

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

MERCOLA.COM, LLC, a limited liability
company,

MERCOLA.COM HEALTH RESOURCES, LLC,
a limited liability company, and

DR. JOSEPH MERCOLA, individually and as an
owner, officer, and director of MERCOLA.COM,
LLC, and MERCOLA.COM HEALTH
RESOURCES, LLC,

Defendants.

Case No. 16 CV 4282

**COMPLAINT FOR
PERMANENT
INJUNCTION AND OTHER
EQUITABLE RELIEF**

Plaintiff, the Federal Trade Commission (“FTC”), for its Complaint alleges:

1. The FTC brings this action under Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), to obtain a permanent injunction, rescission or reformation of contracts, restitution, the refund of monies paid, disgorgement of ill-gotten monies, and other equitable relief for Defendants’ acts or practices in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. § 45(a) and 52, in connection with the labeling, advertising, marketing, distribution, and sale of Mercola brand indoor tanning systems.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a) and 53(b).

3. Venue is proper in this district under 28 U.S.C. § 1391(b)(1), (b)(2), (b)(3), (c)(1), (c)(2), and (d), and 15 U.S.C. § 53(b).

PLAINTIFF

4. Plaintiff FTC is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The FTC also enforces Section 12 of the FTC Act, 15 U.S.C. § 52, which prohibits false advertisements for food, drugs, devices, services, or cosmetics in or affecting commerce.

5. The FTC is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act and to secure such equitable relief as may be appropriate in each case, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies. 15 U.S.C. § 53(b).

DEFENDANTS

6. Defendant Mercola.com, LLC, (“Mercola LLC”) is a Nevada limited liability company with its principal place of business at 3200 West Higgins Road, Hoffman Estates, IL 60169. Mercola LLC transacts or has transacted business in this district and throughout the United States.

7. Defendant Mercola.com Health Resources, LLC, (“MHR”) is a Delaware limited liability company with its principal place of business at 3200 West Higgins Road, Hoffman Estates, IL

60169. MHR transacts or has transacted business in this district and throughout the United States.

8. Defendant Joseph Mercola is the 99% owner, president, and director of both Mercola LLC and MHR. At all times material to this Complaint, acting alone or in concert with others, he has had the authority to control or participated in the acts and practices of Mercola LLC and MHR, including the acts and practices set forth in this Complaint. Among other things, he takes a lead role in determining the content of www.mercola.com and appears in both print passages and videos featured on that site. Defendant Joseph Mercola resides in this district and, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

COMMON ENTERPRISE

9. Defendants Mercola LLC and MHR have operated as a common enterprise while engaging in the deceptive acts and practices alleged below. These entities have a common business purpose and share common ownership, control, management, staffing, and office locations. Because they have operated as a common enterprise, each of them is jointly and severally liable for the acts and practices alleged below. Defendant Joseph Mercola has had the authority to control or participated in the acts and practices of the entities, Mercola LLC and MHR, which constitute the common enterprise.

COMMERCE

10. At all times material to this Complaint, Defendants have maintained a substantial course of trade in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS' BUSINESS ACTIVITIES

11. Defendants have labeled, advertised, marketed, and distributed to the public Mercola brand indoor tanning systems. Mercola brand indoor tanning systems include sunlamp products and ultraviolet lamps, as defined in 21 C.F.R. § 1040.20. There are several models of Mercola brand indoor tanning systems, including but not limited to, D-Lite, Sun Splash, Sun Splash Refresh, Sunsplash Renew, Vitality, Vitality Refresh, and Vitality D-Lite. The models differ in terms of whether they are designed as beds, door-mount, or standing systems; the number of ultraviolet lamps they contain; and whether they also include lamps generating red, infrared, and/or blue light.

12. Defendants have advertised Mercola brand indoor tanning systems through the Mercola.com website, Google AdWords, YouTube, and newsletters to subscribers.

13. To induce consumers to purchase Mercola brand tanning indoor tanning systems, Defendants have disseminated or caused to be disseminated advertisements and promotional materials, including, but not limited to, the attached Exhibits A through H. These advertisements and promotional materials have contained the following representations or statements, among others:

A. Google Ads (Exhibit A)

1. First ad

MERCOLA

VITALITY

HOME TANNING

BEDS

Vitamin D

Glowing Tan
Anti-Wrinkles and
Other Skin Benefits
(9/2012 to 12/2012)

2. Second ad

MERCOLA
VITALITY
HOME TANNING
BEDS
Safe UV Light

Source of Vitamin D
A Glowing Tan
Anti-Wrinkles and
Other Skin Benefits
(9/2012 to 12/2012)

B. Google Ads (Exhibit B, pp. 1, 2)

- **Dr. Mercola's Tanning Beds**

Healthy Safe & Produces Vitamin D

Get Health Benefits of Sun's Energy

shop.mercola.com/tanningbed

(8/2013 to 6/2014)

- **Healthy Tanning Bed**

Safe Healthy In Home Tanning and VitD

Get Health Benefits of Sun's Energy

mercola.com

(2/2013 – 6/2014)

C. YouTube and Mercola.com, transcript of video (Exhibit C)

DR. MERCOLA: Hello, this is Dr. Mercola. If you've been on this site for any length of time, you'll know that vitamin D has a profound and dramatic influence on your health. But then we – we have to ask the practical question, how do I optimize my vitamin D levels. Well, ideally, the best, the single-best way – undisputed, no expert will disagree with this, is to make sure – at least no knowledgeable expert will disagree – is to make sure that you're exposing an appropriate amount of your skin in a safe manner to sunshine, because the ultraviolet B radiation shining on your skin will convert the cholesterol that's in your skin into a vitamin D3. . .

So, if – obviously many of us – you know, I live in Chicago, which is my hometown, and for approximately seven to eight months of the year it is not practical to get your vitamin D from the sun in Chicago. And that's not unusual for much of North America, especially up in Canada.

So, what are your options? Well, then, your second option is to have some other

ultraviolet radiation exposure, ultraviolet B. And the best one is is [sic] probably a safe tanning bed. . . .

We have some of the – actually the some of the best and safest tanning beds in the world, and really the only tanning beds that have been approved by the Vitamin D Council. . . .

(2/18/2015)

D. Mercola.com (Exhibit D)

“Relax Under the Glow of 4 Health-Enhancing Lights”

Enjoy Vitamin D Producing UVB, Infrared, Red and Blue Light

with the Vitality Home Tanning Bed

Vitamin D is an essential nutrient that can make a world of difference for your heart health, bones, skin, immunity, and even your mood. It’s so important, that your body produces it naturally when sunlight comes in contact with your skin. In reality, you are your own Vitamin D producing machine! But without enough outdoor sun exposure, it’s hard to maintain adequate levels of Vitamin D all year round. . . .

For lack of an effective, convenient solution, most people take the problem of Vitamin D Deficiency [sic] lying down. . . .

Fortunately, there are convenient solutions available to you, and I’m about to show you one that you can actually take – lying down or standing up, if you

prefer!

It's the **Mercola Vitality Home Tanning System**, a complete tanning system that utilizes UVB rays to stimulate natural Vitamin D production in your body. It's made even better than conventional tanning beds because it has two more beneficial types of light which are red and infrared light.

With your **Mercola Vitality Home Tanning Bed**, you'll enjoy:

- The benefits of **UV rays** that help your body produce just the right amount of vitamin D, without overdose.
- **Red light** in the 633 nm range to reverse wrinkles and help give you more youthful skin.

Recommended by the Vitamin D Council

Scientists at the Vitamin D Council agree that both children and adults should have a Vitamin D level of 50 ng/ml all year-round. They recommend the use of any Mercola Tanning Systems as a safe and effective way to help you achieve natural levels of Vitamin D. The Vitamin D Council is a nonprofit organization whose aim is to educate the public about Vitamin D deficiency and how to prevent it.

A Message from Dr. Joseph Mercola

I've been advocating the benefits of Vitamin D for years. Vitamin D deficiency is

a very real, global epidemic and I am passionate about helping people address and prevent the diseases associated with it. If you want to know more about vitamin D, visit my health website, Mercola.com [link to Mercola.com site].

[Bottom of page contains navigation links to all other sections of the Mercola.com site.]

(5/27/2014)

E. Mercola.com (Exhibit E)

"Look Younger Now With This 10 Minute Trick"

Forget creams and surgery – this puts collagen back to the surface of your skin to fill in wrinkles, helping you reverse the appearance of aging.

**Also strengthens the walls of your blood vessels in your skin,
improving oxygenation and hydration...**

[video featuring Dr. Mercola]

Yes, you read that correctly -- finally, there is a vitamin D producing system that I can recommend...

In case you didn't know, taking a vitamin D supplement is not the *optimal way* to regulate your body's vitamin D levels.

On the other hand, many experts (including me) believe that there are no health concerns with regard to vitamin D concentration associated with sun exposure.

That's why I feel that the best way to make sure you don't end up with *too much*

or *too little* vitamin D is to produce it in your own body, by **getting some exposure to beneficial ultraviolet A and B rays, like those produced by the sun.**

And, as an added benefit, you'll also help give your skin a more healthful glow.

Tanning beds produce ultraviolet A and B rays as well...

And yes, I've been asked many times if there *is* such a thing as a tanning bed that won't put you at risk.

My answer was always: A tanning bed *can* be useful, but in my opinion **most commercial tanning beds can be a cause for concern.**

You see, there are potential problems associated with them that may have a negative impact on your health:

- **X-Rays** -- These rays, emitted by the ends of the bulbs, are a form of radiation, and can be potentially hazardous.

So although they produce the same beneficial ultraviolet A (UVA) and ultraviolet B (UVB) rays as the sun and add a pleasant tone to your skin, I've always believed that the best source of those beneficial rays is the sun itself, in moderation.

I knew that if they could find a way to shield those harmful emissions and make a convenient and affordable tanning system, there'd be a huge demand for it.

Guess what?

They finally did it. And that's great news for you because now you can **get this beneficial energy in the most convenient place of all** – your own home!

Wait A Minute! I'm Supposed to Avoid the Sun's Rays These Days, Right?

Despite the health benefits you can derive from the sun's ultraviolet rays, they've still gotten a lot of undeserved bad press lately.

Everyone from health officials to your well-meaning friends seems to have the same advice: The sun is your enemy. They tell you that it will wrinkle your skin and cause you to look older prematurely -- even increase your risk of cancer.

It *is* true that anything, no matter how healthy it might be for you, can be harmful in excessive amounts. Remember:

Always avoid overexposing yourself to the sun's rays!

This applies to tanning beds or systems as well.

You should definitely avoid sunburn at all costs.

With that being said, **in moderation, ultraviolet rays from the sun or a tanning system can have many benefits for you.**

Just don't expose yourself long enough to get sunburned.

Vitamin D has demonstrated support for:

- **Your healthy immune system**
- Your cardiovascular system
- **Your prostate**
- Helping increase your level of white blood cells
- **Your healthy skin**

Your body doesn't produce vitamin D on its own. You need exposure to ultraviolet rays to stimulate the production of vitamin D in your body.

Want to Reverse Your Wrinkles?

Then Go To the Light... For Younger Looking Skin

There's another way that light benefits you, specifically light produced in 633 nanometer (nm) waves. (Incidentally, the **D-Lite, SunSplash Refresh, SunSplash Renew Systems** and **Vitality Beds** produce light in this range.)

When you are exposed to light in this 633 nm range, your skin cells are naturally stimulated, leading to the production of collagen, elastin and certain enzymes that support your skin.

As you age, collagen and elastin break down and you begin to see wrinkles, creases and folds in skin that was once taut.

This process may accelerate if you smoke or have poor eating habits.

Light in the 633 nm range pulls collagen back to the surface of your skin to fill in

lines and wrinkles, and help reverse the appearance of aging.

In a nutshell, **light in the 633 nm range can improve the clarity, tone and texture of your skin, basically giving you a more youthful appearance.**

(5/20/2014)

F. Mercola.com (Exhibit F)

[Page header:] New Study Shows Tanning Beds Decrease Melanoma Risk

Slash Your Risk of Cancer – by Breaking this Cardinal Rule

By Dr. Mercola

UV light from the sun and tanning beds is the main vitamin D source for humans, and researchers have identified an astonishing number of health benefits of vitamin D in the past decade.

But since UV exposure has been suspected of causing skin cancer, many conventional health authorities still warn against it.

A recent review of studies sought to review the health effects of solar radiation, tanning beds, and vitamin D.

The researchers looked at data from different time periods for populations at different latitudes, with the aim of looking at the relative risk for

cutaneous malignant melanoma associated with tanning beds, vitamin D and UV effects.

They found that increased tanning bed use was NOT associated with melanoma.

What Makes a Tanning Bed Safe?

High-quality indoor tanning devices are safe if you precisely follow the simple guideline of never getting burned. Your skin should only get the lightest shade of pink after using them. The FDA has very strict guidelines that seem overly restrictive and will likely impair most people from getting enough vitamin D.

The FDA also recommends waiting 24-48 hours between doses. The reason for this is that it takes at least 24 hours for the erythema to go away. This exposure schedule can be described as CONTROLLED SUNSHINE, making it a very safe way to receive the benefits of the sun while indoors.

(1/6/2015)

G. Mercola.com (Exhibit G)

A Healthy Tan Will Actually Reduce Your Risk of Deadly Skin Cancer

Dermatologists and government agencies are quick to hold on to their mantra that sun exposure increases your risk of skin cancer.

As you probably know by now, vitamin D is formed in your skin from exposure to sunlight. The sun, in turn, does increase genetic damage in your skin and can cause skin cancer, but nature has designed a clever system to prevent this risk. . .

. . . to give you a summary, when vitamin D is produced in your skin, it goes directly to the genes in your skin where it helps prevent the types of abnormalities that ultraviolet causes.

To date, no well-designed studies support the connection between melanoma and UV exposure from tanning. . .

A Lack of Vitamin D is a Major Risk Factor for Cancer

The production of the activated form of vitamin D is one of the effective ways your body controls abnormal cell growth.

You Can Safely Tan Indoors

The FDA strictly controls the indoor tanning industry by setting standards

for proper use of equipment – they have endorsed indoor tanning devices as safe.

(1/26/2015)

H. Mercola.com (Exhibit H)

Using the Sun for Skin Cancer Prevention

The key to effectively using the sun for skin cancer *protection* is to find a healthy balance between getting enough natural sunlight to maximize your vitamin D production and maintain your optimal health, while at the same time protecting yourself from damage that occurs from overexposure to the sun.

A good rule of thumb to follow is once your skin turns the lightest shade of pink (if you're Caucasian), it's time to get out of the sun. . .

You should seek to use the natural sunlight as your primary source of vitamin D, but during the winter a safe tanning bed . . . is the next best alternative.

(2/2/2015)

DEFENDANTS' VIOLATIONS OF THE FTC ACT

14. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits unfair or deceptive acts or practices in or affecting commerce.
15. Misrepresentations or deceptive omissions of material fact constitute deceptive acts or

practices prohibited by Section 5(a) of the FTC Act.

16. Section 12(a) of the FTC Act, 15 U.S.C. § 52(a), prohibits the dissemination of any false advertisement in or affecting commerce for the purpose of inducing, or which is likely to induce, the purchase of foods, drugs, devices, services, or cosmetics. For the purposes of Section 12 of the FTC Act, Mercola brand sunlamp products, ultraviolet lamps, and lamps generating infrared, red, or blue light are “devices” as defined in Section 15(d) of the FTC Act, 15 U.S.C. § 55(d).

COUNT ONE

False or Unsubstantiated Safety Claims

17. Through the means described in Paragraph 13, Defendants have represented, expressly or by implication, that:

- A. Tanning with Mercola brand indoor tanning systems is safe;
- B. Tanning with Mercola brand indoor tanning systems will not increase the risk of skin cancer as long as consumers stop using the system when their skin is only the slightest shade of pink and not burned;
- C. Tanning with Mercola brand indoor tanning systems does not increase the risk of skin cancer, including melanoma skin cancer; and
- D. Tanning with Mercola brand indoor tanning systems reduces the risk of skin cancer.

18. The representations set forth in Paragraph 17 are false or misleading, or were not substantiated at the time the representations were made.

19. Therefore, the making of the representations as set forth in Paragraph 17 of this

Complaint constitutes a deceptive act or practice and the making of false advertisements, in or affecting commerce, in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

COUNT TWO

False FDA Endorsement and Proof Claims

20. Through the means described in Paragraph 13, Defendants have represented, expressly or by implication, that:

- A. The FDA has endorsed the use of indoor tanning systems as safe; and
- B. Research proves that indoor tanning systems do not increase the risk of melanoma skin cancer.

21. In truth and in fact,

- A. The FDA has not endorsed the use of indoor tanning systems as safe; and
- B. Research does not prove that indoor tanning systems do not increase the risk of melanoma skin cancer.

22. Therefore, the making of the representations as set forth in Paragraph 20 of this Complaint constitutes a deceptive act or practice and the making of false advertisements, in or affecting commerce, in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

COUNT THREE

False or Unsubstantiated Anti-Aging Claims

23. Through the means described in Paragraph 13, Defendants have represented, expressly or by implication, that the Mercola brand tanning systems with the model names SunSplash Refresh, SunSplash Renew, Vitality, and D-Lite will pull collagen back to the surface of the

skin, increase elastin and other enzymes that support the skin, fill in lines and wrinkles, and reverse the appearance of aging.

24. The representations set forth in Paragraph 23 are false or misleading, or were not substantiated at the time the representations were made.

25. Therefore, the making of the representations as set forth in Paragraph 23 of this Complaint constitutes a deceptive act or practice and the making of false advertisements, in or affecting commerce, in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

COUNT FOUR

Failure to Disclose Material Connection with Endorser

26. Through the means described in Paragraph 13, Defendants have represented, expressly or by implication, that the Vitamin D Council recommends Mercola brand tanning systems.

27. Defendants have failed to disclose that Defendants arranged for the Vitamin D Council to be compensated for its endorsement.

28. This additional information would be material to consumers in their purchase or use of Mercola brand tanning systems.

29. Defendants' failure to disclose the information described in Paragraph 27, in light of the representation described in Paragraph 26, constitutes a deceptive act or practice and the making of false advertisements, in or affecting commerce, in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

COUNT FIVE

Failure to Disclose Material Facts Related to Health

30. Through the means described in Paragraph 13, Defendants have represented, expressly or

by implication, that tanning with Mercola brand tanning systems provides various benefits to consumers, including but not limited to increasing Vitamin D and providing Vitamin D-related health benefits.

31. Defendants have failed to disclose that:

A. Tanning with indoor tanning systems increases the risk of skin cancer, including melanoma skin cancer; and

B. It is not necessary to tan to produce Vitamin D.

32. This additional information would be material to consumers in their purchase or use of Mercola brand tanning systems.

33. Defendants' failure to disclose the information described in Paragraph 31, in light of the representation described in Paragraph 30, constitutes a deceptive act or practice and the making of false advertisements, in or affecting commerce, in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

CONSUMER INJURY

34. Consumers have suffered and will continue to suffer substantial injury as a result of Defendants' violations of the FTC Act. In addition, Defendants have been unjustly enriched as a result of their unlawful acts or practices. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

35. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and such other relief as this Court may deem appropriate to halt and redress violations of any provision of law enforced by the FTC. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief, including rescission or reformation of contracts, restitution, the

refund of monies paid, and the disgorgement of ill-gotten monies, to prevent and remedy any violation of any provision of law enforced by the FTC.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Federal Trade Commission, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and the Court's own equitable powers, requests that the Court:

A. Enter a permanent injunction to prevent future violations of the FTC Act by Defendants;

B. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act, including, but not limited to, rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies; and

C. Award Plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Respectfully submitted,

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Dated: 4/13/16

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