European Sunlight Association a.s.b.l.

(ESA)

CODE OF CONDUCT

Article 1 –OBJECTIVES

The European Sunlight Association a.s.b.l. (ESA)'s goal is to promote the benefits of artificial tanning and to provide balanced information on the risks and benefits of UV light.
The sensitive nature of the artificial tanning for the public implies at any time the risk, for ESA, of being the target of public inquiry and questioning from International, EU and/or States' authorities. ESA therefore wants to promote the image of a responsible sunbed's industry by publicly showing that its members comply with the following set of rules:

- Ethics and fair competition rules[1];
- Competition rules as they apply in the EU and in other major developed economies in the world.

The following Guidelines apply to ESA, including all working groups, individual members, and any sub-group within the association, irrespective of size and name.

Article 2 - ETHICS AND FAIR COMPETITION

The following paragraphs are not intended to be an exhaustive list of requirements. Rather, they highlight areas of particular relevance to the sunbeds industry.

2.1 **Unlawful Payments and Practices**

ESA members shall not directly or indirectly offer, make, or authorize payment of money or anything of material value, to unlawfully:
o Influence the judgment, act, decision or conduct of any company, customer or individual such as scientific researchers, EU or Member States' civil servants, foreign civil servants, politicians, government officials or consultants;

o Win or retain business;

o Gain an advantage with regard to the image or reputation of the sunbeds industry.

This requirement extends not only to direct inducements, but also to indirect inducements made by a member in any form through agents, consultants or other third parties.

2.2 Quality and Regulatory Compliance

2.2.1 General comments

ESA members shall comply with the legal and regulatory requirements of the countries where they do business. These include both regulations specific to sunbeds and general legal requirements applicable to the artificial tanning industry and other industries.

[1] « Members » means both effective and affiliated members as defined in Article 6 of the ESA Statutes

ESA members are thus committed to the production and supply of high quality sunbeds and related services in the interest of customers' safety and well-being.

Hence, ESA members shall fully comply with EU, national legislation, technical standards and principles related to, among others:

- CEN, ETSI and/or CENELEC European Standards which directly or indirectly relate to sunbeds, without prejudice to section 3.3.2 below
- Directive 2001/95 on product safety
- Environmental law, such as the rules stemming from Directive 2012/19 on WEEE and Directive 2011/65 (the "RHoS" directive)
- Labelling and warnings to be affixed on sunbeds
- Confidentiality of information
- Data privacy
- Patent protection
- Fair Trade

Likewise, no ESA member shall sell, distribute or transport sunbeds manufactured by other ESA members or by non-ESA members that do not comply with the applicable legislation, among which the aforementioned list of rules.

2.2.2 Crisis communication plan

Each member should report to ESA any event that could trigger a crisis communication plan from the ESA Board, in particular in view of avoiding potential EU-wide negative regulatory impact for the industry and/or customers.

Any communication triggered this way and any subsequent debates that may occur between ESA members inside or outside ESA's forum shall comply with the last paragraph of Section 3.3.3 of this Guidance.

The ESA Board reserves the right to elaborate ESA internal regulations that will set the procedure for defining and handling crisis communication.

Any decision that ESA may need to take following of a crisis communication shall be taken in accordance with ESA Statutes.

2.3 Fair competition

Each ESA member will refrain from picking other members' customers through unfair means. This entails, among others :

- Refraining from harming the image of any other member of the association before their own customers or before former customers of the other members;
- Promoting to each of its customers the European Code of Conduct that ESA has developed in order to guarantee that tanning studios are providing a safe and responsible tanning with regard to:
    - Acceptance and controlled admission of clients;
    - Information and advice on the use of sunbeds and their appropriate session time limits;
    - The hygiene and equipment of sunbeds.

For the surplus, where applicable, each ESA member commits to act in compliance with all State laws governing unfair competition practices, where ESA members do business.

2.4 Misleading and Comparative Advertising

ESA Members shall ensure that promotional presentations, including product claims and comparisons, are accurate, balanced, fair, objective unambiguous. These presentations shall be justified by appropriate evidence. Hence, statements related to the risks and advantages of sunbeds, as well as their use, should rely upon scientific evidence and should mislead neither the customers nor the final consumers.

In particular, each ESA member commits to act in compliance with the rules stemming from Directive 2006/114/EC on misleading and Comparative Advertising and with any similar complementary State laws existing in that area, in countries/regions where ESA members do business.

This implies, for ESA members, that they commit, among others, to ensure that the information they will provide to their customers, relating to the characteristics (such as Vitamin D benefits), functioning and use of sunbeds, is not misleading insofar as it does not:

- Mislead customers about the characteristics of the sunbeds and their use, especially in relation to their risks;
- Where comparative advertisement is authorised, compare sunbeds and their technique of use with sunbeds and techniques of use that do not meet the same needs or that are not intended for the same purpose;
- Discredit other companies' names or trademarks;

Article 3 COMPLIANCE WITH COMPETITION RULES

3.1 General comments

ESA members commit to determine their behaviour individually on the market. Both ESA and its members thus agree to fully comply with EU competition law and equivalent provisions of national competition laws, in the EU and outside the territory of the EU.

EU and national competition law contain two basic prohibitions:
1. The prohibition of anti-competitive agreements between two or more undertakings;

2. The prohibition of abuses of a single or collective dominant position (which may apply both to unilateral conduct and to agreements involving a dominant party).

Therefore, ESA and its members commit to always comply with these two basic provisions even with regard to arrangements involving ESA members from one country only, or when these arrangements cover only one country or region.

Infringement of EU and national competition law can lead to fines, civil liability for damages, and in some countries even to criminal liability. It is therefore the responsibility of ESA and of each of its members individually to ensure compliance with this code of conduct.

3.2. The prohibition of anti-competitive agreements

As a matter of principle, no ESA member should ever discuss or be involved in any of the following activities:

■ **Price-fixing**, but also, and not limited to, the coordination of other pricing elements, including discounts, bonuses, surcharges, accounting procedures or profit margins discussions on prices;

■ **Market partitioning** such as the allocation of customer groups or territories between competitors, as well as bid rigging agreements that involve for example the exchange of prices before or during the tendering procedure or the submission of an artificially high bid;

■ **Output restrictions**, such as agreements on investment levels, production quotas or agreed restrictions on trade between EU Member States such as export bans, or prohibitions on sales to parallel traders;

■ **Exchange of competitively sensitive information**, for instance, on pricing elements, business plans, customer relations or ongoing or planned bids;

■ **Any other agreement restricting competition** such as, for instance, a collective boycott, joint negotiations, (except after legal review) joint selling or joint buying, any arrangement to avoid direct competition, resale price maintenance, pricing policies designed to isolate national markets or joint action to exclude competitors or new entrants.

ESA members are thus fully aware that an agreement or a decision of an association of undertakings need not to be written or binding in order to be prohibited by competition law. A verbal information exchange or an informal agreement can be an infringement even if it is merely a "gentleman's agreement". On the other hand, an agreement does not need to be exercised in order to infringe competition law. The potential anti-competitive effect is sufficient.

3.3 Specific rules for ESA as a trade association

There are three specific areas that require particular attention in the light of competition rules:

3.3.1 Membership rules.

ESA must not use access to its membership in order to reserve unfair competitive advantage to its members. Accordingly, membership requirements shall comply with the following rules:

■ Membership is voluntary. Companies should not be compelled to join in order to be able to enter the sunbeds' market or trade with ESA members.

■ Membership is open to any interested party in the industry, based on criteria that are precise, objective, transparent, proportionate and reasonably necessary for the purpose and efficient governance of ESA. These criteria are applied in a non-discriminatory manner by ESA Board and ESA General Assembly following the rules set out under Article 5 of ESA Statutes.

■ Any proposed expulsion or rejection of a membership application by ESA General Assembly must be based on objective criteria and may be referred for legal review to the Belgian courts.

■ Membership or access to information must not be conditional upon a promise not to participate in competing associations (unless this is strictly necessary to ensure the viability of ESA, in which case outside legal advice shall be sought).

3.3.2 Industry standards

ESA or ESA working groups may develop and promote or contribute to the development of industry standards, codes of practice or standard terms and conditions for agreements, either inside CEN, ETSI or CENELEC or inside any other international forum. These standards are allowed where they improve the quality of ESA members' products or services; however, neither ESA nor its members are allowed to use them to restrict competition. Accordingly:

■ Standards must be related to specified legitimate objectives, and no more detailed or restrictive than reasonably necessary. Standards should not be used to raise barriers to entry to the market or to exclude competitors.

■ Specifications for standards should be publicly accessible, also for non-members.

■ Compliance should be voluntary (unless required by law). Standards must not prohibit the use of competing technologies.

■ The award of certificates or seals of approval is allowed as long as criteria are objective and legitimate (for instance, based on verifiable quality levels), and applied on a non-discriminatory basis. Fees should be cost-based. The use of standard agreements by ESA members or by any non-ESA member should not be made compulsory, and standard terms and conditions should not attempt to harmonize "price-related" clauses.

In the light of the specificity of artificial tanning industry and of the way it is perceived by some regulators and customers worldwide, ESA may nevertheless consider whether it should bring to the attention of the public or of the authorities any product that does not comply with applicable legislation and/or with the state of the art determined in existing technical standards. For this purpose, ESA Board shall seek legal advice on how to proceed and will consider whether a crisis communication plan is needed.

3.3.3 Information exchange.

Members must never, neither at formal gatherings nor at other informal meetings, inside or outside ESA's forum, exchange or discuss about confidential or otherwise competitively sensitive business information. Subjects that must never be discussed are:

■ Prices, discounts, or price-related contractual terms. This includes planned or implemented price increases (whether or not a precise amount of the increase is included), the dates of planned price increases or announcements, mark-ups, rebates, allowances, credit terms, promotions, or any other data that would have a bearing on price (e.g. costs, production volumes, capacity, inventories, sales).

■ Client relations and customer credit risk, including among others the identities of individual customers or sales territories;

■ Contract tenders, ongoing bids or plans to bid for business as well as the corporate procedures for responding to tenders;

■ Business plans or commercial strategy and forecasts of market evolution;

■ Competitive strengths/weaknesses in particular areas;

■ Production planning or output levels, including inventory/order backlog;

■ Individualised data about production volumes, sales or capacity. It is particularly important that such data is not exchanged in relation to specific competitors (e.g. the top three producers for a particular sales segment in the last quarter).

■ Product development or investment in research programs which is not yet publicly known;

■ Individualized market share data.

However, benchmarking, i.e. compilation and circulation of statistical data and/or exchange of information is allowed, provided that the following conditions are respected and advice from outside legal counsel is sought:

- The entity collecting, aggregating and circulating the data is neutral and bound by confidentiality, and

- Only aggregated data is circulated to participants and competitively sensitive information such as market shares and export volumes remain anonymous. Individual company data must not be circulated and it must not be possible to derive individual company data from the aggregated data circulated (i.e. to disaggregate it).

It is acceptable to discuss public policy, educational and scientific developments, regulatory matters of general interest, demographic trends, artificial-sun exposure trends, acknowledged health and safety industry trends, publicly available information and historical information that have no impact on future business. Members may display or demonstrate new or existing products, but not discuss non-public R&D or production plans.

3.4 The prohibition of abuse of a dominant position

A company may be in a dominant position if it can act to an appreciable extent independently of its customers and suppliers in a given market.

A dominant position is not in itself anti-competitive, but if the company exploits this position to eliminate competition, it is considered to have abused it.

Companies that have the economic power to act independently and set prices regardless of customers' or suppliers' demands or competitive pressure, have a special duty to not to restrict competition and not to exploit their customers. Dominance is, in essence, the power to overprice, which is assumed if a firm accounts for a dominant share of supply or demand (normally 40% or more).

Even if individual members may not be dominant, ESA members could be considered collectively dominant in a particular product market if five or fewer of them account for a large share of supply and if they have contacts with each other through the trade association. Dominant positions can be held by single firms and, in certain circumstances, held collectively. In such an oligopolistic market, parallel behaviour that restricts competition or exploits customers might be found abusive even if there is no evidence of active collusion.

As soon as a dominant undertaking's behaviour has an anti-competitive object or effect, without objective justification, fines and civil liability may result. There is no need to demonstrate the existence of an agreement or collusion. Examples of possible abuse of dominance include:

■ Charging unreasonably high prices;

■ Imposing excessive or discriminatory terms on customers or suppliers;

■ Depriving smaller competitors of customers by selling at artificially low prices they can not compete with;

■ Limiting production or technical development;

■ Refusing to supply parallel traders;

■ Refusing to supply competitors or customers with products that they need and cannot buy elsewhere;

■ Obstructing competitors in the market (or in another related market) by forcing consumers to buy a product which is artificially related to a more popular, in-demand product;

■ Refusing to deal with certain customers;

■ offering special discounts to customers who buy all or most of their supplies from the dominant company;

■ Making the sale of one product conditional on the sale of another product.

If a member is uncertain whether a particular agreement, discussion or information exchange between competitors is allowed, it should immediately contact its legal counsel, who will take appropriate steps. Should the member not have a legal counsel, it shall immediately contact ESA's legal counsel.

3.5. Procedure for ESA meetings

ESA Secretariat shall take every reasonable precaution to ensure that meetings are managed in such a way as to ensure that the risks of inappropriate discussion taking place are minimised.

As a practical matter, therefore, ESA undertakes the following:

- ESA shall post this Guidance on its website (www.ESA.org) so that members and the public have access to it.
- Written agendas for each ESA meeting must be drafted and circulated prior to the meeting and every agenda will contain, as its first and standing item, a competition law reminder.
- Either the working group/taskforce chairman or the Secretariat representative will make sure that all participants are aware of EU competition law obligations and the fact that all ESA meetings will comply with it. This will be recorded in the minutes of the meeting.
- ESA Secretariat will ensure that one of the attendees, be a competent ESA representative or an external legal counsel, will act as a whistleblower during ESA meetings (i.e. during General Assembly meetings, working groups meetings, etc) in order to ensure that any discussion that may be starting to infringe competition rules is immediately interrupted and terminated.
- Comprehensive minutes of each meeting will be drafted and any comment or request for amendment will be notified to the meeting chairman and to ESA Secretariat person in charge as soon as possible following receipt of the minutes.
- In each meeting, a list of participants, including, if available, a list of competition law Dos & Don'ts, shall be circulated during the meeting and signed by all participants. The list shall be appropriately filed by the Secretariat. The list of participants shall be included in the meeting minutes.
- ESA shall keep agendas, minutes and attendance lists of every meeting chronologically.
- ESA shall give meeting participants access to agendas and minutes of the meetings that they have attended upon request.

4. FINAL PROVISION

By adhering to ESA each ESA member shall respect the rules included in this Guidance and will be subject to exclusion by ESA's General Assembly, in accordance with the procedure provided by Article 8 of the ESA's Statutes, for not complying with any of the above commitments.

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