Burned By Berman: A Special Interest PR Campaign Gone Wrong

Few of Washington’s influence peddlers are as infamous as Richard Berman. Nicknamed “Dr. Evil,” Mr. Berman has been described as “an industry Doberman” and “the booze and food industry’s 6’4” weapon of mass destruction.”¹ A veteran of the restaurant industry, Mr. Berman has spent nearly 30 years promoting the interests of big business through his consulting firm, Berman and Company, Inc. (BCI), and a series of nonprofits. He has a well-worn playbook he brings to fights, whether the issue is an increase in the minimum wage or stiffer drunk driving penalties.

The Berman method has several moves: 1) “shoot the messenger” by attacking the credibility of public interest groups and government authorities whose work threatens the bottom line of his clients;² 2) “change the debate” by changing the subject and muddling the facts;³ 3) inundate small newspapers and websites with op-ed pieces and letters to the editor; and 4) run hyperbolic ads in high-profile publications and during prominent events in hopes of garnering free media mentions. Mr. Berman usually fights his battles through nonprofits he established, which sport benign-sounding names and pro-industry messages.

Mr. Berman’s tactics can backfire, as the Indoor Tanning Association (ITA), which represents indoor tanning manufacturers, distributors, facility owners and members from other support industries, learned the hard way.⁴ In 2007, the trade association hired BCI to launch an aggressive campaign aimed at promoting indoor tanning and pushing back against the industry’s detractors. Mr. Berman delivered a flashy campaign, but the ultimate result for the ITA was a crackdown by the Federal Trade Commission (FTC) and a $500,000 legal bill. Documents obtained by Citizens for Responsibility and Ethics in Washington (CREW) through the Freedom of Information Act reveal the extent of the FTC’s investigation into the tanning campaign.⁵

How the “Berman campaign,” as it is known in tanning circles, played out for the ITA is a case study in the pitfalls of hard-edged public relations. Mr. Berman’s business clients are usually hidden. The tanning industry, however, was open about its decision to hire BCI, discussing it on message boards and in trade publications. The ITA not only reported how much

---

² Charles Bernstein, The Zealot, Chain Leader, December 1999.
⁴ http://www.theita.com/.
⁵ In response to a Freedom of Information Act (FOIA) Request filed by CREW, the FTC released hundreds of pages of documents related to the investigation. These documents are available at http://www.scribd.com/collections/4385437/CREW-FTC-Regarding-Indoor-Tanning-Association (hereafter ITA FTC Documents).
it paid BCI in its tax filings, it posted a listing of individual salon owners who had pledged to fund the media campaign.

In addition, BCI denies that Mr. Berman “will rent his non-profits out to anyone for a quick buck,” labeling it a “myth” on a website set up to defend his company’s reputation. In the ITA’s case, however, one of Mr. Berman’s nonprofit organizations, the Center for Consumer Freedom (CCF), was involved. CCF began pushing the ITA’s talking points about vitamin D deficiency during the campaign. The circumstances echo those described in documents recently released as part of litigation between the sugar industry and the corn refining industry, which revealed the Corn Refiners Association paying BCI for an ad campaign waged through the Center for Consumer Freedom.

**Hiring Berman and Company**

By 2007, the indoor tanning industry was on the defensive after an onslaught of bad news. Between 2003 and 2006, 19 states passed laws restricting minors’ access to tanning salons. Prestigious medical bodies, including the World Health Organization (WHO), the American Medical Association, and the American Academy of Dermatology (AAD), issued warnings about the health risks of tanning, especially for minors. In October 2006, Looking Fit, an online news website for the indoor tanning business, declared, “This year more than ever, the indoor tanning industry was besieged with anti-tanning propaganda from the media and medical communities.” In the article, Looking Fit’s group editorial director, Judie Bizzozero, counseled the industry to take a proactive approach. “We need to band together as an intelligent unified voice and spread the Good News about moderate, sensible and responsible exposure to sunlight,” Ms. Bizzozero wrote. “This is the only way to take the ammunition out of the hands of the anti-tanning coalition.” Under pressure from salon owners to create a “national advertising campaign,” the ITA engaged BCI, reportedly hiring the firm in September 2007.

Mr. Berman gave a presentation at the Tanning World Expo in Nashville, TN on October 13, 2007. No definitive transcript or recording of his speech is available, but attendees have posted accounts of it online. According to one TanToday message board member, Mr. Berman, speaking to a full house, said negative attitudes about tanning are a result of fear and “the only

---

7 [Hire Rick Berman’s For-Profit and His Nonprofit Will Go to War for You, Citizens for Responsibility and Ethics in Washington, February 12, 2014.](http://www.bermanfacts.com/myths/).
11 [Id.; Liz Steinberg, Tan Salons Take on a Glow, Baltimore Sun, April 9, 2002.](http://www.bermanfacts.com/myths/).
12 [Id.](http://www.bermanfacts.com/myths/).
13 [Id.](http://www.bermanfacts.com/myths/).
14 [Id.](http://www.bermanfacts.com/myths/).
way to overcome fear in advertising is through ANGER.”

He discussed other companies BCI has worked for and the approach the company takes with their clients, and played a sample commercial demonstrating “what could be.” The crowd was enthusiastic, and industry players brimmed over with optimism. “This one will go down in history,” wrote a moderator on the TanToday message board. “I know the 200 + people who were there will remember it forever.”

“It was a presentation that left those in the audience feeling something that has been seriously lacking in the indoor tanning industry for far too long – hope,” Looking Fit reported. “At the end of the presentation, when the ITA asked for donations to help pay for Berman and Co.’s representation, the audience made its belief in the campaign clear. In the span of a few minutes, the ITA raised approximately $320,000.”

ITA President Dan Humiston was ecstatic. “The outpouring of support by the industry for the Berman project is truly overwhelming,” he said. “In all my years working in the industry, I have never seen anything like it. I would have to say the stars just lined up … it was the right time, the right audience and the right company. Rick Berman and his team knocked the audience off their feet.”

Less than a week after the Tanning Expo, ITA Executive Director John Overstreet reportedly said the organization had raised enough money to pay for Mr. Berman’s projected nine-month plan. Mr. Overstreet and the ITA were looking even further down the road. “I see this as a 10 year plan but it will take salon owner support on this one,” Mr. Overstreet told TanToday. The ITA set up a “Berman and Company Special Media Relations Fund,” soliciting tanning industry professionals to “support our efforts and the industry by making a donation to help fund this campaign.”

“The innovative and audacious strategy that Berman and Company has created for us will come at a high price, but will enable the indoor tanning industry to make invaluable strides forward,” the ITA wrote on a solicitation page for the campaign. By late November 2007, the tanning industry had raised more than $420,000 for the Berman campaign. A list of supporters posted by the ITA included 89 businesses and individuals, including five companies that had

17 Id.
18 Id.
20 Id.
22 Id.
23 Id.
24 Id.
26 Id.
28 Id.
pledged $25,000 or more. By mid-January 2008, the pledges totaled more than $500,000. The ITA’s tax filings show the association paid BCI more than $342,000 in 2008.  

**Berman and Company Lay the Groundwork for ITA’s Ad Campaign**

The goal of the Berman-led public relations push was “to increase the demand for indoor tanning by jumpstarting a backlash against the current anti-tanning ‘hype,’ and by increasing awareness of the positive benefits of vitamin D.” Though the BCI-devised ad campaign did not launch until March 2008, by January 2008, BCI employees began representing the ITA publicly and pushing a pro-tanning message. On January 8, 2008, the ITA issued a press release attacking sunscreen manufacturers and cosmetics companies for scaring people from exposing themselves to the sun, “contributing to vitamin D deficiency among Americans.” Sarah Longwell, who joined BCI in 2005, was quoted in the press release as the ITA’s director of communications. In another press release sent out prior to the unveiling of the BCI ad campaign, Ms. Longwell attacked the AAD on behalf of the ITA. “This scandal is further evidence of the incestuous and unethical relationships between the dermatological community and the skin care industry,” Ms. Longwell said, referring to criticism of the AAD’s “Seal of Recognition” program. Ms. Longwell wasn’t the only BCI employee pushing the indoor tanning industry’s message to the media. James Bowers, who joined BCI in 1996, published an op-ed in Florida’s *Sun Sentinel* newspaper, arguing “the health community has even been sending us mixed messages about sunshine” while tick off the health benefits of vitamin D. Mr. Bowers’ by-line on the op-ed described him as the “managing director at the Center for Consumer Freedom,” which is a nonprofit set up and run by BCI. On February 1, 2008, the UV Foundation, which receives funding from the ITA, issued a press release declaring February “Vitamin D Deficiency Month” as part of an effort to “raise awareness about vitamin D deficiency and its negative health effects.” Tim Miller, the person listed on the press release as the

---

38 *Id.*
“Communications Director for the UV Foundation,” was a BCI employee at the time. Mr. Bowers published a second op-ed in the *Denver Post* on March 16, 2008, arguing America had become “a nation of tan-o-phobes… And our health has suffered as a result.” A clips document posted on the website of a tanning studio, which appears to have been compiled by BCI based on the URL, included both Mr. Bowers’ and Mr. Miller’s press comments in its highlights of pro-tanning media mentions, suggesting BCI considered them part of the ITA campaign.

**ITA’s Media Campaign**

On March 26, 2008, the ITA launched its ad campaign with a full-page *New York Times* ad, a television commercial airing in major media markets, and two websites, SunlightScam.com and TrustTanning.com. The *New York Times* ad declared the claim that tanning causes melanoma to be “hype,” and argued “there is no compelling scientific evidence that tanning causes melanoma.” In the TV commercial, the narrator encouraged, “Go get a tan. Your body will thank you.” “There is nothing dangerous about getting a tan,” declared SunlightScam.com. Ms. Longwell, in the press release announcing the campaign, acknowledged the ITA’s offensive was “controversial,” but argued tanning was both safe and proactively good for people’s health. “Not only is moderate tanning completely safe, more and more it’s becoming just what the doctor ordered,” Ms. Longwell said.

The claims in the ITA ad campaign were immediately met with skepticism from medical experts. “Dermatologists say this is a bunch of baloney,” CNN medical correspondent Elizabeth Cohen reported. “The ad misrepresents scientific fact,” Yale Medical School’s David Leffell told *ABC News*, adding, “ultraviolet radiation from the sun and from the artificial bulbs that are used in the tanning parlors can lead to skin cancer.” Despite the pushback, the ITA was pleased with the immediate results of the campaign, estimating the ads received about $375,000 in “earned media,” or free mentions.

---

43 *Id.; LinkedIn, Profile: Tim Miller, available at http://www.linkedin.com/in/timmillergop.*
45 *http://www.clubsuntanning.com/pdf/BAC_Tanning_ALL_Clips.pdf. CREW uses the acronym BCI to refer to Berman and Company, but Mr. Berman and his associates use BAC. See http://www.bermanfacts.com/.*
46 *Press Release, Indoor Tanning Association, Indoor Tanning Association Launches Campaign Attacking Melanoma Hype, March 26, 2008.*
50 *Press Release, the Indoor Tanning Association, Indoor Tanning Association Launches Campaign Attacking Melanoma Hype, March 26, 2008.*
51 *Id.*
52 *Transcript, Can Indoor Tanning Keep You Glowing and Healthy?, CNN American Morning, April 3, 2008.*
53 *Leamy and Levine, ABC News, Mar. 27, 2008.*
54 *Update: ITA Public Education Campaign, Looking Fit, April 1, 2008.*
The FTC Investigates the ITA’s Berman Campaign

The FTC, however, was not nearly as impressed. Documents obtained by CREW show the agency began its investigation within days of the official launch of the ITA’s Berman-produced ad campaign.55 “The Division of Advertising Practices is investigating this company to determine whether the Indoor Tanning Association has engaged in deceptive or unfair advertising in violation of the Sections 5 and 12 of the FTC Act,” or Federal Trade Commission Act, read the FTC’s description in a database linked to the investigation.56

As the FTC’s investigation got underway, the Berman campaign forged ahead. The ITA and BCI followed up with the “Melanoma Hype” ad with an ad in USA Today at the end of April 2008, which was meant to carry a more “positive” message than the campaign’s initial ads.57 “The positive effects of getting vitamin D from sunlight are clear,” the ad read. “So soak up a little sunlight—indoors or out—a couple of times each week, and get your recommended dose of the ‘sunshine vitamin.’”58 The trade association became aware the FTC was investigating by May 12, 2008, when the FTC sent a request for information to the trade association.59 Nonetheless, the association stuck with the Berman campaign. In September 2008, Mr. Berman appeared at the 2008 ITA World Tanning Expo to discuss how salon owners and others in the tanning industry “can fight back against the negative press that is scaring people away from the sun and the tanning industry.”60 Mr. Berman outlined a campaign for 2009 that would focus on online advertising and would include efforts to promote negative stories to the media about critics of the tanning industry.61 The response from the industry, however, was markedly less enthusiastic than before. Reportedly, only $40,000 was raised at the event to support this next stage in the campaign.62

By June 2009, the FTC had concluded the ITA had violated the Federal Trade Commission Act and entered into negotiations for a settlement with the ITA, though BCI’s work continued at least through the summer of 2009.63 Ms. Longwell continued to speak to the press on behalf of ITA, explaining to Mother Jones, for instance, that ITA emphasized tanning as a source of vitamin D because the trade association’s mission is to promote tanning. “If you’re a

56 Id.
62 Ribner, ist magazine, Jan. 2014.
supplement company, you can promote the supplement. But we are the Indoor Tanning Association,” Ms. Longwell said. In July 2009, BCI helped the ITA respond after the International Agency for Research on Cancer, which is part of the WHO, classified ultraviolet-based tanning devices as “carcinogenic to humans.” After the ITA failed to raise the $50,000 needed to run a response ad in the New York Times, BCI assured the organization that placing the ad in the New York Post for less money would be equally effective. A BCI employee, Allison Miller, acted as the organization’s media contact when it announced the ad. On January 26, 2010, the FTC announced it was charging the ITA with making false health and safety claims about indoor tanning and the ITA had already agreed to settle the matter. The FTC approved the final settlement on May 19, 2010. In its complaint, the FTC alleged the ITA had made multiple false and misleading representations about tanning and indoor tanning as part of its public relations campaign. Specifically, the FTC’s investigation found the ITA had suggested indoor tanning does not increase the risk of skin cancer, poses no danger, is approved by the government and is safer than tanning outdoors because the amount of exposure to ultraviolet light is monitored and controlled inside, none of which was true. In addition, the FTC found the ITA also falsely and misleadingly represented that vitamin D supplements may adversely affect the body’s ability to fight disease and that a study in the Proceedings of the National Academy of Sciences found the risks of not getting enough ultraviolet light outweighed the hypothetical risk of skin cancer, among other things. The FTC ordered the ITA to cease making those claims. Finally, the FTC argued the ITA committed a “deceptive practice” when it represented that tanning generates vitamin D and has health benefits because the trade association failed to disclose a tan isn’t necessary to increase vitamin D and there are dangers to ultraviolet radiation. The FTC said the ITA could not make claims about the health benefits of tanning or the effect of tanning on the generation of vitamin D, without making such disclosures. The FTC’s order also required the ITA to send a notice to all of its members acknowledging the FTC’s allegations against the organization and requesting that they stop using materials the ITA provided to them during the Berman campaign.

64 Kiera Butler, Consumer Retorts: Tanning Salons, Mother Jones, July/August 2009.
66 ITA Update Regarding Ad, Media Hype, Looking Fit, July 30, 2009.
67 ITA to Run Ad Countering Media Hype for Tanning Classification, Looking Fit, July 29, 2009; Ryan Chittum, The Front-Group Impresario, Columbia Journalism Review, February 14, 2014. The telephone number listed for contacting Ms. Miller to set up an interview with the ITA is the same media contact number listed on the Center for Consumer Freedom’s website. See http://www.consumerfreedom.com/about/.
71 Id.
72 Id.
76 Id.
Though the FTC’s complaint made no mention of BCI or any of the firm’s employees, ITA Executive Director Overstreet told ist Magazine that the FTC investigation was a result of the “Berman campaign.”\(^77\) In addition, the materials cited by the FTC as making false and misleading statements, including the “Melanoma Hype” print ad and the TrustTanning and SunlightScam websites, were part of the Berman campaign.\(^78\) In her role as a spokesperson for the ITA, Ms. Longwell of BCI regularly made arguments the FTC concluded were false and misleading. For instance, Ms. Longwell repeatedly told the media that there is no scientific evidence that tanning causes melanoma.\(^79\) “There has been no scientific studies that show that indoor tanning causes melanoma,” Ms. Longwell told the Washington Post. “It's almost a reckless claim. It's an overt effort to slander the indoor tanning industry.”\(^80\) The FTC concluded, however, that “in truth and in fact” tanning “increases the risk of skin cancer, including squamous cell and melanoma skin cancers.”\(^81\)

The Repercussions of the Berman Campaign for the ITA

Though the ITA was not fined by the FTC, the investigation and settlement process reportedly cost the organization half a million dollars in legal fees.\(^82\) In addition, while the organization avoided admitting that it had “made misrepresentations or violated the law,”\(^83\) the settlement forced the ITA to cease making misleading statements and to begin disclosing certain risks involved with indoor tanning, something the trade association had tried to avoid.\(^84\) In correspondence with the FTC obtained by CREW, the ITA’s lawyers sought a consent decree that would “not place any limitations on statements regarding health benefits.”\(^85\) The FTC rejected the request immediately. “Given that the case challenges the Indoor Tanning Association’s many unsubstantiated and false representations regarding the health risks and benefits of indoor tanning and ultraviolet radiation, this suggestion is a nonstarter,” replied FTC attorney Janet M. Evans.\(^86\) In the months after the settlement, the ITA’s website began carrying a FTC-supplied notice declaring, “You do not need to become tan for your skin to make Vitamin

---


\(^{80}\) Id.


D. Exposure to ultraviolet radiation may increase the likelihood of developing skin cancer and can cause serious eye injury.  

Soon after the settlement was first announced, a writer for *Looking Fit* argued there were some benefits to the agreement, namely that it allowed the ITA to focus on a positive message and it provided the ITA with clear guidance on how to talk about vitamin D in regards to indoor tanning. The president of the tanning company Darque Tan argued the settlement was a “triumph” because it “enabled the ITA to connect vitamin D to tanning beds, with a disclaimer statement.” ITA Executive Director John Overstreet, however, concluded the FTC experience meant the tanning industry should stop making health claims about UV tanning. “Based on our experience with the FTC,” Mr. Overstreet told *ist Magazine*, “we believe that refraining from making health claims is in our industry’s best interest. We strongly encourage all tanning salon operators to follow our lead on this issue, because making these types of claims can have a legal impact at the salon level, as well.”

The FTC settlement is still frequently mentioned in stories and editorials about indoor tanning. Critics of tanning, like the AAD and the American Cancer Society, use it to support arguments against the practice. After a new industry group, the American Suntanning Association (ASA), formed in December 2012, a California state senator sought to hold the new organization to the terms of the ITA’s 2010 settlement with the FTC. The lawmaker, Sen. Ted Lieu (D), alleged that the ASA was a successor organization to the ITA, pointing out that the two organizations shared some members and the ITA provided the ASA with lobbying information. Sen. Lieu sent two letters to the FTC requesting they apply the constraints placed on the ITA to the ASA. In a March 20, 2013 letter, the FTC replied that while “the information you have provided and the concerns you have expressed are being carefully considered,” the commission

---

95 Id.
96 Id.
was statutorily prohibited from discussing what actions, if any, it might take.  

There is some evidence that the ASA is following at least one of the requirements of the ITA settlement. An ASA webpage about tanning and vitamin D carries the same warning the FTC mandated the ITA use whenever advertising claims about exposure to ultraviolet radiation and the production of vitamin D in the body.

Some clearly blame the Berman campaign and the FTC’s response for current challenges facing the tanning industry. In January 2014, *ist Magazine* director of editorial content John P. Ribner wrote an editorial arguing against “blaming Berman for all of this industry’s problems.” Mr. Ribner’s argument acknowledged the campaign had produced “disastrous results,” but he argued focusing on it avoided taking sufficient responsibility and could be counterproductive. “Blaming the non-stop negative attention we currently receive on the Berman Campaign could leave us vulnerable to new quick-fix concepts that will also prove detrimental, especially if it involves continued health claims about indoor tanning,” Mr. Ribner wrote.

_The Lessons of the ITA’s Berman Experience_

The ITA’s experience with BCI offers a rare window into how a Berman campaign operates, from hiring to execution to fallout. The ITA contracted with Mr. Berman’s for-profit consulting firm, but it received more than just ad creation and press representation. One of Mr. Berman’s nonprofits pushed the industry’s talking points as well.

In addition, the FTC’s finding that the ITA’s Berman campaign made multiple false and misleading representations highlights BCI’s willingness to make statements that play fast and loose with the facts. In the past, scientists have criticized the misleading manner in which BCI has used their studies, but there have been few serious consequences. This time, however, a BCI client was rebuked by a federal agency for making false health claims in a BCI-produced campaign. The campaign clearly went too far, and the public needs to beware of Mr. Berman’s record of false claims.

---