



COMMERCE COMMISSION

1221596_3

16 August 2011

Get Brown Tanning
220 Marua Rd
Ellerslie
Auckland 1051

Dear Sir or Madam

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). The Act applies to a wide range of activities, focusing on all aspects of the promotion and sale of goods and services. The Act prohibits false or misleading representations in trade.

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 has investigated this matter and would like to take this opportunity to make sunbed operators and distributors aware of the conduct prohibited by the Act.

This letter is being sent to all sunbed operators and distributors in New Zealand. Your business has been identified as operating or distributing sunbeds in New Zealand. If this is not the case please disregard this letter.

MISLEADING AND DECEPTIVE CONDUCT PROHIBITED

The Act prohibits conduct that is misleading or deceptive. It also prohibits conduct which is *likely* to mislead or deceive or which is liable to mislead the public as to the characteristics or suitability for a purpose of goods and services.

Breaches of the Act can provide grounds for prosecution or civil proceedings. Criminal penalties include fines of up to \$200,000 for a company and \$60,000 for an individual. Civil penalties include orders to refund money to persons who have suffered loss or damage as a result of a breach.

DISPLAYING MATERIAL CREATED BY SOMEONE ELSE

You should be aware that if your business displays material created by others that contains false or misleading representations you may be liable under the Act in relation to those representations.

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RELYING ON STUDIES

You may be at risk of breaching the Act if you inaccurately or selectively report scientific studies or data. In order to avoid misleading the public, any information your business relies on when making representations should be up to date, reliable and accurate.

“OPINIONS” MAY BREACH THE ACT

A statement which is expressed as an opinion may breach the Act, including if it contains a representation which is misleading or deceptive, or if the opinion is not honestly held.

SPECIFIC REPRESENTATIONS:

The Commission understands that some sunbed operators and distributors in New Zealand may be making representations about the health benefits and risks of sunbed use. The Commission is concerned that some sunbed operators are at risk of breaching the Act, including by understating the risks and overstating the benefits of sunbed use.

The Commission has received advice from an independent expert about this matter. Relevant aspects of that advice are set out below.

Benefits and Risks of Sunbed Use

1. Short-wavelength UVB is carcinogenic and there is increasing evidence that longer wavelength UVA used in sunbeds penetrates the skin more deeply and can induce skin cancer. Sunbed exposure will further increase the known risks of UV exposure¹.
2. There is no evidence that suggests that UV exposure from any type of sunbed is less harmful than UV exposure from the sun. have also been found in sunlight protected but sunbed exposed skin after just two to three years of sunbed use.
3. Exposure to UV light also causes photo-ageing of the skin with breakdown of collagen leading to wrinkles and loss of elasticity. UV light can damage the eyes with cataracts forming, pterygium forming and inflammatory problems.
4. The UV light on a sunbed does not replicate that from the sun, and light in modern sunbeds is not healthier than natural sunlight.
5. The Commission has been advised that there are no health benefits associated with sunbed use. However, it has been argued that ultra violet light can improve one's mood, especially in the winter in northern European countries. Psychiatrists increasingly believe this benefit is due to white light rather than UVB or UVA².

¹ World Health Organisation Media Live Fact Sheet 287

² Kripke, D. et al, Psychiatry Res 1983, Oct, 10 (2), 105-12

Vitamin D

6. The Commission has been advised that the exact nature of any health benefits associated with Vitamin D are unclear. More information is becoming available, but what is agreed is that Vitamin D is essential for healthy bones, whether it influences other conditions is to this date unclear.
7. A sunbed will help produce Vitamin D as the UVB light in the sunbed will stimulate its production in the skin. However, at the same time you are doing great damage to your skin.
8. The majority of the population will get enough Vitamin D from incidental exposure from the sun and from their diet. Supplementation through diet is more desirable than sunbed use or sun exposure if there is a deficiency of this Vitamin³.

Tanning as a Natural Protection against Sunburn

9. Dermatologists believe that a tan is a sign of skin damage. There is no evidence that tanning on a sunbed provides natural protection against sunburn. At best it may give a protection of SPF 2 – 3⁴. Furthermore, the Commerce Commission has been advised that tanning on a sunbed does not inhibit incidences of melanoma.

While the Commission is taking no further action at this time, we will continue to monitor the representations being made by sunbed operators and distributors. If the Commission considers that industry participants have made false or misleading representations, the Commission may reconsider its enforcement options.

Yours sincerely



Steve Anthony
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³ American Academy of Dermatology Position Statement on Vitamin D

⁴ Normval M, Wulf H.C *Does chronic sunscreen use reduce vitamin D production to insufficient levels?* Dr.J. Dermatol. 161, 732-736 (2009)