

**ATTORNEY GENERAL OF THE STATE OF NEW YORK
HEALTH CARE BUREAU**

IN THE MATTER OF

Assurance No. 13-486

**HT Franchising Management, LLC (dba "Hollywood
Tans") and HT Acquisition Holdings, LLC**

**ASSURANCE OF DISCONTINUANCE
PURSUANT TO NEW YORK EXECUTIVE LAW
SECTION 63, SUBDIVISION 15**

Pursuant to the provisions of New York Executive Law § 63(12) and Article 22-A of the New York General Business Law, Eric T. Schneiderman, Attorney General of the State of New York, caused an inquiry to be made into certain business practices of HT Franchising Management, LLC, dba Hollywood Tans ("Hollywood Tans") and its parent, HT Acquisition Holdings, LLC ("Hollywood Tans Acquisition"). Based upon that inquiry, the Office of the Attorney General ("OAG") has made the following findings, and Hollywood Tans has agreed to modify its practices, discontinue certain practices and assure compliance with the following provisions of this Assurance of Discontinuance ("Assurance").

THE ATTORNEY GENERAL'S INVESTIGATION AND FINDINGS

1. Hollywood Tans is a limited liability company organized under the laws of the State of Delaware. Hollywood Tans, its parent, Hollywood Tans Acquisition, and non-tanning salon affiliates (HT Distribution, LLC; HT Human Resources, LLC; and HT Branding, LLC) are located at 11 Enterprise Court, Sewell, New Jersey 08080.

2. Hollywood Tans sells tanning salon franchises, and through its agreements with the franchisees, provides an array of guidance and support to its franchisees as well as restrictions on certain franchisee activities. In 2012, Hollywood Tans acquired the Hollywood Tans trademark and began preparation of franchise offering materials. In 2013, Hollywood Tans submitted its franchise offering materials for approval to the OAG. The OAG is empowered to review and approve a franchisor's franchise offering prospectus prior to the franchisor's offering and selling franchises within or from the State of New York, pursuant to New York General Business Law, Article 33, § 680 et seq., known as the "New York State Franchise Sales Act."

3. Hollywood Tans currently maintains, through license agreements entered into by the prior owner of the "Hollywood Tans" trademark ("License Agreements"), a legal relationship with seven independently owned Hollywood Tans salons ("HT Salons") located in New York State. Once its franchise offering materials are approved, Hollywood Tans intends to offer franchises in New York to the current licensees and to new prospective franchisees.

4. The seven HT Salons operate in the southern region of New York State -- in Long Island, New York City and Westchester.

5. HT Salons offer tanning services, through their sunlamps on premises, to their customers. HT Salons offer "pay-as-you-go," individual tanning sessions as well as "unlimited" monthly tanning packages.

6. HT Salons advertise their tanning services in a number of arenas, including print ads, on-line websites, Facebook, and Twitter.

7. The current License Agreements require that each licensee "operate its indoor tanning salon in compliance with all laws and regulations." Hollywood Tans' proposed

Franchise Agreement includes the requirement that all HT Salon marketing materials be approved by Hollywood Tans.

8. The risks of indoor tanning increasing the chance of skin cancer, especially for young people, are well-established. Rates of melanoma have increased dramatically nationwide over the past three decades. The Centers for Disease Control confirms that the risk of melanoma, the deadliest type of skin cancer, has increased by 75% in persons who have been exposed to radiation from indoor tanning before the age of 35, and that the risk of melanoma increases with each tanning session. In 2009, the World Health Organization added indoor tanning to its list of most dangerous forms of cancer-causing radiation, placing tanning beds in the highest cancer risk category: "carcinogenic to humans," the same category as tobacco. Since some 30-35% of U.S. teen girls use tanning beds by age 17, public health experts are increasingly concerned about future health consequences.

9. The OAG commenced the investigation after becoming aware that HT Salons were asserting an array of purported indoor tanning health benefits and the safety of indoor tanning in their consumer-facing materials and advertising, including on their websites and through social media.

10. HT Salons have publicly represented, among other representations, that:

- "If you want to reduce cancer by as much as 80%, you want to reduce the risk of heart disease, you want to reduce diabetes, reduce obesity, reduce mental health disorders, then all you need to do is get people into the tanning booths in the winter months combined with good nutrition. That is how we can save our nation."
- "The American Cancer Society doesn't want you to know the truth about tanning booths. Susan G. Komen doesn't want you to know the truth about tanning booths"

because if women were in tanning booths they wouldn't be growing breast cancer tumors during the winter months."

- "Sunlight prevents skin cancer and other cancers. It's absolutely true."
- "Tanning in a tanning booth is only bad for you if you have bad nutrition."
- "There is still no proof that tanning in a non-burning fashion is linked to melanoma."
- "A lot of our clients suffer from acne, eczema, and psoriasis. UVB aids in healing these skin conditions. We are easier and less expensive than the medical co-pays."

11. The scientific evidence does not support these broad assertions of health benefits: indoor tanning has not been shown to *reduce* an array of cancers, but has been strongly associated with increases in skin cancer. HT Salon statements to the contrary misrepresent the risks for consumers, and lead consumers to believe that indoor tanning is not only risk-free, but contributes to improved health. Moreover, tanning beds are not FDA-approved to treat skin conditions or to provide any other health benefit.¹ Finally, indoor tanning poses risks for everyone (not "only" when you have "bad nutrition"), and is particularly harmful when initiated at younger ages.

12. In 2012, the New York State legislature, recognizing the dangers posed by indoor tanning, passed Public Health Law Section 3555 to ban indoor tanning to minors. In passing the law, the legislature explicitly recognized that the harmful effects of UV exposure accumulate over time, and that indoor tanning devices, therefore, pose a greater risk for children and teens by boosting overall lifetime exposure. In addition to risk for skin cancer, exposure to the deep penetrating rays of sunlamps and sun beds is also associated with damage to the blood vessels of

¹ The U.S. Food and Drug Administration ("FDA") has approved tanning beds, or "sunlamps," for the narrow purpose of "tan[ning] the skin." 21 C.F.R. Part 878.4635. The FDA has not approved tanning beds for "health" purposes.

the skin and eyes, burned corneas and other eye diseases. Exposure to UV causes visible damage that results in leathery and prematurely aged skin, wrinkles, brown age spots, and skin blotching.

13. In addition to the representations regarding the health benefits associated with tanning and the safety of indoor tanning, HT Salons also made many specific representations about indoor tanning benefits associated with vitamin D, including:

- "Getting enough vitamin D is linked to reductions in heart disease, diabetes, multiple sclerosis & many cancers—are you getting enough?"
- "Male sexual health may be improved with vitamin D and sun exposure. . ."
- "...[I]mproving your vitamin D status, whether by supplements or by exposure to sunlight, you are providing your skin cells with a mechanism to prevent them from becoming malignant."

14. Although vitamin D is an important nutrient for bone health, studies have not established a clear link between vitamin D and other health conditions. Moreover, sufficient vitamin D levels can be maintained through diet and supplements, without the risk of skin cancer posed by indoor tanning.

15. In addition, recent OAG investigator visits to selected HT Salons revealed that some HT Salons were in violation of New York's indoor tanning laws, including:

- Failing to provide the state prescribed "Tanning Hazards Information Sheet" (10 N.Y.C.R.R.72-1.8(b)), which, among other things, advises consumers of the risks associated with tanning, explains that indoor tanning devices are not safer than tanning in natural sunlight, that tanning is prohibited in New York State for people under 17 years of age and that 17 year olds need a parent or legal guardian to sign a consent form prior to using an ultraviolet device.

- Failing to post state required warning signs near all tanning devices (10 N.Y.C.R.R.72-1.9), which, among other things, states the manufacturer's maximum exposure for the device, advises that failure to use protective eyewear may result in severe burns or long-term injury to the eye, and warns that medications or cosmetics may increase sensitivity to ultraviolet radiation.
- Failing to provide free protective eyewear to tanning patrons (10 N.Y.C.R.R.72-1.10), which is intended to protect eyes from severe burns or long-term injuries.
- Failing to have Parental Consent Forms or current Parental Consent Forms for tanning patrons 17 years of age (N.Y. Pub. Health Law §355(2)), which require a parent or legal guardian to sign a consent form in the presence of the tanning salon owner or operator prior to a 17 year old's use of an ultraviolet device.

16. Article 22-A of the New York State General Business Law ("GBL") prohibits "deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state. . . ." (GBL § 349[a]) as well as "[f]alse advertising in the conduct of any business, trade or commerce or in the furnishing of any service in this state...." (GBL § 350).

17. New York Executive Law § 63(12) prohibits persons or business entities from engaging in repeated fraudulent or illegal acts in the conducting or transaction of business.

WHEREAS, the OAG has been conducting an ongoing investigation, pursuant to Executive Law § 63(12) and General Business Law Article 22-A, of the business practices of Hollywood Tans and Hollywood Tans Acquisition as well as HT Salons related to marketing and provision of tanning services;

WHEREAS, Hollywood Tans and Hollywood Tans Acquisition have been cooperative in exploring the resolution of the OAG's concerns;

WHEREAS, neither Hollywood Tans nor Hollywood Tans Acquisition either admits or denies the OAG's Findings in paragraphs 1 - 17 above;

WHEREAS, the OAG is willing to accept the terms of the Assurance pursuant to New York Executive Law § 63(15) and to discontinue its investigation with respect to Hollywood Tans and Hollywood Tans Acquisition; and

WHEREAS, the parties each believe that the obligations imposed by this Assurance are appropriate to help resolve the OAG's concerns;

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the parties that:

I. PROSPECTIVE RELIEF

18. In the event Hollywood Tans and/or Hollywood Tans Acquisition has actual knowledge that a HT Salon is not in compliance with New York State laws, Hollywood Tans and/or Hollywood Tans Acquisition will use best efforts to bring the HT Salon into compliance, up to and including, termination of the License Agreement or Franchise Agreement. Hollywood Tans and/or Hollywood Tans Acquisition will, within ten (10) days of actual knowledge of non-compliance, send a communication to the HT Salon, with a copy to the OAG, 1) specifying the act(s) of non-compliance; 2) indicating that non-compliance must be discontinued no later than thirty (30) days from receipt of the communication; and 3) notifying that failure to come into compliance may result in termination of the License Agreement or Franchise Agreement.

19. Hollywood Tans and its non-tanning salon affiliates shall not make any representation in any advertising or promotion about the safety, health-related efficacy or performance, or health-related risks or benefits, of tanning.

20. Hollywood Tans and its non-tanning salon affiliates shall not make any representation in any advertising or promotion about the health-related risks or benefits of vitamin D, including that tanning is a safe way to obtain vitamin D.

21. In particular, Hollywood Tans and its non-tanning salon affiliates shall not represent that:

- Tanning, including indoor tanning, prevents or reduces the risk of cancer or does not increase the risk of skin cancer;
- Tanning reduces the risk of disease including diabetes, reduces obesity, or reduces mental health disorders;
- Tanning, including indoor tanning, is safe or poses no danger;
- Tanning only poses a danger if you have "bad nutrition;"
- There is no proof that tanning is linked to melanoma;
- Tanning can help heal or has proven to help skin conditions such as acne, eczema and psoriasis; and
- Indoor tanning is safer than tanning outdoors.

22. Hollywood Tans and its non-tanning salon affiliates shall not use the term "unlimited" to describe, identify, reference, promote, market, or sell any tanning service or tanning package in the State of New York.

23. Hollywood Tans and its non-tanning salon affiliates shall replace the term "student" with the term "college student" in any description, identification, reference, promotion, marketing, or offer for sale of any tanning service or tanning package. Hollywood Tans and its non-tanning affiliates further agree not to use any advertisements in the State of New York that

reference or relate to high school proms (provided that this restriction shall not apply to Hollywood Tans' franchisees).

24. Pursuant to the OAG's request, in connection with the OAG's investigation, Hollywood Tans submitted revised language for its proposed Franchise Agreement to the OAG Investor Protection Bureau, in accordance with the New York State Franchise Sales Act, that explicitly prohibits Hollywood Tans franchisees in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of any tanning service or product from making health-related claims or representations.

25. Hollywood Tans shall, within thirty (30) days of the Effective Date, revise its Operations Manual for franchisees in New York to: 1) expressly prohibit franchisees from making any representation in any advertising or promotion (including social media) about the health-related risks or benefits of vitamin D, including that tanning is a safe way to obtain vitamin D, 2) require that all advertising developed by the franchisees be submitted to Hollywood Tans for review and written approval before it can be used, 3) expressly prohibit franchisees from using the term "unlimited" to describe tanning packages, and 4) require that franchisees use term "college student" in place of the term "student" in any description, identification, reference, promotion, marketing, or offer for sale of any tanning service or tanning package. Such revised Operations Manual shall be submitted to the OAG for its approval. Once the Operations Manual has been revised, pursuant to this paragraph, Hollywood Tans shall not change or remove the revised language without OAG approval.

26. In the event that Hollywood Tans and/or Hollywood Tans Acquisition has actual knowledge that a HT Salon is not in compliance with the prohibition on the use of health-related representations set out in the Franchise Agreement or of any of the terms in the Operations

Manual set out in paragraph 24 above, Hollywood Tans and/or Hollywood Tans Acquisition will use best efforts to bring the salon into compliance, up to and including, termination of the License Agreement or Franchise Agreement. Hollywood Tans and/or Hollywood Tans Acquisition will, within ten (10) days of actual knowledge of non-compliance, send a communication to the HT Salon, with a copy to the OAG, 1) specifying the act(s) of non-compliance; 2) indicating that non-compliance must be discontinued no later than thirty (30) days from receipt of the communication; and 3) notifying that failure to come into compliance may result in termination of the License Agreement or Franchise Agreement.

27. Hollywood Tans shall, within one hundred and twenty (120) days of the Effective Date of this Assurance, review HT Salons' consumer-facing materials, including HT Salons' websites, samples of print materials provided by HT Salons upon request, and social media sites operated by HT Salons (of which Hollywood Tans has actual knowledge) (Twitter, Facebook, Instagram) to assess their compliance with the terms of this Assurance.

28. Within one hundred and eighty (180) days of the Effective Date of this Assurance, Hollywood Tans shall provide a written report to the OAG setting forth the measures taken to adhere to this Assurance, including but not limited to copies of all correspondence with HT Salons regarding compliance with the restrictions on marketing, as well as copies of Franchise Agreements and Operations Manuals with HT Salons in New York.

II. PROSPECTIVE PENALTIES

29. If Hollywood Tans and/or Hollywood Tans Acquisition fails to send a communication to a HT Salon in violation of paragraph 18 or 25, the OAG will assess a penalty of five hundred dollars (\$500) per violation.

III. CORRESPONDENCE AND PAYMENT

30. All notices, reports, requests, and other communications to any party pursuant to this Assurance shall be in writing and shall be directed as follows:

If to the OAG to:

Brant Campbell
Assistant Attorney General
Office of the Attorney General
Health Care Bureau
120 Broadway, 26th Floor
New York, New York 10271

If to Hollywood Tans or Hollywood Tans Acquisition to:

HT Franchising, LLC
c/o President
11 Enterprise Court
Sewell, New Jersey 08080

With a copy to:

Stephen C. Barsotti, Esq.
Kegler Brown Hill & Ritter Co., LPA
65 East State Street, Suite 1800
Columbus, Ohio 43215

31. All checks issued pursuant to this Assurance shall be made payable to "State of New York Department of Law."

32. All payments and correspondence related to this Assurance must reference "Assurance 13-486."

IV. MISCELLANEOUS

Hollywood Tans' and Hollywood Tans Acquisition's Representations

33. The OAG has agreed to the terms of this Assurance based on, among other things,

the representations made to the OAG by Hollywood Tans, Hollywood Tans Acquisition and their counsel, and the OAG's own factual investigation. To the extent that any material representations are later found to be inaccurate or misleading, this Assurance is voidable by the OAG in its sole discretion.

No Deprivation of the Public's Rights

34. Nothing herein shall be construed to deprive any person of any private right under law or equity.

**No Blanket Approval by the Attorney General
of Hollywood Tans' and/or Hollywood Tans Acquisition's Practices**

35. Acceptance of this Assurance by the OAG shall not be deemed or construed as approval by the OAG of any of Hollywood Tans' and/or Hollywood Tans Acquisition's acts or practices, and Hollywood Tans and/or Hollywood Tans Acquisition shall make no representation to the contrary.

Monitoring by the OAG

36. To the extent not already provided under this Assurance, Hollywood Tans and Hollywood Tans Acquisition shall, upon request by the OAG, provide all documentation and information necessary for the OAG to verify compliance with this Assurance, at Hollywood Tans and Hollywood Tans Acquisition expense. This Assurance does not in any way limit the OAG's right to obtain, by subpoena or by any other means permitted by law, documents, testimony, or other information.

No Limitation on the Attorney General's Authority & Hollywood Tans' and/or Hollywood Tans Acquisition's Duty to Honor Investigation and Obligations

37. Nothing in this Assurance in any way limits the OAG's ability to investigate or

take other action with respect to any non-compliance at any time by Hollywood Tans and/or Hollywood Tans Acquisition with respect to this Assurance, or Hollywood Tans' and/or Hollywood Tans Acquisition's noncompliance with any applicable law with respect to any matters.

Nondisparagement of Assurance

38. Hollywood Tans and/or Hollywood Tans Acquisition shall not take any action or make any statement denying, directly or indirectly, the propriety of this Assurance or expressing the view that this Assurance is without factual basis. Nothing in this paragraph affects Hollywood Tans' and/or Hollywood Tans Acquisition's (a) testimonial obligations or (b) right to take legal or factual positions in defense of litigation or other legal proceedings to which OAG is not a party.

Governing Law; Effect of Violation of Assurance of Discontinuance

39. Under Executive Law § 63(15), evidence of a violation of this Assurance shall constitute prima facie proof of a violation of this Assurance in any action or proceeding thereafter commenced by the OAG.

40. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

41. If a court of competent jurisdiction determines that Hollywood Tans and/or Hollywood Tans Acquisition has breached this Assurance, Hollywood Tans and/or Hollywood Tans Acquisition shall pay to the OAG the cost, if any, of such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs.

42. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held to be invalid, illegal, or unenforceable in any respect, in the sole

discretion of the OAG such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

43. Any failure by the OAG to enforce this entire Assurance or any provision thereof with respect to any deadline or any other provision herein shall not be construed a waiver of the OAG's right to enforce other deadlines and provisions of this Assurance.

Entire Agreement; Amendment

44. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by Hollywood Tans and/or Hollywood Tans Acquisition in agreeing to this Assurance.

45. This Assurance contains an entire, complete, and integrated statement of each and every term and provision agreed to by and among the parties, and the Assurance is not subject to any condition not provided for herein. This Assurance supersedes any prior agreements or understandings, whether written or oral, between the OAG and Hollywood Tans and Hollywood Tans Acquisition regarding the subject matter of this Assurance.

46. This Assurance may not be amended or modified except in an instrument in writing signed on behalf of all the parties to this Assurance.

47. The division of this Assurance into sections and subsections and the use of captions and headings in connection herewith are solely for convenience and shall have no legal effect in construing the provisions of this Assurance.

Binding Effect

48. This Assurance is binding on and inures to the benefit of the parties to this Assurance and their respective successors and assigns, provided that no party, other than the OAG, may assign, delegate, or otherwise transfer any of its rights or obligations under this

Assurance without prior written consent of the OAG. Hollywood Tans and Hollywood Tans Acquisition represent and warrant, through the signatures below, that the terms and conditions of this Assurance are duly approved, and execution of this Assurance is duly authorized.

Effective Date

49. This Assurance is effective on the date that it is signed by the Attorney General or his authorized representative (the "Effective Date"), and the document may be executed in counterparts, which shall all be deemed an original for all purposes.

AGREED TO BY THE PARTIES:

Dated: March 18, 2014

HT Franchising Management, LLC

By: Michelle Ernst
Michelle Ernst, President

HT Acquisition Holdings, LLC

By: Michelle Ernst
Michelle Ernst, President

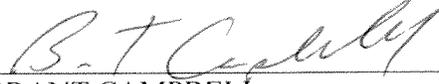
CONSENTED TO:

Dated: New York, New York

as of March 20, 2014

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York

By: 
LISA LANDAU
Bureau Chief
Health Care Bureau

By: 
BRANT CAMPBELL
Assistant Attorney General
Health Care Bureau