

IN THE MATTER OF

AN-MAR INTERNATIONAL, LTD., INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SECS.
5 & 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3261. Complaint, July 17, 1989—Decision, July 17, 1989*

This consent order prohibits, among other things, a Wood Dale, Ill. maker of suntanning devices, from misrepresenting that its devices provide health benefits and that they do not pose a risk of any harmful side effects. In addition, the order requires respondents' promotional materials to contain a warning statement regarding potential eye injury, skin cancer, skin aging and photosensitive reactions.

Appearances

For the Commission: *Mark Kindt* and *William Brinley*.

For the respondents: *Craig M. White, Wildman, Harrold, Allen & Dixon*, Chicago, Ill.

COMPLAINT

The Federal Trade Commission, having reason to believe that An-Mar International, Ltd., Inc., a corporation, and Andrew Bobel, individually and as an officer of said corporation, and Marzenna Bobel, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated Sections 5 and 12 of the Federal Trade Commission Act, and that an action by it is in the public interest, issues this complaint and alleges that:

PARAGRAPH 1. Respondent An-Mar International, Ltd., Inc., "respondent An-Mar") is an Illinois corporation, with its office and principal place of business located at 345 Beinoris Drive, Wood Dale, Illinois.

Respondents Andrew Bobel and Marzenna Bobel are officers of respondent An-Mar and are responsible for formulating, directing and controlling the policies of respondent An-Mar. Their address is the same as that for respondent An-Mar.

PAR. 2. Respondents have 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 sometimes marketed under the trade name Solar Gold.

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

PAR. 4. Respondents have disseminated and caused the dissemination of product brochures and other sales literature directly to consumers and to distributors and mail order companies across state lines. Typical of the representations made by respondents, but not necessarily all-inclusive thereof, are the attached Exhibits A and B. The aforesaid representations make the following statements or depictions:

1. "Some [people are] not allowed to tan outdoor because of large amount of UV-B (ultraviolet Beta) in the sun's spectrum." (Exhibit A.)

2. "In addition to a beautiful appearance, tanning contributes to good health by providing a positive and stabilizing effect on metabolism, respiration and blood formation. It has a beneficial effect on our power of resistance, makes us feel better and gives us stamina." (Exhibit A.)

3. Models are typically depicted using respondents' tanning devices without wearing protective eyewear. (Exhibit B.)

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

1. Use of respondents' tanning devices results in health benefits, including positive effects on metabolism, respiration, blood formation, power of resistance, and stamina;

2. Use of respondents' tanning devices does not pose a risk of the harmful side effects associated with exposure to the sun's radiation; and

3. Respondents' tanning devices can be used safely without protective eyewear.

PAR. 6. In truth and in fact:

1. Use of respondents' tanning devices results in no health benefit;

2. Use of respondents' tanning devices does pose a risk of the harmful side effects associated with exposure to the sun's radiation; and

3. Respondents' tanning devices cannot be used safely without protective eyewear.

Therefore, the representations set forth in paragraph four 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, respondents have represented, directly or by implication, that at the time they made the representations, they possessed and relied upon a reasonable basis consisting of competent and reliable scientific evidence for each of the representations.

PAR. 8. In truth and in fact, respondents did not possess and rely upon a reasonable basis for making such representations. Therefore, respondents' representations as set forth herein were and are false and misleading.

PAR. 9. In the advertising and sale of their tanning devices, respondents have, as alleged in paragraph four, made health claims and safety claims without disclosing that the use of such tanning devices poses the risks of eye injury, skin cancer, skin aging, and impairment of the immune function. These facts would be material to consumers. The failure to disclose these facts, in light of the representations made as alleged in paragraph four, is a deceptive practice.

PAR. 10. The acts and practices of respondents 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 or 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



ARTFULLY TAN. Each year at least 80% of U.S. population do not have a chance and time to tan outdoor—on the beach. Some of them not allowed to tan outdoor because of large amount of UV-B (ultraviolet Beta) in the sun's spectrum. Unlike the conventional beach or lawn suntan Solarium Tanning can be accomplished in any season, at any time, and on any day—whether cloudy, rainy or cold. Best of all, it can be done at your convenience, at your own home.

Most importantly, a deep, rich and even tan be obtained after a week's course of tanning sessions. In addition to a beautiful appearance, tanning contributes to good health by providing a positive and stabilizing effect on metabolism, respiration and blood formation. It has a beneficial effect on our power of resistance, makes us feel better and gives us stamina. And when we feel better, we look better!

000005 A

SOLAR GOLD UV-B

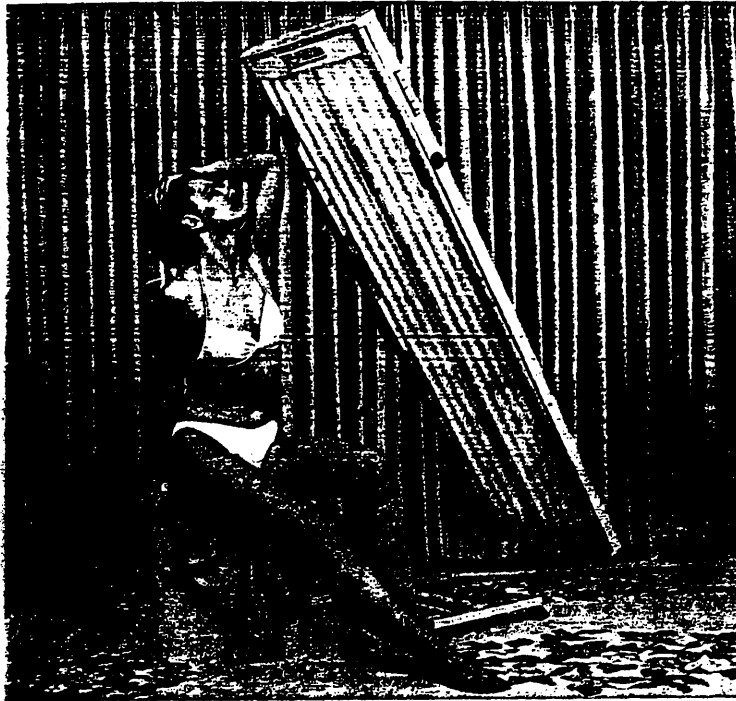
215 E. Belmont Drive • Wood Dale, IL 60191

EXHIBIT A

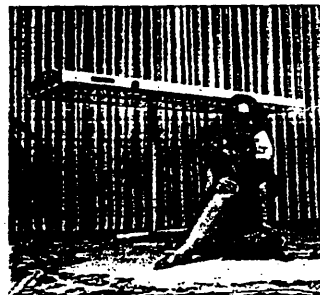
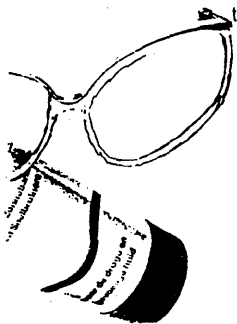
Complaint

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EXHIBIT B



800 FIFTH AVE. The beautiful and practical design of this tanning canopy brings the real beach home. It has adjustable height. can be used *over a bed or with any chair or chaise.* A 30 minute timer turns it off automatically. Four to six 30 minute sessions will develop a full, golden, rich tan. It operates on 110 Volt household current, has 8 Philips UV-A bulbs, protective plexiglas and internal cooling fan. Wheels permit ease of movement and storage. Supply: 900 Watts 110 Volt 1.1 Amps



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DECISION AND ORDER

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

Respondents, their attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents 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 respondents 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, 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 An-Mar International, Ltd., Inc. ("An-Mar") is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 345 Beinoris Drive, Wood Dale, Illinois.

Respondents Andrew Bobel and Marzenna Bobel are officers of respondent An-Mar and are responsible for formulating, directing and controlling the policies, acts and practices of An-Mar.

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

ORDER

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 respondents An-Mar International, Ltd., Inc., a corporation, its successors and assigns, and its officers Andrew Bobel and Marzenna Bobel, individually and as officers of An-Mar International, Ltd., Inc., a corporation, and respondents' others officers and its agents, representatives, and employees, directly or through any corporation, subsidiary, division or other corporate 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 such tanning device may result in any health benefit, including a positive effect on metabolism, respiration, blood formation, power of resistance, or stamina;

B. Use of respondents' tanning devices does not pose a risk of the harmful side effects associated with exposure to the sun's radiation; and

C. Protective eye wear is not needed when using any such device.

II.

It is further ordered, That, for the purposes of this order, any promotional material depicting models using tanning devices without appropriate protective eye wear will be deemed to represent that protective eye wear is not needed when using the tanning devices; *unless*, the promotional material clearly and conspicuously, and in close proximity to such depiction, discloses that protective eye wear is needed to prevent eye injury, *and further*, if such promotional material depicts models wearing what might appear to be ordinary sunglasses, the disclosure required by this Part must also disclose that ordinary sunglasses do not offer adequate protection.

III.

It is further ordered, That for one (1) year after the date of service of this order, respondents, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other corporate 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 multi-page 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 (1) year after the date of service of this order, respondents, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other corporate 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 promotional material any representation, directly or by implication, that the tanning device is safe or safer than other methods of tanning or that using the tanning device results in any health benefit unless the following statement is prominently disclosed:

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 multi-page 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 respondents, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other corporate 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, respondents possess and rely 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 for three (3) years from the date that the representations to which they pertain are last disseminated, respondents 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;

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.

VII.

It is further ordered, That respondents 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 current dealer, distributor, mail order retailer and purchaser or lessee for commercial use, of its tanning devices (such as health clubs, tanning salons, beauty catalogue houses, and tanning device retailers), and to each retail customer known through existing company records to have purchased its tanning devices.

VIII.

It is further ordered, That for ten (10) years after the date of service of this order respondents 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 respondents 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, mail order retailer and purchaser or lessee for commercial use, of respondents' tanning devices.

X.

It is further ordered, That respondents shall notify the Commission at least thirty (30) days prior to any proposed change in respondent An-Mar International, Inc., 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 Andrew Bobel and respondent Marzenna Bobel shall notify the Commission of the discontinuance of their present employment and of their affiliation with any new business or employment involving the manufacture, advertising, sale, offering for sale or distribution in commerce of any tanning device, or of their affiliation with any new business or employment in which their duties or responsibilities would involve the manufacture, advertising, sale, offering for sale or distribution of tanning devices, with each such notice to include respondent's new business address and a statement as to the nature of the new business or employment, as well as a description of their duties and responsibilities.

XII.

It is further ordered, That respondents shall, within sixty (60) days after service of this order upon them 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 they have complied or intend to comply with this order.

IN THE MATTER OF

THE B.F. GOODRICH COMPANY, ET AL.

MODIFIED FINAL ORDER, ETC., IN REGARD TO ALLEGED VIOLATION
OF SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT

Docket 9159. Final Order, Mar. 15, 1988—Modified Final Order, July 18, 1989*

This modified final order, issued pursuant to a stipulation between the Commission and B.F. Goodrich and a joint motion granted in the court of appeals, requires Goodrich to divest its Calvert City, Ky. facility, for the production of vinyl chloride monomer (VCM) and ethylene dichloride, instead of the LaPorte VCM plant.

Appearances

For the Commission: *Rhett R. Krulla.*

For the respondents: *Tom D. Smith, Jones, Day, Reavis & Pogue,*
Washington, D.C. *Richard W. Pogue, Jones, Day, Reavis & Pogue,*
Cleveland, OH.

MODIFIED FINAL ORDER

The Commission issued a Final Order in this proceeding on March 15, 1988, and respondent, The B.F. Goodrich Company ("Goodrich"), subsequently filed a petition for review of that Order in the United States Court of Appeals for the Second Circuit. On April 5, 1989, the Commission and Goodrich filed a joint motion asking that court to modify the Commission's Final Order pursuant to a Stipulation between the Commission and Goodrich. The parties expressly agreed that entering into the Stipulation did not "constitute an admission of any liability or of any issue of law or fact." Commissioner Azcuenaga issued the attached dissent to the Commission's entry into the Stipulation, later joined by Commissioner Strenio. On April 25, 1989, the court of appeals granted the parties' joint motion and entered its order modifying the Commission's Final Order of March 15, 1988.

Now therefore, *it is hereby ordered*, that the aforesaid "Final Order" be, and hereby is, modified in accordance with the order of the Court of Appeals to read as follows:

*Complaint, Final Order, etc. previously published at 110 FTC 207 (1988).