

**UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION**

**COMMISSIONERS:**      **Jon Leibowitz, Chairman**  
                                 **William E. Kovacic**  
                                 **J. Thomas Rosch**  
                                 **Edith Ramirez**  
                                 **Julie Brill**

<b>In the Matter of</b>	)	
	)	
<b>INDOOR TANNING ASSOCIATION,</b>	)	<b>DOCKET NO. C-4290</b>
	)	
<b>a corporation</b>	)	<b>DECISION AND ORDER</b>
	)	

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 fo 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 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 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.

**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 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.

### 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 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.

## 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.

**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 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.

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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.

Donald S. Clark  
Secretary

ISSUED: May 13, 2010

[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?”

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](http://www.ftc.gov) and search “Indoor Tanning Association.”

Very truly yours,

John Overstreet  
Executive Director