

1 CARLA M. STERN
Attorney, Midwest Field Office
2 United States Department of Justice
Antitrust Division, Midwest Field Office
3 Suite 600
209 South LaSalle Street
4 Chicago, Illinois 60604
Telephone: (312) 353-7530

5 NORA M. MANELLA
6 United States Attorney
ROGER E. WEST
7 Assistant United States Attorney
Telephone: (213) 894-2461

8 Attorneys for Plaintiff

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,)
12) Civil Action No. 94-5522
Plaintiff,)
13)
v.) COMPETITIVE IMPACT STATEMENT
14)
CALIFORNIA SUNCARE, INC.,)
15) 8/12/94
Defendant.)

16
17 The United States of America, pursuant to Section 2 of the
18 Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C.
19 § 16(b), submits this Competitive Impact Statement in connection
20 with the proposed Final Judgment submitted for entry in this
21 civil antitrust proceeding.

22 I

23 NATURE AND PURPOSE OF THE PROCEEDING

24 On Aug 12, 1994, the United States filed a civil
25 antitrust complaint under Section 4 of the Sherman Act, as
26 amended, 15 U.S.C § 4, alleging that the defendant California
27 SunCare, Inc. ("California SunCare") engaged in a combination
28

1 and conspiracy, in violation of Section 1 of the Sherman Act, 15
2 U.S.C. § 1, to fix the price of indoor tanning products sold by
3 California SunCare to dealers throughout the United States. The
4 complaint alleges that, in furtherance of this conspiracy,
5 California SunCare:

6 (a) established and communicated to dealers a minimum resale
7 price for indoor tanning products from California SunCare; and

8 (b) obtained agreements from dealers to maintain the minimum
9 price as a condition of receiving and continuing to receive
10 indoor tanning products from California SunCare.

11 The complaint also alleges that as a result of the
12 combination and conspiracy, prices of indoor tanning products
13 have been fixed and maintained, and competition in sales of
14 indoor tanning products has been restrained.

15 The complaint alleges that the combination and conspiracy is
16 illegal, and seeks to enjoin California SunCare from continuing
17 or renewing the alleged combination or conspiracy and from
18 engaging in any combination or conspiracy or adopting any
19 practice or plan having a similar purpose or effect.

20 The United States and California SunCare have stipulated that
21 the proposed Final Judgment may be entered after compliance with
22 the APPA, unless the United States withdraws its consent.

23 The Court's entry of the proposed Final Judgment will
24 terminate the action, except that the Court will retain
25 jurisdiction over the matter for possible further proceedings to
26 construe, modify or enforce the Judgment, or to punish violations
27 of any of its provisions.

1
2 II

3 DESCRIPTION OF PRACTICES GIVING RISE TO
4 THE ALLEGED VIOLATION OF THE ANTITRUST LAWS

5 California SunCare, a California corporation, is a leading
6 seller of indoor tanning products in the United States. Indoor
7 tanning products sold by California SunCare are manufactured in
8 California by California SunCare. California SunCare sells
9 indoor tanning products to dealers which sell them to indoor
10 tanning salons, which in turn sell them to consumers. Each year,
11 California SunCare publishes a resale price schedule stating the
12 price at which California SunCare believes its products should be
13 resold by dealers to salons.

14 During the period from November 1992 through April 1994,
15 California SunCare confronted several dealers who were selling
16 California SunCare products at a discount. The discounts
17 included new customer discounts, discounts for trade association
18 members, and free product after a certain number of bonus points
19 had been earned on previous purchases. California SunCare
20 obtained agreements from these dealers to maintain California
21 SunCare's announced resale prices on indoor tanning products.

22 In April, 1994, the Antitrust Division of the Department of
23 Justice began an investigation into California SunCare's pricing
24 policy.
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

III

EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The parties have stipulated that the proposed Final Judgment may be entered by the Court at any time after compliance with the APPA. The proposed Final Judgment states that it shall not constitute an admission by either party with respect to any issue of fact or law.

The proposed Final Judgment enjoins any direct or indirect continuation or renewal of the type of conspiracy alleged in the complaint. Specifically, Section IV enjoins and restrains the defendant from entering into, adhering to, maintaining, furthering, enforcing or claiming any right under any contract, agreement, understanding, plan or program with any dealer to fix, stabilize, or maintain the resale prices at which indoor tanning products sold or distributed by the defendant may be sold or offered for sale in the United States by any dealer.

The proposed Final Judgment not only bars California SunCare's unlawful practices, but also contains additional provisions that are remedial in nature. Section IV provides that the defendant is prohibited for five years from announcing to the public or to any present or potential dealer of its indoor tanning products that defendant has or is adopting, promulgating, suggesting, announcing or establishing any resale pricing policy for indoor tanning products that provides that: (1) defendant will sell only to a dealer that prices at or above defendant's suggested resale price, and/or (2) defendant will terminate any dealer for pricing below defendant's suggested resale price.

1 Additionally, the defendant is prohibited for a period of
2 five years from the date of entry of the final judgment from (1)
3 threatening any dealer with termination or terminating any dealer
4 for pricing below the defendant's suggested resale price, and (2)
5 discussing with any present or potential dealer any decision
6 regarding termination of any other dealer for any reason directly
7 or indirectly related to the latter dealer's pricing below
8 defendant's suggested resale price.

9 Section V of the proposed Final Judgment is designed to
10 ensure that California SunCare's dealers are aware of the
11 limitations imposed on it by the Final Judgment. Section V
12 requires the defendant to send notices and copies of the Judgment
13 to each dealer who purchased indoor tanning products from the
14 defendant in 1992, 1993 or 1994. In addition, the defendant is
15 required to send notices and copies of the Judgment to every
16 other dealer who purchases indoor tanning products from
17 California SunCare within ten years of the date of entry of the
18 proposed Final Judgment.

19 Section VI requires the defendant to set up an antitrust
20 compliance program. The defendant is also required to furnish a
21 copy of the Judgment to each of its officers and directors and
22 each of its non-clerical employees, representatives, or agents
23 with supervisory or direct responsibility for the sale or
24 advertising of indoor tanning products in the United States.

25 In addition, the proposed Final Judgment provides methods for
26 determining and securing the defendant's compliance with its
27 terms. Section VIII provides that, upon request of the
28

1 Department of Justice, the defendant shall submit written
2 reports, under oath, with respect to any of the matters contained
3 in the Judgment. Additionally, the Department of Justice is
4 permitted to inspect and copy all books and records, and to
5 interview officers, directors, employees and agents of the
6 defendant.

7 Section IX makes the Judgment effective for ten years from
8 the date of its entry.

9 Section XI of the proposed Final Judgment states that entry
10 of the Judgment is in the public interest. Under the provisions
11 of the APPA, entry of the proposed Final Judgment is conditional
12 upon a determination by the Court that the proposed Final
13 Judgment is in the public interest.

14 The Government believes that the proposed Final Judgment is
15 fully adequate to prevent the continuation or recurrence of the
16 violation of Section 1 of the Sherman Act alleged in the
17 Complaint, and that disposition of this proceeding without
18 further litigation is appropriate and in the public interest.

19 IV

20 REMEDIES AVAILABLE TO
21 POTENTIAL PRIVATE LITIGANTS

22 Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that
23 any person who has been injured as a result of conduct prohibited
24 by the antitrust laws may bring suit in federal court to recover
25 three times the damages the person has suffered, as well as costs
26 and reasonable attorney fees. Entry of the proposed Final
27 Judgment will neither impair nor assist the bringing of any

1 private antitrust damage action. Under the provisions of Section
2 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final
3 Judgment has no prima facie effect in any subsequent private
4 lawsuit that may be brought against the defendant.

5 V

6 PROCEDURES AVAILABLE FOR MODIFICATION
7 OF THE PROPOSED FINAL JUDGMENT

8 The United States and the defendant have stipulated that the
9 proposed Final Judgment may be entered by the Court after
10 compliance with the provisions of the APPA, provided that the
11 United States has not withdrawn its consent.

12 The APPA provides a period of at least 60 days preceding the
13 effective date of the proposed Final Judgment within which any
14 person may submit to the United States written comments regarding
15 the proposed Final Judgment. Any person who wants to comment
16 should do so within 60 days of the date of publication of this
17 Competitive Impact Statement in the Federal Register. The United
18 States will evaluate the comments, determine whether it should
19 withdraw its consent, and respond to the comments. The comments
20 and the response of the United States will be filed with the
21 Court and published in the Federal Register.

22 Written comments should be submitted to:

23 Marvin N. Price, Jr.
24 Midwest Office
25 Antitrust Division
26 United States Department of Justice
Suite 600
209 S. LaSalle Street
Chicago, Illinois 60604

27 Under Section X of the proposed Judgment, the Court will retain
28

1 jurisdiction over this matter for the purpose of enabling any of
2 the parties to apply to the Court for such further orders or
3 directions as may be necessary or appropriate for the
4 construction, implementation, modification, or enforcement of the
5 Judgment, or for the punishment of any violations of the Judgment.

6 VI

7 ALTERNATIVES TO THE
8 PROPOSED FINAL JUDGMENT

9 The only alternative to the proposed Final Judgment
10 considered by the Government was a full trial on the merits and
11 on relief. Such litigation would involve substantial cost to the
12 United States and is not warranted because the proposed Final
13 Judgment provides appropriate relief against the violations
14 alleged in the complaint.
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

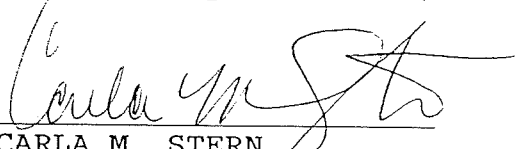
VII

DETERMINATIVE MATERIALS AND DOCUMENTS

No materials or documents were determinative in formulating the proposed Final Judgment. Consequently, the Government has not attached any such materials or documents to the proposed Final Judgment.

Dated:

Respectfully submitted,


CARLA M. STERN

Attorney, Antitrust Division
U.S. Department of Justice
Suite 600
209 S. LaSalle Street
Chicago, Illinois 60604
(312) 353-7530

7338CB