



COMMERCE COMMISSION

Please refer to:

12727
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3 June 2011

Tiffany Brown
Get Brown Tanning
220 Marua Road
Ellerslie
Auckland 1051

Dear Ms Brown

FAIR TRADING ACT 1986: Alleged Misleading Representations made by Solarium (Sunbed) Distributors & Operators

The Commerce Commission (the Commission) is responsible for enforcing the Fair Trading Act 1986 (the Act), together with a number of standards. The Act applies to a wide range of activities, focusing on all aspects of the promotion and sale of goods and services.

To ensure compliance with the Act, the Commission undertakes investigations into alleged breaches of the Act brought to its attention via complaints it receives, or via pro-active surveillance and monitoring of the markets.

BACKGROUND

The Commission has received a complaint from Consumer New Zealand and the Cancer Society of New Zealand (the Complainants). The complainants allege that representations made by some Sunbed operators and distributors in New Zealand about the health benefits and risks of sunbed use are false or misleading.

The Commission is conducting a preliminary investigation into these allegations. The Commission's investigation is at a very early stage; we are currently seeking independent advice and gathering further information. Please note that no determination as to whether there has been a breach of the Act has been made at this stage.

THE ALLEGATIONS

The complaint is based on a survey of sunbed distributors and operators conducted by Consumer New Zealand in September 2010. A copy of the complaint is available to view on the Cancer Society Website at:

<http://www.cancernz.org.nz/assets/files/info/SunSmart/SunbedOperatorsComplaintLetterFeb2011.pdf>

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The Complainants allege the following representations made by Get Brown Tanning Limited are false or misleading.

Representation 1: *“Are sunbeds safe?”*

“It’s almost impossible to say that any human activity is 100% safe, because by definition this means you can do it recklessly and come to no harm. At Get Brown Tanning we believe the benefits of moderate suntanning (producing vitamin D, feel-good endorphins, well-being, confidence-boosting) far outweigh the minimal and manageable risks associated with over exposure to UV light”. Analogy to driving a car.

Representation 2: *“What about UV light and skin cancer?”*

“There has been no statistically satisfying conclusion reached about sunbeds and the incidence of melanoma. In fact, ground-breaking research was recently completed which points to the fact that tanning may actually inhibit the incidence of melanoma”.

Representation 3: *Isn’t tanning bad for me?*

The relationship between sunlight and skin cancer has been blown out of proportion, mainly by the cosmetic wing of the pharmaceutical industry. In fact, there is no clear evidence that chemical sunscreens have a protective effect against skin cancer, nor that staying out of the sun reduces your risk of skin cancer or skin ageing.

Representation 4: *The good news about UV light (sunlight) and other cancers*

“Moderate UV light exposure gives greater protection than no exposure for those who can develop a tan. This negates the myth that ‘no tan is a safe tan’. Parts of the world with higher sunshine have proven to have lower rates of other cancers. In 1941, the American publication “Journal of Cancer” stated that a possible increased risk of non-melanoma skin cancer (from sun exposure) was the price to be paid for the reduced risk of prostate, breast and colon cancer.

The Complainants Response to these Representations: There is no evidence to show that sunbed use offers any health benefits. On the contrary, sunbeds emit UV radiation. Exposure to UV radiation is a major cause of skin cancer, and may also lead to the development of cataracts and other eye conditions, and premature skin ageing.

The 2006 IARC review of the health effects of sunbeds found that: people who have ever used a sunbed have a 15% increased risk of melanoma; people who first used a sunbed before the age of 35 have a 75% increased risk of melanoma¹.

We also think it’s misleading to quote research published in 1941. If this is the best and most recent evidence they can provide it is not reassuring.

Representation 5: *“What’s great about vitamin D?”*

¹ International Agency for Research on Cancer Working Group. “The association of use of sunbeds with cutaneous malignant melanoma and other skin cancers: A systematic review (2006) 120 International Journal of Cancer 1116.

This discusses the role of vitamin D in bone health, regulating blood pressure and that it may reduce the risk of hypertension, strokes, diabetes, heart attack and heart failure. Also says vitamin D improves insulin production and is strongly linked with preventing diabetes as well as helps lower the risk of several diseases, particularly those caused by abnormal cell growth (some cancers).

The Complainants Response: There are many conflicting messages about the benefits of vitamin D. To help clarify the issue the US and Canadian governments asked the US Institute of Medicine to assess the current evidence on health outcomes associated with vitamin D (and calcium). The committee assessed more than 1,000 studies and reports and listened to testimony from scientists and stakeholders before making its conclusions. The report published in November 2010 found that the evidence supported a role for these nutrients in bone health but not in other health conditions, which included cancer, cardiovascular disease and hypertension, diabetes and immune function². This conclusion is also supported by the UK Consensus Vitamin D Position Statement (2010), developed by seven national health Agencies³.

Representation 6: *“Be wary of sunscreen”*

The part of the sunlight spectrum that makes vitamin D is UVB, so wearing a UVB-blocking sunscreen will not allow you to make vitamin D. Be wary of sunscreen – it’s not the elixir of youth or the cancer cure-all that it pretends to be.

The Complainants Response: The evidence is unclear about how much vitamin D production is inhibited by sunscreen use. A review of published studies concludes that while sunscreens can significantly reduce the production of vitamin D under strictly controlled conditions, “normal usage does not generally result in vitamin D insufficiency⁴”. Skin can burn in less than 15 minutes in the midday summer sun and to suggest consumers be wary of wearing sunscreen is potentially a very dangerous statement.

Representation 7: *“What is UV light?”*

States that the UV light in a sunbed replicates that from the sun, except that the rays are created in differing quantities and the environment can be controlled to reduce the risk of burning to the skin. Also states that UVB stimulates melanin production (tanning) and thickens the surface skin, providing protection against sunburn.

The Complainants Response: The solarium industry arguments that tanning in sunbeds is a safer or more controlled way for people to obtain a tan are not valid. Exposure to UV radiation has been proven to be harmful and there is no such thing as a ‘safe tan’. As stated earlier, sunbeds typically are UVA-rich and emit low levels of UVB (which is the UV spectrum which makes vitamin D). It is possible that many solariums emit UV radiation that is

² Institute of Medicine of the National Academies. Report Brief. November 2010. Dietary Reference Intakes for Calcium and Vitamin D. www.iom.edu

³ UK Consensus Vitamin D position statement. December 2010.
http://info.cancerresearchuk.org/prod_consump/groups/cr_common/@nre/@sun/documents/generalcontent/cr_052628.pdf

⁴ Norval M., Wulf H.C. Does chronic sunscreen use reduce vitamin D production to insufficient levels? Br. J. Dermatol. 161, 732–736 (2009).

three times the strength of the midday summer sun, since this is the level of UV radiation allowed under the Australia/New Zealand standard on Solaria for Cosmetic Purposes.

Also a 2010 study by the National Institute of Water & Atmospheric Research (NIWA) looked at the radiation levels of sunbeds in New Zealand, measured by the World Health Organization's UV index. It found the average radiation levels emitted by sunbeds commonly used in New Zealand was similar to New Zealand's summer sunlight, which is high to extreme on the UV index. Moreover, in this study, the intensity of radiation at some wavelengths was several times higher than ever occurs in natural sunlight. According to NIWA researcher Dr Richard McKenzie by using sunbeds we expose ourselves to unknown risks⁵.

Similarly, a study of 20 solaria in Australia concluded that Australians have access to sunbeds that have significantly higher UVB and UVA emissions than mid-latitude summer sunshine, "with implications for resultant adverse health effects"⁶.

According to the IARC Working Group the evidence does not support a protective effect of solarium use against damage to the skin from subsequent sun exposure.

Representation 8: Smart tanning

With sunscreens, there is potential for much more DNA 'exited-state' activity, which in turn can produce free radicals and ultimately skin damage. So if you develop a tan indoors, doing so will provide a measure of natural protection to your skin.

The Complainants Response: According to the IARC Working Group the evidence does not support a protective effect of sunbed use against damage to the skin from subsequent sun exposure. It's estimated the protection from a sunbed tan is about the same as using an SPF2 or SPF3 sunscreen. You need at least SPF15 to get the recommended level of protection.

REQUEST FOR INFORMATION

As part of the investigation process, the Commission would like to provide a representative of your company with the opportunity to respond to these allegations. In order to assist us, could you please provide the following information.

Company Details

1. In replying to this letter, please confirm the name and position of the person replying and if the person has authority to speak on behalf of your company?
2. Please confirm the company's registered name and/or any other trading name that it may be known by?

⁵ McKenzie, R., Liley, B and Johnstone, P. Erythema v vitamin D production from sunlight and solarium. NIWA's UV Workshop 2010 Papers. <http://www.niwa.co.nz/our-services/online-services/uv-and-ozone/workshops/2010/papers/papersindex>

⁶ Gies, P., Javorniczky, J, Henderson, S. et al. UVR Emissions from Solaria in Australia and Implications for the Regulation Process. Photochemistry and Photobiology. January/February 2011. Volume 87, Issue 1, pp. 1-261.

3. What are the physical and mailing addresses for your company?
4. Please confirm the names of the Directors and/or owners and/or General Manager?

Promotional Material and Representations

5. Please provide copies of any promotional material and representations your company makes to consumers about the benefits and risks of Sunbed use.
6. Please identify who produced this material.

Opportunity to Respond to the Allegations

7. Please provide a response to each of the eight allegations made by the complainants above.
8. Please inform the Commission if your company has made or intends to make any changes as a result of the complaint by Consumer and the Cancer Society.

Miscellaneous Matters

9. Has your company received any complaints regarding the identified issues? If so, please detail those complaints and how your company responded.
10. Please provide any other information you think would assist the Commission in considering this complaint.

It would be appreciated if your responses to this information request are formatted numerically in relation to the enquiries made by the Commission, e.g. your response to question 1 is listed as "1", response to question 2 as "2" etc. When responding to the allegations in question 7 please label your responses as "Representation 1", "Representation 2" etc.

Please note that the Commission has not formed any opinions about this matter and the information is required to assess whether or not there are any issues in terms of the Act.

Please provide this information to the Wellington office of the Commerce Commission, at PO Box 2351, Wellington 6140 or alternatively email kate.stringer@comcom.govt.nz by close of business **Friday 24 June 2011**. If you have any questions, please do not hesitate to contact me on (04) 924 3634.

Thank you for your assistance.

Yours sincerely



Kate Stringer
Investigator
Enforcement Branch