

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Robert Pitofsky, Chairman
Mary L. Azcuenaga
Janet D. Steiger
Roscoe B. Starek, III
Christine A. Varney

In the Matter of)	
)	
CALIFORNIA SUNCARE, INC.,)	DOCKET NO. C-3715
a corporation, and)	
)	
DONALD J. CHRISTAL,)	DECISION AND
individually and as an)	ORDER
officer of said corporation.)	
)	
)	

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 Bureau of Consumer Protection 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

The respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the 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, or that 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 respondents have violated the said Act, and that a 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 sixty (60) days, now in further conformity with the procedure prescribed in § 2.34

of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent California Suncare, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 1100 Glendon Avenue in the City of Los Angeles, State of California.

Respondent Donald J. Christal is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation, and his principal office and place of business is located at the above stated address.

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

ORDER

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

1. "California Tan Heliotherapy products" shall mean the Heliotherapy™ line of skin care products for use in connection with tanning as a result of exposure to sunlight or indoor UV radiation sold under the brand name California Tan®.

2. "Competent and reliable scientific evidence" shall mean tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

3. "Purchaser for resale" shall mean any person that has bought any California Tan Heliotherapy products to sell to another business or members of the public including, but not limited to, wholesalers, distributors, tanning salons, beauty parlors, health spas, and gyms.

I.

IT IS ORDERED that respondents, California SunCare, Inc., a corporation, its successors and assigns, and its officers, and Donald J. Christal, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any California Tan Heliotherapy product or any

other product or service for use in connection with tanning, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

- A. Representing, in any manner, directly or by implication, that the negative effects of exposure to sunlight or indoor UV radiation, including skin cancer and premature skin aging, are caused only by overexposure and burning or are not caused by cumulative moderate exposure, over a period of years, including exposure sufficient to cause tanning;
- B. Representing, in any manner, directly or by implication, that tanning as a result of exposure to sunlight or indoor UV radiation is not harmful to the skin;
- C. Misrepresenting, in any manner, directly or by implication, that the use of such product or service prevents or minimizes the negative effects of exposure to sunlight or indoor UV; or
- D. Representing, in any manner, directly or by implication, that exposure to sunlight or indoor UV radiation reduces the risk of skin cancer.

II.

IT IS FURTHER ORDERED that respondents, California SunCare, Inc., a corporation, its successors and assigns, and its officers, and Donald J. Christal, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any California Tan Heliotherapy product or any other product or service for use in connection with tanning, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that:

- A. Exposure to sunlight or indoor UV radiation prevents or reduces the risk of cancer, including but not limited to colon or breast cancer;
- B. Exposure to sunlight or indoor UV radiation lowers blood pressure;
- C. Exposure to sunlight or indoor UV radiation has benefits similar to those of exercise, including but not limited to decreased blood pressure or lower heart rate;

- D. Exposure to sunlight or indoor UV radiation reduces serum cholesterol;
- E. Exposure to indoor UV radiation is an effective treatment for Seasonal Affective Disorder;
- F. Exposure to sunlight or indoor UV radiation is an effective treatment for AIDS;
- G. Exposure to sunlight or indoor UV radiation enhances the immune system;
- H. For the general population, reduced winter sunlight leads to bone disorders such as osteoporosis and osteomalacia and increased exposure to sunlight or indoor UV radiation is necessary to reduce the risk of such disorders; or
- I. Exposure to sunlight or indoor UV radiation has any health benefit,

unless, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

III.

IT IS FURTHER ORDERED that respondents, California SunCare, Inc., a corporation, its successors and assigns, and its officers, and Donald J. Christal, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any California Tan Heliotherapy product or any other product or service for use in connection with tanning, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, in any manner, directly or by implication:

- A. That the use of such product or service prevents or minimizes the negative effects of exposure to sunlight or indoor UV radiation, including but not limited to skin cancer or premature aging;
- B. That the use of such product or service will improve users' ability to tan; or
- C. Regarding the performance, safety, benefits, or efficacy of such product or service,

unless, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

IV.

IT IS FURTHER ORDERED that respondents, California SunCare, Inc., a corporation, its successors and assigns, and its officers, and Donald J. Christal, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product or service, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication:

- A. The existence, contents, validity, results, conclusions, or interpretations of any test or study; or
- B. That any person, firm, organization, or government agency approves or endorses any such product or service or exposure to sunlight or indoor UV radiation.

V.

IT IS FURTHER ORDERED that respondents, California SunCare, Inc., a corporation, its successors and assigns, and its officers, and Donald J. Christal, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any California Tan Heliotherapy product or any other product or service for use in connection with tanning, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

- A. Failing to display, clearly and prominently, in any advertising or promotional material for any such product(s), one or more of which does not contain a sunscreen ingredient providing a minimum of SPF 2, the following disclosure:

CAUTION: Tanning in sunlight or under tanning lamps can cause skin cancer and premature skin aging -- even if you don't burn.

The disclosure requirements set forth in this subparagraph shall terminate at such time as

respondents have expended at least one million, five hundred thousand dollars (\$1,500,000) on the dissemination to consumers of advertising and promotional material for the product(s) specified above.

For purposes of this subparagraph "advertising or promotional material" shall include such material that is disseminated to consumers either directly, or indirectly through any purchaser for resale, but shall not include television advertising, billboards, or advertising appearing in any periodical sold only by subscription for which fifty percent (50%) or more of the readership is comprised of tanning or beauty salon professionals. Provided, however, that in the event that respondents have not expended at least one million, five hundred dollars (\$1,500,000) on the dissemination of the advertising and promotional material defined above within two (2) years and six (6) months after the date of service of this Order, the exclusions contained in that definition shall terminate and all advertising and promotional material for any such product(s) shall be subject to the disclosure requirements of this subparagraph.

In calculating the amount of expenditures on the dissemination to consumers of the advertising and promotional materials specified above, the costs of distributing, publishing, or broadcasting the advertising and promotional material shall be included, but the costs of developing, designing, creating, or producing the advertising or promotional material (other than printing) shall not be included.

- B. Making any representation in any advertising or promotional material for any such product(s), in any manner, directly or by implication, about the safety or any health benefits of exposure to sunlight or indoor UV radiation unless respondents disclose, clearly and prominently, the following:

CAUTION: Tanning in sunlight or under tanning lamps can cause skin cancer and premature skin aging.

For purposes of this subparagraph, "advertising or promotional material" shall include television advertising, billboards, or advertising appearing in any periodical sold only by subscription for which fifty percent (50%) or more of the readership is comprised of tanning or beauty salon professionals, and, once the requirements of subparagraph A above have

been satisfied, all other advertising and promotional material.

- C. Making any representation on the labeling or package of any such product that does not contain a sunscreen ingredient providing a minimum of SPF 2, in any manner, directly or by implication, about the safety or any health benefits of exposure to sunlight or indoor UV radiation unless respondents disclose, clearly and prominently, the following:

CAUTION: Tanning in sunlight or under tanning lamps can cause skin cancer and premature skin aging.

This product does not contain a sunscreen and does not protect against sunburn.

For purposes of the display of the disclosure or the corrective statement required by this part ("required information"), "clearly and prominently" shall mean as follows:

1. In a television, broadcast, or video advertisement, the required information shall be presented simultaneously in both the audio and video portions of the advertisement. The audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. The video disclosure shall be of a size and shade, and shall appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it.
2. In a radio advertisement, the required information shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it.
3. In a print advertisement or other printed promotional material, the disclosure shall be displayed in a manner sufficient for an ordinary consumer to see and read it, considering factors including but not necessarily limited to type size and style, location, layout, and contrast with the background against which it appears. No other elements in the advertisement including but not necessarily limited to the layout, graphics, other copy, or depictions, shall detract from or obscure the prominence of the disclosure. In multipage documents, the disclosure shall appear on the cover or first page.
4. On product labeling, the required information shall be set out in the same format in which it appears in subparagraph C above, in at least ten (10) point Times New Roman Bold, in a location on the principal display

panel that is sufficiently noticeable for an ordinary consumer to read and comprehend it, and in a print that contrasts sharply with the background against which it appears.

5. On a product package, the required information shall be set out in the same format in which it appears in subparagraph C above, in at least twelve (12) point Times New Roman Bold, in a location on the principal display panel that is sufficiently noticeable for an ordinary consumer to read and comprehend it, and in a print that contrasts sharply with the background against which it appears.

Nothing contrary to, inconsistent with, or in mitigation of the required information shall be used in any advertising, promotional material, labeling, or packaging.

VI.

IT IS FURTHER ORDERED that respondents, California SunCare, Inc., its successors and assigns, and Donald J. Christal shall:

- A. Within thirty (30) days after the date of service of this Order, send by first class certified mail, return receipt requested, to each purchaser for resale of any California Tan Heliotherapy product with whom respondents have done business since January 1, 1993, an exact copy of the notice attached hereto as Attachment A. The mailing shall include no other document;
- B. In the event that respondents receive any information that subsequent to receipt of Attachment A any purchaser for resale is using or disseminating any advertisement or promotional material that contains any representation prohibited by this Order, respondents shall immediately notify the purchaser for resale that respondents will terminate the use of said purchaser for resale if it continues to use such advertisements and promotional materials; and
- C. Terminate any purchaser for resale about whom respondents receive any information that such purchaser for resale has continued to use advertisements or promotional materials that contain any representation prohibited by this Order after receipt of the notice required by subpart B of this part.

VII.

IT IS FURTHER ORDERED that the provisions of this Order shall not apply to any label or labeling printed prior to the date of service of this Order and shipped by respondents to purchasers for resale prior to one hundred (100) days after service of this Order; provided, however, that any multipage fold-out labels that contain claims that violate Parts I through IV of this Order shall be removed from all products in respondents' inventory prior to shipping after the date of service of this Order.

VIII.

IT IS FURTHER ORDERED that respondents, California SunCare, Inc., its successors and assigns, and Donald J. Christal shall for five (5) years after the last correspondence to which they pertain, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

- A. Copies of all notification letters sent to purchasers for resale pursuant to subparagraph A of part VI of this Order; and
- B. Copies of all communications with purchasers for resale pursuant to subparagraphs B and C of part VI of this Order.

IX.

Nothing in this Order shall prohibit respondents from making any representation for any drug that is permitted in labeling for any such drug under any tentative final or final standard promulgated by the Food and Drug Administration, or under any new drug application approved by the Food and Drug Administration.

X.

IT IS FURTHER ORDERED that for five (5) years after the last date of dissemination of any representation covered by this Order, respondents, or their successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

- A. All materials that were relied upon in disseminating such representation; and
- B. All tests, reports, studies, surveys, demonstrations or other evidence in their possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such

representation, including complaints from consumers or government organizations.

XI.

IT IS FURTHER ORDERED that respondent California SunCare, Inc., its successors and assigns, shall:

- A. Within thirty (30) days after the date of service of this Order, provide a copy of this Order to each of respondent's current principals, officers, directors, and managers, and to all personnel, agents, and representatives having sales, advertising, or policy responsibility with respect to the subject matter of this Order; and
- B. For a period of ten (10) years from the date of service of this Order, provide a copy of this Order to each of respondent's future principals, officers, directors, and managers, and to all personnel, agents, and representatives having sales, advertising, or policy responsibility with respect to the subject matter of this Order within three (3) days after the person assumes his or her position.

XII.

IT IS FURTHER ORDERED that respondent Donald J. Christal shall for a period of ten (10) years from the date of service of this Order, notify the Commission within thirty (30) days of the discontinuance of his present business or employment and his affiliation with any new business or employment. Each such notice of affiliation with any new business or employment shall include respondent's new business address and telephone number, current home address, and a statement describing the nature of the business or employment and his duties and responsibilities.

XIII.

IT IS FURTHER ORDERED that respondents 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 under this Order.

XIV.

This Order will terminate on February 11, 2017, 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 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 of this Order that terminates in less than twenty (20) years;
- B. The 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 respondents 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 paragraph as though the complaint was never 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.

XV.

IT IS FURTHER ORDERED that respondents shall, within sixty (60) days after service of this Order, 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 with this Order.

By the Commission.

[Seal]

Donald S. Clark
Secretary

ISSUED: February 11, 1997

ATTACHMENT A

BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED

[To be printed on California SunCare, Inc., letterhead]

[date]

Dear [purchaser for resale]:

This letter is to inform you that California SunCare, Inc. ("California Tan"), recently settled a civil dispute with the Federal Trade Commission ("FTC") regarding certain alleged claims for our Heliotherapy™ line of skin care products. As part of that settlement, we are required to notify our distributors and others who sell our products to consumers to stop using or distributing any advertisements or promotional materials containing any such claims.

Allegations of the FTC complaint.

The FTC alleged that certain advertisements and promotional materials for California Tan Heliotherapy products made false and/or unsubstantiated claims, expressly or by implication, that tanning as a result of exposure to sunlight or indoor UV radiation:

- reduces the risk of certain cancers;
- has cardiovascular benefits, such as lowering blood pressure and serum cholesterol or providing the benefits of exercise;
- is an effective treatment for Seasonal Affective Disorder and AIDS;
- enhances the immune system; and
- reduces the risk of bone disorders for members of the general population.

In addition, according to the FTC's complaint, the advertising and promotional materials made false and/or unsubstantiated claims, expressly or by implication, that:

- the negative effects of exposure to sunlight or indoor UV radiation, including skin cancer and premature skin

aging, are caused only by burning and overexposure and not moderate exposure and tanning;

- tanning as a result of exposure to sunlight or indoor UV radiation is not harmful to the skin;
- use of the products prevents or minimizes the negative effects of exposure to sunlight and UV radiation, including skin cancer and premature skin aging;
- the MAXIMIZER products help users achieve up to 42% better tanning results; and
- the products that contain VITATAN improve users' ability to tan by up to 67%.

Finally, the complaint charges that advertising and promotional materials falsely represented, expressly or by implication, that scientific studies demonstrate that exposure to sunlight or indoor UV radiation provides the health benefits stated above and that the American Medical Association endorses exposure to sunlight or indoor UV as a medical treatment.

Our settlement with the FTC.

Our settlement with the FTC prohibits us from making the above listed claims for California Tan Heliotherapy products or any other product for use in connection with tanning, unless the claims are supported by competent and reliable evidence. The settlement also requires us to substantiate any claims about the health benefits of exposure to sunlight or indoor UV radiation and the performance and safety of our skin care products for use in connection with tanning. The settlement also precludes us from making misrepresentations about scientific studies or endorsements.

Under the terms of our settlement with the FTC, all of our advertising for tanning products, with the exception of billboards, television advertising, and advertisements in magazines for salon professionals, for a period of time, must contain a disclosure to the effect that tanning without burning, either with tanning lamps or in sunlight, can cause skin injury. Even after that period ends, if in the future we make any claim about the safety or health benefits of exposure to sunlight or indoor UV radiation in our advertising, labeling or packaging, we must disclose that tanning is associated with skin damage.

We deny the FTC's allegations, but in order to avoid protracted litigation we have entered into a settlement agreement with the FTC. As part of that settlement, we have agreed to send this letter. We request your assistance by asking you to

discontinue using, relying on or distributing any California Tan advertising or promotional material currently in your possession that makes any of the claims the FTC challenged as listed above. More specifically, we are asking you not to display any California Tan posters, cash register notices, or other materials that contain any of the claims challenged by the FTC and to remove magazines that contain California Tan advertisements that make the challenged claims from places where they may be seen by any of your customers. We are also asking our distributors to notify their retail or wholesale customers who have any California Tan materials that contain any of the challenged claims to discontinue using them as described above. If you continue to use materials that contain any of the challenged claims, we are required by the FTC settlement to stop doing business with you.

Thank you for your assistance. If you have any questions about this letter, please call 1 800 _____.

Sincerely,

Donald J. Christal
President
California SunCare, Inc.

Statement of Commissioner Roscoe B. Starek, III,
Concurring in Part and Dissenting in Part
in
California Suncare, Inc., Docket No. C-3715

I have voted to issue the complaint and final consent order against California Suncare, Inc. (CSI) because, for the most part, it provides appropriate relief for the extremely serious misrepresentations alleged in the complaint about the health and safety effects of ultraviolet radiation (UVR) exposure and the benefits and efficacy of the company's tanning products. However, I do not support including the "untriggered" disclosure in Part V.A. of the consent order.¹ In my view this remedy constitutes corrective advertising, and I am not convinced that the evidence here meets the standard for imposing corrective advertising set forth in *Warner-Lambert Co. v. FTC*, 562 F.2d 749, 762 (D.C. Cir. 1977), *cert. denied*, 435 U.S. 950 (1978).

Both the characteristics and the scope of the untriggered disclosure lead me to conclude that it is actually corrective advertising in disguise. The disclosure requirement has certain characteristics usually associated with corrective advertising: it runs until a specific time period expires and a specific sum of money is exhausted, and it must be made regardless of the representations CSI makes about its products. *See, e.g., American Home Products Corp. v. FTC*, 695 F.2d 681, 700 (3d Cir. 1982) ("[A] genuine corrective advertising requirement . . . demand[s] disclosure in future advertisements regardless of the content of those advertisements."). Most significant, however, the scope of the untriggered disclosure far exceeds its rationale. The disclosure must appear in CSI's general advertising as well as in all promotional materials distributed directly to consumers for any tanning product that does not contain a sunscreen with a minimum SPF of 2. Yet the rationale advanced for this untriggered disclosure is that it is necessary to protect prospective purchasers from being misled by future misrepresentations about the effects of UVR exposure, particularly misrepresentations that might occur at "the point of sale" -- the tanning salons where consumers purchase CSI products. I see no reason for the untriggered disclosure to appear in general advertising if the disclosure's true intent is to prevent possible future deception of consumers at the point of sale.

¹ Part V.A. requires CSI to include the following statement in any advertising and promotional materials disseminated directly to consumers or through purchasers for resale (except television advertising, billboards and advertising in magazines sold only by subscription for which half or more of the readership is comprised of tanning or beauty salon professionals): "CAUTION: Tanning in sunlight or under tanning lamps can cause skin cancer and premature aging -- even if you don't burn." This disclosure is applicable to all of respondent's products that contain a sunscreen ingredient providing a sun protection factor (SPF) of less than 2 and must be made until CSI spends \$1.5 million on dissemination. If CSI does not expend this amount within 2½ years after the service of the order, the untriggered disclosure then becomes applicable to all forms of advertising until the required amount is spent.

The disparity between the scope of the disclosure and its rationale suggests that its primary purpose is more consistent with corrective advertising than with an affirmative disclosure. The purpose of corrective advertising is to dispel false beliefs in the public mind created or reinforced by a challenged ad that are likely to endure (and thus to influence purchase decisions) even after the ad stops running. In contrast, the purpose of an affirmative disclosure remedy is to prevent deception from future claims like or related to those challenged.² I recognize that the untriggered disclosure might have some impact on potential future deceptive claims about UVR exposure at the point of sale, but it is overbroad for this particular purpose, and the need for it seems minimal in light of the extensive other relief provided by the final order.³ Thus, the main purpose of this untriggered disclosure seems to be to ameliorate lingering false beliefs that may have been created or reinforced by CSI's past claims that UVR exposure not only is *not* harmful but is positively beneficial.

Although both corrective advertising and affirmative disclosures are forms of fencing-in relief that are well within the Commission's remedial authority, the standard for imposing corrective advertising is significantly more stringent than that for an affirmative disclosure. In imposing corrective advertising, the Commission normally relies on extrinsic evidence of the existence of lingering false beliefs created by past advertising. In certain cases, however, it may be possible to presume the existence of such false beliefs based on the nature and extent of the advertising campaign. *Warner-Lambert*, 562 F.2d at 762-63.⁴ An affirmative disclosure remedy, on the other hand, requires only that the disclosure be

² It is difficult to draw bright lines between these possible forms of fencing-in relief, and I am not suggesting that the Commission forgo ordering affirmative disclosures in all circumstances in which the disclosures, while targeted primarily at the prevention of deception from future claims, may also incidentally affect a possible lingering public misimpression created by past advertising. This situation is not the case presented here.

³ In addition to prohibiting misrepresentations about the effects of UVR exposure and tanning and unsubstantiated claims about the performance, safety, benefits, or efficacy of products or services used in connection with tanning, the consent order requires two additional affirmative disclosures (Parts V.B. and V.C.) that are triggered by claims about the safety or health benefits of exposure to sunlight or indoor UVR. The language of these triggered disclosures is similar to that of the untriggered disclosure. The triggered disclosures apply to labeling and packaging -- forms of advertising exempted from the untriggered disclosure -- and, after the untriggered disclosure requirement runs out, to all other advertising and promotional material. The order (Part VI) also requires CSI to send a letter to distributors and retailers of the company's tanning products that describes the Commission's enforcement action and advises them to stop using ads and promotional materials that contain any of the representations prohibited by the order or face losing CSI's business.

⁴ See, e.g., *Egglund's Best, Inc.*, Docket No. C-3520 (Aug. 15, 1994) (Statement of Roscoe B. Starek, III).

"reasonably related" to the alleged violations. In my view, it is important to distinguish between corrective advertising and affirmative disclosures because the Commission should not evade the more demanding standard for corrective advertising where it is clearly applicable.

There appears to be little basis for Part V.A. of the order when it is viewed as corrective advertising. There is no direct evidence that CSI's ads and sales materials created or contributed to a lingering false impression that UVR exposure through sunlight and tanning has the health and safety benefits represented by the company. Moreover, I am not persuaded that it would be appropriate to presume that the company's message -- that UVR exposure is beneficial -- would endure in light of pervasive messages to the contrary.

By issuing this consent order against CSI, the Commission comes perilously close to lowering its standard for imposing corrective advertising by erasing the already blurred dividing line between that form of fencing-in relief and affirmative disclosures. Such a change is one that I cannot endorse.