

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.



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](http://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 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, 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



x Healthy Tanning Bed

Safe Healthy In Home Tanning and Vit

Get Health Benefits of Sun's Energy

mercola.com

(2/2013 – 6/2014)

C. YouTube and Mercola.com transcript of video



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:

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

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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.

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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].

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[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 ~~ag~~~~thead~~ that won't put you at risk.

My answer was always: A tanning bed can be useful, but in my ~~opinion~~~~isn't~~ 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 X-Rays -- These rays, emitted by the ~~end~~~~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 ~~to~~~~your~~ skin, I've always believed that the best source of those beneficial rays is the sun itself, in moderation.

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I knew that if they could find a way to shield those harmful emissions and make a convenient and affordable tanning system, there ~~ed~~ 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!

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## 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 old 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.

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Vitamin D has demonstrated support for:

- x Your healthy immune system
- x Your cardiovascular system
- x Your prostate
- x Helping increase your level of white blood cells
- x 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.

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## 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 LED, SunSplash Refresh, SunSplash Renew System 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.

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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)

[Pageheader:] New Study Shows Tanning Beds Decrease Melanoma Risk

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Slash Your Risk of Cancer –

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

They found that increased tanning bed use was NOT associated with

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

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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. . .

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. . . 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

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### 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.

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### You Can Safely Tan Indoors

The FDA strictly controls the indoor tanning industry by setting standards





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 lamp 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 16, 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; or,

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.

skin, increase elastin and other enzymes that support the skin, fill in lines and wrinkles 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 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 or



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 Commission's 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 disgorgement of ill gotten monies;

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: \_\_\_\_\_

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