

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

IN THE MATTER OF

Assurance No. 14-036

750 6th Avenue Tans, 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 750 6th Avenue Tans, LLC (“Hollywood Tans NYC”). Based upon that inquiry, the Office of the Attorney General (“OAG”) has made the following findings, and Hollywood Tans NYC 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 NYC is a domestic business corporation organized under the laws of the State of New York. Hollywood Tans NYC operates a retail tanning salon at 750 6th Avenue, New York, New York 10010.

2. Hollywood Tans NYC offers tanning services, through their sunlamps on premises, to their customers. Hollywood Tans NYC offers individual tanning sessions at various price points depending on the tanning device. Hollywood Tans NYC also offers tanning packages as well as a number of specials-- including a reduced-price student option.

3. Hollywood Tans NYC advertises their tanning services in a number of arenas, including print ads, flyers and brochures, on-line websites, FaceBook and Twitter.

4. The risks of indoor tanning increasing the chance of skin cancer, especially for young people, are not in dispute. 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.

5. Hollywood Tans NYC has asserted an array of purported indoor tanning health benefits and the safety of indoor tanning in its consumer-facing materials and advertising, including on its website and through social media.

6. Hollywood Tans NYC has publically represented, among other representations, that;

- "Sunlight prevents skin cancer and other cancers. It's absolutely true."
- "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."
- "Seasonal Affective Disorder is also known as winter depression, an affective mood disorder that stems from lack of sunlight. Most SAD sufferers experience regular mental health throughout most of the year, but experience depression symptoms during the winter months. Tanning has been shown to release endorphins, a chemical such as serotonin that produces a happy, pleasant feeling."
- "Improve your look, health, and mood with the rays of our safe tanning beds...."

7. The scientific evidence does not support these assertions that tanning or ultra-violet ("UV") exposure protects against or reduces cancers. To the contrary, there is compelling evidence that use of artificial UV exposure to induce a tan causes melanoma, an often lethal form of cancer. Hollywood Tans NYC's statements down playing the UV-melanoma relationship misrepresent the risk of acquiring melanoma through tanning to consumers. Moreover, tanning beds are not approved to provide any health benefit, including promoting a better mood.¹

8. 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

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 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 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.

9. In addition to the representations discussed above, Hollywood Tans NYC also has made many specific representations about indoor tanning benefits associated with vitamin D, including, but not limited to:

- “Male sexual health may be improved with vitamin D and sun exposure, University of Copenhagen researchers reported this week — another reason researchers are saying that overzealous sun avoidance is unnatural and has potential negative side effects.”
- "Vitamin D prevents brain cancer, bone cancer, prostate cancer, liver cancer and all other types of cancer. And vitamin D is manufactured in your skin by exposing it to sunlight."
- “Tanning booths can be therapeutic. It can help your body to create vitamin D to prevent cancer.”

10. 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 risks of skin cancer posed by indoor tanning.

11. In addition, a recent OAG investigator visit to Hollywood Tans NYC's salon located at 750 6th Avenue, New York, New York 10010 revealed that was in violation of New York's indoor tanning laws, including:

- Failing to have the state prescribed "Tanning Hazards Information Sheet" (10 N.Y.C.R.R.72-1.8(b))
- Failing to have current "Tanning Facilities Statement of Acknowledgement" forms for each patron 18 years or older to sign (10 N.Y.C.R.R. 72-1.8(c))
- Failing to post state required warning signs near all tanning devices (10 N.Y.C.R.R.72-1.9)
- Failing to have current Parental Consent Forms for tanning patrons 17 years of age (N.Y. Pub. Health Law §355(2))

12. 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).

13. 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.

14. The OAG finds that respondent has engaged in conduct violative of Executive Law § 63(12) and GBL §§ 349 and 350.

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 NYC related to marketing and provision of tanning services;

WHEREAS, Hollywood Tans NYC neither admits or denies the OAG's Findings 1 - 14 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 NYC; and

WHEREAS, the parties each believe that the obligations imposed by this Assurance are prudent and appropriate;

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

I. PROSPECTIVE RELIEF

15. Hollywood Tans NYC shall comply with all New York State laws regulating indoor tanning and shall monitor its practices to ensure compliance with New York State laws.

16. Hollywood Tans NYC 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.

17. Hollywood Tans NYC 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.

18. In particular, Hollywood Tans NYC shall not represent that:

- Sunlight prevents skin cancer and other cancers;
- That tanning or UV exposure produces endorphins, increases serotonin levels, or promotes a better mood;
- Indoor tanning is safe.

19. Hollywood Tans NYC shall not use the term “unlimited” to describe, identify, reference, promote, market, or sell any UV tanning service or UV tanning package.

20. Hollywood Tans NYC shall replace the term “student” with the term “college student” in any description, identification, reference, promotion, marketing, or offer for sale of any UV tanning service or UV tanning package.

21. Hollywood Tans NYC shall not, in its UV tanning marketing or advertisements, include or mention in any way, explicitly or implicitly, high school proms.

22. Hollywood Tans NYC shall comply with New York State’s indoor tanning laws including, but not limited to, Article 35-A of the New York Public Health Law and Part 72 of the New York State Department of Health’s Tanning Facilities regulations.

23. Hollywood Tans NYC shall, within thirty (30) days of the execution of this Assurance, submit to OAG for approval revised employee training materials and/or training protocols. The training materials and/or training protocols will expressly: (a) prohibit Hollywood Tans NYC employees from making any health-related claims or representations in connection with the advertising, promotion, offering for sale, sale, or distribution of any tanning service or product, (b) direct Hollywood Tans NYC employees to limit any claims regarding the benefits of tanning to cosmetic benefits, (c) prohibit Hollywood Tans NYC employees from using the term "unlimited" to describe UV tanning packages, (d) require that Hollywood Tans NYC employees use the term "college student" in place of the term "student" in any description, identification, reference, promotion, marketing, or offer for sale of any UV tanning service or UV tanning package, and (e) expressly prohibit Hollywood Tans NYC employees from using advertisements related to high school proms for UV tanning.

24. Hollywood Tans NYC shall, within one hundred and twenty (120) days of the Effective Date of this Assurance review its consumer-facing materials, including Hollywood Tans NYC's websites, print materials, and social media sites (such as: Twitter, Facebook, Instagram, and YouTube) to assess their compliance with the terms of the Assurance.

25. Within one hundred and eighty (180) days of the Effective Date of this Assurance, Hollywood Tans NYC shall provide a written report to the Attorney General setting forth the measures taken to adhere to this Assurance, including but not limited to copies of all correspondence with Hollywood Tans NYC employees regarding compliance with the restrictions on marketing, as well as copies of training materials and/or protocols.

II. COSTS AND PENALTIES

26. Within thirty (30) days of the Effective Date of this Assurance, Hollywood Tans NYC shall pay five thousand dollars (\$5,000) to the OAG in costs, and penalties under GBL §§349 and 350.

27. If after one hundred and eighty (180) days of the Effective date of this Assurance Hollywood Tans NYC makes health-related claims or representations in violation of paragraphs 16 through 18, the OAG will assess a penalty of five hundred dollars (\$500) per violation.

III. CORRESPONDENCE AND PAYMENT

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

750 6th Avenue

New York, NY 10010

29. All checks issued pursuant to this Assurance shall be made payable to “State of New York Department of Law.”

30. All payments and correspondence related to this Assurance must reference “Assurance 14-036.”

IV. MISCELLANEOUS

Successors and Third Parties

31. This Assurance and all obligations imposed on or undertaken by Hollywood Tans NYC herein, will be binding upon and enforceable against Hollywood Tans NYC and its officers, directors, agents, employees and assignees, and any subsequent owner or operator (whether by merger, transfer of control, contractual arrangements or other means) of Hollywood Tans NYC.

Hollywood Tans NYC’s Representations

32. The OAG has agreed to the terms of this Assurance based on, among other things, the representations made to the OAG by Hollywood Tans NYC (and its legal 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

33. 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 NYC's Practices

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

Monitoring by the OAG

35. To the extent not already provided under this Assurance, Hollywood Tans NYC shall, upon request by the OAG, provide all documentation and information necessary for the OAG to verify compliance with this Assurance, at Hollywood Tans NYC's 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 NYC's Duty to Honor Investigation and Obligations

36. 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 NYC with respect to this Assurance, or Hollywood Tans NYC's noncompliance with any applicable law with respect to any matters.

Nondisparagement of Assurance

37. Hollywood Tans NYC 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 NYC'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

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

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

40. If a court of competent jurisdiction determines that Hollywood Tans NYC has breached this Assurance, Hollywood Tans NYC 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.

41. 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.

42. 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

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

44. 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 NYC regarding the subject matter of this Assurance.

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

46. 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

47. 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 NYC represents and warrants, 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

48. 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: February 26th, 2014

Hollywood Tans NYC

By: 

JAMES A. STAMULIS, OWNER

CONSENTED TO:

Dated: New York, New York

March 24, 2014

ERIC 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