



TRADE PRACTICES ACT 1974

Undertaking to the Australian Competition and Consumer Commission
given for the purposes of section 87B

by

Australian Indoor Tanning Association Pty Ltd

ACN 079 014 038

Background

(1) Australian Indoor Tanning Association Pty Limited ACN 079 014 038 ("AITA") was incorporated in June 1997 with the primary purpose of providing the Australian indoor tanning industry with the following:

- Educational material concerning the use of indoor tanning equipment;
- Certified training courses for staff of indoor tanning salons to ensure the correct use of indoor tanning equipment including the training of staff to identify skin types of customers and suitable lotion protection for such customers;
- A unified standard of service by increasing the knowledge and care taken by indoor tanning salons.

AITA conducted certified training courses for staff of indoor tanning salons in accordance with course literature and materials provided by International Smart Tan Network Inc. of the USA ("ISTN").

(2) By distributing ISTN factsheet: *Don't be afraid of the light: you couldn't live without it* and ISTN factsheet: *Tan here with confidence* published by ISTN, AITA made certain representations in trade or commerce including:

- (a) "You've heard about the increased risk of skin cancer associated with ultraviolet light. In reality, the relationship isn't that simple. There are many forms of skin cancer, and the relationship with ultraviolet light is a confusing one";
- (b) "Overall cancer rates are higher in sun-deprived areas of the world and decrease significantly as one gets closer to the equator";

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- (c) “Malignant melanoma skin cancer is most common in people who do not receive regular sun exposure and most frequently develops on parts of the body not regularly exposed to sunlight”;
 - (d) “Several studies suggest that many types of cancer - including breast, colon, prostate and ovarian - are slowed or inhibited by increased exposure to sunlight”;
 - (e) “Sunlight is the body’s only natural and reliable source of vitamin D. Studies suggest that this vitamin – linked to the prevention of breast, colon, prostate and ovarian cancers – cannot be reliably supplemented in our diet ”;
 - (f) “More than 138,000 Americans die each year from breast, colon, ovarian and prostate cancers. Less than 2,200 die of non-melanoma skin cancer”;
 - (g) “A 1994 study shows that Northern women have five times greater risk of ovarian cancer than Southern women who receive more direct sun exposure”; and
 - (h) “Tanning is natural. It’s your body’s natural defence against sunburn”; and
 - (i) “There’s plenty of research that says totally avoiding the sun can increase your risk of many forms of cancer, including skin cancer”;
 - and
 - (j) “That the statement “tanning causes skin cancer” is misconceived”;
 - and
 - (k) “... Besides making you look and feel healthier, a tan helps protect you from the harmful rays during outdoor activity. Tanning improves your body’s circulation and increases the production of Vitamin D – important for strong bones and teeth”.
- (3) Following an investigation, the Australian Competition and Consumer Commission has reached the view that AITA contravened the *Trade Practices Act 1974* (the “Act”) in that AITA made false or misleading representations in those brochures in contravention of sections 52, 53(a), 53(c), 53(f) and 55A of the Act. The Commission considers AITA contravened sections 52, 53(a), 53(c), 53(f) and 55A of the Act by:



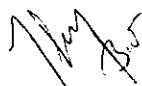
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- (a) representing that the relationship between skin cancer and ultraviolet light is a confusing one;
 - (b) representing that cancer rates are higher in sun-deprived areas of the world and decrease significantly as one gets closer to the equator;
 - (c) representing that malignant melanoma skin cancer is most common in people who do not receive regular sun exposure and most frequently develops on parts of the body not regularly exposed to sunlight;
 - (d) representing that breast, colon, prostate and ovarian are slowed or inhibited by increased exposure to sunlight;
 - (e) representing that sunlight is the body's only natural and reliable source of vitamin D;
 - (f) representing that deaths caused from breast, colon, ovarian and prostate cancers are meaningfully comparable to deaths caused from non-melanoma skin cancer;
 - (g) representing that Northern women have greater risk of ovarian cancer than Southern women who receive more direct sun exposure without any account of other factors which may be relevant such as diet, lifestyle, climate, pollution life-expectancy and ethnicity or race; and
 - (h) representing that tanning is your body's natural defence against sunburn; and
 - (i) representing that totally avoiding the sun can increase your risk of many forms of cancer, including skin cancer; and
 - (j) representing that "the statement "tanning causes skin cancer" is misconceived"; and
 - (k) representing that a tan helps protect you from the harmful rays during outdoor activity, improves your body's circulation and increases the production of Vitamin D.



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- (4) In March 2000 the Commission brought to AITA's attention its view that the representations referred to in paragraph (3) above contravened sections 52, 53(a), 53(c), 53(f) and 55A of the Act. The Commission and AITA subsequently met several times to discuss the Commission's view.
- (5) Without any admission, AITA ceased trading in March 2000.
- (6) AITA concedes that the representations in (2) above are capable of being misleading in that the draft *Australia/New Zealand Standard DR 01010 – Installation, maintenance and operation of solarium for cosmetic purposes* states that exposure to UV radiation such as from a sunbed and/or natural sunlight may contribute to skin cancer and premature ageing of the skin. AITA ceased the conduct referred to in paragraph (3) upon the Commission's concerns being brought to its attention in March 2000 and has agreed to give the undertakings set out below.

Undertakings

- (7) AITA hereby undertakes for the purposes of section 87B of the Act:
- (a) that it will not, in trade or commerce:
- (i) make the representations referred to in (2) above;
- (ii) make false or misleading representations (whether oral or written) in relation to the need for, the safety of, and the health benefits and risks of tanning and/or the products and services provided them;
- (b) that it will :
- (i) within 21 days of the date hereof distribute to each member of AITA to which it distributed the brochures referred to in (2) above, in sufficient quantities to be made available to their customers, a corrective statement in the form of annexure "A" hereto;
- (ii) cease all future trading and will use its best efforts to cause AITA to be voluntarily wound up within 3 months of the date hereof.



Acknowledgments

- (8) AITA acknowledges that the Commission will make this undertaking available for public inspection.
- (9) AITA further acknowledges that the Commission will from time to time publicly refer to this undertaking.
- (10) AITA further acknowledges that this undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.
- (11) AITA further acknowledges that the reports referred to in paragraph (8) will be held with this undertaking on the public register.
- (12) AITA further acknowledges that this undertaking in no way derogates from the rights and remedies available to the Commission, including action in relation to the representations in paragraph (2), arising from the breach of this undertaking by AITA.

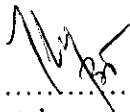
IN WITNESS of these undertakings and its agreement this document is signed by Australian Indoor Tanning Association Pty Limited (ACN 079 014 038) in accordance with s.127 Corporations Law:



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Thierry Botel – Sole Director & Secretary

This Thied day of August 2001

I, Thierry Botel, Sole Director and Secretary of Australian Indoor Tanning Association Pty Limited (ACN 079 014 038) give the undertakings set out in paragraph 7(a) above.




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Thierry Botel

This Thied day of August 2001

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ACCEPTED BY THE AUSTRALIAN COMPETITION AND CONSUMER
COMMISSION PURSUANT TO SECTION 87B OF THE TRADE PRACTICES ACT
1974.


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Professor Allan Fels
Chairman

This 8 day of August 2001

MC/01424u5

ANNEXURE "A"

CORRECTIVE STATEMENT FOR AITA MEMBERS

Various indoor tanning courses, including that created and published by International Smart Tan Network Inc. ("ISTN"), make various claims with respect to the need for, safety of, and risk and benefits of tanning using sunbeds.

Australian Indoor Tanning Association Pty Limited ("AITA") as a distributor of the ISTN tanning course in Australia and as a responsible Australian company accepts the concerns of the Australian Competition and Consumer Commission that such statements may suggest that artificial tanning and solarium use is safe and good for your health. Ergoline acknowledges there is widely accepted medical opinion that sunbed use and/or natural sunlight may contribute to skin cancer and premature aging of the skin.

For that reason AITA publicly announces that from now on it no longer intends to promote or distribute the ISTN indoor tanning courses.

**YOU SHOULD WARN CUSTOMERS NOT TO EXPOSE
THEMSELVES TO EXCESSIVE ULTRAVIOLET LIGHT
(by sunbed or by natural sunlight)**

