

IN THE MATTER OF
SUN INDUSTRIES, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SECS. 5 &
12 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3230. Complaint, May 13, 1988—Decision, May 13, 1988

This consent order prohibits, among other things, a Jonesboro, AR., manufacturer and seller of tanning devices and related products from misrepresenting that the use of a tanning device does not pose a risk of any harmful side effects to users. The consent order also requires the respondent to include a warning statement in any advertisements or promotional materials used for its tanning devices.

Appearances

For the Commission: *Brinley H. Williams and Toby M. Levin.*

For the respondent: *Ray A. Goodwin, Goodwin, Hamilton & Moore,*
Paragould, AR.

COMPLAINT

The Federal Trade Commission, having reason to believe that Sun Industries, Inc., a corporation, ("respondent") has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent is an Arkansas corporation, with its office and principal place of business located at 2409 Industrial Drive, P.O. Box 2026, Jonesboro, Arkansas.

PAR. 2. Respondent has manufactured, advertised, offered for sale, sold and distributed tanning devices and related products for the artificial tanning of humans, including tanning beds, facial units, overhead lamp systems, and other products to the public. These tanning devices are marketed under such trade names as SunTana Sun-System.

PAR. 3. The acts or practices of respondent alleged in this complaint have been in or affecting commerce.

PAR. 4. Respondent has disseminated and caused the dissemination of advertisements and promotional materials for its tanning devices published in magazines and broadcasted on television across state lines, and disseminated in product brochures and other sales literature directly to consumers or to distributors for display or distribution

to consumers. Typical of respondent's advertisements, but not necessarily all - inclusive thereof, are the attached Exhibits A through G. The aforesaid advertisements contain the following statements or depictions:

1. "Our SunTana SunSystem guarantees you a glorious, radiant tan that you can keep all year long. A tan you achieve with soft, comfortable and SAFE U.V.A. light and without all the burning, peeling and flaking you get in natural sunlight." (Emphasis in original) (Exhibit A)
2. "[F]or efficient tanning year 'round without the harmful side effects often associated with natural sunlight." (Exhibit B)
3. "There has never been to our knowledge a case of skin cancer reported to have been caused by use of a SunTana sunbed." (Exhibit C)
4. "There's no harsh glare, so no goggles or eye shades are necessary!" (Exhibit D)
5. "You can lie in luxury on our special SunBed while our SAFE built in lamps make you beautifully brown!" (Emphasis in original) (Exhibit E)
6. "Introducing the year 'round tan by SunTana, makers of the remarkable, new European-style Sunmate. Enjoy the luxury and convenience of a proven and safe UVA tanning system. Achieve a magnificent, golden tan without burning." (Text of TV advertisement, Exhibit F).
7. "The days of lying outdoors in the heat, enduring the discomforts and damaging rays of sunlight are being replaced by proven, non-burning* SunTana SunSystems. (* When exposure times are followed properly.)" (Exhibit G)

PAR. 5. Through the use of the statements and depictions referred to in paragraph four and others in advertisements not specifically set forth herein, respondent has represented, directly or by implication, that:

1. Use of respondent's tanning devices cannot increase the risk of developing skin cancer.
2. Respondent's tanning devices can be safely used without protective eyewear.
3. Respondent's tanning devices can be used without the risk of any harmful side effect associated with the sun.

PAR. 6. In truth and in fact:

1. Use of respondent's tanning devices can increase the risk of developing skin cancer.
2. Respondent's tanning devices cannot be safely used without protective eyewear.
3. Respondent's tanning devices cannot be used without the risk of any harmful side effect associated with the sun.

Therefore, the representations set forth in paragraph five were, and are, false and misleading.

PAR. 7. Through the use of the representations referred to in paragraph five and others not specifically set forth herein, respondent has

represented, directly or by implication, that at the time it made the representations it possessed and relied upon a reasonable basis consisting of competent and reliable scientific evidence for said representations.

PAR. 8. In truth and in fact, at the time it made the representation respondent did not possess and rely upon a reasonable basis for making such representations. Therefore, respondent's representation as set forth in paragraph seven was and is false and misleading.

PAR. 9. In the advertising and sale of its tanning devices, respondent has used terms such as "safe" and "no harmful side effects" without disclosing that the use of such devices poses the risk of eye injury and the increased risk of skin cancer and skin aging. These facts would be material to consumers. The failure to disclose these facts, in light of the representations made as alleged in paragraph five, is a deceptive practice.

PAR. 10. The acts and practices of respondent as alleged in this complaint, and the placement in the hands of others of the means and instrumentalities by and through which others may have used said acts and practices, constitute unfair and deceptive acts or practices in or affecting commerce and the dissemination of false advertisements in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

EXHIBIT A



*Your
Personal
Invitation*



... to a year 'round, beautiful tan!

Our SunTana SunSystem guarantees you a glorious, radiant tan that you can keep all year long. A tan you achieve with soft, comfortable and SAFE U.V.A. light and without all the burning, peeling and flaking you get in natural sunlight. Our SunSystem is GUARANTEED to tan anyone who tans in the sun... while you relax in cool comfort.

We'd like to tell you more about this exciting new way to tan. A single visit will convince you.

Call us or come by today. . .

Complaint

110 F.T.C.

EXHIBIT B



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EXHIBIT C

Q. Does use of the SunSystem cause skin cancer?

A. There has never been to our knowledge a case of skin cancer reported to have been caused by use of a SunTana sunbed. In the ultraviolet light spectrum of sunlight, there is ultraviolet light in what is called UVB wavelengths, which burn the skin and in different, less dangerous wavelengths called UVA. Early UV tanning devices emitted light in UVB wavelengths and did sometimes cause burns. SunTana's lamps emit ultraviolet light in the UVB range only to the extent of 2%, the bulk of the emissions being in the UVA wavelength range. UVA lamps will tan the skin and when used as directed will not burn the skin as the UVB lamps do.

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EXHIBIT D



SUGGESTED RADIO COPY

60 SECOND SUNTANNING SPOT.

ANNOUNCER: Remember how hard you worked last summer . . . all the long hours
you put in . . . all the glare from the hot sun and the sweat trickling
down your back . . . Just to get a suntan?!!

(Music: Upbeat and Catchy)

ANNOUNCER: Now getting a suntan can be fun at (name)! You can get
the best of the sun, without the bother! With our exclusive European
Tanning Process, you can relax on our special SunBed, even read a book,
while you receive a rich golden tan! There's no harsh glare, so no goggles
or eye shades are necessary! And quite cooling fans keep the temperatures
paradise-perfect! At (name), we can give you something the
sun can't A Guarantee! You are guaranteed a darker skin tone
or your money back! Pale faces are our specialty!! And there's absolutely
no burning! Go to where the sun always shines, where you can get the
best of the sun, without bother! A suntan is fun at (name)!
And that's a guarantee! Call 000-0000 for your place in the sun today!!!!
(name), (town)!!

(Music up to completion)

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EXHIBIT E

SUGGESTED RADIO COPY60 SECOND INTRODUCTORY SPOT

ANNOUNCER: Beautiful Tan!

(Theme established then under)

ANNOUNCER: Getting a tan can be fun and easy! _____ (Name) _____ is proud to announce that they are open and ready for business in _____ (town) _____ at _____ (address) _____.

The tan you worked for all last summer can be deep and dark this summer.

_____ (name) _____ features an exclusive European tanning process.

There are no dangers of overexposure or burning that other tanning salon treatments can bring! There are no boring stand-up sessions at _____ (name) _____. You can lie in luxury on our special SunBed while our SAFE built in lamps make you beautifully brown! You can look good all summer long! Let _____ (name) _____ help you keep your tan all year long! Call soon for your appointment.

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EXHIBIT F

SunTana 30 Second TV Spot

Herget Marketing, January 20, 1984

Introducing the year 'round tan by SunTana, makers of the remarkable, new, European-style Sunmate. Enjoy the luxury and convenience of a proven and safe UVA tanning system. Achieve a magnificent, golden tan without burning. Order your Sunmate now.

Incredibly low price of \$795. Freight and shipping extra. Toll-free number 1-800-643-0086.

EXHIBIT G

TAN Year 'Round



□ More and more Americans are discovering the convenience and benefits of year 'round indoor tanning.

□ If you tan in natural sunlight, our European-styled SunTana SunSystem guarantees you a glorious, radiant tan you can keep all year long. The days of living outdoors in the heat, enduring the discomforts and damaging rays of sunlight are being replaced by proven, non-burning* SunTana SunSystems.



Call or come by today and let us prove it to you.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Sun Industries, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Arkansas. Sun Industries has its offices and principal place of business at 2409 Industrial Drive, P.O. Box 2026, Jonesboro, Arkansas.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent and the proceeding is in the public interest.

ORDER

DEFINITION

For the purpose of this order, the following definition shall apply:

"Tanning device" means any product designed to incorporate one or more ultraviolet lamps and intended for irradiation of any part of the living human body by ultraviolet radiation to induce skin tanning.

I.

It is ordered, That respondent Sun Industries, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any tanning device, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, directly or by implication, through the use of the word safe or any other word or words of similar meaning, that use of any such tanning device does not pose a risk of any harmful side effect to the user.

II.

It is further ordered, That respondent Sun Industries, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any tanning device, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, directly or by implication, that:

- a. Use of any such device does not increase the risk of developing skin cancer; and
- b. Protective eye wear is not needed when using any such device.

III.

It is further ordered, That for one year after the date of service of this order respondent Sun Industries, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any tanning device, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from failing to prominently disclose in any print advertisement, film, video tape or any other promotional material the following statement:

NOTICE - Read the mandatory FDA warning label found on every tanning machine for important information on potential eye injury, skin cancer, skin aging and photosensitive reactions.

The above-required language shall be included in printed material printed in a typeface and color that are clear and conspicuous, and, in multipage documents, shall appear on the cover or first page; and in any film, video tape, or slide promotional material shall be included either orally or visually in a manner designed to ensure clarity and prominence; provided, further, that nothing contrary to, inconsistent with, or in mitigation of the above-required statement shall be used in any advertising or promotional materials.

IV.

It is further ordered, That commencing one year after the date of service of this order respondent Sun Industries, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any tanning device, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making in any print advertisement, film, video tape or any other promotional material any representation, directly or by implication, that the tanning device is safe or safer than other devices or methods of tanning or that the device has health benefits unless the following statement is given:

NOTICE - Read the mandatory FDA warning label found on every tanning machine for important information on potential eye injury, skin cancer, skin aging and photosensitive reactions.

The above-required language shall be included in printed material printed in a typeface and color that are clear and conspicuous, and, in multipage documents, shall appear on the cover or first page; and in any film, video tape, or slide promotional material shall be included either orally or visually in a manner designed to ensure clarity and prominence; provided, further, that nothing contrary to, inconsistent with, or in mitigation of the above-required statement shall be used in any advertising or promotional materials.

V.

It is further ordered, That respondent Sun Industries, Inc., its successors and assigns and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, offering for sale, sale, or distribution of any product for personal or household use, in or affecting commerce, as "commerce" is defined in the Federal Trade

Commission Act, do forthwith cease and desist from making, directly or by implication, any health or safety representation unless, at the time of such representation, respondent possesses and relies upon a reasonable basis for each such representation, consisting of reliable and competent scientific evidence that substantiates such representation; provided however, that to the extent such evidence of a reasonable basis consists of scientific or professional tests, analyses, research, studies or any other evidence based on expertise of professionals in the relevant area, such evidence shall be "reliable and competent" only if those tests, analyses, research, studies, or other evidence are conducted and evaluated in an objective manner by persons qualified to do so, and using procedures generally accepted in the profession to yield accurate and reliable results.

VI.

It is further ordered, That respondent shall distribute a copy of this order to each current officer, employee, agent and or representative having sales or promotional responsibilities with respect to the subject matter of this order, and to each dealer, distributor, and purchaser or lessee for commercial use, of its tanning devices (such as health clubs, tanning salons, beauty salons, catalogue houses, and tanning device retailers) known through existing company records to be in operation on the effective date of this order.

VII.

It is further ordered, That for three (3) years from the date that the representations to which they pertain are last disseminated, respondent, its successors and assigns shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials relied upon to substantiate any claim or representation covered by this order; and

B. All test reports, studies, surveys, or other materials in its possession or control or of which it has knowledge that contradict, qualify, or call into question such representation or the basis upon which respondent relied for such representation, including complaints from consumers.

VIII.

It is further ordered, That for ten (10) years after the date of service of this order respondent, its successors and assigns shall maintain for three (3) years from the last date of dissemination of the material a copy of each nonidentical form of promotional and training material disseminated by respondent and upon request make such material available to the Federal Trade Commission or its staff for inspection and copying.

IX.

It is further ordered, That for ten (10) years after the date of service of this order respondent, its successors and assigns shall maintain, for three (3) years and upon request make available to the Federal Trade Commission for inspection and copying records of the name and last known address of each dealer, distributor and purchaser or lessee for commercial use of respondent's sunlamp products.

X.

It is further ordered, That respondent, its successors and assigns shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of this order.

XI.

It is further ordered, That respondent shall, within sixty (60) days after service of this order upon it and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied or intends to comply with this order.

Modifying Order

110 F.T.C.

IN THE MATTER OF

OGILVY & MATHER INTERNATIONAL, INC.

MODIFYING ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SECS. 5
& 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket 9149. Consent Order, Jan. 4, 1983—Modifying Order, May 24, 1988*

The Federal Trade Commission has modified a portion of a 1983 consent order (101 FTC 1) with Ogilvy & Mather International, Inc., the advertising agency for Thompson Medical Co., Inc., the makers of the topically applied analgesic "Aspercreme", by making two modifications in accordance with paragraph eight of the consent order so that the Ogilvy order matches the language in the Thompson order.

ORDER REOPENING THE PROCEEDING AND
MODIFYING CEASE AND DESIST ORDER

On February 5, 1981, the Commission issued its complaint in this proceeding alleging that Thompson Medical Co., Inc. ("Thompson"), and its advertising agency, Ogilvy & Mather International, Inc. ("Ogilvy"), had made false and deceptive representations in advertising materials for Thompson's over-the-counter topically applied analgesic "Aspercreme" in violation of Section 5 of the FTC Act, 15 U.S.C. 45 ("Section 5"). On October 4, 1982, the Commission accepted from Ogilvy an "Agreement Containing Consent Order to Cease and Desist" for public comment and on January 4, 1983, issued the negotiated consent order. The litigation against Thompson continued.

Paragraph 8 of the Ogilvy consent agreement specified that:

8. No part or provision of this Order shall become binding upon respondent until the effective date of a final order to cease and desist against Thompson Medical Company, Inc. or its successors or assigns. If a final order against Thompson Medical Company, Inc. in this proceeding contains a provision different from the provision that correspond[s] to the provision in Part I(A) of this Order or contains a definition of "competent and reliable scientific or medical evidence" that differs from Part II of this Order, then this Order shall be reopened for the sole purpose of conforming said provision or said definition in this Order with the corresponding provision or definition in the Thompson Medical Company, Inc. order. In the event that the Complaint in this matter against Thompson Medical Company, Inc. is dismissed in whole, then the Commission, upon the application of respondent, shall set aside this Order.

On November 24, 1984, the Commission issued a cease-and-desist order against Thompson. 104 FTC 648. Thompson petitioned for review of the order, which was affirmed by the Court of Appeals. 791 F.2d 189 (D.C. Cir. 1986). Thompson then petitioned for *certiorari*, and