

THE COMPETITION TRIBUNAL

IN THE MATTER OF THE *COMPETITION ACT*, R.S.C. 1985, c.C-34, as amended;

AND IN THE MATTER OF an inquiry pursuant to subsection 10(1)(b)(ii) of the *Competition Act* relating to the marketing practices of The Dosco Group Inc., Fabutan Corporation, Fabutan Studios and Douglas Scott McNabb, President, carrying on business as Fabutan Sun Tan Studios;

AND IN THE MATTER OF an Application by the Commissioner of Competition for an order pursuant to Section 74.01 of the *Competition Act*.

BETWEEN:

THE COMMISSIONER OF COMPETITION

Applicant

- and -

THE DOSCO GROUP INC., FABUTAN CORPORATION,  
FABUTAN STUDIOS AND DOUGLAS SCOTT MCNABB, President,  
carrying on business as FABUTAN SUN TAN STUDIOS

Respondents

COMPETITION TRIBUNAL	
TRIBUNAL DE LA CONCURRENCE	
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OTTAWA, ON	0002

RESPONSE

I. RESPONSE TO THE APPLICANT'S GROUNDS FOR APPLICATION

1. The Respondents deny each of the grounds alleged by the Commissioner of Competition ("Commissioner") in the application ("Application"), except as expressly admitted below and, in particular, deny that any of them are, or were, engaged in reviewable conduct:
  - (a) by making any representations to the public that were false or misleading in any material respect contrary to paragraph 74.01(1)(a) of the *Competition Act*, R.S.C. 1985, c. C-34, as amended ("Act"); or

(b) by making any representations to the public in the form of a statement, warranty or guarantee of the performance or efficacy of indoor tanning services that were not based on an adequate or proper test thereof contrary to paragraph 74.01(1)(b) of the Act.

2. The Respondents deny that any of The Dosco Group Inc., Fabutan Studios, Douglas Scott McNabb or Fabutan Suntan Studios made any of the representations to the public which are the subject of the Application through the [www.fabutan.com](http://www.fabutan.com) website ("Fabutan Website") or otherwise. Fabutan Corporation is solely responsible for any representations which were made on the Fabutan Website.

## II. RESPONSE TO THE APPLICANT'S STATEMENT OF MATERIAL FACTS

3. The Respondents admit:

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- (a) the allegation in paragraph 10 of the Application;
  - (b) that The Dosco Group Inc., Fabutan Corporation and Fabutan Studios Inc. are corporations that were incorporated pursuant to the *Business Corporations Act*, S.A. 1981, c. B-15, as amended and that the head office of each corporation is located at 5925 – 3rd Street SE, Calgary, Alberta, T2H 1K3;
  - (c) that Douglas Scott McNabb is the President and a Director of The Dosco Group Inc., Fabutan Corporation and Fabutan Studios Inc.; and
  - (d) that Douglas Scott McNabb is the principal shareholder of The Dosco Group Inc. and that The Dosco Group Inc. is the sole shareholder of Fabutan Corporation and Fabutan Studios Inc.

4. The Respondents deny:

- (a) that Douglas Scott McNabb is carrying on business as Fabutan Sun Tan Studios;

- (b) that Douglas Scott McNabb, The Dosco Group Inc. or Fabutan Studios are responsible for, or made any representations to the public, on the Fabutan Website; and
  - (c) that information posted on the Fabutan Website indicates that there are 150 Corporate Studios and 131 Franchise Studios in operation. The Fabutan Website actually states that there are 19 Corporate Studios and 131 Franchise Studios.
5. The Respondents do not dispute the description of "the tanning process" contained in paragraph 12 of the Application or the definition of "moderate tanning" contained in footnote 1 of the Application as "the gradual exposure to UV radiation sufficient to result in a change in pigmentation of the skin but less than that which would result in a sunburn".
- ~~6. The issues before the Tribunal on this Application relate to the alleged representations made by the Respondents, not the legitimacy or lack of legitimacy of the position taken by Health Canada in respect of tanning, as described in paragraph 13 of the Application.~~
- A. Paragraph 74.01(a)**
7. The Commissioner has interpreted certain portions of the Fabutan Website in an erroneous and overstated manner. The Commissioner alleges in paragraph 16 of the Application that the Fabutan Website contained certain representations which the Respondents state do not properly reflect the contents of the Fabutan Website. The Respondents deny that certain of the alleged representations set forth in paragraph 16 of the Application were made on the Fabutan Website.
8. Further, or in the alternative, the Respondents deny that any representations referred to in paragraph 16 of the Application which were made by Fabutan Corporation on the Fabutan Website were false or misleading in any material respect.
9. In response to paragraph 16(a) of the Application, the Fabutan Website did not contain the representations "that moderate tanning is necessary for stimulation of the production of Vitamin D in the body", "that moderate tanning is a safe, reliable way to stimulate

production of Vitamin D in the body" or "that deficiency in Vitamin D cannot be effectively corrected by dietary supplements". In particular, the Commissioner has misinterpreted certain portions of the Fabutan Website by suggesting that it indicated that vitamin supplements are not effective to address Vitamin D deficiency. The excerpt from the Fabutan Website did not address vitamin supplements. Instead it referred to studies that suggest that Vitamin D cannot be reliably supplemented through diet. The excerpt from the Fabutan Website relied upon by the Commissioner actually stated:

**Your Source for Vitamin D** UV-B rays are the main source of Vitamin D for our bodies, which helps to promote healthy bones and the absorption of calcium and phosphorous in the body.

Sunlight is the body's only natural and reliable source of Vitamin D. Studies suggest that this vitamin – linked to the prevention of breast, colon, prostate and ovarian cancers – cannot be reliably supplemented in our diet.

Holick, Dr. M., et al. "Sunlight Regulates ..." Journal of Endocrinology and Metabolism. 68:882, 1989.

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Matsuoka, L. et al. "Suntanning and Cutaneous Synthesis of Vitamin D3", Journal of Clinical Medicine. 116:87, 1990.

10. Further, or in the alternative, the above excerpt from the Fabutan Website referred to in paragraph 9 of the Response did not contain any representations that were false or misleading in any material respect
11. In response to paragraph 16(b) of the Application, the Fabutan Website did not contain the representation that "moderate tanning has been conclusively shown to be associated with prevention or reduced risk of breast, colon, prostate and ovarian cancers". The excerpt from the Fabutan Website relied upon by the Commissioner actually stated:

**Reduce Specific Types of Cancer**

Many types of cancer – including breast, colon, prostate and ovarian – are slowed or inhibited by increased exposure to sunlight. More than 138,000 Americans die each year from breast, colon, ovarian and prostate cancers. One 1993 study claims that the wide spread public adoption of regular, moderate sun exposure could prevent 30,000 breast and colon cancer deaths each year.

Garland, Dr. C., et al. "Calcium and Colon Cancer: Clinical Nutrition, July/August pgs. 161-166, 1986.

12. Further, or in the alternative, the above excerpt from the Fabutan Website referred to in paragraph 11 of the Response did not contain any representations that were false or misleading in any material respect.
13. In response to paragraph 16(c) of the Application, the Fabutan Website did not contain the representation that "moderate tanning has been conclusively shown to be associated with prevention or reduced risk of heart or cardiovascular disease". The excerpt from the Fabutan Website relied upon by the Commissioner actually stated:

**Reduce your Risk of Heart Disease**

Exposure to sunlight may have similar effects as exercise, decreased blood pressure, lower resting heart rate, a 39% increase in the output of blood. UV light is also known to help break down cholesterol.

Falkenbach, Dr. A. et al "Heart Rate Fitness Variability", Biological Effects of Light. New York, Walter de Gruyter, 1992

14. Further, or in the alternative, the above excerpt from the Fabutan Website referred to in paragraph 13 of the Response did not contain any representations that were false or misleading in any material respect.
15. In response to paragraph 16(d), the Fabutan Website did not contain the representation "that moderate tanning has been conclusively shown to be an effective treatment for seasonal affective disorder". The excerpt from the Fabutan Website relied upon by the Commissioner actually stated:

**Beat the "Winter Blues"**

70% of patients with Seasonal Affective Disorder (SAD) show improvement after UV treatment, the only known cure for the "winter blues".

Wirz-Justice, A., et al, "Light Therapy in Seasonal Affective Disorder is Dependent on Time of Day or Circadian Phase" Arch Gen Psychiatry, 50:929, 1993.

16. Further, or in the alternative, the above excerpt from the Fabutan Website referred to in paragraph 15 of the Response did not contain any representations that were false or misleading in any material respect.

17. In response to paragraph 16(e), the Fabutan Website did not contain the representation "that moderate tanning has been conclusively shown to be associated with stimulation of the thyroid gland, resulting in an increase or boost of metabolism". The excerpt from the Fabutan Website relied upon by the Commissioner actually stated:

**Increase your Metabolism**

Sunlight stimulates the thyroid gland, which boosts your metabolism.

Hollwich, Fritz, "The influence of Ocular Light Perception on Metabolism in man and in Animal", New York: Springer Verlag, 1979.

18. Further, or in the alternative, the above excerpt from the Fabutan Website referred to in paragraph 17 of the Response did not contain any representations that were false or misleading in any material respect.

19. In response to paragraph 16(f), the Fabutan Website did not contain the representation "that moderate tanning has been conclusively shown to be associated with prevention or reduced risk of osteoporosis". The excerpt from the Fabutan Website relied upon by the Commissioner actually stated:

**Minimize your Risk of Osteoporosis**

Because UV exposure produces Vitamin D which helps in the absorption of calcium into bones, you could decrease your risk of developing osteoporosis.

"Interim Report and Recommendations for Osteoporosis", World Health Organization's Task Force for Osteoporosis, November 4, 1999.

20. Further, or in the alternative, the above excerpt from the Fabutan Website referred to in paragraph 19 of the Response did not contain any representations that were false or misleading in any material respect.

21. In response to paragraph 16(g), the Fabutan Website did not contain the representation "that moderate tanning has been conclusively shown to be associated with significantly reduced risk of sunburn from exposure to sunlight". The excerpt from the website relied upon by the Commissioner actually stated:

**Other Important Health Facts:**

As taken from the **Smart Tan Network's Tanning Facts**, March 15, 2000

- Surveys have shown that indoor tanners are less likely to sunburn when they are outdoors. Indoor tanning units are designed to help you minimize your risk of sunburn.

- Indoor tanners are 80% less likely to sunburn outdoors than non-tanners

22. Further, or in the alternative, the above excerpt from the Fabutan Website referred to in paragraph 21 of the Response did not contain any representations that were false or misleading in any material respect.
23. In response to paragraph 16(h), the Fabutan Website did not contain the representation "that moderate tanning is not associated with significant risk of permanent skin damage, wrinkling or photo-aging of the skin, or skin cancer". The excerpt from the Fabutan Website relied upon by the Commissioner actually stated:

As taken from the **Smart Tan Network's Tanning Facts**, March 15, 2000.

--The significant risks involved with ultraviolet light are attributed to over-exposure – not to moderate tanning. No study has ever linked moderate tanning – indoors or outdoors – as a causative factor of any kind of permanent skin damage. Sunburn and heredity, on the other hand, are the main risk factors for skin damage.

24. Moreover, the statements contained on certain portions of the Fabutan Website must be read in context. Elsewhere on the Fabutan Website were numerous warnings regarding the risks associated with tanning.
25. Further, or in the alternative, the above excerpt from the Fabutan Website referred to in paragraph 23 of this Response did not contain any representations that were false or misleading in any material respect.
26. The "DID YOU KNOW" Card ("Card") referred to in paragraph 17 of the Application did not contain representations that were similar or identical to those discussed in paragraph 16 of the Application. Moreover, none of the statements contained on the Card were false or misleading in any material respect.

27. The Respondents deny that they were responsible for the distribution of the Card at reception counters at Fabutan Studios or that any of them made any representations to the public on or through the Card.

**B. Paragraph 74.01(b)**

28. The Commissioner has interpreted certain portions of the Fabutan Website in an erroneous and overstated manner. The Commissioner alleges in paragraph 19 of the Application that the Fabutan Website contains representations which the Respondents state do not properly reflect the contents of the Fabutan website. The Respondents deny that the alleged representations set forth in paragraph 19 of the Application were made on the Fabutan Website.

29. Further, or in the alternative, the representations alleged in paragraph 19 of the Application did not constitute a statement, warranty or guarantee of the performance or efficacy of a product.

30. Further, or in the further alternative, any representations referred to in paragraph 19 of the Application which were made by Fabutan Corporation on the Fabutan Website which constituted a statement, warranty or guarantee of the performance or efficacy of a product were based on adequate and proper tests which include, but are not limited to, the studies listed below. For convenience, these studies have been divided into various topics. However, many of the studies overlap several topics, and are relied upon to the extent they are applicable, regardless of where they are listed.

(a) As a source for Vitamin D:

**Oral vitamin D and ultraviolet radiation for the prevention of vitamin D deficiency in the elderly.**

Toss G, Andersson R, Diffey BL, Fall PA, Larko O, Larsson L.  
Acta Med Scand. 1982;212(3):157-61

**The prevention of vitamin D deficiency in the elderly.**

Dunnigan MG, Fraser SA, McIntosh WB, Moseley H, Sumner DJ  
Scott Med J. 1986 Jul;31(3):144-9.



**Influence of season and latitude on the cutaneous synthesis of vitamin D3: exposure to winter sunlight in Boston and Edmonton will not promote vitamin D3 synthesis in human skin.**

Webb AR, Kline L, Holick MF.

Vitamin D, Skin, and Bone Research Laboratory, Boston University Medical School, Massachusetts 02118.

J Clin Endocrinol Metab. 1988 Aug;67(2):373-8

**Sunlight regulates the cutaneous production of vitamin D3 by causing its photodegradation.**

Webb AR, DeCosta BR, Holick MF

Journal of Clinical Endocrinology and Metabolism. 68:882-887, 1989

**Endogenous, cutaneous vitamin D synthesis stimulation as an effective way of improving the vitamin D status in children with hepatobiliary malfunctions.**

Lukaszkiwicz J, Ryzko J, Socha J, Lorenc RS.

Biochemistry Department, Childs' Health Centre, Monument Hospital, Warsaw-Miedzylesie, Poland.

Digestion. 1989;42(3):158-62

**Suntanning and cutaneous synthesis of vitamin D3.**

Matsuoka LY, Wortsman J, Hollis BW.

Department of Dermatology, Jefferson Medical College, Philadelphia, PA 19107.

J Lab Clin Med. 1990 Jul;116(1):87-90.

**Prevalence of vitamin D insufficiency in an adult normal population.**

Chapuy MC, Preziosi P, Maamer M, Arnaud S, Galan P, Hercberg S, Meunier PJ.

INSERM U. 403, Hospital Edouard Herriot, Lyon, France.

Osteoporos Int. 1997;7(5):439-43.

**Vitamin D supplementation, 25-hydroxyvitamin D concentrations, and safety.**

Reinhold Vieth

From the Department of Laboratory Medicine and Pathobiology, University of Toronto, and Pathology and Laboratory Medicine, Mount Sinai Hospital, Toronto.

American Journal of Clinical Nutrition, Vol. 69, No. 5, 842-856, May 1999

**Hypovitaminosis D: a major worldwide public health problem**

Gannage-Yared MH, Tohme A, Halaby G.

Departement d'Endocrinologie, Hotel-Dieu de France, rue Adib Ishaac, Beyrouth, Liban

Presse Med. 2001 Apr 7;30(13):653-8.

**Vitamin D deficiency and secondary hyperparathyroidism in the elderly: consequences for bone loss and fractures and therapeutic implications.**

Lips P.

Department of Endocrinology, Institute for Endocrinology, Reproduction and Metabolism, EVM-Institute, Vrije Universiteit Medical Center, 1007 MB Amsterdam, The Netherlands.

Endocr Rev. 2001 Aug;22(4):477-501.

**Vitamin D status and its adequacy in healthy Danish perimenopausal women: relationships to dietary intake, sun exposure and serum parathyroid hormone.**

Brot C, Vestergaard P, Kolthoff N, Gram J, Hermann AP, Sorensen OH.  
Osteoporosis Research Clinic, Dep 545, Copenhagen University Hospital Hvidovre,  
Kettegaard Alle 30, DK- 2650 Hvidovre, Denmark  
Br J Nutr. 2001 Aug;86 Suppl 1:S97-103.

**Vitamin D deficiency and associated factors in adolescent girls in Beijing.**

Du X, Greenfield H, Fraser DR, Ge K, Trube A, Wang Y.  
Department of Food Science and Technology, University of New South Wales, New  
South Wales, Australia  
Am J Clin Nutr. 2001 Oct;74(4):494-500

**Wintertime vitamin D insufficiency is common in young Canadian women, and their vitamin D intake does not prevent it.**

Vieth R, Cole DE, Hawker GA, Trang HM, Rubin LA.  
Mount Sinai Hospital, Toronto, Canada.  
Eur J Clin Nutr. 2001 Dec;55(12):1091-7.

**Vitamin D insufficiency in a population of healthy western Canadians.**

Diana Rucker, Jane A. Allan, Gordon H. Fick and David A. Hanley  
From the Departments of Medical Science, Medicine and Community Health Sciences,  
University of Calgary, Calgary, Alta. CMAJ. 2002 June 11; 166 (12): 1517-1524.

**Vitamin D intake and vitamin D status of Australians.**

Nowson CA, Margerison C.  
School of Health Sciences, Deakin University, 221 Burwood Highway, Burwood, VIC  
3125, Australia.  
Med J Aust. 2002 Aug 5;177(3):149-52.

**Effects of above average summer sun exposure on serum 25-hydroxyvitamin D and calcium absorption.**

Barger-Lux MJ, Heaney RP.  
Osteoporosis Research Center, Creighton University, 601 North 30th Street, Omaha,  
Nebraska 68131, USA.  
J Clin Endocrinol Metab. 2002 Nov;87(11):4952-6.

**Vitamin D: A millennium perspective.**

Holick MF.  
Vitamin D Laboratory, Section of Endocrinology, Department of Medicine, Boston  
University Medical Center, Boston, Massachusetts 02118, USA  
J Cell Biochem. 2003 Feb 1;88(2):296-307

**Vitamin D and bone health in early life.**

Molgaard C, Michaelsen KF.  
Department of Human Nutrition, LMC Centre for Advanced Food Studies, The Royal  
Veterinary and Agricultural University, Rolighedsvej 30, DK-1958 Frederiksberg C,  
Denmark.  
Proc Nutr Soc. 2003 Nov;62(4):823-8.

**Vitamin D and skin: new aspects for dermatology.**

Lehmann B, Querings K, Reichrath J.  
Department of Dermatology, Dresden University of Technology, Medical School Carl

Gustav Carus, Dresden, Germany.  
Exp Dermatol. 2004;13 Suppl 4:11-5.

**Tanning is associated with optimal vitamin D status (serum 25-hydroxyvitamin D concentration) and higher bone mineral density.**

Tangpricha V, Turner A, Spina C, Decastro S, Chen TC, Holick MF.  
Vitamin D, Skin and Bone Research Laboratory and the Section of Endocrinology,  
Diabetes and Nutrition, Department of Medicine, Boston University School of Medicine,  
Boston, MA 02118, USA  
Am J Clin Nutr. 2004 Dec;80(6):1645-9

**UV-exposition and vitamin-D: How much sunlight do we need?**

Reichrath J, Girndt M, Tilgen W, Querings K.  
Hautklinik und Poliklinik, Universitätskliniken des Saarlandes, Homburg/Saar;Innere  
Medizin IV, Universitätskliniken des Saarlandes, Homburg/Saar, Germany.  
Exp Dermatol. 2005 Feb;14(2):153.

**Vitamin D and adult bone health in Australia and New Zealand: a position statement.**

Working Group of the Australian and New Zealand Bone and Mineral Society; Endocrine  
Society of Australia; Osteoporosis Australia.  
Med J Aust. 2005 Mar 21;182(6):281-5.

(b) Reducing the risk of certain types of cancer:

**Dietary Vitamin D and calcium and the risk of colorectal cancer: a 19-year prospective study in men.**

Garland C., Shekelle, R.B., Barrett-Connor, E., Criqui, M.H., Rosaf, A.H., Paul, O.  
Lancet., 1985 Feb 9;1(8424):307-9.

**Occupational sunlight exposure and melanoma in the U.S. Navy.**

Garland FC, White MR, Garland CF, Shaw E, Gorham ED.  
Occupational Medicine Department, School of Medicine, University of California, San  
Diego.  
Arch Environ Health. 1990 Sep-Oct;45(5):261-7.

**Geographic patterns of prostate cancer mortality. Evidence for a protective effect of ultraviolet radiation.**

Hanchette CL, Schwartz GG.  
Department of Geography, University of North Carolina, Chapel Hill.  
Cancer. 1992 Dec 15;70(12):2861-9.

**Beneficial effects of sun exposure on cancer mortality.**

Ainsleigh, H.G.  
Rev. Med. 1993 Jan;22(1):132-40.

**Sunlight, vitamin D, and ovarian cancer mortality rates in US women.**

Lefkowitz ES, Garland CF.  
Department of Family and Preventive Medicine, University of California, San Diego, La  
Jolla 92093-0620, USA  
Int J Epidemiol. 1994 Dec;23(6):1133-6.

**Sunlight--can it prevent as well as cause cancer?**

Studzinski GP, Moore DC.

Department of Laboratory Medicine and Pathology, UMD-New Jersey Medical School,  
Newark 07103, USA.

Cancer Res. 1995 Sep 15;55(18):4014-22.

**Vitamin D and breast cancer risk: the NHANES I Epidemiologic follow-up study, 1971-1975 to 1992. National Health and Nutrition Examination Survey.**

John EM, Schwartz GG, Dreon DM, Koo J.

Northern California Cancer Center, Union City 94587, USA

Cancer Epidemiol Biomarkers Prev. 1999 May;8(5):399-406.

**Comprehensive series in photosciences: Sun protection in man, a perspective on the beneficial effects of moderate exposure to sunlight: bone health, cancer prevention, mental health and well being.**

Holick MF

Elsevier Science B.V., P.U. 2001

**25-hydroxyvitamin D-1alpha-hydroxylase in normal and malignant colon tissue.**

Tangpricha V, Flanagan JN, Whitlatch LW, Tseng CC, Chen TC, Holt PR, Lipkin MS, Holick MF.

Lancet. 2001 May 26;357(9269):1673-4

**An estimate of premature cancer mortality in the U.S. due to inadequate doses of solar ultraviolet-B radiation.**

Grant WB.

Cancer. 2002 Mar 15;94(6):1867-75.

**Susceptibility to prostate cancer: studies on interactions between UVR exposure and skin type.**

Bodiwala D, Luscombe CJ, French ME, Liu S, Saxby MF, Jones PW, Ramachandran S, Fryer AA, Strange RC.

Department of Urology, North Staffordshire Hospital, UK.

Carcinogenesis. 2003 Apr;24(4):711-7.

**Vitamin D in preventive medicine: are we ignoring the evidence?**

Zittermann A.

Department of Nutrition Science, University of Bonn, Endenicher Allee 11-13, 53115 Bonn, Germany.

Br J Nutr. 2003 May;89(5):552-72.

**Vitamin D and skin: new aspects for dermatology.**

Lehmann B, Querings K, Reichrath J.

Department of Dermatology, Dresden University of Technology, Medical School Carl Gustav Carus, Dresden, Germany.

Exp Dermatol. 2004;13 Suppl 4:11-5.

**A critical review of studies on vitamin D in relation to colorectal cancer.**

Grant WB, Garland CF.

SUNARC, San Francisco, CA 94109, USA.

Nutr Cancer. 2004;48(2):115-23.

**Vitamin D: importance in the prevention of cancers, type 1 diabetes, heart disease, and osteoporosis.**

Holick MF.

Vitamin D, Skin, and Bone Research Laboratory, Section of Endocrinology, Diabetes, and Nutrition, Department of Medicine, Boston University School of Medicine, Boston, MA 02118-2394, USA.

Am J Clin Nutr. 2004 Mar;79(3):362-71.

**Vitamin D3 from sunlight may improve the prognosis of breast-, colon- and prostate cancer (Norway).**

Robsaahm TE, Tretli S, Dahlback A, Moan J.

The Cancer Registry of Norway, Institute of Population-based Cancer Research, Montebello, 0310 Oslo, Norway.

Cancer Causes Control. 2004 Mar;15(2):149-58

**Sun exposure may protect against non-Hodgkin lymphoma: a case-control study.**

Hughes AM, Armstrong BK, Vajdic CM, Turner J, Grulich AE, Fritschi L, Milliken S, Kaldor J, Benke G, Krickler A.

School of Public Health, The University of Sydney, Australia.

Int J Cancer. 2004 Dec 10;112(5):865-71

**Sunlight and Reduced Risk of Cancer: Is the Real Story Vitamin D?**

Egan KM, Sosman JA, Blot WJ.

J Natl Cancer Inst. 2005 Feb 2;97(3):161-3.

**UV-exposition and vitamin-D: How much sunlight do we need?**

Reichrath J, Girndt M, Tilgen W, Querings K.

Hautklinik und Poliklinik, Universitätskliniken des Saarlandes, Homburg/Saar;Innere Medizin IV, Universitätskliniken des Saarlandes, Homburg/Saar, Germany.

Exp Dermatol. 2005 Feb;14(2):153.

**The epidemiology of vitamin D and cancer incidence and mortality: A review (United States).**

Giovannucci E.

Channing Laboratory, Department of Medicine, Harvard Medical School and Brigham and Women's Hospital, 181 Longwood Avenue, Boston, MA, 02115

Cancer Causes Control. 2005 Mar;16(2):83-95.

**Ultraviolet radiation: effects on risks of prostate cancer and other internal cancers.**

Moon SJ, Fryer AA, Strange RC.

Human Genomics Research Group, Institute of Science and Technology in Medicine and Department of Urology, Keele University School of Medicine, University Hospital of North Staffordshire, UK

Mutat Res. 2005 Apr 1;571(1-2):207-19. Epub 2005 Jan 28.

(c) Reducing the risk of heart disease:

**Myocardial infarction is inversely associated with plasma 25-hydroxyvitamin D3 levels: a community-based study.**

Scragg R, Jackson R, Holdaway IM, Lim T, Beaglehole R.

Department of Community Health, University of Auckland, New Zealand.

Int J Epidemiol. 1990 Sep;19(3):559-63

**Heart Rate Fitness Variability.**

Falkenbach, Dr. A. et al  
Biological Effects of Light. New York, Walter de Gruyter, 1992

**Ultraviolet light may contribute to geographic and racial blood pressure differences.**

Rostand SG  
Nephrology Research and Training Center, Division of Nephrology, Department of Medicine, The University of Alabama at Birmingham.  
Hypertension. 1997 Aug;30(2 Pt 1):150-156.

**1,25-Dihydroxyvitamin D3 is a negative endocrine regulator of the renin-angiotensin system.**

Yan Chun Li, Juan Kong, Minjie Wei, (Department of Medicine, University of Chicago, Chicago, Illinois) Zhou-Feng Chen, Shu Q. Liu (Department of Anesthesiology, Washington University School of Medicine, St. Louis, Missouri) and Li-Ping Cao (Department of Biomedical Engineering, Northwestern University, Evanston, Illinois)  
J Clin Invest, July 2002, Volume 110, Number 2, 229-238

**Low vitamin D status: a contributing factor in the pathogenesis of congestive heart failure?**

Zittermann A, Schleithoff SS, Tenderich G, Berthold HK, Korfer R, Stehle P.  
Department of Nutrition Science, University of Bonn, Germany  
J Am Coll Cardiol. 2003 Jan 1;41(1):105-12.

**Vitamin D: importance in the prevention of cancers, type 1 diabetes, heart disease, and osteoporosis**

Holick MF.  
Vitamin D, Skin, and Bone Research Laboratory, Section of Endocrinology, Diabetes, and Nutrition, Department of Medicine, Boston University School of Medicine, Boston, MA 02118-2394, USA.  
Am J Clin Nutr. 2004 Mar;79(3):362-71

(d) **Improving Seasonal Affective Disorder:**

**Light, vitamin D and psychiatry. Role of 1,25 dihydroxyvitamin D3 (solatriol) in etiology and therapy of seasonal affective disorder and other mental processes.**

Stumpf WE, Privette TH.  
Department of Cell Biology and Anatomy, University of North Carolina, Chapel Hill 27599.  
Psychopharmacology (Berl). 1989;97(3):285-94.

**Vitamin D3 enhances mood in healthy subjects during winter.**

Lansdowne AT, Provost SC.  
Department of Psychology, The University of Newcastle, Callaghan NSW, Australia.  
Psychopharmacology (Berl). 1998 Feb;135(4):319-23.

**Vitamin D vs broad spectrum phototherapy in the treatment of seasonal affective disorder.**

Gloth FM 3rd, Alam W, Hollis B.  
The Department of Medicine, The Union Memorial Hospital, Baltimore, Maryland 21218-2895, USA.  
J Nutr Health Aging. 1999;3(1):5-7.

**Comprehensive series in photosciences: Sun protection in man, a perspective on the beneficial effects of moderate exposure to sunlight: bone health, cancer prevention, mental health and well being.**

Holick MF  
Elsevier Science B.V., P.U. 2001

(e) Increasing metabolism:

**Decreased bioavailability of vitamin D in obesity.**

Wortsman J, Matsuoka LY, Chen TC, Lu Z, Holick MF.  
Southern Illinois University School of Medicine, Springfield, USA  
Am J Clin Nutr. 2000 Sep;72(3):690-3.

**Dairy calcium and vitamin D stimulate postprandial thermogenesis: effect of sequential meals.**

Soares MJ, Ping-Delfos WC, James AP, Cummings NK.  
Nutrition & Dietetics, Curtin University of Technology, Perth Western Australia 6102.  
Asia Pac J Clin Nutr. 2004;13(Suppl):S56.

(f) Minimizing the risk of osteoporosis:

**Vitamin D and bone health in the elderly.**

Parfitt AM, Gallagher JC, Heaney RP, Johnston CC, Neer R, Whedon GD  
Am J Clin Nutr. 1982 Nov;36(5 Suppl):1014-31.

**Osteoporosis and vitamin D.**

Nordin BE, Morris HA.  
Division of Clinical Chemistry, Institute of Medical and Veterinary Science, Adelaide, South Australia  
J Cell Biochem. 1992 May;49(1):19-25

**Vitamin D supplementation, 25-hydroxyvitamin D concentrations, and safety.**

Reinhold Vieth  
From the Department of Laboratory Medicine and Pathobiology, University of Toronto, and Pathology and Laboratory Medicine, Mount Sinai Hospital, Toronto.  
American Journal of Clinical Nutrition, Vol. 69, No. 5, 842-856, May 1999

**Interim Report and Recommendations of the World Health Organization Task-Force for Osteoporosis**

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**III. RELIEF AND PROCEDURAL MATTERS**

31. The Respondents deny that the Commissioner is entitled to the relief requested in paragraphs 1 through 7 of the Application and requests, in any event or in the alternative, that the Tribunal exercise its judgment not to make any order under Section 74.1 of the *Act*.
32. The Respondents intend to use the English language in the proceedings and agree with the Commissioner's request that this proceeding be conducted in the English language.
33. The Respondents request that the hearing of this Application be held in Calgary, Alberta.
34. The Respondents request that documents for this hearing be filed in both paper and electronic format.
35. The Respondents request that this Application be dismissed.
36. The Respondents request that they be awarded the costs of this Application, pursuant to section 8.1 of the *Competition Tribunal Act*, R.S.C. 1985, c.c-19 (2<sup>nd</sup> Supp), as amended

DATED at Calgary, in the Province of Alberta, this 30th day of May, 2005.

  
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