

Complaint

IN THE MATTER OF

INDOOR TANNING ASSOCIATIONCONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5(A) OF THE FEDERAL TRADE COMMISSION ACT

Docket No. C-4290; File No. 082 3159
Filed, May 13, 2010 — Decision, May 13, 2010

This consent order addresses Indoor Tanning Association's advertising and promotion of indoor tanning products and facilities. Indoor Tanning Association falsely represented that: tanning, including indoor tanning, poses no danger; does not increase the risk of skin cancer; indoor tanning is approved by the government; and indoor tanning is safer than tanning outdoors because, in indoor tanning facilities, the amount of ultraviolet light is monitored and controlled. Additionally, Indoor Tanning Association falsely represented that research shows that vitamin D supplements may harm the body's ability to fight disease; and that a recent study in the prestigious Proceedings of the National Academy of Sciences determined that the risks of not getting enough ultraviolet light far outweigh the hypothetical risk of skin cancer, that getting a healthy tan produces vitamin D, and that increased vitamin D has been linked to significantly decreasing your risk of contracting internal cancers, such as lung, kidney, or liver cancer. ITA also represented that tanning causes the skin to generate vitamin D and has health benefits, but failed to disclose that consumers can increase their vitamin D levels through ultraviolet levels lower than the amount needed to get a tan, and that ultraviolet radiation can injure the eyes and increases the risk of skin cancer. The order prohibits Indoor Tanning Association from representing that tanning, including indoor tanning, does not increase the risk of skin cancer; is safe or poses no danger; indoor tanning is approved by the government; and indoor tanning is safer than tanning outdoors because in indoor tanning facilities, the amount of ultraviolet light is monitored and controlled. Furthermore, Indoor Tanning Association is prohibited from misrepresenting (1) that research shows that vitamin D supplements may harm the body's ability to fight disease and (2) that a study in the Proceedings of the National Academy of Sciences determined: (a) that sun exposure does not cause skin cancer or melanoma, or that the risk of such cancer is only hypothetical; (b) that getting a tan is healthy; (c) that the risks of not getting enough ultraviolet light far outweigh the risk of skin cancer; or (d) that vitamin D has been linked to significantly decreasing the risk of contracting lung, kidney, or liver cancer.

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Participants

For the *Commission*: Janet M. Evans.

For the *Respondents*: Daniel F. McInnis and Andrea Vavonese, Akin Gump Strauss Hauer & Feld LLP; Bridget Calhoun and David Osei, Crowell & Moring.

COMPLAINT

The Federal Trade Commission, having reason to believe that Indoor Tanning Association, a corporation (“respondent”), has violated the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Indoor Tanning Association (“ITA”) is a Massachusetts corporation with its principal place of business at 2025 M St., N.W., Washington, D.C. 20036. ITA is registered as a nonprofit entity under Section 501(c)(6) of the Internal Revenue Code. Its members include indoor tanning manufacturers, distributors, facility owners, and representatives of other supporting industries. ITA’s purpose is to “advance the business growth and image of the indoor tanning industry, and the welfare of its membership.”
2. Respondent has advertised and promoted to the public the use of ultraviolet lamps and sunlamp products, as defined in 21 C.F.R. § 1040.20, and commercial indoor tanning facilities where consumers may use ultraviolet lamps or sunlamp products. Ultraviolet lamps and sunlamp products are “devices” within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.
3. The acts and practices of respondent, as alleged herein, have been in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act.

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4. As part of a coordinated campaign to promote ultraviolet lamps and sunlamp products and indoor tanning, respondent created, prepared, disseminated, or caused to be disseminated advertisements, including the attached Exhibits A through G. These advertisements contain the following representations or statements, among others:

a. **TANNING CAUSES MELANOMA HYPE**

Recent research indicates that the benefits of moderate exposure to sunlight outweigh the hypothetical risks. Surprisingly, there is no compelling scientific evidence that tanning causes melanoma. Scientists have proven, however, that exposure to all forms of ultraviolet light – both indoors and out – stimulates the natural production of vitamin D. And research has proven that vitamin D protects against heart disease and many types of cancer, in addition to other important health benefits.

It's time to rethink sunbathing.

Find out more at **www.SunlightScam.com**.

A message brought to you by the Indoor Tanning Association

–Exhibit A, newspaper advertisement and point-of-sale poster art provided to ITA members

b. * * *

There are a lot of misconceptions about sunlight. After hearing relentless campaigns telling us to lather on the sunscreen, many Americans have been led to believe that ultra violet [sic] (UV) light – whether it comes from the sun or from a tanning salon – is something to be feared, rather than cherished.

...

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The reality is that UV light provides us with countless health benefits – both physiological and psychological. And the rewards of “soaking up the sun” even outweigh the risks of overexposure. Though there are various ways of getting the recommended amount, such as mowing the lawn or lying by the pool, safe, moderate tanning is the best way to maximize these benefits while minimizing any risks.

* * *

Melanoma Misinformation.

* * *

Getting a regular amount of sunlight is healthy, whether it's outdoors or in a sun bed. Moderate exposure to UV light benefits people with vitamin D deficiency and makes people feel good. However, a great deal of misinformation has been spread about the link between Melanoma and *any* amount [sic] UV exposure.

The truth may surprise you:

- Sunburns, not sun tans are linked to melanoma
- Melanoma is most common among those who work indoors, not outside
- Melanoma appears most commonly on body parts not regularly exposed to sun

Safe, moderate exposure does not increase risk of melanoma skin cancer. And tanning indoors is even safer because, unlike exposure to the sun, the environment is controlled. In fact, the anti-cancer benefits of UV exposure highlighted by [sic] recent studies far outweigh the risks associated with over-exposure.

–Exhibit B, website, <http://www.trusttanning.com>

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c. Get the Facts About Tanning

* * *

SCAM: Getting a tan is dangerous

TRUTH: There is nothing dangerous about getting a tan. In fact, your body needs ultraviolet light to live. And now, new research is unlocking the secrets of vitamin D, which is naturally produced by skin when it is exposed to sunlight or indoor tanning lights. Earlier this year the London *Telegraph* reported:

Last week, a report in the prestigious US journal Proceedings of the National Academy of Sciences revealed that people with higher levels [of vitamin D] were more likely to survive colon, breast and lung cancer

...

The Proceedings of the National Academy of Sciences study determined that the risks associated with not getting enough sun far outweighed any hypothetical damage that might occur.

While a healthy tan poses no significant risks of damaging your skin, burning your skin can be dangerous. For that reason, indoor tanning – where the amount of UV light you receive is monitored – is considered by many to be a safer alternative to tanning outdoors.

* * *

SCAM: Every ray of UV light from a tanning bed increases your risk of contracting melanoma skin cancer

TRUTH:

* * *

A recent study in the prestigious Proceedings of the National Academy of Sciences determined that the risks of not getting enough UV light far outweighed

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the hypothetically minute risk of skin cancer. That's because getting a healthy tan naturally produces vitamin D, which has been linked to significantly decreasing your risk of contracting internal cancers like lung, kidney, or liver cancer.

While getting too much sun has been linked to some forms of cancer, indoor tanning is a government-approved, controlled environment designed to give you a tan without ever burning – which is the likely culprit in contracting cancer from sun exposure.

* * *

SCAM: Indoor tanning is more dangerous than tanning in the sun

TRUTH: Just the opposite is true. Unlike tanning outdoors, indoor tanning is designed to match your skin type and desired tan in a well-regulated, controlled environment. Consequently, the vast bulk of scientific research indicates that indoor tanning is a safer alternative to tanning outdoors.

–Exhibit C, website, www.sunlightscam.com.

- d. The fear of getting a tan has gone too far. Dermatologists with the sunscreen and cosmetic industries are trying to scare us away from the sun. But tanning produces vitamin D, and research shows vitamin D may fight heart disease, breast cancer, stroke, and osteoporosis. So go get a tan, your body will thank you.

[on screen: Vitamin D Fights Heart Disease Breast Cancer Stroke Osteoporosis]

Bought to you by The Indoor Tanning Association.

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-Exhibit D1, Transcript, television and website advertisement and Exhibit E, DVD containing video of same

[on screen: www.SunLightScam.com]

The fear of getting a tan has gone too far. Dermatologists with the sunscreen and cosmetic industries are trying to scare us away from the sun. But tanning produces vitamin D, and research shows vitamin D may fight heart disease, breast cancer, stroke, and osteoporosis. So go get a tan, your body will thank you.

[on screen: www.SunLightScam.com]

[on screen: Vitamin D Fights Heart Disease Breast Cancer Stroke Osteoporosis]

Bought to you by The Indoor Tanning Association.

-Exhibit D2, Transcript, television and website advertisement and Exhibit E, DVD containing video of same

e. * * *

By practicing what you find in this book, you will more effectively communicate your message, build your image, and motivate desired behavior.

* * *

ARGUMENT 1 – VITAMIN D IS GOOD (VITAMIN D IS THE “SUNSHINE VITAMIN”):

* * *

- It is impossible to get the requisite amount of vitamin D in cities north of 37 degrees for as many as 6 months out of the year. . .
- Vitamin D isn't like other vitamins that you can easily ingest as part of your diet. It is best absorbed through

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the skin from exposure to UV light. New research indicates that supplement-based vitamin D, as opposed to vitamin D naturally produced through exposure to UV light, may actually harm the body's ability to fight disease.

* * *

ARGUMENT 3 – TANNING IN MODERATION IS BENEFICIAL:

* * *

- Indoor tanning in moderation is safer than exposure to the sun, because the environment is controlled.
- Unlike the sun, tanning is well regulated and approved by the government. When used moderately and responsibly, tanning sessions are designed to prevent burning.

-Exhibit F, ITA "Communications: the basics" guide provided to ITA members

f. Enjoy the sun on doctor's orders
Solar rays can help protect against some cancers and heart disease, say scientists
 -The Guardian, January 8, 2008

As Vitamins Go, D, You Are My Sunshine
Just 20 minutes of sun exposure without sunscreen enables the skin to produce 20,000 IU of vitamin D
 - The Washington Post, September 18, 2007

Sunshine prevents more deaths than it causes; Sunshine has a protective effect overall because it helps to create vitamin D
 - New Scientist, January 12, 2008

* * *

Time to rethink sun tanning?

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For more information visit www.TrustTanning.com

Dermatologists and the sunscreen industry have spent millions on a deceptive campaign to scare Americans away from the sun. Now the tide of research is turning the other direction. The positive effects of getting vitamin D from sunlight are clear. So soak up a little sunlight – indoors or out – a couple of times each week, and get your recommended dose of the “sunshine vitamin.”

Paid for by the Indoor Tanning Association

–Exhibit G, newspaper advertisement and point-of-sale poster art provided to ITA members

5. Through the means described in Paragraph 4, respondent has represented, expressly or by implication, that:

- a. Tanning, including indoor tanning, does not increase the risk of skin cancer;
- b. Tanning, including indoor tanning, poses no danger;
- c. Indoor tanning is approved by the government; and
- d. Indoor tanning is safer than tanning outdoors because, in indoor tanning facilities, the amount of ultraviolet light is monitored and controlled.

6. In truth and in fact:

- a. Tanning, including indoor tanning, increases the risk of skin cancer, including squamous cell and melanoma skin cancers;
- b. Tanning, including indoor tanning, poses danger;

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- c. Indoor tanning is not approved by the government; and
- d. Indoor tanning is not safer than tanning outdoors because the amount of ultraviolet light received when tanning indoors is neither monitored nor controlled sufficiently to prevent the health risks associated with ultraviolet exposure.

Therefore, the representations set forth in paragraph 5 were, and are, false and misleading.

7. Through the means described in Paragraph 4, respondent has represented, expressly or by implication, that it relied on a reasonable basis that substantiated the representations set forth in Paragraph 5, at the time the representations were made.

8. In truth and in fact, respondent did not possess and rely upon a reasonable basis that substantiated the representations set forth in Paragraph 5, at the time the representations were made. Therefore, the representation set forth in paragraph 7 was, and is, false and misleading.

9. Through the means described in Paragraph 4, respondent has represented, expressly or by implication, that:

- a. Research shows that vitamin D supplements may harm the body's ability to fight disease; and
- b. A recent study in the prestigious Proceedings of the National Academy of Sciences determined that the risks of not getting enough ultraviolet light far outweigh the hypothetical risk of skin cancer, that getting a healthy tan produces vitamin D, and that increased vitamin D has been linked to significantly decreasing your risk of contracting internal cancers, such as lung, kidney, or liver cancer.

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10. In truth and in fact:

- a. Research has not shown that vitamin D supplements may harm the body's ability to fight disease; and
- b. The study in the Proceedings of the National Academy of Sciences referenced by respondent did not determine that the risk of getting skin cancer from ultraviolet light is only hypothetical, that the risks of not getting enough ultraviolet light far outweigh the risk of skin cancer, that getting a tan is healthy, or that increased vitamin D has been linked to significantly decreasing the risk of contracting internal cancers, such as lung, kidney, or liver cancer.

Therefore, the representations set forth in paragraph 9 were, and are, false and misleading.

11. Through the means described in paragraph 4, respondent has represented that tanning causes the skin to generate vitamin D and has health benefits. Respondent has failed to disclose that consumers can increase their vitamin D levels through ultraviolet exposure levels lower than the amount needed to get a tan, and that ultraviolet radiation can injure the eyes and increases the risk of skin cancer. These facts would be material to consumers in their purchase or use of indoor tanning services. The failure to disclose these facts, in light of the representation made, was, and is, a deceptive practice.

12. Through the means described in Paragraph 4, respondent has provided to others the means and instrumentalities to engage in deceptive acts or practices.

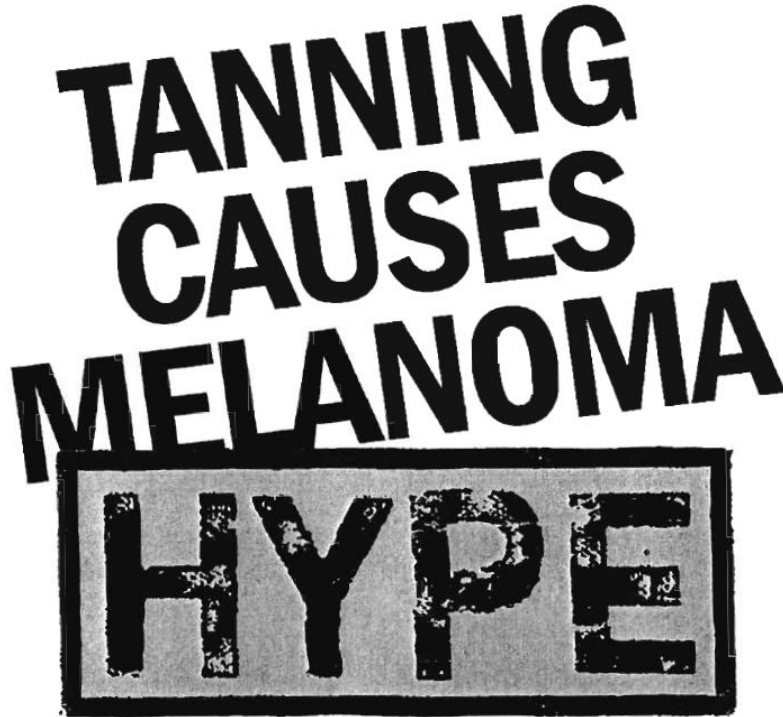
13. The acts and practices of respondent as alleged in this complaint constitute unfair or deceptive acts or practices, and the making of false advertisements, in or affecting commerce in violation of Section 5(a) and 12 of the Federal Trade Commission Act.

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THEREFORE, the Federal Trade Commission this thirteenth day of May, 2010, has issued this complaint against respondent.

By the Commission, Commissioner Ramirez not participating.

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EXHIBIT A

Recent research indicates that the benefits of moderate exposure to sunlight outweigh the hypothetical risks. Surprisingly, there is no compelling scientific evidence that tanning causes melanoma. Scientists have proven, however, that exposure to all forms of ultraviolet light—both indoors and out—stimulates the natural production of vitamin D. And research has proven that vitamin D protects against heart disease and many types of cancer, in addition to other important health benefits.

It's time to rethink sun bathing.

Find out more at
www.SunlightScam.com

Exhibit A

A message brought to you by the Indoor Tanning Association

EXHIBIT B

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Life on our planet needs sunlight to survive. And humans are no exception. Unlike plants and animals that daily struggle to stay in the light, we actively work to *avoid* the sun.

There are a lot of misconceptions about sunlight. After hearing relentless campaigns telling us to lather on the sunscreen, many Americans have been led to believe that ultra violet (UV) light—whether it comes from the sun or from a tanning salon—is something to be feared, rather than cherished. Until now, hope for a balanced message in the public debate on this issue seemed to be lost.

The reality is that UV light provides us with countless health benefits—both physiological and psychological. And the rewards of “soaking up the sun” even outweigh the risks of overexposure. Though there are various methods of getting the recommend amount, such as mowing the lawn or lying by the pool, safe, moderate tanning is the best way to maximize these benefits while minimizing any risks.

TrustTanning.com is devoted to answering the most frequently asked questions about tanning and debunking some of the most pervasive myths.

© 2008 TrustTanning.com

Exhibit B, p. 1

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EXHIBIT B (continued)

EXHIBIT B (continued) | TRUSTTANNING.COM

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Melanoma Misinformation

"These data, together with those for internal cancers and the beneficial effects of an optimal vitamin D status, indicate that increased sun exposure may lead to improved cancer prognosis and, possibly, give more positive than adverse health effects."

—*Proceedings from the National Academies of Science*
2008

Getting a regular amount of sunlight is healthy, whether it's outdoors or in a sun bed. Moderate exposure to UV light benefits people with vitamin D deficiency and makes people feel good. However, a great deal of misinformation has been spread about the link between Melanoma and any amount UV exposure.

The truth may surprise you:

- Sunburns, not sun tans are linked to melanoma
- Melanoma is most common among those who work indoors, not outside
- Melanoma appears most commonly on body parts not regularly exposed to sun

Safe, moderate exposure does not increase risk of melanoma skin cancer. And tanning indoors is even safer, because unlike exposure to the sun, the environment is controlled. In fact, the anti-cancer benefits of UV exposure highlighted by recent studies far outweigh the risks associated with over-exposure.

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Exhibit B, p. 2

<http://www.trusttanning.com/skinCancerMisinformation.htm>

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EXHIBIT C

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06/1/09, Getting a tan is dangerous - SunLightScam.com

Page 1 of 2



- Forside
- Sunscare
- Scams About Tanning
- Blowback
- About Us

Get the Facts about Tanning

The Sunscam Industry has spent millions of dollars scaring Americans out of the sun in an effort to sell more sunscreen. But before you believe the sunscreen companies, get the facts about UV light and tanning.

- **Getting a tan is dangerous**
- Tanning has caused an epidemic of skin cancer
- Every ray of UV light from a tanning bed increases your risk of contracting melanoma skin cancer
- Tanning beds are 15 times stronger than the sun
- There is no such thing as a responsible tan
- You can get enough Vitamin D through supplements or drinking milk
- Tanning doesn't protect you from getting a burn on vacation
- Indoor tanning is more dangerous than tanning in the sun

SCAM:

Getting a tan is dangerous

TRUTH:

There is nothing dangerous about getting a tan. In fact, your body needs ultraviolet light to live. And now, new research is unlocking the secrets of vitamin D, which is naturally produced by skin when it is exposed to sunlight or indoor tanning lights. Earlier this year the London *Telegraph* reported:

Last week, a report in the prestigious US journal Proceedings of the National Academy of Sciences revealed that people with higher levels [of vitamin D] were more likely to survive colon, breast and lung cancer. This follows last year's University of San Diego review of 40 years of research, which revealed that a daily dose could halve the risk of breast and bowel cancer.

Other claims are that it reduces the risk of heart disease (a study of 10,000 women in California found that those who took supplements had a 31 per cent lower risk of dying

Exhibit C, p. 1

<http://www.sunlightscam.com/scam1.html>

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EXHIBIT C (continued)

Complaint

SCAM1: Getting a tan is dangerous - sunlightscam.com

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from it), diabetes (in a Finnish study of 12,000 children, it cut their chance of developing Type A diabetes by 80 per cent), even colds and flu (New Yorkers who took vitamin D had flu 70 per cent less often).

The Proceedings of the National Academy of Sciences study determined that the risks associated with not getting enough sun far outweighed any hypothetical damage that might occur.

While a healthy tan poses no significant risks of damaging your skin, burning your skin can be dangerous. For that reason, indoor tanning—where the amount of UV light you receive is monitored—is considered by many to be a safer alternative to tanning outdoors.

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Exhibit C, p. 2

<http://www.sunlightscam.com/scaml.html>

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EXHIBIT C (continued)

Every ray of UV light from a tanning bed increases your risk of contracting melanoma skin cancer... Page 1 of 2

x

- Forside
- Sunscare
- Scams About Tanning
- Blowback
- About Us
- Getting a tan is dangerous
- Tanning has caused an epidemic of skin cancer
- **Every ray of UV light from a tanning bed increases your risk of contracting melanoma skin cancer**
- Tanning beds are 15 times stronger than the sun
- There is no such thing as a responsible tan
- You can get enough Vitamin D through supplements or drinking milk
- Tanning doesn't protect you from getting a burn on vacation
- Indoor tanning is more dangerous than tanning in the sun

SCAM:

Every ray of UV light from a tanning bed increases your risk of contracting melanoma skin cancer

TRUTH:

So careful sunbathing, with measured exposure to the sun, may actually reduce rather than increase the risk of melanoma, reduce the overall risk of death from skin cancer, and improve survival for those who develop melanoma.

- Dr. Oliver Gillie in the British Journal of Dermatology

The "C" word is scary. Nobody knows that more than the billion-dollar sunscreen industry, which has systematically attempted to link sun exposure to cancer in an effort to deceptively scare people into buying their products. But despite their best efforts to link tanning to melanoma, no clear link exists. In fact, more than 18 separate peer-reviewed scientific studies indicate that there is no link between tanning indoors and melanoma.

That should put the debate about tanning and cancer to rest, but the sunscreen industry knows that the fear of cancer is the driving force selling their product. As a result, they have taken to quietly funding front groups with deceptive names like the Skin Cancer Foundation and the Sun Safety Alliance to keep the myth of tanning and cancer planted in the minds of the media and, ultimately, their consumers.

Ironically, emerging research (may require login) indicates that sunscreen does nothing to protect against contracting melanoma. The industry is effectively selling a problem in search of a solution that

Exhibit C, p. 3

<http://www.sunlightscam.com/scam3.html>

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Complaint

EXHIBIT C (continued)

...and every ray of UV light from a tanning bed increases your risk of contracting meta... Page 2 of 2

they don't even have.

In the meantime, the law of unintended consequences reveals that the sunscreen industry's message of UV abstinence may have backfired when it comes to preventing cancer.

A recent study in the prestigious Proceedings of the National Academy of Sciences determined that the risks of not getting enough UV light far outweighed the hypothetically minute risk of skin cancer. That's because getting a healthy tan naturally produces vitamin D, which has been linked to significantly decreasing your risk of contracting internal cancers like lung, kidney, or liver cancer.

While getting too much sun has been linked to some forms of cancer, indoor tanning is a government-approved, controlled environment designed to give you a tan without ever burning—which is the likely culprit in contracting cancer from sun exposure.

The bottom line is clear: the risks of not getting enough vitamin D outweighs the hypothetical risks of UV light exposure.

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Exhibit C, p. 4

<http://www.sunlightscam.com/scam3.html>

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EXHIBIT C (continued)

Complaint

SCAM: indoor tanning is more dangerous than tanning in the sun - SunLightScam.com

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- [Forside](#)
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 - [About Us](#)
- Getting a tan is dangerous
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 - There is no such thing as a responsible tan
 - You can get enough Vitamin D through supplements or drinking milk
 - Tanning doesn't protect you from getting a burn on vacation
 - **Indoor tanning is more dangerous than tanning in the sun**

SCAM:

Indoor tanning is more dangerous than tanning in the sun

TRUTH:

Just the opposite is true. Unlike tanning outdoors, indoor tanning is designed to match your skin type and desired tan in a well-regulated, controlled environment. Consequently, the vast bulk of scientific research indicates that indoor tanning is a safer alternative to tanning outdoors.

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Exhibit C, p. 5

<http://www.sunlightscam.com/scam8.html>

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EXHIBIT D

The fear of getting a tan has gone too far. Dermatologists with the sunscreen and cosmetic industries are trying to scare us away from the sun. But tanning produces vitamin D, and research shows vitamin D may fight heart disease, breast cancer, stroke, and osteoporosis. So go get a tan, your body will thank you.

[on screen: Vitamin D Fights Heart Disease Breast Cancer Stroke Osteoporosis]

Bought to you by The Indoor Tanning Association.

—Exhibit D1, Transcript, television and website advertisement

[on screen: www.SunLightScam.com]

The fear of getting a tan has gone too far. Dermatologists with the sunscreen and cosmetic industries are trying to scare us away from the sun. But tanning produces vitamin D, and research shows vitamin D may fight heart disease, breast cancer, stroke, and osteoporosis. So go get a tan, your body will thank you.

[on screen: www.SunLightScam.com]

[on screen: Vitamin D Fights Heart Disease Breast Cancer Stroke Osteoporosis]

Bought to you by The Indoor Tanning Association.

—Exhibit D2, Transcript, television and website advertisement

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EXHIBIT E



Exhibit E

Complaint

EXHIBIT F



Exhibit F, p. 1

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EXHIBIT F (continued)

of an effective communications STRATEGY

AN EFFECTIVE COMMUNICATIONS STRATEGY IS ESSENTIAL FOR ANY BUSINESS OR NON-PROFIT ADVOCACY GROUP. In a world where there is an infinite amount of information competing for the limited attention of consumers, it is increasingly important to employ a messaging campaign that can cut through the clutter and reach your intended target.

It is frequently assumed that to do this you need a multi-million dollar advertising budget. However, with solid research, new or underreported facts, a creative or controversial advertising campaign, and a coordinated media strategy, there are inexpensive ways to ensure that the public hears and is influenced by your message.

By practicing what you find in this book, you will be able to more effectively communicate your message, build your image, and motivate desired behavior.

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3
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Exhibit F, p. 2

Complaint

EXHIBIT F (continued)

WORKING

ARGUMENT 1--**VITAMIN D IS GOOD (VITAMIN D IS THE "SUNSHINE VITAMIN"):**

- According to a Harvard University study published in the *New England Journal of Medicine*, 60% of Americans are vitamin D deficient.
- Vitamin D deficiency is associated with an increased risk of colon, prostate, and breast cancer and is shown to ward off heart disease, MS, and other chronic health problems.
- Recent research shows that the benefits associated with vitamin D outweigh any potential risks associated with exposure to UV light.
- Doctors estimate that there are over one billion people worldwide at risk of vitamin D deficiency, with 30-50% of children and adults in the United States at high risk for this dangerous condition.
- Vitamin D is also linked to many common wintertime complaints such as fatigue, depression, and aches and pains.
- It is impossible to get the requisite amount of vitamin D in cities north of 37 degrees for as many as 6 months out of the year. That includes cities like Richmond, VA, St. Louis, MO, Sacramento, CA, and those further north.
- Vitamin D isn't like other vitamins that you can easily ingest as part of your diet. It is best absorbed through the skin from exposure to UV light. New research indicates that supplement-based vitamin D, as opposed to vitamin D naturally produced through exposure to UV light, may actually harm the body's ability to fight disease.
- African Americans are particularly susceptible to vitamin D deficiency because increased levels of skin pigment inhibit the body's natural ability to produce vitamin D.

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EXHIBIT F (continued)

WORKING

**ARGUMENT 3-
TANNING IN MODERATION IS BENEFICIAL:**

- Tanning in moderation makes people look and feel better.
- Moderate exposure to UV light benefits people concerned about vitamin D deficiency and has proven to boost immunity to certain diseases.
- Indoor tanning in moderation is safer than exposure to the sun, because the environment is controlled.
- Unlike the sun, tanning indoors is well regulated and approved by the government. When used moderately and responsibly, tanning sessions are designed to prevent burning.

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EXHIBIT G

Enjoy the sun on doctor's orders

Solar rays can help protect against some cancers and heart disease, say scientists

—The Guardian, January 8, 2008

As Vitamins Go, D, You Are My Sunshine

Just 20 minutes of sun exposure without sunscreen enables the skin to produce 20,000 IU of vitamin D.

—The Washington Post, September 18, 2007

Sunshine prevents more deaths than it causes; Sunshine has a protective effect overall because it helps to create vitamin D

—New Scientist, January 12, 2008

The so-called sunshine vitamin is poised to become the nutrient of the decade...

—The New York Times, February 19, 2008

Studies shed light on 'sunshine vitamin'

Americans typically get more than 90 percent of their vitamin D from the source that nature intended—the sun...

—The Oakland Tribune, January 22, 2008

Time to rethink sun tanning?

For more information visit www.TrustTanning.com

Dermatologists and the sunscreen industry have spent millions on a deceptive campaign to scare Americans away from the sun. Now the tide of research is turning the other direction. The positive effects of getting vitamin D from sunlight are clear. So soak up a little sunlight—indoors or out—a couple of times each week, and get your recommended dose of the "sunshine vitamin."

Exhibit G

Paid for by the Indoor Tanning Association

Decision and Order

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 the respondent with violation of the Federal Trade Commission Act; and

The respondent 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 complaint, a statement that the signing of the agreement is for settlement purposes only and does not constitute an admission by the respondent that the law has been violated as alleged in such complaint, or that any of the facts as alleged in such complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having duly considered the comments received from interested persons, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings, and issues the following Order:

1. Respondent Indoor Tanning Association ("ITA") is a Massachusetts corporation with its principal office or

Decision and Order

place of business at 2025 M Street, N.W., Washington, D.C. 20036.

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

ORDER**DEFINITIONS**

For the purposes of this order, the following definitions shall apply:

1. Unless otherwise specified, “respondent” shall mean Indoor Tanning Association, its successors and assigns, its officers when acting in active concert or participation with Indoor Tanning Association, and its executive director.
2. “Covered product or service” shall mean any ultraviolet lamp or sunlamp product, as defined in 21 C.F.R. § 1040.20; and any commercial facility where consumers may use ultraviolet lamps or sunlamp products.
3. “Clearly and conspicuously” means:
 - a. In print communications, the disclosure shall be presented in a manner that stands out from the accompanying text, so that it is sufficiently prominent, because of its type size, contrast, location, or other characteristics, for an ordinary consumer to notice, read and comprehend it;
 - b. In communications made through an electronic medium (such as television, video, radio, and interactive media such as the Internet, online

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services, and software), the disclosure shall be presented simultaneously in both the audio and visual portions of the communication. In any communication presented solely through visual or audio means, the disclosure shall be made through the same means through which the communication is presented. In any communication disseminated by means of an interactive electronic medium such as software, the Internet, or online services, the disclosure must be unavoidable. Any audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. Any visual disclosure shall be presented in a manner that stands out in the context in which it is presented, so that it is sufficiently prominent, due to its size and shade, contrast to the background against which it appears, the length of time it appears on the screen, and its location, for an ordinary consumer to notice, read and comprehend it; and

- c. Regardless of the medium used to disseminate it, the disclosure shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any communication.
4. “Close proximity” means on the same print page, web page, online service page, or other electronic page, and proximate to the triggering representation, and not accessed or displayed through hyperlinks, pop-ups, interstitials, or other means.
5. “Commerce” shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

I.

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IT IS HEREBY ORDERED that respondent, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any covered product or service, in or affecting commerce, shall not represent, in any manner, expressly or by implication, including through the use of a product name, endorsement, depiction, or illustration, that:

- A. Tanning, including indoor tanning, does not increase the risk of skin cancer;
- B. Tanning, including indoor tanning, is safe or poses no danger;
- C. Indoor tanning is approved by the government; and
- D. Indoor tanning is safer than tanning outdoors because in indoor tanning facilities, the amount of ultraviolet light is monitored and controlled.

II.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any covered product or service, in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, including through the use of a product name, endorsement, depiction, or illustration, that:

- A. Research shows that vitamin D supplements may harm the body's ability to fight disease; and
- B. A study in the Proceedings of the National Academy of Sciences determined: (a) that sun exposure does not

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cause skin cancer or melanoma, or that the risk of such cancer is only hypothetical; (b) that getting a tan is healthy; (c) that the risks of not getting enough ultraviolet light far outweigh the risk of skin cancer; or (d) that vitamin D has been linked to significantly decreasing the risk of contracting lung, kidney, or liver cancer.

III.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any covered product or service, in or affecting commerce, shall not make any representation, expressly or by implication, including through the use of a product name, endorsement, depiction, or illustration, about the safety, health-related efficacy or performance, or health-related risks or benefits, of any covered product or service; or about the sources, performance, efficacy, or health-related risks or benefits of vitamin D; unless the representation is non-misleading, and, at the time it is made, respondent possesses and relies upon competent and reliable scientific evidence that is sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields to substantiate that the representation is true. For the purposes of this order, competent and reliable scientific evidence shall consist of tests, analyses, research, studies, or other evidence that have been conducted and evaluated in an objective manner by qualified persons, that are generally accepted in the profession to yield accurate and reliable results, and whose results are consistent with the body of reliable scientific evidence relevant to the representation.

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IV.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any covered product or service, in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, including through the use of a product name, endorsement, depiction, or illustration, the existence, contents, validity, results, conclusions, or interpretations of any test, study, survey, or research.

V.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any covered product or service, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, including through the use of a product name, endorsement, depiction, or illustration, about the safety or health benefits of any covered product or service unless it discloses, clearly and conspicuously, and within close proximity to that representation:

NOTICE: Exposure to ultraviolet radiation may increase the likelihood of developing skin cancer and can cause serious eye injury.

Provided that, in lieu of the above, in the event that advertising for any covered product or service makes any representation, expressly or by implication, including through the use of a product name, endorsement, depiction, or illustration, that exposure to ultraviolet radiation produces vitamin D in the body, or otherwise about the effectiveness or usefulness of such product

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for generation of vitamin D, the required disclosure shall be as follows:

NOTICE: You do not need to become tan for your skin to make vitamin D. Exposure to ultraviolet radiation may increase the likelihood of developing skin cancer and can cause serious eye injury.

VI.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any covered product or service, in or affecting commerce, shall not provide to any other person or entity any means or instrumentalities that contain any representation or omission prohibited by this order. For the purposes of this Part, “means or instrumentalities” shall mean any information, including but not necessarily limited to any advertising, labeling, communications guides, or other promotional material.

VII.

IT IS FURTHER ORDERED that respondent Indoor Tanning Association and its successors and assigns shall send as soon as practicable, but in no event later than thirty (30) days after entry of this order, by first-class mail, postage prepaid and return receipt requested, an exact copy of the notice attached hereto as Attachment A, showing the date of mailing, to all Indoor Tanning Association members and all other entities to which Indoor Tanning Association provided point-of-sale advertising on or after January 1, 2008. The notice required by this paragraph shall not include any other document or enclosures and may be sent to the principal place of business of each entity.

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VIII.

IT IS FURTHER ORDERED that, for a period of five (5) years after the last date of dissemination of any representation covered by this order, respondent Indoor Tanning Association and its successors and assigns shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

- A. All advertisements and promotional materials containing the representation;
- B. All materials that were relied upon in disseminating the representation; and
- C. All tests, reports, studies, demonstrations, or other evidence in its possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

IX.

IT IS FURTHER ORDERED that respondent Indoor Tanning Association and its successors and assigns shall deliver a copy of this order to all current and future principals, officers, directors, and other employees with managerial authority having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondent shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

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X.

IT IS FURTHER ORDERED that respondent Indoor Tanning Association and its successors and assigns shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. *Provided, however,* that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

XI.

IT IS FURTHER ORDERED that respondent Indoor Tanning Association and its successors and assigns shall, within sixty (60) days after the date of service of this order file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form in which respondent has complied with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, respondent shall submit additional true and accurate written reports.

XII.

This order will terminate on May 13, 2030, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an

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accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

- A. Any Paragraph in this order that terminates in less than twenty (20) years; and
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Paragraph.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission, Commissioner Ramirez not participating.

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ATTACHMENT A

[ON INDOOR TANNING ASSOCIATION LETTERHEAD]

IMPORTANT NOTICE ABOUT GOVERNMENT ACTION

[insert addressee name]
[insert addressee address]

Dear ITA Member or Affiliate:

In a recent lawsuit, the Federal Trade Commission (FTC) charged the Indoor Tanning Association (ITA) with making misleading representations in its advertising and marketing for indoor tanning. Among other things, the FTC alleged that ITA falsely claimed that indoor tanning poses no risk to health, including no risk of skin cancer. In addition, the FTC alleged that when ITA represented that indoor tanning caused the skin to generate vitamin D, ITA failed to disclose material facts about the risks of indoor tanning. ITA has agreed to send this notification to you as part of its settlement with the FTC.

ITA hereby requests that you immediately stop using all advertising and marketing materials previously provided by to you by ITA. Among the materials you should no longer use are all of the materials contained on the CD-ROM issued in 2008, including the following:

- A. The “Melanoma Hype” print ad
- B. The “Overdose of Hysteria” video
- C. The “Communications: The Basics” guide and
- D. The print ad with the tag line, “Time to rethink sun tanning?”

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The FTC complaint alleges that these ads contain representations that are false and/or misleading.

For further information about the FTC's complaint and order, go to www.ftc.gov and search "Indoor Tanning Association."

Very truly yours,

John Overstreet
Executive Director

**ANALYSIS OF PROPOSED CONSENT ORDER
TO AID PUBLIC COMMENT**

The Federal Trade Commission ("FTC" or "Commission") has accepted, subject to final approval, an agreement containing a consent order from the Indoor Tanning Association ("respondent"). The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves the advertising and promotion of indoor tanning products and facilities. According to the FTC complaint, respondent represented, in various advertisements, that tanning, including indoor tanning, does not increase the risk of skin cancer. The complaint alleges that this claim is false and unsubstantiated

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because tanning, including indoor tanning, increases the risk of skin cancer, including squamous cell and melanoma skin cancers. Also, according to the complaint, respondent represented that: tanning, including indoor tanning, poses no danger; indoor tanning is approved by the government; and indoor tanning is safer than tanning outdoors because, in indoor tanning facilities, the amount of ultraviolet light is monitored and controlled. The FTC complaint alleges that these claims are false and unsubstantiated.

The FTC complaint further charges that respondent represented that research shows that vitamin D supplements may harm the body's ability to fight disease; and that a recent study in the prestigious Proceedings of the National Academy of Sciences determined that the risks of not getting enough ultraviolet light far outweigh the hypothetical risk of skin cancer, that getting a healthy tan produces vitamin D, and that increased vitamin D has been linked to significantly decreasing your risk of contracting internal cancers, such as lung, kidney, or liver cancer. The complaint alleges that these claims are false and misleading. The FTC complaint also alleges that respondent represented that tanning causes the skin to generate vitamin D and has health benefits, but that respondent failed to disclose facts that would be material to consumers in their purchase and use of indoor tanning services, specifically, that consumers can increase their vitamin D levels through ultraviolet levels lower than the amount needed to get a tan, and that ultraviolet radiation can injure the eyes and increases the risk of skin cancer. The complaint alleges that respondent's failure to disclose these facts, in light of the representation made, is a deceptive practice. Finally, the complaint alleges that respondent provided to others the means and instrumentalities to engage in deceptive acts or practices.

The proposed consent order contains provisions designed to prevent respondent from engaging in similar acts or practices in the future. The order covers representations made in connection with the manufacturing, labeling, advertising, promotion, offering

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for sale, sale, or distribution of any covered product or service, in or affecting commerce. It does not cover representations made in non-commercial settings or contexts, such as communications to legislative or executive bodies. The order defines a covered product or service as any ultraviolet lamp or sunlamp product, as defined in federal regulation 21 C.F.R. § 1040.20, or any commercial facility where consumers may use ultraviolet lamps or sunlamp products.

Part I of the order prohibits respondent from making the following representations: tanning, including indoor tanning, does not increase the risk of skin cancer; tanning, including indoor tanning, is safe or poses no danger; indoor tanning is approved by the government; and indoor tanning is safer than tanning outdoors because in indoor tanning facilities, the amount of ultraviolet light is monitored and controlled. The ban on representations that tanning, including indoor tanning, is safe, is fencing-in relief. Part II of the order prohibits respondent from misrepresenting (1) that research shows that vitamin D supplements may harm the body's ability to fight disease and (2) that a study in the Proceedings of the National Academy of Sciences determined: (a) that sun exposure does not cause skin cancer or melanoma, or that the risk of such cancer is only hypothetical; (b) that getting a tan is healthy; (c) that the risks of not getting enough ultraviolet light far outweigh the risk of skin cancer; or (d) that vitamin D has been linked to significantly decreasing the risk of contracting lung, kidney, or liver cancer.

Part III prohibits respondent from making any representation about the safety, health-related efficacy or performance, or health-related risks or benefits, of any covered product or service; or about the sources, performance, efficacy, or health-related risks or benefits of vitamin D; unless the representation is non-misleading, and, at the time it is made, respondent possesses and relies upon competent and reliable scientific evidence that is sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields to substantiate that the representation is true. For the purposes of the order, competent and reliable

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scientific evidence is defined as tests, analyses, research, studies, or other evidence that have been conducted and evaluated in an objective manner by qualified persons, that are generally accepted in the profession to yield accurate and reliable results, and whose results are consistent with the body of reliable scientific evidence relevant to the representation. Part IV of the order prohibits respondent from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test, study, survey, or research.

Part V of the order is a disclosure provision. It prohibits respondent from making any representation about the safety or health benefits of any covered product or service unless it makes the following disclosure, clearly and conspicuously, and in close proximity to the representation: **"NOTICE:** Exposure to ultraviolet radiation may increase the likelihood of developing skin cancer and can cause serious eye injury." In the event, however, that respondent represents that exposure to ultraviolet radiation produces vitamin D in the body, or otherwise about the effectiveness or usefulness of such product for generation of vitamin D, the required disclosure shall be as follows: **"NOTICE:** You do not need to become tan for your skin to make vitamin D. Exposure to ultraviolet radiation may increase the likelihood of developing skin cancer and can cause serious eye injury."

Part VI of the order prohibits respondent from providing to any other person or entity any means or instrumentalities that contain any representation prohibited by the order. Part VII requires respondent to send a notice about the FTC's law enforcement action to all of its members, and all other entities to which it provided point-of-sale advertising on or after January 1, 2008; the required notice is attached to the order as Attachment A.

Parts VIII, IX, X, and XI of the consent order require respondent to keep copies of relevant advertisements and materials substantiating claims made in the advertisements; to

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provide copies of the order to its personnel; to notify the Commission of changes in corporate structure that might affect compliance obligations under the order; and to file compliance reports with the Commission. Part XII provides that the order will terminate after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Complaint

IN THE MATTER OF

DAVE & BUSTER'S, INC.CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5(A) OF THE FEDERAL TRADE COMMISSION ACT*Docket No. C-4291; File No. 082 3153**Filed, May 20, 2010 — Decision, May 20, 2010*

This consent order addresses Dave & Buster's, Inc.'s practices that, taken together, failed to provide reasonable and appropriate security for personal information on its computer networks. Dave & Buster's: (a) failed to employ sufficient measures to detect and prevent unauthorized access to computer networks or to conduct security investigations, such as by employing an intrusion detection system and monitoring system logs; (b) failed to adequately restrict third-party access to its networks, such as by restricting connections to specific IP addresses or granting temporary, limited access; (c) failed to monitor and filter outbound traffic from its networks to identify and block export of sensitive personal information without authorization; (d) failed to use readily available security measures to limit access between in-store networks, such as by using firewalls or isolating the payment card system from the rest of the corporate network; and (e) failed to use readily available security measures to limit access to its computer networks through wireless access points on the networks. Between April 30, 2007, and August 28, 2007, an intruder, exploiting some of these vulnerabilities, connected to Dave & Buster's networks numerous times without authorization, installed unauthorized software, and intercepted personal information in transit from in-store networks to its credit card processing company. The breach compromised approximately 130,000 unique payment cards used by consumers in the United States. The order requires Dave & Buster's to establish and maintain a comprehensive information security program in writing that is reasonably designed to protect the security, confidentiality, and integrity of personal information collected from or about consumers. The security program must contain administrative, technical, and physical safeguards appropriate to Dave & Buster's size and complexity, the nature and scope of its activities, and the sensitivity of the personal information collected from or about consumers.

Participants

For the Commission: *Katrina Blodgett and Kate White.*