

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent California Suncare, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 1100 Glendon Avenue in the City of Los Angeles, State of California.

Respondent Donald J. Christal is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation, and his principal office and place of business is located at the above stated address.

2. The Federal Trade Commission has jurisdiction of the subject matter of the proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

For purposes of this order, the following definitions shall apply:

1. "*California Tan Heliotherapy products*" shall mean the Heliotherapy™ line of skin care products for use in connection with tanning as a result of exposure to sunlight or indoor UV radiation sold under the brand name California Tan®.

2. "*Competent and reliable scientific evidence*" shall mean tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

3. "*Purchaser for resale*" shall mean any person that has bought any California Tan Heliotherapy products to sell to another business or members of the public including, but not limited to, wholesalers, distributors, tanning salons, beauty parlors, health spas, and gyms.

I.

It is ordered, That respondents, California SunCare, Inc., a corporation, its successors and assigns, and its officers, and Donald J. Christal, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any California Tan Heliotherapy product or any other product or service for use in connection with tanning, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, in any manner, directly or by implication, that the negative effects of exposure to sunlight or indoor UV radiation, including skin cancer and premature skin aging, are caused only by overexposure and burning or are not caused by cumulative moderate exposure, over a period of years, including exposure sufficient to cause tanning;

B. Representing, in any manner, directly or by implication, that tanning as a result of exposure to sunlight or indoor UV radiation is not harmful to the skin;

C. Misrepresenting, in any manner, directly or by implication, that the use of such product or service prevents or minimizes the negative effects of exposure to sunlight or indoor UV; or

D. Representing, in any manner, directly or by implication, that exposure to sunlight or indoor UV radiation reduces the risk of skin cancer.

II.

It is further ordered, That respondents, California SunCare, Inc., a corporation, its successors and assigns, and its officers, and Donald J. Christal, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any California Tan Heliotherapy product or any other product or service for use in connection with tanning, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that:

A. Exposure to sunlight or indoor UV radiation prevents or reduces the risk of cancer, including but not limited to colon or breast cancer;

B. Exposure to sunlight or indoor UV radiation lowers blood pressure;

C. Exposure to sunlight or indoor UV radiation has benefits similar to those of exercise, including but not limited to decreased blood pressure or lower heart rate;

D. Exposure to sunlight or indoor UV radiation reduces serum cholesterol;

E. Exposure to indoor UV radiation is an effective treatment for Seasonal Affective Disorder;

F. Exposure to sunlight or indoor UV radiation is an effective treatment for AIDS;

G. Exposure to sunlight or indoor UV radiation enhances the immune system;

H. For the general population, reduced winter sunlight leads to bone disorders such as osteoporosis and osteomalacia and increased exposure to sunlight or indoor UV radiation is necessary to reduce the risk of such disorders; or

I. Exposure to sunlight or indoor UV radiation has any health benefit,

unless, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

III.

It is further ordered, That respondents, California SunCare, Inc., a corporation, its successors and assigns, and its officers, and Donald J. Christal, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any California Tan Heliotherapy product or any other product or service for use in connection with tanning, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, in any manner, directly or by implication:

A. That the use of such product or service prevents or minimizes the negative effects of exposure to sunlight or indoor UV radiation, including but not limited to skin cancer or premature aging;

B. That the use of such product or service will improve users' ability to tan; or

C. Regarding the performance, safety, benefits, or efficacy of such product or service,

unless, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

IV.

It is further ordered, That respondents, California SunCare, Inc., a corporation, its successors and assigns, and its officers, and Donald J. Christal, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product or service, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication:

A. The existence, contents, validity, results, conclusions, or interpretations of any test or study; or

B. That any person, firm, organization, or government agency approves or endorses any such product or service or exposure to sunlight or indoor UV radiation.

V.

It is further ordered, That respondents, California SunCare, Inc., a corporation, its successors and assigns, and its officers, and Donald J. Christal, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any California Tan Heliotherapy product or any other product or service for use in connection with tanning, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Failing to display, clearly and prominently, in any advertising or promotional material for any such product(s), one or more of which does not contain a sunscreen ingredient providing a minimum of SPF 2, the following disclosure:

CAUTION: Tanning in sunlight or under tanning lamps can cause skin cancer and premature skin aging -- even if you don't burn.

The disclosure requirements set forth in this subparagraph shall terminate at such time as respondents have expended at least one million, five hundred thousand dollars (\$1,500,000) on the dissemination to consumers of advertising and promotional material for the product(s) specified above.

For purposes of this subparagraph "advertising or promotional material" shall include such material that is disseminated to consumers either directly, or indirectly through any purchaser for resale, but shall not include television advertising, billboards, or advertising appearing in any periodical sold only by subscription for which fifty percent (50%) or more of the readership is comprised of tanning or beauty salon professionals. Provided, however, that in the event that respondents have not expended at least one million, five hundred dollars (\$1,500,000) on the dissemination of the advertising and promotional material defined above within two (2) years and six (6) months after the date of service of this order, the exclusions contained in that definition shall terminate and all advertising and promotional material for any such product(s) shall be subject to the disclosure requirements of this subparagraph.

In calculating the amount of expenditures on the dissemination to consumers of the advertising and promotional materials specified above, the costs of distributing, publishing, or broadcasting the advertising and promotional material shall be included, but the costs of developing, designing, creating, or producing the advertising or promotional material (other than printing) shall not be included.

B. Making any representation in any advertising or promotional material for any such product(s), in any manner, directly or by implication, about the safety or any health benefits of exposure to sunlight or indoor UV radiation unless respondents disclose, clearly and prominently, the following:

CAUTION: Tanning in sunlight or under tanning lamps can cause skin cancer and premature skin aging.

For purposes of this subparagraph, "advertising or promotional material" shall include television advertising, billboards, or advertising appearing in any periodical sold only by subscription for which fifty percent (50%) or more of the readership is comprised of tanning or beauty salon professionals, and, once the requirements of subparagraph A above have been satisfied, all other advertising and promotional material.

C. Making any representation on the labeling or package of any such product that does not contain a sunscreen ingredient providing a minimum of SPF 2, in any manner, directly or by implication, about the safety or any health benefits of exposure to sunlight or indoor UV radiation unless respondents disclose, clearly and prominently, the following:

CAUTION: Tanning in sunlight or under tanning lamps can cause skin cancer and premature skin aging.

This product does not contain a sunscreen and does not protect against sunburn.

For purposes of the display of the disclosure or the corrective statement required by this part ("required information"), "clearly and prominently" shall mean as follows:

1. In a television, broadcast, or video advertisement, the required information shall be presented simultaneously in both the audio and video portions of the advertisement. The audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. The video disclosure shall be of a size and shade, and shall appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it.

2. In a radio advertisement, the required information shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it.

3. In a print advertisement or other printed promotional material, the disclosure shall be displayed in a manner sufficient for an ordinary consumer to see and read it, considering factors including but not necessarily limited to type size and style, location, layout, and contrast with the background against which it appears. No other elements in the advertisement including but not necessarily limited to the layout, graphics, other copy, or depictions, shall detract from or obscure the prominence of the disclosure. In multipage documents, the disclosure shall appear on the cover or first page.

4. On product labeling, the required information shall be set out in the same format in which it appears in subparagraph C above, in at least ten (10) point Times New Roman Bold, in a location on the principal display panel that is sufficiently noticeable for an ordinary consumer to read and comprehend it, and in a print that contrasts sharply with the background against which it appears.

5. On a product package, the required information shall be set out in the same format in which it appears in subparagraph C above, in at least twelve (12) point Times New Roman Bold, in a location on the principal display panel that is sufficiently noticeable for an ordinary consumer to read and comprehend it, and in a print that contrasts sharply with the background against which it appears.

Nothing contrary to, inconsistent with, or in mitigation of the required information shall be used in any advertising, promotional material, labeling, or packaging.

VI.

It is further ordered, That respondents, California SunCare, Inc., its successors and assigns, and Donald J. Christal shall:

A. Within thirty (30) days after the date of service of this order, send by first class certified mail, return receipt requested, to each purchaser for resale of any California Tan Heliotherapy product with whom respondents have done business since January 1, 1993, an exact copy of the notice attached hereto as Attachment A. The mailing shall include no other document;

B. In the event that respondents receive any information that subsequent to receipt of Attachment A any purchaser for resale is using or disseminating any advertisement or promotional material that contains any representation prohibited by this order, respondents shall immediately notify the purchaser for resale that respondents will terminate the use of said purchaser for resale if it continues to use such advertisements and promotional materials; and

C. Terminate any purchaser for resale about whom respondents receive any information that such purchaser for resale has continued to use advertisements or promotional materials that contain any representation prohibited by this order after receipt of the notice required by subpart B of this part.

VII.

It is further ordered, That the provisions of this order shall not apply to any label or labeling printed prior to the date of service of this order and shipped by respondents to purchasers for resale prior to one hundred (100) days after service of this order; provided,

however, that any multipage fold-out labels that contain claims that violate Parts I through IV of this order shall be removed from all products in respondents' inventory prior to shipping after the date of service of this order.

VIII.

It is further ordered, That respondents, California SunCare, Inc., its successors and assigns, and Donald J. Christal shall for five (5) years after the last correspondence to which they pertain, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. Copies of all notification letters sent to purchasers for resale pursuant to subparagraph A of part VI of this order; and

B. Copies of all communications with purchasers for resale pursuant to subparagraphs B and C of part VI of this order.

IX.

Nothing in this order shall prohibit respondents from making any representation for any drug that is permitted in labeling for any such drug under any tentative final or final standard promulgated by the Food and Drug Administration, or under any new drug application approved by the Food and Drug Administration.

X.

It is further ordered, That for five (5) years after the last date of dissemination of any representation covered by this order, respondents, or their successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All tests, reports, studies, surveys, demonstrations or other evidence in their possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers or government organizations.

XI.

It is further ordered, That respondent California SunCare, Inc., its successors and assigns, shall:

A. Within thirty (30) days after the date of service of this order, provide a copy of this order to each of respondent's current principals, officers, directors, and managers, and to all personnel, agents, and representatives having sales, advertising, or policy responsibility with respect to the subject matter of this order; and

B. For a period of ten (10) years from the date of service of this order, provide a copy of this order to each of respondent's future principals, officers, directors, and managers, and to all personnel, agents, and representatives having sales, advertising, or policy responsibility with respect to the subject matter of this order within three (3) days after the person assumes his or her position.

XII.

It is further ordered, That respondent Donald J. Christal shall for a period of ten (10) years from the date of service of this order, notify the Commission within thirty (30) days of the discontinuance of his present business or employment and his affiliation with any new business or employment. Each such notice of affiliation with any new business or employment shall include respondent's new business address and telephone number, current home address, and a statement describing the nature of the business or employment and his duties and responsibilities.

XIII.

It is further ordered, That respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising under this order.

XIV.

This order will terminate on February 11, 2017, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any paragraph of this order that terminates in less than twenty (20) years;

B. The order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this paragraph.

Provided further, that if such complaint is dismissed or a federal court rules that the respondents did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this paragraph as though the complaint was never filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

XV.

It is further ordered, That respondents shall, within sixty (60) days after service of this order, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

ATTACHMENT A

BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED
[To be printed on California SunCare, Inc., letterhead]

[date]

Dear [purchaser for resale]:

This letter is to inform you that California SunCare, Inc. ("California Tan"), recently settled a civil dispute with the Federal Trade Commission ("FTC") regarding certain alleged claims for our Heliotherapy™ line of skin care products. As part of that settlement, we are required to notify our distributors and others who sell our products to consumers to stop using or distributing any advertisements or promotional materials containing any such claims.

Allegations of the FTC complaint.

The FTC alleged that certain advertisements and promotional materials for California Tan Heliotherapy products made false and/or unsubstantiated claims, expressly or by implication, that tanning as a result of exposure to sunlight or indoor UV radiation:

- * reduces the risk of certain cancers;
- * has cardiovascular benefits, such as lowering blood pressure and serum cholesterol or providing the benefits of exercise;
- * is an effective treatment for Seasonal Affective Disorder and AIDS;
- * enhances the immune system; and
- * reduces the risk of bone disorders for members of the general population.

In addition, according to the FTC's complaint, the advertising and promotional materials made false and/or unsubstantiated claims, expressly or by implication, that:

- * the negative effects of exposure to sunlight or indoor UV radiation, including skin cancer and premature skin aging, are caused only by burning and overexposure and not moderate exposure and tanning;
- * tanning as a result of exposure to sunlight or indoor UV radiation is not harmful to the skin;
- * use of the products prevents or minimizes the negative effects of exposure to sunlight and UV radiation, including skin cancer and premature skin aging;
- * the MAXIMIZER products help users achieve up to 42% better tanning results; and
- * the products that contain VITATAN improve users' ability to tan by up to 67%.

Finally, the complaint charges that advertising and promotional materials falsely represented, expressly or by implication, that scientific studies demonstrate that exposure to sunlight or indoor UV radiation provides the health benefits stated above and that the American Medical Association endorses exposure to sunlight or indoor UV as a medical treatment.

Our settlement with the FTC.

Our settlement with the FTC prohibits us from making the above listed claims for California Tan Heliotherapy products or any other product for use in connection with tanning, unless the claims are supported by competent and reliable evidence. The settlement also requires us to substantiate any claims about the health benefits of exposure to sunlight or indoor UV radiation and the performance and safety of our skin care products for use in connection with tanning. The settlement also precludes us from making misrepresentations about scientific studies or endorsements.

Under the terms of our settlement with the FTC, all of our advertising for tanning products, with the exception of billboards, television advertising, and advertisements in magazines for salon professionals, for a period of time, must contain a disclosure to the effect that tanning without burning, either with tanning lamps or in sunlight, can cause skin injury. Even after that period ends, if in the future we make any claim about the safety or health benefits of exposure to sunlight or indoor UV radiation in our advertising, labeling or packaging, we must disclose that tanning is associated with skin damage.

We deny the FTC's allegations, but in order to avoid protracted litigation we have entered into a settlement agreement with the FTC. As part of that settlement, we have agreed to send this letter. We request your assistance by asking you to discontinue using, relying on or distributing any California Tan advertising or promotional material currently in your possession that makes any of the claims the FTC challenged as listed above. More specifically, we are asking you not to display any California Tan posters, cash register notices, or other materials that contain any of the claims challenged by the FTC and to remove magazines that contain California Tan advertisements that make the challenged claims from places where they may be seen by any of your customers. We are also asking our distributors to notify their retail or wholesale customers who have any California Tan materials that contain any of the challenged claims to discontinue using them as described above. If you continue to use materials that contain any of the challenged claims, we are required by the FTC settlement to stop doing business with you.

Thank you for your assistance. If you have any questions about this letter, please call 1 800 ____.

Sincerely,

Donald J. Christal
President
California SunCare, Inc.

STATEMENT OF COMMISSIONER ROSCOE B. STAREK, III,
CONCURRING IN PART AND DISSENTING IN PART

I have voted to issue the complaint and final consent order against California Suncare, Inc. (CSI) because, for the most part, it provides appropriate relief for the extremely serious misrepresentations alleged in the complaint about the health and safety effects of ultraviolet radiation (UVR) exposure and the benefits and efficacy of the company's tanning products. However, I do not support including the "untriggered" disclosure in Part V.A of the consent order.¹ In my

¹ Part V.A requires CSI to include the following statement in any advertising and promotional materials disseminated directly to consumers or through purchasers for resale (except television advertising, billboards and advertising in magazines sold only by subscription for which half or more of the readership is comprised of tanning or beauty salon professionals): "CAUTION: Tanning in sunlight or under tanning lamps can cause skin cancer and premature aging -- even if you don't burn." This disclosure is applicable to all of respondent's products that contain a sunscreen ingredient providing a sun protection factor (SPF) of less than 2 and must be made until CSI spends \$1.5 million on dissemination. If CSI does not expend this amount within 2½ years after the service of the order, the untriggered disclosure then becomes applicable to all forms of advertising until the required amount is spent.

view this remedy constitutes corrective advertising, and I am not convinced that the evidence here meets the standard for imposing corrective advertising set forth in *Warner-Lambert Co. v. FTC*, 562 F.2d 749, 762 (D.C. Cir. 1977), *cert. denied*, 435 U.S. 950 (1978).

Both the characteristics and the scope of the untriggered disclosure lead me to conclude that it is actually corrective advertising in disguise. The disclosure requirement has certain characteristics usually associated with corrective advertising: it runs until a specific time period expires and a specific sum of money is exhausted, and it must be made regardless of the representations CSI makes about its products. *See, e.g., American Home Products Corp. v. FTC*, 695 F.2d 681, 700 (3d Cir. 1982) ("[A] genuine corrective advertising requirement . . . demand[s] disclosure in future advertisements regardless of the content of those advertisements."). Most significant, however, the scope of the untriggered disclosure far exceeds its rationale. The disclosure must appear in CSI's general advertising as well as in all promotional materials distributed directly to consumers for any tanning product that does not contain a sunscreen with a minimum SPF of 2. Yet the rationale advanced for this untriggered disclosure is that it is necessary to protect prospective purchasers from being misled by future misrepresentations about the effects of UVR exposure, particularly misrepresentations that might occur at "the point of sale" -- the tanning salons where consumers purchase CSI products. I see no reason for the untriggered disclosure to appear in general advertising if the disclosure's true intent is to prevent possible future deception of consumers at the point of sale.

The disparity between the scope of the disclosure and its rationale suggests that its primary purpose is more consistent with corrective advertising than with an affirmative disclosure. The purpose of corrective advertising is to dispel false beliefs in the public mind created or reinforced by a challenged ad that are likely to endure (and thus to influence purchase decisions) even after the ad stops running. In contrast, the purpose of an affirmative disclosure remedy is to prevent deception from future claims like or related to those challenged.² I recognize that the untriggered disclosure might have some impact on potential future deceptive claims about UVR exposure at the point of sale, but it is overbroad for this particular

² It is difficult to draw bright lines between these possible forms of fencing-in relief, and I am not suggesting that the Commission forgo ordering affirmative disclosures in all circumstances in which the disclosures, while targeted primarily at the prevention of deception from future claims, may also incidentally affect a possible lingering public misimpression created by past advertising. This situation is not the case presented here.

purpose, and the need for it seems minimal in light of the extensive other relief provided by the final order.³ Thus, the main purpose of this untriggered disclosure seems to be to ameliorate lingering false beliefs that may have been created or reinforced by CSI's past claims that UVR exposure not only is not harmful but is positively beneficial.

Although both corrective advertising and affirmative disclosures are forms of fencing-in relief that are well within the Commission's remedial authority, the standard for imposing corrective advertising is significantly more stringent than that for an affirmative disclosure. In imposing corrective advertising, the Commission normally relies on extrinsic evidence of the existence of lingering false beliefs created by past advertising. In certain cases, however, it may be possible to presume the existence of such false beliefs based on the nature and extent of the advertising campaign. *Warner-Lambert*, 562 F.2d at 762-63.⁴ An affirmative disclosure remedy, on the other hand, requires only that the disclosure be "reasonably related" to the alleged violations. In my view, it is important to distinguish between corrective advertising and affirmative disclosures because the Commission should not evade the more demanding standard for corrective advertising where it is clearly applicable.

There appears to be little basis for Part V.A of the order when it is viewed as corrective advertising. There is no direct evidence that CSI's ads and sales materials created or contributed to a lingering false impression that UVR exposure through sunlight and tanning has the health and safety benefits represented by the company. Moreover, I am not persuaded that it would be appropriate to presume that the company's message -- that UVR exposure is beneficial -- would endure in light of pervasive messages to the contrary.

³ In addition to prohibiting misrepresentations about the effects of UVR exposure and tanning and unsubstantiated claims about the performance, safety, benefits, or efficacy of products or services used in connection with tanning, the consent order requires two additional affirmative disclosures (Parts V.B and V.C) that are triggered by claims about the safety or health benefits of exposure to sunlight or indoor UVR. The language of these triggered disclosures is similar to that of the untriggered disclosure. The triggered disclosures apply to labeling and packaging --forms of advertising exempted from the untriggered disclosure -- and, after the untriggered disclosure requirement runs out, to all other advertising and promotional material. The order (Part VI) also requires CSI to send a letter to distributors and retailers of the company's tanning products that describes the Commission's enforcement action and advises them to stop using ads and promotional materials that contain any of the representations prohibited by the order or face losing CSI's business.

⁴ See, e.g., *Eggland's Best, Inc.*, Docket No. C-3520 (Aug. 15, 1994) (Statement of Roscoe B. Starek, III).

Statement

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By issuing this consent order against CSI, the Commission comes perilously close to lowering its standard for imposing corrective advertising by erasing the already blurred dividing line between that form of fencing-in relief and affirmative disclosures. Such a change is one that I cannot endorse.

IN THE MATTER OF

TRANS UNION CORPORATION

Docket 9255. Interlocutory Order, Feb. 11, 1997

ORDER DIRECTING GENERAL COUNSEL
TO ENFORCE THIRD-PARTY SUBPOENA

On February 5, 1997, pursuant to Section 3.38(c) of the Commission's Rules of Practice, 16 CFR 3.38(c) (1996), Administrative Law Judge Lewis F. Parker certified to the Commission a motion by Trans Union Corporation ("Trans Union") for enforcement of a third-party subpoena to First National Bank of Omaha ("FNBO"). Judge Parker's certification included a recommendation that the Commission grant the motion. Also before the Commission were the subpoena, the motion to quash, Trans Union's response thereto and the Judge's order denying the motion to quash.

On October 29, 1996, the respondent Trans Union served on FNBO a *subpoena duces tecum* seeking deposition testimony of "a person or persons with knowledge to respond to questions regarding . . . (1) the factors that influence [the bank's] decisions regarding a consumer's eligibility for credit;" and "(2) if and how [the bank] use[s] credit scorer data in [its] decisions regarding credit eligibility." The subpoena directed that documents pertaining to those topics be made available at the deposition.¹

On December 16, 1996, FNBO filed a motion to quash the subpoena, stating that Trans Union "is attempting to use the Subpoena as a means for gaining an advantage in an unrelated multi-million dollar litigation brought by FNBO against Trans Union in the State of Nebraska ('Nebraska Litigation')." Motion at 1. The bank also argued that the subpoena should be quashed because "the discovery sought is obtainable from other sources that are less burdensome and is otherwise overly broad." *Id.* at 5. FNBO contended further that "the information sought by Trans Union is oppressive to FNBO in that it will permit Trans Union to evade a discovery order in the Nebraska Litigation" (*Id.* at 7) and that the subpoena "unnecessarily commands disclosure of confidential information at the heart of FNBO's

¹ Trans Union also served subpoenas seeking similar or identical information from nine other banks. Order Denying Motin To Quash at 1.

business." *Id.* at 9. The bank urged the Administrative Law Judge to "enter an appropriate order allowing Trans Union to select another bank from whom to take the discovery it seeks from FNBO." *Id.* at 10.

Trans Union supported its subpoena to FNBO arguing that the information sought is relevant to Trans Union's defenses in the instant proceeding (Response at 2-4), that negotiations between Trans Union and FNBO have limited the scope of the request and irrelevance are vastly overblown." *Id.* at 6. Trans Union also noted its willingness to negotiate "a protective order to guard against unnecessary disclosure of [the bank's] proprietary information" (*Id.* at n.2). Finally, Trans Union argued that the motion to quash should be denied because even if the subpoena "seeks out-of-time-discovery in connection with the Nebraska litigation[,] . . . this should not serve as a basis for quashing the Subpoena" because "federal courts as a general matter will not limit the use of discovery obtained in one forum from use in another forum, or proceeding, provided the discovery being sought is relevant." *Id.* at 7.

Citing Section 3.31(c) of the Commission's Rules, the Administrative Law Judge denied the motion to quash. He stated that FNBO's motion "does not establish that respondent has fashioned its discovery request in this proceeding solely to gain an advantage in the Nebraska litigation." Order at 1. Judge Parker concluded that FNBO had not shown that Trans Union "should be forced to withdraw the subpoena and issue one to another bank, simply to avoid inconvenience to FNBO," that the subpoena "seeks relevant information, is not too broad or excessively burdensome, and was not designed to harm FNBO or to gain an unfair advantage in the Nebraska litigation." *Id.* at 2. He, therefore, recommends that the Commission direct enforcement of the subpoena.

The Commission has a strong interest in ensuring the integrity of its adjudicative process. In addition, the Commission is satisfied that the information and documentation specified in the subpoena are relevant for discovery purposes in the current proceeding, and that the burden on FNBO is not unreasonable. That the respondent might have obtained, or be able to obtain, from another banking institution the same or similar information to that which it seeks from FNBO is not reason to deny the respondent the right to conduct its defense in this matter as it deems best. Accordingly,

It is ordered, That, the General Counsel promptly take appropriate action to enforce Trans Union's subpoena to FNBO.

IN THE MATTER OF

PHASEOUT OF AMERICA, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3716. Complaint, Feb. 12, 1997--Decision, Feb. 12, 1997

This consent order requires, among other things, the New York-based firms to send a postcard to identifiable past purchasers of PhaseOut, a purported stop-smoking device, notifying them of the Commission's action. The order also requires the respondents to have scientific substantiation for claims that PhaseOut or any other smoking-cessation product reduces the amount of nicotine, tar, and carbon monoxide smokers receive. In addition, the consent order prohibits the respondents' misrepresentations concerning any test, study or endorsement.

Appearances

For the Commission: *Shira D. Modell, Lesley Anne Fair and Michael Ostheimer.*

For the respondents: *David Clanton, Baker & McKenzie, Washington, D.C. and David Levy, Kraver & Levy, New York, N.Y.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Phaseout of America, Inc. and Products & Patents, Ltd., corporations ("respondents"), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Phaseout of America, Inc. is a Delaware corporation with its principal office or place of business at 140 Broadway, Lynbrook, New York.

2. Respondent Products & Patents, Ltd., is a Delaware corporation with its principal office or place of business at 140 Broadway, Lynbrook, New York.

3. Respondents have manufactured, advertised, labeled, offered for sale, sold, and distributed products to the public, including the PhaseOut device ("PhaseOut"), which punches one or more small holes in cigarettes and is intended to reduce the amount of tar,

nicotine, and carbon monoxide smokers get from their cigarettes and aid in smoking cessation. PhaseOut is a "device" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.

4. The acts and practices of respondents alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

5. At the time the acts and practiced alleged in this complaint occurred, respondents were under common management and control. Respondent Phaseout of America, Inc. advertised and sold PhaseOut. Respondent Products & Patents, Ltd. owned the patents to PhaseOut, licensed and sold the device to Phaseout of America, Inc., and was a substantial shareholder of Phaseout of America, Inc.

6. Respondents have disseminated or caused to be disseminated advertisements for PhaseOut, including but not necessarily limited to the attached Exhibits A through J. These advertisements contain the following statements and depictions:

INFOMERCIAL #1

A. MASON ADAMS: You're going to see some unprecedented findings and hear some remarkable stories about a breakthrough device that can help you phase cigarettes out of your life without expensive therapies, patches or drugs. . . . Its name is PhaseOut and its effectiveness in reducing the most harmful components of cigarette smoke has been scientifically confirmed in research conducted at such prestigious institutions as the Johns Hopkins University School of Medicine. . . . It creates an additional filter within the existing filter but it doesn't change the taste or the draw of your cigarette. (Exhibit A, p. 1).

B. CONSUMER ENDORSER: There's no point not to use it if you're a smoker. It's not as if you can tell a difference in your cigarette. It's not as if you have to switch to a disgusting tasting cigarette with lower nicotine. It's the same thing that you've always done, only it's less harmful. (Exhibit A, pp. 2 and 18).

C. CONSUMER ENDORSER: PhaseOut is good, it's gradual, you're not even aware that it's working. Then all of a sudden, you realize you're smoking a lot less. (Exhibit A, pp. 2 and 18).

D. MASON ADAMS: If you're like most people, you'll start feeling better right away, while you're preparing to quit. Indeed, PhaseOut's impact is so definite, that even if you don't quit, you'll be significantly reducing the harmful effects of every cigarette. (Exhibit A, p. 2).

E. FIRST CONSUMER ENDORSER: At least you're eliminating a lot of the irritants that are caused by the tars and nicotines. And you start feeling better, I think, almost from the beginning.

SECOND CONSUMER ENDORSER: I'm not as winded. I just feel, even though I'm still smoking, yes, I feel a little bit healthier. (Exhibit A, p. 2).

F. MASON ADAMS: Now, were you a very heavy smoker?

DR. ARNOLD BENSON: I was a heavy smoker. I smoked for forty years exactly, and smoked not less than two packages of cigarettes a day.

ADAMS: And you attribute your quitting to PhaseOut?

BENSON: I stopped smoking because of PhaseOut. PhaseOut did it gradually for me.

ADAMS: And you're still not smoking today?

BENSON: Well, it's two-and-a-half years since I quit. Forty years of smoking and I have gone two-and-a-half-years without smoking and I don't miss it. (Exhibit A, p. 3).

G. MASON ADAMS: Doctor, I understand that there's a medical study which confirms that PhaseOut reduces the amount of nicotine in a regular cigarette.

DR. ROBERT BRANDSTETTER: At Johns Hopkins University, volunteers who smoked for a considerable period of time were enrolled in a study which demonstrated that PhaseOut actually reduced the amount of nicotine in their blood over the period of time of the study.

Depiction: Front cover of journal Pharmacology, Biochemistry and Behavior

Graphic: The Johns Hopkins University School of Medicine

"Smoking exposure reductions of 30% to 80% were obtained for both nicotine and carbon monoxide."

ADAMS: So, the idea is then that if you reduce the amount of addictive nicotine, you'll thereby be reducing the addiction. Is that correct?

BRANDSTETTER: Exactly. And at the same time, you'll be actually reducing the possibility of withdrawal symptoms. And it is these withdrawal symptoms which cause people not to be able to stop smoking. (Exhibit A, pp. 3-4).

H. VOICE-OVER: It works without having to change your cigarette brand, without changing the taste or enjoyment, and, best of all, it works without patches, painful clips or expensive counseling. (Exhibit A, p. 5).

I. CONSUMER ENDORSER: I've been smoking these for about two or three years, it tastes like the same thing. (Exhibit A, p. 5).

J. VOICE-OVER: There is medical evidence that PhaseOut lets you do something good for yourself. The April 1992 issue of Pharmacology, Biochemistry and Behavior published results of a research study conducted at the Johns Hopkins University School of Medicine. This prestigious journal reports that PhaseOut significantly reduced human exposure to tobacco smoke constituents. Reductions of 30% to 80% were observed for both nicotine and carbon monoxide. The report concluded that the use of the PhaseOut device could be particularly useful as a weaning method prior to smoking cessation. (Exhibit A, p. 6).

K. MASON ADAMS: If you follow the PhaseOut plan, over a period of several weeks you will gradually reduce the levels of damaging substances in every cigarette you smoke.

Graphic: Three cigarettes, labeled 'Nicotine,' 'Tar' and 'Carbon Monoxide,' each shrinking in size PhaseOut is a four-step program where you control your progress.

Graphic: Three cigarettes shown shrinking and labeled as follows:

Results after Phase four

Nicotine	81%
Tar	92%
Carbon Monoxide	89%

Here's how it works. Take any standard size pack of cigarettes, hard or soft, kings or 100's, put it into the PhaseOut device and press down. Microfine, almost invisible perforations now create a condensation screen that cuts nicotine levels by

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26%, the levels of tar by almost 41%, and the levels of toxic gasses like carbon monoxide by 58%.

Graphic: Three cigarettes shown shrinking and labeled as follows:

Results after Phase one	
Nicotine	26%
Tar	41%
Carbon Monoxide	58%

Phase two reduces nicotine nearly in half and further reduces the levels of tar and toxic gasses.

Graphic: Three cigarettes shown shrinking and labeled as follows:

Results after Phase two	
Nicotine	47%
Tar	66%
Carbon Monoxide	73%

Phase three cuts levels of nicotine by nearly 64%, tar by 80%, and carbon monoxide by 83%.

Graphic: Three cigarettes shown shrinking and labeled as follows:

Results after Phase three	
Nicotine	64%
Tar	80%
Carbon Monoxide	83%

By the time you reach phase four, your nicotine consumption is reduced by nearly 81%. You're also taking in 92% less tar and 89% less toxic gasses.

Graphic: Three cigarettes shown shrinking and labeled as follows:

Results after Phase four	
Nicotine	81%
Tar	92%
Carbon Monoxide	89%

(Exhibit A, pp. 6-7).

L. MASON ADAMS: You can stay on each phase as long as you like until you're ready to move on. You're in control. You know that with each phase, you're doing more good for your health. And when you get to phase four, you can quit whenever you're ready. PhaseOut has helped many smokers quit cigarettes for good and thousands of others to smoke less damaging cigarettes. (Exhibit A, pp. 7-8).

M. CONSUMER ENDORSER: You wake up in the morning, you're not as congested, you don't have to wait for your chest to clear. I can run up and down the stairs and I can go to the park and I can play ball and I can, you know, run around with the kids and not be winded and not have to sit down and say "Mommy's tired. I can't do this." (Exhibit A, p. 8).

N. BOBBY RYDELL: I've gone from over two-and-a-half packs a day to a pack a day, and I know I'm on my way to quitting because PhaseOut makes it easy. (Exhibit A, p. 8).

O. VOICE-OVER: Nobody has to tell you the damage smoking causes. But many people still enjoy smoking. And even if you want to want to cut back or quit, most methods are annoying, painful, or expensive. But now, there's PhaseOut, a breakthrough device that drastically reduces the harmful effects of cigarette smoking without changing the taste or the pleasure. You don't have to change brands to get all the benefits of reduced nicotine, tar, and other harmful substances. PhaseOut works on any standard pack. With a simple punch, it forms a

condensation filter within your cigarette, which traps more harmful substances before they ever reach your body. By the end of the program, you're smoking 81% less nicotine, 92% less tar, and 89% less toxic gasses. (Exhibit A, pp. 9, 13 and 17).

P. VOICE-OVER: PhaseOut is a real smoker's solution. You keep smoking until you're ready to cut down or quit. And because it gradually reduces the nicotine you inhale, you don't suffer the painful withdrawal symptoms associated with going cold turkey.

Graphic: PHASEOUT

- * Smoke less harmful cigarettes

- * Cut down

- * Quit for good

- * No withdrawal symptoms

(Exhibit A, pp. 9, 13 and 17).

Q. CONSUMER ENDORSER: We, we asked her, we ultimatumed her, everything we could do, we couldn't get her to stop. But she found the PhaseOut program, luckily, and she stopped, and we're extremely happy about it. (Exhibit A, p. 10).

R. VOICE-OVER: With PhaseOut, you're not hit with agonizing withdrawal symptoms. The changes are so gradual, so subtle, you won't feel any negative physical effects. (Exhibit A, p. 10).

S. FIRST CONSUMER ENDORSER: With PhaseOut, you can cut back, you don't have to quit, and you're still a lot better off than before.

SECOND CONSUMER ENDORSER: With the use of PhaseOut, the system, I could only come out ahead. I would either stop, cut down, or whatever I smoked, I would have eliminated most of the poisons, tars, nicotines, carbon monoxides. So you couldn't lose. (Exhibit A, p. 12).

T. MASON ADAMS: We've been looking at a major development in the move to end smoking, called PhaseOut, which seems to be producing some remarkable results, by giving people the tool they need to cut down or eliminate their addiction to smoking. (Exhibit A, p. 14).

U. VOICE-OVER (quoting Dr. Robert Brandstetter): "In the late 1970's the Surgeon General acknowledged that one of the most difficult aspects in the cessation of smoking was avoiding withdrawal symptoms. And it is the withdrawal symptoms that discourage people from actually stopping smoking. A method had to be devised that would gradually reduce the amount of nicotine in the blood and therefore avoid withdrawal symptoms. By using PhaseOut appropriately you can avoid withdrawal symptoms." (Exhibit A, p. 15).

INFOMERCIAL #2

V. CONSUMER ENDORSER: When I got the, um, PhaseOut product I was concerned that because of the reduced nicotine and tar and all the other poisons that I would immediately increase my intake of cigarettes. However that wasn't the case, I went, I started on phase one, um, the first day I got it, I was all excited, and then went immediately, within two days to phase two because I didn't notice a difference at all. (Exhibit B, p. 6).

W. CONSUMER ENDORSER: I thought that I would want to smoke more cigarettes but I didn't, in fact I smoked less cigarettes and I wasn't thinking about it. (Exhibit B, p. 6).

TELEVISION COMMERCIAL ("Stop Smoking Or Your Money Back")

X. VOICE-OVER: Introducing PhaseOut, the stop smoking system that actually lets you continue to smoke until you don't need to anymore.

Place your favorite brand of cigarettes inside the PhaseOut device and press down, that's all you have to do. PhaseOut actually eliminates up to 92% of tar and 89% of carbon monoxide. PhaseOut reduces up to 81% of nicotine to help break the cigarette addiction.

* * *

Yes with PhaseOut you can actually keep smoking, because smoking is less harmful until you're ready to quit. 100% guaranteed or your money back. (Exhibit C).

RADIO ADVERTISEMENT ("Advertorial")

Y. VOICE-OVER: Here's an announcement smokers everywhere have been waiting to hear: Tests at Johns Hopkins University prove a revolutionary new system called PHASEOUT eliminates up to 80% of the nicotine and carbon monoxide in any brand of cigarettes. It doesn't change the flavor or satisfaction of your favorite brand, doesn't require patches or prescriptions. . . . Smoke a pack a day? With PHASEOUT that's like cutting down to just 4 cigarettes. And as PHASEOUT gradually eliminates the nicotine it gradually eliminates your "need" for cigarettes. Now you can quit easily, without cold turkey, or continue smoking cigarettes that are far less dangerous to your health. (Exhibit D).

PRINT ADVERTISEMENT #1

Z. STOP SMOKING FOREVER -- WITH PHASEOUT® Guaranteed or your money back

NEW EASY WAY -- Clinically tested and validated by Johns Hopkins University School of Medicine to reduce up to 80% of nicotine and carbon monoxide in cigarette smoke.

- * Works automatically -- no will power needed
- * Virtually no change in taste or draw
- * Ends nicotine craving forever
- * No cravings or urges * 100% safe
- * No side effects or unpleasant withdrawal symptoms
- * Recommended by doctors and health organizations
- * Eliminates up to 80% of the tars, nicotine and poison in cigarette smoke -- so even if you decide to keep smoking, you will no longer face the same danger of cancer and heart disease (Exhibit E).

PRINT ADVERTISEMENT #2

AA. PHASEOUT

NEW Proven new device shown to reduce the dangers of cigarettes while helping even hardcore smokers quit.

PhaseOut is a scientifically designed and patented mechanical device that eliminates toxins in cigarette smoke. Tests conducted at the U.S. Testing Company

and confirmed in recent studies at the Johns Hopkins School of Medicine show that PhaseOut lets smokers gradually and easily withdraw from [sic] nicotine addiction without the stress and irritation of "cold turkey."

Simply place an unopened pack of cigarettes in PhaseOut and press. PhaseOut instantly puts tiny perforations into your filtered or unfiltered cigarette. This allows cool air to mix with the hot gases created when you smoke. The resulting condensation traps up to 90% of the tars, nicotine and other poisons, and keeps them from reaching your lungs.

Use the simple 8-week PhaseOut program (included) to stop smoking entirely, or just use PhaseOut to create safer cigarettes. Either way, your health will benefit. Try fast, simple and effective PhaseOut now. (Exhibit F).

PRINT ADVERTISEMENT #3

BB. Would you spend the price of two cartons of cigarettes to protect your unborn child?

Maternal smoking is one of the most significant causes of serious risk in pregnancy and is linked with complications including miscarriages, pre-term birth, low birth weight, and respiratory distress syndrome. If you're pregnant, you owe it yourself and your unborn child to stop smoking!

If you haven't been able to stop smoking before, the four-step PHASEOUT® SYSTEM will help win this important battle for you, your baby, and all your other family members who are affected by your second-hand smoke.

* * *

PHASEOUT prevents up to 80% of the deadly tar, nicotine, and other poisons from ever entering your body.

And the taste, flavor and draw of your cigarettes aren't changed!

* * *

With PHASEOUT you'll successfully wean yourself of smoking at your own pace, with your own timetable. (Emphasis in original) (Exhibit G).

PRINT ADVERTISEMENT #4

CC. PRACTICE SAFE SMOKING.

* * *

Clinical research by Johns Hopkins University and tests by US Testing Company prove PHASEOUT's patented microperforation system significantly reduces all harmful substances in the cigarette brand you're lighting up right now.

It won't noticeably affect the taste or draw and you will still enjoy the pleasure and satisfaction of smoking your favorite brand. But by gently and gradually eliminating up to 80% of your nicotine intake, PHASEOUT makes it easier to quit. Without cold turkey withdrawal symptoms or side effects.

* * *

Protect yourself with PHASEOUT. Because what you don't smoke can't harm you. (Exhibit H).

PROMOTIONAL FLYER

DD. PHASEOUT MAKES IT SAFER TO SMOKE, EASIER TO QUIT.

The amazing scientific breakthrough that makes cigarettes 80% less harmful.

* * *

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PHASEOUT lets you smoke cigarettes that are over 80% less harmful. You still get the taste, pleasure and satisfaction without changing brands. You just don't get the nicotine, tars, carbon monoxide and other toxins. PHASEOUT's patented micro-perforations block them right out. So you should feel better almost immediately and you enjoy a healthier lifestyle, because what you don't smoke can't harm you!

* * *

Until today, the odds were against you: 9 out of 10 people who try to quit fail. No wonder. The withdrawal symptoms that come with the abrupt elimination of nicotine can be brutal.... PHASEOUT helps eliminate these withdrawal symptoms. PHASEOUT gently and gradually blocks out the nicotine, enabling your body to slowly detoxify. You're in total control. You set your own pace. For the first time, you can end your nicotine addiction completely without the symptoms of "cold turkey" withdrawal. So you will succeed . . . guaranteed!

PHASEOUT IS SCIENTIFICALLY AND CLINICALLY PROVEN

Research confirms the benefits of the PHASEOUT System. Tests conducted by Johns Hopkins University and U.S. Testing Laboratories confirm that PHASEOUT gradually eliminates over 80% of the nicotine, tars, carbon monoxide and all other tobacco toxins found in cigarette smoke. (Exhibit I).

WORLD WIDE WEB HOME PAGE

EE. PHASEOUT THE WEAN-MACHINE TO HELP YOU QUIT SMOKING

The amazing scientific breakthrough that gradually reduces NICOTINE and other unwanted substances from cigarette smoke

* * *

Depiction: Four bar graphs of shrinking cigarettes labeled "LEVELS OF TAR," "LEVELS OF NICOTINE," "LEVELS OF CARBON MONOXIDE," and "TOTAL PARTICULATE MATTER."

Illustrated are the reductions of nicotine and other toxins during each phase. (Exhibit J).

FF. STOP SMOKING THE SAME WAY YOU STARTED...GRADUALLY

Try PHASEOUT yourself, or share it with someone you love.

You may be surprised at just how easy it is to kick the habit for good.

PHASEOUT is a treatment for your cigarettes, not you. Its patented design allows you to punch tiny, undetectable holes in your cigarettes, causing condensation...a natural filtering process that traps over 80% of the toxins.

Each phase adds more perforations, further decreasing the levels of nicotine, tar and carbon monoxide. It's a safe, effective method approved by doctors and validated by Johns Hopkins University School of Medicine. (Exhibit J).

GG. PHASEOUT IS SCIENTIFICALLY PROVEN

Research confirms the effectiveness of PHASEOUT. Tests conducted by Johns Hopkins University and U.S. Testing Laboratories conclude that PHASEOUT gradually eliminates up to 80% of the nicotine, tar, carbon monoxide and total particulate matter found in cigarette smoke. (Exhibit J).

HH. "I've been a two pack a day (and more) smoker for twenty years. I have tried almost every way to quit over the past fifteen years. None of the programs could deal with my major challenge...staying quit. I am in the third phase of the (PHASEOUT) program which means I am reducing tar by 77% and the nicotine

by 66% but miraculously I am smoking less than ever. To me it is a miracle because I am trying to cut down. I want to thank everyone involved."

Donna

Akron, Ohio (Exhibit J).

7. The Johns Hopkins University research to which the advertisements attached as Exhibits A through J refer is a study that has been reported as Stitzer, Brigham and Felch, Phase-Out Filter Perforation: Effects on Human Tobacco Smoke Exposure, 41 Pharmacology, Biochemistry and Behavior 748 (1992) (hereinafter, the "Johns Hopkins study").

8. Through the means described in paragraph six, respondents have represented, expressly or by implication, that:

A. The Johns Hopkins study proves that PhaseOut significantly reduces the amount of tar, nicotine, and carbon monoxide smokers get under normal smoking conditions.

B. The Johns Hopkins study proves that PhaseOut is effective in enabling smokers to quit smoking.

C. The Johns Hopkins study proves that smokers who use PhaseOut and continue to smoke significantly reduce their risk of smoking-related health problems.

9. In truth and in fact:

A. The Johns Hopkins study does not prove that PhaseOut significantly reduces the amount of tar, nicotine, and carbon monoxide smokers get under normal smoking conditions. Among other reasons, that study was conducted under carefully controlled conditions that did not reflect how smokers actually smoke, in part because they did not take into account such behavior as compensatory smoking -- the tendency of some smokers who switch to lower yield cigarettes to smoke more cigarettes or smoke each one more intensively.

B. The Johns Hopkins study does not prove that PhaseOut is effective in enabling smokers to quit smoking.

C. The Johns Hopkins study does not prove that smokers who use PhaseOut and continue to smoke significantly reduce their risk of smoking-related health problems.

Therefore, the representations set forth in paragraph eight were, and are, false or misleading.

10. Through the means described in paragraph six, respondents have represented, expressly or by implication, that:

A. On Phase One of the PhaseOut program, smokers will reduce the amount of nicotine they get from smoking a cigarette by 26 percent, the amount of tar they get by 41 percent, and the amount of carbon monoxide they get by 58 percent.

B. On Phase Two of the PhaseOut program, smokers will reduce the amount of nicotine they get from smoking a cigarette by 47 percent, the amount of tar they get by 66 percent, and the amount of carbon monoxide they get by 73 percent.

C. On Phase Three of the PhaseOut program, smokers will reduce the amount of nicotine they get from smoking a cigarette by 64 percent, the amount of tar they get by 80 percent, and the amount of carbon monoxide they get by 83 percent.

D. On Phase Four of the PhaseOut program, smokers will reduce the amount of nicotine they get from smoking a cigarette by 81 percent, the amount of tar they get by 92 percent, and the amount of carbon monoxide they get by 89 percent.

E. PhaseOut is effective in enabling smokers to quit smoking.

F. PhaseOut significantly reduces the risk of smoking-related health problems, including lung cancer and heart disease, for smokers who continue to smoke.

G. PhaseOut significantly reduces the amount of tar, nicotine, and carbon monoxide that smokers get without changing a cigarette's taste or draw.

H. Smokers using PhaseOut will not compensate for the product's effects by increasing the number of cigarettes they smoke per day.

I. PhaseOut is effective in enabling smokers to quit smoking without withdrawal symptoms.

J. PhaseOut provides immediate health benefits, including reduced congestion, coughing, and windedness, for smokers who continue to smoke.

11. Through the means described in paragraph six, respondents have represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representations set forth in paragraph ten, at the time the representations were made.

12. In truth and in fact, respondents did not possess and rely upon a reasonable basis that substantiated the representations set forth in paragraph ten, at the time the representations were made. Therefore, the representation set forth in paragraph eleven was, and is, false or misleading.

13. Through the means described in paragraph six, respondents have represented, expressly or by implication, that testimonials from consumers appearing in the advertisements for PhaseOut reflect the typical or ordinary experience of members of the public who use the product.

14. Through the means described in paragraph six, respondents have represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representation set forth in paragraph thirteen, at the time the representation was made.

15. In truth and in fact, respondents did not possess and rely upon a reasonable basis that substantiated the representation set forth in paragraph thirteen, at the time the representation was made. Therefore, the representation set forth in paragraph fourteen was, and is, false or misleading.

16. The acts and practices of respondents as alleged in this complaint constitute unfair or deceptive acts or practices, and the making of false advertisements, in or affecting commerce in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

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EXHIBIT A

PHASEOUT: THE SMOKER'S SOLUTION

EXHIBIT A

PHASEOUT: THE SMOKER'S SOLUTION

VOICE-
OVER:
(male)

This program length advertisement is brought to you by the Regal Group, Incorporated.

Regal logo with superimposed text: This program length advertisement is brought to you by Regal Group, Inc.

VOICE-
OVER:
(male)

Do you need an inexpensive, painless and easy solution to your smoking problem? If you want a healthier lifestyle without sacrificing anything, please pay close attention to the following information about Phaseout, the smoker's solution.

Pictures of hands holding cigarettes, an ashtray filled with lit cigarettes. The words 'Inexpensive,' 'Painless,' and 'Easy' move across the screen.

Graphic: PHASEOUT
The
Smoker's
Solution

MASON
ADAMS:
(V/O)

You're going to see some unprecedented findings and hear some remarkable stories about a breakthrough device that can help you phase cigarettes out of your life without expensive therapies, patches or drugs.

Video montage of testimonialists, people on the street.

Superimposed text:
This program is a paid advertisement for PhaseOut.

MASON
ADAMS:

I'm Mason Adams and I'm a pretty good example of what I've just been talking about. Twenty years ago, I was finally able to quit smoking for good. But I remember all too vividly what an agonizing struggle it was. So when I was asked to be the host of this program, I jumped at the chance. Its name is Phaseout and its effectiveness in reducing the most harmful components of cigarette smoke has been scientifically confirmed in research conducted at such prestigious institutions as the Johns Hopkins University School of Medicine. The idea is this: Phaseout accurately applies microfine perforations to the filter of each cigarette. This simple perforation has a remarkable effect. It creates an additional filter within the existing filter but it doesn't change the taste or the draw of your cigarette. As warm air is drawn through the cigarette, cool air is drawn in through the perforation. The hot air hits the cold air and a trace of condensation forms. That's the additional filter which traps more of the toxins before you can inhale them into your body.

Picture of Phaseout device, with its accompanying box

Graphic: image of Phaseout device punching pack of cigarettes

Graphic: representation of cigarette with perforation; diagram shows direction of air movement, condensation

EXHIBIT A

CONSUMER
ENDORSER
A: Because it's done so gradually, I didn't miss anything going from phase to phase, I didn't feel I was being deprived of anything.

CONSUMER
ENDORSER
B: There's no point not to use it if you're a smoker. It's not as if you can tell a difference in your cigarette. It's not as if you have to switch to a disgusting tasting cigarette with lower nicotine. It's the same thing that you've always done, only it's less harmful.

Consumer
Endorser
C: Phaseout is good, it's gradual, you're not even aware that it's working. Then all of a sudden, you realize you're smoking a lot less.

MASON
ADAMS: If you're like most people, you'll start feeling better right away, while you're preparing to quit. Indeed, Phaseout's impact is so definite, that even if you don't quit, you'll be significantly reducing the harmful effects of every cigarette.

CONSUMER
ENDORSER
D: At least you're eliminating a lot of the irritants that are caused by the tars and nicotines. And you start feeling better, I think, almost from the beginning.

CONSUMER
ENDORSER
E: I'm not as winded. I just feel, even though I'm still smoking, yes, I feel a little bit healthier.

CONSUMER
ENDORSER
F: I'm doing something good for me with the Phaseout.

MASON
ADAMS: The Phaseout program is receiving some very interesting attention in the medical community. With me is pulmonary specialist Dr. Robert Brandstetter, Associate Director of Medicine at New Rochelle Hospital Medical Center, and distinguished cardiologist Dr. Arnold Benson, former Chief of Medical Services to the Pentagon.

Dr. Benson, as a cardiologist, what stimulated your professional interest in Phaseout?

Superimposed text:
Dr. Robert Brandstetter
Pulmonary Specialist
Associate Director of Medicine
New Rochelle Hospital Medical
Center

Dr. Arnold Benson
Former Chief, Medical Services
The Pentagon

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EXHIBIT A

DR. ARNOLD BENSON: Well, here I was, a physician and a cardiologist and a smoker. And I was embarrassed. I have taken care of many sick people, who I had to recommend that they stop immediately the habit of smoking, and yet they would walk into my office and the smell of smoke was ever present. I was afraid of stopping smoking, I didn't want to go through the withdrawal phase.

ADAMS: Now, were you a very heavy smoker?

DR. BENSON: I was a heavy smoker. I smoked for forty years exactly, and smoked not less than two packages of cigarettes a day.

ADAMS: And you attribute your quitting to Phaseout?

DR. BENSON: I stopped smoking because of Phaseout. Phaseout did it gradually for me.

ADAMS: And you're still not smoking today?

DR. BENSON: Well, it's two-and-a-half years since I quit. Forty years of smoking and I have gone two-and-a-half-years without smoking and I don't miss it.

ADAMS: Doctor, I understand that there's a medical study which confirms that Phaseout reduces the amount of nicotine in a regular cigarette.

DR. ROBERT BRAND-STETTER: At Johns Hopkins University, volunteers who smoked for a considerable period of time were enrolled in a study which demonstrated that Phaseout actually reduced the amount of nicotine in their blood over the period of time of the study.

ADAMS: So, the idea is then that if you reduce the amount of addictive nicotine, you'll thereby be reducing the addiction. Is that correct?

Depiction:
Front cover of journal
Pharmacology, Biochemistry and Behavior

Graphic:
The Johns Hopkins University
School of Medicine

"Smoking exposure reductions of 30% to 80% were obtained for both nicotine and carbon monoxide."

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Complaint

EXHIBIT A

DR.
BRAND-
STETTER

Exactly. And at the same time, you'll be actually reducing the possibility of withdrawal symptoms. And it is these withdrawal symptoms which cause people not to be able to stop smoking.

VOICE-
OVER:
(male)

Let's face it, one of the things that drives smokers mad is being lectured about it, particularly from people they don't even know.

Video montage of people on the street

CONSUMER
ENDORSER
G:

I live in California and people in California really hate smoking.

CONSUMER
ENDORSER
H:

Even my 13 grandchildren try to stop me.

Voice:

What do they do?

H:

Take my cigarettes and throw them away.

CONSUMER
ENDORSER
I:

A lot of my friends are nonsmokers and I have to not smoke in the car.

VOICE-
OVER:
(male)

Nonsmokers don't know how physically and psychologically difficult it is to stop and how many smokers have tried and failed using all kinds of methods.

CONSUMER
ENDORSER
J:

It's not like I started and I don't want to quit. I really do, would like to quit. It's just, it's very hard, it's very addicting.

CONSUMER
ENDORSER
K:

All efforts have failed.

CONSUMER
ENDORSER
L:

I had almost kind of resigned myself to the fact that I was going to be a smoker until the day that I died. And I knew that if I continued that that my life would be shorter, and you see all the warnings and hear things and know of people who actually have lost their, shortened their lives by doing this stupid thing. And still you don't stop.

Complaint

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EXHIBIT A

VOICE-
OVER:
(male)

We're here on the streets of New York City to talk to smokers about Phaseout, the smoker's solution. It works without having to change your cigarette brand, without changing the taste or enjoyment, and, best of all, it works without patches, painful clips or expensive counselling.

Words 'New York City' move across screen, over pictures of people on the street

Graphic: PHASEOUT
The
Smoker's
Solution

Graphic: PHASEOUT
• Without Changing Brands
• Without Changing Taste
• Without Patches, Clips or
Counselling

CONSUMER
ENDORSER
M:

I don't feel any different

CONSUMER
ENDORSER
N:

Well, it doesn't taste any different.

K:

I've been smoking these for about two or three years, it tastes like the same thing.

CONSUMER
ENDORSER
O:

Yeah, you couldn't even tell, I mean it tastes exactly the same.

CONSUMER
ENDORSER
P:

It's hard to believe.

Voice:

Really? Why is it hard to believe?

CONSUMER
ENDORSER
Q:

Can't tell.

Voice:

You can't tell at all?

Q:

You can't.

CONSUMER
ENDORSER
R:

Tastes like a Marlboro.

Voice:

What if I told you that in that one drag, in the one thing we just did, you cut down 30% on the nicotine and some of the other toxins that are in the cigarette?

Superimposed text:
The Complete Program
Reduces Nicotine by 81%

M:

Really? Well, I would like to see proof, some kind of data showing that. And if so, then I would buy it and I would punch every pack.

EXHIBIT A

VOICE-
OVER:
(male)

There is medical evidence that Phaseout lets you do something good for yourself. The April 1992 issue of Pharmacology, Biochemistry and Behavior published results of a research study conducted at the Johns Hopkins University School of Medicine. This prestigious journal reports that Phaseout significantly reduced human exposure to tobacco smoke constituents. Reductions of 30% to 80% were observed for both nicotine and carbon monoxide.

The report concluded that the use of the Phaseout device could be particularly useful as a weaning method prior to smoking cessation.

More favorable comments come from Jack E. Henningfield, Ph.D., of the National Institute on Drug Abuse. "The Johns Hopkins study is exciting because it showed that by using the PhaseOut device with regular cigarettes, the volunteers obtained progressively lower amounts of nicotine and carbon monoxide. This suggests that the PhaseOut device might provide a practical and useful means for smokers to wean themselves from nicotine and their addiction to tobacco."

VOICE-
OVER:
(male)

That's proof that Phaseout can work for you, whether you want to smoke less harmful cigarettes or whether you want to stop for good.

MASON
ADAMS:
(V/O)

If you follow the Phaseout plan, over a period of several weeks you will gradually reduce the levels of damaging substances in every cigarette you smoke.

Depiction: Cover of journal Pharmacology, Biochemistry and Behavior

Depiction: Journal is opened, pages turned

Depiction: Close-up of title page of journal article

Superimposed text (full screen):
"significantly reduced human exposure to tobacco smoke constituents. Reductions of 30% to 80% were observed for both nicotine and carbon monoxide."

Superimposed text (full screen):
"The use of the PhaseOut device . . . could be particularly useful as a weaning method prior to smoking cessation."

Superimposed text (full screen):
Jack E. Henningfield, Ph.D., Chief
Clinical Pharmacology Branch
Research Branch
National Institute on Drug Abuse
"The Johns Hopkins study. . . is exciting because it showed that by using the PhaseOut device with regular cigarettes, the volunteers obtained progressively lower amounts of nicotine and carbon monoxide."

Superimposed text (full screen):
Jack E. Henningfield, Ph.D., Chief
Clinical Pharmacology Branch
Research Branch
National Institute on Drug Abuse
This suggests that the PhaseOut device might provide a practical and useful means for smokers to wean themselves from nicotine and their addiction to tobacco."

Depiction: Clouds moving across sky

Depiction: PhaseOut device with its accompanying box

Superimposed text:
Smoke Less
Or
Stop For Good

Graphic: Three cigarettes, labelled 'Nicotine,' 'Tar' and 'Carbon Monoxide,' each shrinking in size

Graphic: Three cigarettes shown

Complaint

123 F.T.C.

EXHIBIT A

Phaseout is a four-step program where you control your progress.

Here's how it works. Take any standard size pack of cigarettes, hard or soft, kings or 100's, put it into the Phaseout device and press down. Microfine, almost invisible perforations now create a condensation screen that cuts nicotine levels by 26%, the levels of tar by almost 41%, and the levels of toxic gasses like carbon monoxide by 58%.

Phase two reduces nicotine nearly in half and further reduces the levels of tar and toxic gasses.

Phase three cuts levels of nicotine by nearly 64%, tar by 80%, and carbon monoxide by 83%.

By the time you reach phase four, your nicotine consumption is reduced by nearly 81%. You're also taking in 92% less tar and 89% less toxic gasses.

And it's easy. It's completely natural, no expensive prescriptions, no attachments, no trading one drug for another. Best of all, you continue to enjoy the taste and draw of your own cigarette brand. By waiting at least two weeks between phases, you gradually reduce your body's need for nicotine without the agony of going cold turkey. You can stay on each phase as long as you like until you're ready to

shrinking and labelled as follows:

Results after Phase four
 Nicotine 81%
 Tar 92%
 Carbon Monoxide 89%

Depiction: Man at desk punching a pack of cigarettes with Phaseout

Graphic: cigarette with perforation

Graphic: Three cigarettes shown shrinking and labelled as follows:

Results after Phase one
 Nicotine 26%
 Tar 41%
 Carbon Monoxide 58%

Graphic: Three cigarettes shown shrinking and labelled as follows:

Results after Phase two
 Nicotine 17%
 Tar 66%
 Carbon Monoxide 73%

Graphic: Three cigarettes shown shrinking and labelled as follows:

Results after Phase three
 Nicotine 36%
 Tar 80%
 Carbon Monoxide 83%

Graphic: Three cigarettes shown shrinking and labelled as follows:

Results after Phase four
 Nicotine 19%
 Tar 92%
 Carbon Monoxide 89%

Depiction: Various endusers smoking cigarettes

395

Complaint

EXHIBIT A

move on. You're in control. You know that with each phase, you're doing more good for your health. And when you get to phase four, you can quit whenever you're ready. Phaseout has helped many smokers quit cigarettes for good and thousands of others to smoke less damaging cigarettes.

Pictures of cityscape with following phrases moving across the screen: 'The Time is Now' 'To Quit' 'Or Smoke Less.' Followed by picture of clouds in sky, with words 'The Answer Is,' and then a picture of the Phaseout device with its accompanying box

CONSUMER
ENDORSER
S:

You wake up in the morning, you're not as congested, you don't have to wait for your chest to clear. I can run up and down the stairs and I can go to the park and I can play ball and I can, you know, run around with the kids and not be winded and not have to sit down and say "Mommy's tired. I can't do this."

BOBBY
RYDELL:

Hi, I'm Bobby Rydell and I want to talk to you about Phaseout because I know it really works. It works for me, and I'll tell you how I discovered Phaseout. I was working on a television show for Regal, and as I was lighting up another cigarette, I turned to a stage hand and said, "Boy, would I really love to stop smoking." The stage hand said to me, "I was working on another show for Regal a while ago called 'Phaseout.' It's a stop smoking device. I took it home and it worked. As a matter of fact, it worked so well, I'm a nonsmoker now. I really don't need it anymore. Why don't I give it to you, Bobby, and you try it. He showed me how to use it, and all I can say is, it works. I can't thank that stage hand and Phaseout enough. I've gone from over two-and-a-half packs a day to a pack a day, and I know I'm on my way to quitting because Phaseout makes it easy. And I'll tell you, I've been smoking for over 30 years, and I've tried everything to quit smoking -- clinics, hypnosis, nicotine gum -- let me tell you, nothing's worked for me except

Complaint

123 F.T.C.

EXHIBIT A

Phaseout. Phaseout can change your life, but it's up to you. You just gotta take that first step, you gotta make that call.

Graphic: PHASEOUT
The
Smoker's
Solution

COMMERCIAL:

VOICE-
OVER:
(male)

Nobody has to tell you the damage smoking causes. But many people still enjoy smoking. And even if you want to want to cut back or quit, most methods are annoying, painful, or expensive. But now, there's Phaseout, a breakthrough device that drastically reduces the harmful effects of cigarette smoking without changing the taste or the pleasure. You don't have to change brands to get all the benefits of reduced nicotine, tar, and other harmful substances. Phaseout works on any standard pack. With a simple punch, it forms a condensation filter within your cigarette, which traps more harmful substances before they ever reach your body. By the end of the program, you're smoking 81% less nicotine, 92% less tar, and 89% less toxic gasses.

Phaseout is a real smoker's solution. You keep smoking until you're ready to cut down or quit. And because it gradually reduces the nicotine you inhale, you don't suffer the painful withdrawal symptoms associated with going cold turkey.

With many other methods, you're simply trading one drug for another, but with Phaseout, you're allowing your body to slowly become more comfortable with less and less nicotine, without drugs.

Best of all, Phaseout lets you progress at your own pace. You decide when to move from one phase to the next. For one low cost, you get all the benefits and none of the pain or hassles that go with quitting. You simply can't lose with Phaseout. Whether you

Pictures of hands holding cigarettes, ashtray filled with smoking cigarettes

Superimposed text:
This program is a paid advertisement for Phaseout.

Depiction: Woman at desk punching a pack of cigarettes with Phaseout

Pictures of various endorsers smoking

Graphic: Phaseout device punching a pack of cigarettes

Graphic: Cigarette with created filter

Graphic: Three cigarettes shown shrinking and labelled as follows:

Nicotine	81%
Tar	92%
Carbon Monoxide	89%

Graphic: PHASEOUT

- * Smoke less harmful cigarettes
- * Cut down
- * Quit for good
- * No withdrawal symptoms

Graphic: PHASEOUT

- * No invasive drugs
- * No patches or gum

Graphic: PHASEOUT

- * Go at your own pace

Depiction of Phaseout device w/accompanying box, framed by following ordering information:

\$39.95

395

Complaint

EXHIBIT A

quit or continue to smoke less
damaging cigarettes, Phaseout is
the only product you'll ever need.

It comes with a money-back
guarantee, so you risk absolutely
nothing to give Phaseout a try.

Join thousands of other smokers
who have started on the road to
better health with Phaseout. It's
safe, effective, easy to use, and
scientifically proven. It's the
discovery smokers have been
waiting for.

Give yourself or someone you love
the gift of life. Order Phaseout
today. Have your credit card
ready and call the toll-free
number now. Or send your check or
money order to the address on your
screen. But for fastest delivery,
call the toll-free number now.
Sorry, no COD's.

END COMMERCIAL

CONSUMER
ENDORSER
T:

(with
wife &
kids)

VOICE-
OVER:
(female)

We, we asked her, we ultimatumed
her, everything we could do, we
couldn't get her to stop. But she
found the Phaseout program,
luckily, and she stopped, and
we're extremely happy about it.

Phaseout lets you control your own
progress. Stay on each phase for
the recommended two weeks, or
until you're ready to go on to the
next phase. With each phase,
you're gradually reducing your
physical need to smoke. With
Phaseout, you're not hit with
agonizing withdrawal symptoms.
The changes are so gradual, so
subtle, you won't feel any
negative physical effects.

D:

If it didn't work and I didn't
really like what it was doing for
me, I wouldn't continue to use it.

Plus \$6 S&H
Add sales tax
Send check or
money order to:
PhaseOut
P.O. Box 10441
Waterbury, CT
06725-0441

30 Day Money Back Guarantee

Superimposed text:

If after 30 days, you are not
completely satisfied with your
results, return PHASEOUT for a
full refund of your payment

Graphic (framed by ordering info):

- PHASEOUT
- Safe
 - Effective
 - Easy to Use
 - Scientifically Proven

Depiction: Phaseout device with
accompanying box (framed by
ordering information)

Photo montage, including graphic
of three cigarettes shrinking.

The following words move across
the screen:
'NO WITHDRAWAL'
'GRADUAL CHANGES'

Photo montage, with following

Complaint

123 F.T.C.

EXHIBIT A

VOICE-
OVER:
(female)

Phaseout's effects are immediate. Your progress begins when you punch your very first pack. With Phaseout, you're not trading one dependency for another. You won't need to have to rely on gums, filters, or other crutches. Phaseout contains no drugs or chemicals, and you don't need a doctor's prescription to get it.

words moving across the screen:
'IMMEDIATE EFFECTS'
'NO TRADING DEPENDENCIES'
'DRUG FREE'

CONSUMER
ENDORSER
U:

I have it right with me, and as soon as I buy the cigarettes, I punch them, and that's it. [Where as?] any other method of quitting, like when I got the clips in my ears, I got infections.

VOICE-
OVER:
(female)

With Phaseout, there are no uncomfortable, ugly patches on your body. No annoying computers beeping at you. No need to keep replacing filters. Just put your cigarette pack in the Phaseout device and punch it in seconds. And, finally, Phaseout saves you money. You buy it once and use it forever. You don't have to pay for a visit to a doctor or for expensive prescriptions or refills. Phaseout pays for itself as you feel the need to smoke fewer and fewer cigarettes.

Photo montage, against cityscape backdrop.

The following words move across the screen:
'NO PATCHES...COMPUTERS...FILTERS'
'JUST PUNCH IT'
'SAVES MONEY'
'NO PRESCRIPTIONS'

VOICE-
OVER:
(male)

It seems like torture for a smoker not being able to smoke on airplanes, long meetings, or any nonsmoking environment. Phaseout can help you get through those times.

The following words move across a backdrop of clouds floating through the sky:
'Airplanes,' 'Restaurants,' 'The Office,' 'Car Pools,' 'Hospitals,' 'No Smoking,' 'Long Meetings,' 'GETTING THROUGH THE DAY'

CONSUMER
ENDORSER
V:

With the Phaseout, as I got through the program, I found less and less, if I had to work through my break, I wouldn't miss the cigarette.

L:

You know, I figured, OK, I can wait three, four, five hours for my next cigarette, and I thought, my God, what am I doing. I'm waiting five hours for a cigarette. It was amazing.

CONSUMER
ENDORSER
W:

There wasn't that starvation feeling and that deprived feeling, because the Phaseout program works so slowly, and it weans you is what it does, it weans you. It's not, you know, cold turkey.

395

Complaint

EXHIBIT A

VOICE-
OVER:
(male) It's unanimous. Phaseout offers smokers a real solution. It doesn't change the taste or draw of your cigarette.

N: Well, it doesn't taste any different.

O: Yeah, you couldn't even tell. I mean it tastes exactly the same.

K: I've been smoking these for about two or three years, it tastes like the same thing.

VOICE-
OVER:
(male) People love the idea of gradually getting control over cigarettes, because it removes the fear of withdrawal symptoms. And they know that with the Phaseout program, they're smoking less damaging cigarettes.

L: You're still doing yourself a tremendous favor, even if you do continue to smoke.

E: With Phaseout, you can cut back, you don't have to quit, and you're still a lot better off than before.

A: With the use of Phaseout, the system, I could only come out ahead. I would either stop, cut down, or whatever I smoked, I would have eliminated most of the poisons, tars, nicotines, carbon monoxides. So you couldn't lose.

CONSUMER
ENDORSER
X: It doesn't need much to do it. And you don't feel like you failed in any way, you never feel like you failed.

VOICE-
OVER:
(male) We asked smokers who tried Phaseout just once how much they'd pay to own this breakthrough device.

CONSUMER
ENDORSER
Y: I mean, there's no price on this, it's gonna cut your bad habits. So I'd pay up to, you know, hundreds of dollars.

CONSUMER
ENDORSER
Z: I would pay \$95 for it.

R: Fifty to a hundred dollars.

Complaint

123 F.T.C.

EXHIBIT A

K: Any amount of money would be worth it.

L: I would have paid anything, if I knew then what I know now, I would have paid almost anything. Because when your health is failing, all the money in the world doesn't bring it back.

COMMERCIAL:

VOICE-
OVER:
(male)

Nobody has to tell you the damage smoking causes. But many people still enjoy smoking. And even if you want to want to cut back or quit, most methods are annoying, painful, or expensive. But now, there's Phaseout, a breakthrough device that drastically reduces the harmful effects of cigarette smoking without changing the taste or the pleasure. You don't have to change brands to get all the benefits of reduced nicotine, tar, and other harmful substances. Phaseout works on any standard pack. With a simple punch, it forms a condensation filter within your cigarette, which traps more harmful substances before they ever reach your body. By the end of the program, you're smoking 81% less nicotine, 92% less tar, and 89% less toxic gasses.

Phaseout is a real smoker's solution. You keep smoking until you're ready to cut down or quit. And because it gradually reduces the nicotine you inhale, you don't suffer the painful withdrawal symptoms associated with going cold turkey.

With many other methods, you're simply trading one drug for another, but with Phaseout, you're allowing your body to slowly become more comfortable with less and less nicotine, without drugs.

Best of all, Phaseout lets you progress at your own pace. You decide when to move from one phase to the next. For one low cost, you get all the benefits and none of the pain or hassles that go

Pictures of hands holding cigarettes, ashtray filled with smoking cigarettes

*Superimposed text:
This program is a paid advertisement for Phaseout.*

Depiction: Woman at desk punching a pack of cigarettes with Phaseout

Pictures of various endorsers smoking

Graphic: Phaseout device punching a pack of cigarettes

Graphic: Cigarette with created filter

Graphic: Three cigarettes shown shrinking and labelled as follows:

Nicotine	81%
Tar	92%
Carbon Monoxide	89%

Graphic:

PHASEOUT

- Smoke less harmful cigarettes
- Cut down
- Quit for good
- No withdrawal symptoms

Graphic:

PHASEOUT

- No invasive drugs
- No patches or gum

Graphic:

PHASEOUT

- Go at your own pace

Depiction of Phaseout device w/accompanying box, framed by following ordering information:

395

Complaint

EXHIBIT A

with quitting. You simply can't lose with Phaseout. Whether you quit or continue to smoke less damaging cigarettes, Phaseout is the only product you'll ever need.

It comes with a money-back guarantee, so you risk absolutely nothing to give Phaseout a try.

Join thousands of other smokers who have started on the road to better health with Phaseout. It's safe, effective, easy to use, and scientifically proven. It's the discovery smokers have been waiting for.

Give yourself or someone you love the gift of life. Order Phaseout today. Have your credit card ready and call the toll-free number now. Or send your check or money order to the address on your screen. But for fastest delivery, call the toll-free number now. Sorry, no COD's.

END COMMERCIAL

MASON
ADAMS:

We've been looking at a major development in the move to end smoking, called Phaseout, which seems to be producing some remarkable results, by giving people the tool they need to cut down or eliminate their addiction to smoking. And its effectiveness in reducing the most harmful components of cigarette smoke is receiving some very interesting attention in the medical community.

VOICE-
OVER:
(male)

Favorable comments from the medical community include these: "The Johns Hopkins study is exciting because it showed that by using the PhaseOut device with regular cigarettes, the volunteers obtained progressively lower

\$39.95
Plus \$6 S&H
Add sales tax
Send check or
money order to:
PhaseOut
P.O. Box 10441
Waterbury, CT
06725-0441

30 Day Money Back Guarantee

Superimposed text:
If after 30 days, you are not completely satisfied with your results, return PHASEOUT for a full refund of your payment

Graphic (framed by ordering info):
PHASEOUT

- Safe
- Effective
- Easy to Use
- Scientifically Proven

Depiction: Phaseout device with accompanying box (framed by ordering information)

Depiction: ashtray filled with smoking cigarettes

Depiction: close-up of title page of journal article

Superimposed text (full screen):
Jack E. Henningfield, Ph.D. Chief
Clinical Pharmacology Branch
Research Branch
National Institute on Drug Abuse

"The Johns Hopkins study... is exciting because it showed that by using the PhaseOut device with regular cigarettes, the volunteers obtained progressively lower

Complaint

123 F.T.C.

EXHIBIT A

amounts of nicotine and carbon monoxide. This suggests that the PhaseOut device might provide a practical and useful means for smokers to wean themselves from nicotine and their addiction to tobacco."

"In the late 1970's the Surgeon General acknowledged that one of the most difficult aspects in the cessation of smoking was avoiding withdrawal symptoms. And it is the withdrawal symptoms that discourage people from actually stopping smoking. A method had to be devised that would gradually reduce the amount of nicotine in the blood and therefore avoid withdrawal symptoms. By using Phaseout appropriately you can avoid withdrawal symptoms."

MASCN
ADAMS:

Doctors, there's no doubt that society is determined to put an end to smoking. We know that it's bad for us, we know that it has to stop. People are quitting. But there are still so many people out there who just haven't been able to quit yet, as much as they may want to. It seems that the will alone just isn't enough to do it. Research tells us that many of them are failing because of withdrawal, because their bodies can't shake the need to keep smoking. Why exactly is that.

amounts of nicotine and carbon monoxide.

Superimposed text (full screen):
Jack S. Henningfield, Ph.D., Chief
Clinical Pharmacology Branch
Research Branch
National Institute on Drug Abuse
This suggests that the PhaseOut device might provide a practical and useful means for smokers to wean themselves from nicotine and their addiction to tobacco."

Superimposed text (full screen, over depiction of document):
Dr. Robert Brandstetter
Pulmonary Specialist
Associate Director of Medicine
New Rochelle Hospital Medical Center
"In the late 1970's the Surgeon General acknowledged that one of the most difficult aspects in the cessation of smoking was avoiding withdrawal symptoms. And it is the withdrawal symptoms that discourage people from actually stopping smoking."

Superimposed text (full screen, over depiction of document):
Dr. Robert Brandstetter
Pulmonary Specialist
Associate Director of Medicine
New Rochelle Hospital Medical Center
A method has to be devised that would gradually reduce the amount of nicotine in the blood and therefore avoid withdrawal symptoms. By using Phaseout appropriately. . . you can avoid withdrawal symptoms."

Superimposed text:
Dr. Arnold Benson
Former Chief, Medical Services
The Pentagon

Complaint

EXHIBIT A

DR.
BENSON: I had trepidation about stopping smoking for many years. In fact, I would've enjoyed not smoking, but I feared it because I was so addicted to the nicotine. But with Phaseout, I was able to continue smoking. I gradually phased out of the nicotine habit each time I added perforations to my cigarettes. I was lessening my nicotine addiction nicotine while I continued to smoke, until finally I no longer wanted to smoke.

Bobby
Rydell: In today's show, you heard a variety of testimonials from people whose lives have been changed by Phaseout. Your life can be changed by Phaseout, too. Plus, you'll be thrilled by the amount of money you can save with Phaseout. Compared to the other stop-smoking programs, it's the least expensive method. But more importantly, it works.

CONSUMER
ENDORSER
AA: My wife was a smoker, but she quit the hard way. She went cold turkey. I took the easy road, the Phaseout road.

CONSUMER
ENDORSER
BB: Phaseout is something that everybody should try, because it works and it's easy, and I wouldn't say it if I didn't mean it.

L: It wasn't as hard as I thought it was going to be, and nobody was more surprised than me. I couldn't believe it.

CONSUMER
ENDORSER
CC: Try Phaseout, because you're not losing either way. If you try it and you stay on phase one for the rest of your life, you're still making an improvement. If you try it and you go to phase two and three and you're still smoking the same number of cigarettes that you smoked without Phaseout, you're making an improvement for yourself. And you might surprise yourself. You know, if you do it long enough, you may get to four, and like magic, just put it down and stop. And that's great.

MASON
ADAMS: I urge you to try Phaseout. For you or someone you love, this may be the gift of life. This is

Superimposed text:
(c) 1992 Regal Group, Inc.
95 Scovill Street, Waterbury CT
06706

Complaint

123 F.T.C.

EXHIBIT A

Mason Adams. Thank you for joining us. And to all of you, good health.

L: I would have paid anything. If I knew then what I know now, I would have paid almost anything. Because when your health is failing, all the money in the world doesn't bring it back.

VOICE-
OVER;
(male)

COMMERCIAL:

Nobody has to tell you the damage smoking causes. But many people still enjoy smoking. And even if you want to want to cut back or quit, most methods are annoying, painful, or expensive. But now, there's Phaseout, a breakthrough device that drastically reduces the harmful effects of cigarette smoking without changing the taste or the pleasure. You don't have to change brands to get all the benefits of reduced nicotine, tar, and other harmful substances. Phaseout works on any standard pack. With a simple punch, it forms a condensation filter within your cigarette, which traps more harmful substances before they ever reach your body. By the end of the program, you're smoking 81% less nicotine, 92% less tar, and 89% less toxic gasses.

Phaseout is a real smoker's solution. You keep smoking until you're ready to cut down or quit. And because it gradually reduces the nicotine you inhale, you don't suffer the painful withdrawal symptoms associated with going cold turkey.

With many other methods, you're simply trading one drug for another, but with Phaseout, you're allowing your body to slowly become more comfortable with less and less nicotine, without drugs.

Best of all, Phaseout lets you progress at your own pace. You decide when to move from one phase to the next. For one low cost,

Pictures of hands holding cigarettes, ashtray filled with smoking cigarettes

Superimposed text:
This program is a paid advertisement for Phaseout.

Depiction: Woman at desk punching a pack of cigarettes with Phaseout

Pictures of various endorsers smoking

Graphic: Phaseout device punching a pack of cigarettes

Graphic: Cigarette with created filter

Graphic: Three cigarettes shown shrinking and labelled as follows:

Nicotine	81%
Tar	92%
Carbon Monoxide	89%

Graphic: PHASEOUT

- Smoke less harmful cigarettes
- Cut down
- Quit for good
- No withdrawal symptoms

Graphic: PHASEOUT

- No invasive drugs
- No patches or gum

Graphic: PHASEOUT

- Go at your own pace

Depiction of Phaseout device w/accompanying box, framed by following ordering information:

\$39.95
Plus \$6 S&H
Add sales tax

Complaint

EXHIBIT A

you get all the benefits and none of the pain or hassles that go with quitting. You simply can't lose with Phaseout. Whether you quit or continue to smoke less damaging cigarettes, Phaseout is the only product you'll ever need.

It comes with a money-back guarantee, so you risk absolutely nothing to give Phaseout a try.

Join thousands of other smokers who have started on the road to better health with Phaseout. It's safe, effective, easy to use, and scientifically proven. It's the discovery smokers have been waiting for.

Give yourself or someone you love the gift of life. Order Phaseout today. Have your credit card ready and call the toll-free number now. Or send your check or money order to the address on your screen. But for fastest delivery, call the toll-free number now. Sorry, no COD's.

END COMMERCIAL

A: I didn't miss anything going from phase to phase, I didn't feel I was being deprived of anything.

B: There's no point not to use it if you're a smoker. It's not as if you can tell a difference in your cigarette. It's not as if you have to switch to a disgusting tasting cigarette with lower nicotine. It's the same thing that you've always done, only it's less harmful.

C: Phaseout is good, it's gradual, you're not even aware that it's working. Then all of a sudden, you realize you're smoking a lot less.

Send check or money order to:
PhaseOut
P.O. Box 10441
Waterbury, CT
06725-0441

30 Day Money Back Guarantee

Superimposed text:
If after 30 days, you are not completely satisfied with your results, return PHASEOUT for a full refund of your payment

Graphic (framed by ordering info)
PHASEOUT

- Safe
- Effective
- Easy to Use
- Scientifically Proven

Depiction: Phaseout device with accompanying box (framed by ordering information)

Ordering information remains on the screen

Depiction: Telephone operators, warehouse, delivery person

Complaint

123 F.T.C.

EXHIBIT A

VOICE-
OVER:
(female)

When you call our toll-free number, you get fast, courteous service. We'll process your order quickly and ship it directly from our warehouse to your door. What's more, we stand behind all our products. Our customer service representatives can answer questions about any Regal Shop product. And naturally all our products are completely guaranteed, so you can order with confidence.

VOICE-
OVER:
(male)

This program-length advertisement has been brought to you by Regal Group, Incorporated.

Graphic: Regal logo
Superimposed text: This program-length advertisement has been brought to you by Regal Group, Inc.

EXHIBIT B

EXHIBIT B

"PhaseOut: The Smokers' Solution"

GRAPHIC: Blue screen: "PhaseOut: The Smokers' Solution"

Depiction: Anonymous people smoking

Superimposed text:

Disclaimer at bottom of screen that this is paid ad.

Voice-Over:

Like most smokers you're probably sick of hearing about the dangers of cigarettes, but now there's PhaseOut, a simple device that lets you keep smoking your old brand while it reduces the nicotine and other toxins you inhale by as much as 90%. Without changing the taste or pleasure of your cigarettes, PhaseOut gradually decreases their damaging effects without the expense, difficulty or side effects of other methods.

Superimposed text:

This program is a paid advertisement. All claims and representations made in this program-length advertisement are the sole responsibility of the sponsor.

Mason Adams:

I'm Mason Adams. And I'm a pretty good example of what I've just been talking about. Twenty years ago I was finally able to quit smoking for good. But I remember all too vividly what an agonizing struggle it was, so when I was asked to be the host of this program I jumped at the chance.

You're going to see some unprecedented findings and hear some remarkable stories about a breakthrough device that can help you phase cigarettes out of your life without expensive therapies, patches, or drugs.

Its name is PhaseOut and its effectiveness in reducing the most harmful components of cigarette smoke has been scientifically confirmed in research conducted at such prestigious institutions as the Johns Hopkins University School of Medicine.

GRAPHIC: Shows how to use product, punching down on pack of cigarettes. Then illustrated images of perforations and inflow and outflow of warm and cold air and toxins.

The idea is this, PhaseOut accurately applies micro fine perforations to the filter of each cigarette. This simple perforation has a remarkable effect, it creates an additional filter within the existing filter but it doesn't change the taste or the draw of your cigarette. As warm air is drawn through the cigarette, cool air is drawn in through the perforation, the hot air hits the cold air and a trace of condensation forms, that's the additional filter which traps more of the toxins before you can inhale them into your body.

There's no point not to use it if you're a smoker, it's not as if you can tell the difference in your cigarette, it's not as if you have to switch to a disgusting tasting cigarette with lower nicotine. It's the same thing you've always done, only it's less harmful.

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EXHIBIT B

B: PhaseOut is good, it's gradual, you're not even aware that it's working and all the sudden you realize you're smoking a lot less.

C: Because it's done so gradually, I didn't miss anything going from phase to phase, I didn't feel I was being deprived of anything.

D: I was still able to smoke and get the satisfaction from, the psychological effect, or what ever, from doing something with my hands, but when I stopped to think about it, I thought I'm doing something for myself. I'm putting less toxins into my body and all it takes is two seconds to punch some holes in my cigarettes.

Adams: If you're like most people, you'll start feeling better right away while you're preparing to quit. Indeed, PhaseOut's impact is so definite that even if you don't quit, you'll be significantly reducing the harmful effects of every cigarette.

E: Makes me feel that I'm doing something good for me, with PhaseOut

F: At least you're eliminating a lot of the irritants that are caused by the tars and nicotine and you start feeling better, I think almost from the beginning

G: I'm not as winded, it gives, uh, I just feel, uh, even though I am still smoking, yes, I feel a little bit healthier (chuckle).

H: You wake up in the morning and you're not as congested, you don't have to wait for your chest to clear, I can run up and down the stairs and I can go to the park and I can play ball and, you know, I can run around with the kids and not be winded and not have to sit down and say, "Mommy's tired, I can't do this."

GRAPHIC: Blue Screen: "PhaseOut: The Smokers' Solution"

[COMMERCIAL:]

Depiction: Pictures people smoking, using product. Quick disclaimer that this is paid ad at bottom.

Voice-Over: Nobody has to tell you the damage smoking causes, but many people still enjoy smoking and, even if you want to cut back or quit, most methods are annoying, painful or expensive. But now there's PhaseOut, a breakthrough device that drastically reduces the harmful effects of cigarette smoking without changing the taste or the pleasure.

GRAPHIC: words overlay pictures of people smoking:
PhaseOut works on:
Filtered or Non Filtered
Hard or Soft Pack
Kings, 100's or Regular

EXHIBIT B

You don't have to change brands to get all the benefits of reduced nicotine, tar and other harmful substances. PhaseOut works on any standard pack.

GRAPHIC: Shows illustrated image of punching pack, and inflow of air in perforated cigarette

With a simple punch it forms a condensation filter within your cigarette which traps more harmful substances before they ever reach your body.

GRAPHIC: Illustrated cigarettes shrink and respective labels notify viewer of reductions in:

"Nicotine 81%
Tar 92%
Carbon Monoxide 89%"

By the end of the program, you're smoking 81% less nicotine, 92% less tar, and 89% less toxic gases.

GRAPHIC: Shows people smoking with overlay of words:

"Smoke less harmful cigarettes
Cut down
Quit for good
No withdrawal symptoms"

PhaseOut is a real smokers' solution. You keep smoking until you are ready to cut down or quit, and because it gradually reduces the nicotine you inhale, you don't suffer the painful withdrawal symptoms associated with going cold turkey.

GRAPHIC:
No invasive drugs
No patches or gum

With many other methods, you're simply trading one drug for another, but with PhaseOut, you're allowing your body to become more comfortable with less and less nicotine without drugs.

GRAPHIC:
Go at your own pace

Best of all PhaseOut lets you progress at your own pace, you decide when to move from one phase to the next.

GRAPHIC: Shows product and "Only \$35.95"

For one low cost, you get all of the benefits and none of the pain or hassles that go with quitting; you simply can't lose with PhaseOut. Whether you quit or continue to smoke less damaging cigarettes, PhaseOut is the only product you'll ever need.

Superimposed text:
If after 30 days, you are not completely satisfied with your results, return PhaseOut for a full refund of your payment.

It comes with a money back guarantee so you risk absolutely nothing to give PhaseOut a try.

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Depiction:
Pictures all of the people that gave testimonials in the
ad-program

Join thousands of other smokers who have started on the
road to better health with PhaseOut.

GRAPHIC: Shows product w/superimposed text:
Safe
Effective
Easy to use
Scientifically proven

It's safe, effective, easy to use, and scientifically
proven. It's the discovery smokers have been waiting
for.

GRAPHIC: Shows product, phone number -- 1-800-257-8866,
address -- P.O. Box 10441, Waterbury CT 06725-0441,
price -- \$39.95 plus \$6.00 S&H . . .

Give yourself or someone you love the gift of life,
order PhaseOut today. Have your credit card ready and
call the toll free number now or send check or money
order to the address on your screen, but for fastest
delivery call the toll free number now; sorry no COD's.

[END COMMERCIAL]

GRAPHIC: Blue Screen: "PhaseOut: The Smokers' Solution"

Reporter:

We're here on the streets of New York City to talk to
smokers about a revolutionary new device that lets them
keep smoking while cutting down on the nicotine and
other toxins they inhale. It works without having to
change your cigarette brand, without changing the taste
or enjoyment, and best of all it works without drugs;
it's great news for people who smoke.

I:

Well it doesn't taste any different

J:

I've been smoking these for about two or three years and
it tastes like the same thing.

K:

Yea, you couldn't even tell, I mean it tastes exactly
the same.

L:

Hard to believe

Reporter:

Why is it hard to believe?

L:

You can't tell

Reporter:

You can't tell at all?

L:

You can't

M:

It taste like a Marlboro

N:

I don't feel any different

Reporter:

Yea? Does it taste like the normal cigarette you have?

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N: Yea

Superimposed text:
The Complete Program Reduces Nicotine by 81%

Voice-Over: We asked if she realized she just inhaled 30% less nicotine and other damaging substances

N: Really, well I would like to see, um, proof, some kind of data showing that and, if so, then I would buy it and I would punch every pack

Adams: PhaseOut program has been receiving some very interesting attention in the medical community. With me is Pulmonary Specialist Dr. Robert Brandstetter, Associate Director of Medicine at New Rochelle Hospital Medical Center and distinguished Cardiologist Dr. Arnold Benson, former Chief of Medical Services at the Pentagon. Dr. Benson, as a cardiologist, what stimulated your interest in PhaseOut?

Dr. Benson: Well here I was a physician and a cardiologist and a smoker, and I was embarrassed. I have, uh, taken care of many sick people who I had to recommend that they stop immediately the habit of smoking, and, uh, yet they would walk into my office, the smell of smoke was ever present. I was afraid of stopping smoking, I didn't want to go through the withdrawal phase

Adams: Were you a very heavy smoker?

Dr. Benson: I was a heavy smoker, I smoked for 40 years exactly and I smoked not less than 2 packages of cigarettes a day

Adams: And you attribute your quitting to PhaseOut?

Dr. Benson: I stopped smoking because of PhaseOut, PhaseOut did it gradually

Adams: And your still not smoking today?

Dr. Benson: Well it's two and a half years since I quit, 40 years of smoking, and I have gone two and a half years without smoking and I don't miss it.

Adams: Now doctor, I understand there's a medical study which confirms that PhaseOut reduces the amount of nicotine in a regular cigarette

Dr. Brandstetter: At Johns Hopkins University, volunteers who smoked for a considerable period of time were enrolled in a study which demonstrated that PhaseOut actually reduced the amount of nicotine in their blood over the period of time of the study.

Adams: So, the idea is then if you can reduce the amount of addicting nicotine, you'll thereby be reducing the addiction is that correct?

Dr. Brandstetter: Exactly and at the same time you'll actually be reducing the possibility of withdrawal symptoms and it's these

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withdrawal symptoms which cause people not to be able to stop smoking

A: When I got the, um, PhaseOut product I was concerned that because of the reduced nicotine and tar and all the other poisons that I would immediately increase my intake of cigarettes. However that wasn't the case, I went, I started on phase one, um, the first day I got it, I was all excited, and then went immediately, within two days to phase two because I didn't notice a difference at all.

B: I had little faith in smoking devices to help me stop smoking and, um, after a while I definitely saw a change, like I was telling you before, now I'm down to one pack every three or four days where before it was a pack a day.

O: I felt that PhaseOut helped me control how I was going to stop smoking, how long it was going to take me, and in stages I could handle.

P: I thought that I would want to smoke more cigarettes but I didn't, in fact I smoked less cigarettes and I wasn't thinking about it

Q: I feel great about not being controlled by the use of cigarettes

GRAPHIC: Shows how to use product and illustration of perforations and shrinking cigarettes with words:

Nicotine 26% Tar 41% Carbon Monoxide 58%
Phase Two: Nicotine 47% Tar 66% Carbon Monoxide 73%
Phase Three: Nicotine 64% Tar 80% Carbon Monoxide 83%
Phase Four: Nicotine 81% Tar 92% Carbon Monoxide 89%

Adams: If you follow the PhaseOut plan over a period of several weeks you will gradually reduce the levels of damaging substances in every cigarette you smoke. PhaseOut is a four step program where you control your progress. Here's how it works, take any standard size package of cigarettes hard or soft, kings or 100's, put it into the PhaseOut device and press down, micro fine almost invisible perforations now create a condensation screen that cuts nicotine levels by 26%, the levels of tar by almost 41% and the levels of toxic gases like carbon monoxide by 58%. Phase two reduces nicotine levels by nearly in half, and further reduces the levels of tar and toxic gases. Phase three cuts levels of nicotine by nearly 64%, tar by 80% and carbon monoxide by 83%. By the time you reach phase four, your nicotine consumption is reduced by nearly 81%, you're also taking in 92% less tar and 89% less toxic gases.

And its easy, its completely natural, no expensive prescriptions, no attachments, no trading one drug for another, best of all you continue to enjoy the taste and draw of your own cigarette brand. By waiting at least two weeks between phases you gradually reduce your body's need for nicotine without the agony of going cold turkey. You can stay on each phase as long as you like

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until you're ready to move on. You're in control, you know that with each phase you're doing more good for your health and when you get to phase four you can quit whenever you're ready. PhaseOut has helped many smokers quit cigarettes for good and thousands of others to smoke less damaging cigarettes.

A: I think it's been very easy to use PhaseOut because it feels as if I'm not doing anything different and I get closer and closer to quitting, it's good that I've been able to stick with it through phase four because I know now, that the nicotine withdrawal is going to be so much less and so much easier to break having gone through this gradual reduction.

Q: In using the PhaseOut program, it was after, I was in the last stage, I had been using it for a while, that I was beginning to feel, hey, I think I've really kicked this

E: It helped me do it at my own pace, I kinda felt that I was in control.

O: I phased out a very bad habit and I did in my own way, in my own time and it was comfortable and it was easy and it worked.

C: I've tried to stop smoking many, many times all unsuccessfully before PhaseOut, I think it was Groucho Marx that said, "it's easy to stop smoking, I know because I've done it dozens of times", but I never did successfully before PhaseOut.

R: With this product, anybody can quit smoking, it's no big deal. I thought it was a big deal to quit smoking, but it was so easy.

P: But it wasn't as tough as I'd built it up to be, and I really and honestly and truly believe that PhaseOut really helped me stop and that's what I needed, just a little help.

Reporter: Let's face it, one of the things that drive smokers mad is being lectured about it, particularly from people they don't even know

S: I live in California, and people in California really hate smoking

T: Even my 11 grandchildren try to stop me

Reporter: What do they do?

T: Take my cigarettes and throw them away

U: A lot of my friends are non-smokers and I have to not smoke in the car

Reporter: Non-smokers just don't understand how physically and psychologically difficult it is to stop and they don't know how many smokers have tried and failed using all kinds of methods.

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V: It's not like I started and I don't want to quit, I really do, would like to quit, it's just very hard, it's very addicting

J: All efforts have failed

W: I tried a billion times, by hiding cigarettes from myself, I told people I hold in great esteem that I quit smoking and I'm using a whole bottle of perfume not to smell like smoke, and I tried once taking care of cancer patients, volunteer, so that it scares me and I don't smoke for like a day or two, then I run back and pick up a cigarette.

Reporter: I used to be a smoker myself so I know what it's like to sit through a long flight and not be able to light up, it used to happen during long meeting or when I'd be out with a group of non-smokers. It's torture not being able to smoke, but PhaseOut can help you get through those times

X: With the PhaseOut, as I got through the program I found less and less, if I had to work through my break, I wouldn't miss the cigarette

P: I figured, well, I can wait three, four, five hours for my next cigarette, and I thought, My God, what am I doing waiting five hours for a cigarette, it was amazing

Reporter: PhaseOut is easy, effective and it's inexpensive, best of all it is good news for your health.

VO: We asked smokers who tried PhaseOut just once, how much they'd pay to own this breakthrough device

Y: There's no price on this, it's going to cut your bad habit, so I'd pay up to, you know, hundreds of dollars

Z: I would pay \$95. for it

J: Any amount of money would be worth it

M: I don't see \$25, \$50, or \$100 being a big ticket

P: I would of paid anything if I knew then what I know now, I would have paid almost anything, because when your health is failing, all the money in the world doesn't bring it back

GRAPHIC:**PhaseOut**

Nicotine patch: 3 months=\$300

Hypnotism: each session=\$100

Nicotine gum: 2 months=\$72

Acupuncture: each session=\$50

based on average cost per recommended treatment

Think of the expense of most anti-smoking methods and then realize that none of them help you fight the psychological or emotional need to have a cigarette in your hand

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Reporter:

With PhaseOut there's a one time low cost, you use the same device for as long as you wish to keep smoking. It gradually eliminates your physical need so you can take the time you need to break the emotional or psychological need. It even comes with a money back guarantee. People love the idea of gradually getting control over cigarettes because it takes away the fear of withdrawal symptoms and they know that as long as they are on the PhaseOut program, they're smoking less damaging cigarettes.

P:

You're still doing yourself a tremendous favor even if you do continue to smoke

G:

With PhaseOut you can cut back, you don't have to quit and you're still a lot better off than before

AA:

If I just wanted to, like, smoke when I go out to a bar, and, like, when I'm having a drink with somebody, and if I want to smoke and do the whole thing I can still smoke and enjoy a cigarette but I'll be getting less bad things.

D:

I pull out my cigarettes in my social situation and I feel better for it because I know it's reduced and maybe I'm a little smarter than everyone else here because my cigarette has been phased out and yours are normal and so right now I'm intaking less toxins into my body

C:

With the use of the PhaseOut system I can only come out ahead, I would either stop, cut down or, whatever I smoke, I would have eliminated most of the poisons, tars, nicotine, carbon monoxides, so you couldn't lose.

Reporter:

It's unanimous, PhaseOut offers smokers a real solution, it doesn't change the taste or draw of the cigarette, there are no side effects, it lets you decide if and when you want to quit, and here's the best part, PhaseOut it just a phone call away.

GRAPHIC: Blue Screen: "PhaseOut: The Smokers' Solution"

[BEGIN COMMERCIAL]
[END COMMERCIAL]

GRAPHIC: Blue Screen: "PhaseOut: The Smokers' Solution"

Adams:

And now I'd like you to meet our next guest who successfully quit smoking using PhaseOut. This is Rene Myer, welcome Rene. Let me ask first, how heavy a smoker were you?

Rene:

I smoked a pack a day for eight or nine years

Adams:

Well tell us now, if you can, what you experienced as you progressed through the phases of the PhaseOut program

Rene:

PhaseOut was so gradual that with the first phase I didn't really notice any differences. The second phase the only thing I noticed was that I wasn't as anxious about getting breaks to have a cigarette. And the third

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phase, I wasn't overly concerned that I had to have my pack of cigarettes before I got to work. And phase four, I was ready to quit, I just wanted to stretch it for that special New Year's Eve occasion, and as of midnight that was it, I had my last cigarette.

Adams: Very, very good to hear, Rene, thank you for sharing your story with us

Rene: You're welcome

Reporter: Most smokers are pretty tired of being picked on for the damage they're doing to their health, and now there's strong evidence to back up the fact that PhaseOut lets you do something good for your self

GRAPHIC: Shows book and flips to pages of study

VOICE-OVER: The April 1992 issue of Pharmacology, Biochemistry and Behavior published results of a research study conducted at the Johns Hopkins University School of Medicine. This prestigious journal reports that PhaseOut,

VOICE-OVER
w/superimposed
text: "significantly reduced human exposure to tobacco smoke constituents. Reductions of 30% to 80% were observed for both nicotine and carbon monoxide." The report concluded that, "the use of the PhaseOut device . . . could be particularly useful as a weaning method prior to smoking cessation." More favorable comments come from Jack E. Henningfield, Ph.D., of the National Institute on Drug Abuse, "The Johns Hopkins study . . . is exciting because it showed that by using the PhaseOut device with regular cigarettes, the volunteers obtained progressively lower amounts of nicotine and carbon monoxide. This suggests that the PhaseOut device might provide a practical and useful means for smokers to wean themselves from nicotine and their addiction to tobacco."

Reporter: That's proof that PhaseOut can work for you, whether you want to smoke less harmful cigarettes or whether you want to give up smoking for good

Superimposed text:
PhaseOut works: Reduces levels of:
Nicotine up to 81%; Tar up to 92%; Carbon Monoxide and other toxins up to 89%

Voice-Over: Medical evidence proves that PhaseOut works, it effectively reduces the levels of nicotine and toxins you smoke even if you are already smoking a low tar or nicotine brand.

GRAPHIC: Overlay:
"PhaseOut is easy; Smoke your own brand; Same taste; same draw"

PhaseOut is easy to use, it works on your own brand of cigarettes, without changing the taste or the draw, you still get the same enjoyment from every cigarette.

GRAPHIC: Overlay:

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*"You control your own progress; Go at your own pace;
Stay on any phase as long as you like"*

PhaseOut lets you control your own progress, stay on each phase for the recommended two weeks or until you are ready to go on to the next phase.

GRAPHIC: Overlay:
*"No Suffering: Gradually reduces the need to smoke;
Virtually no withdrawal symptoms"*

With each phase you're gradually reducing your physical need to smoke. With PhaseOut, you're not hit with agonizing withdrawal symptoms, the changes are so gradual, so subtle, you won't feel any negative physical effects.

GRAPHIC: Overlay:
"Immediate results"

PhaseOut's effects are immediate, your progress begins when you punch your very first pack.

GRAPHIC: Overlay:
No trading dependencies

With PhaseOut, you're not trading one dependency for another, you won't have to rely on gums, filters, or other crutches.

GRAPHIC: Overlay:
No drugs or chemicals

PhaseOut contains no drugs or chemicals, and you don't need a doctor's prescription to get it.

GRAPHIC: Overlay:
*PhaseOut is hassle-free:
No patches; No annoying alarms; No filters*

With PhaseOut, there are no uncomfortable, ugly patches on your body, no annoying computers beeping at you, no need to keep replacing filters, just put your cigarette pack in the PhaseOut device and punch it in seconds.

GRAPHIC: Overlay:
*PhaseOut is a great value:
No doctor's visits; No on-going prescriptions*

And finally, PhaseOut saves you money, you buy it once and use it forever. You don't have to pay for a visit to the doctor or for expensive prescriptions and refills, PhaseOut pays for itself in the money you'll save as you feel the need to smoke fewer and fewer cigarettes.

Reporter:

All in all it is clear PhaseOut is a solution, not a band-aid, a fad, or an invasive, expensive drug, with PhaseOut, you immediately start to smoke less harmful cigarettes, with no loss of flavor or satisfaction, you may even quit smoking for good. So now when someone says to you, you need to do something about your

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smoking, you can show them PhaseOut, the breakthrough device that is truly enriching the lives of smokers everywhere.

GRAPHIC: Disclaimer: "This program is a paid advertisement for PhaseOut"
Screen with people speaking and price, number and address to order

BB: It doesn't take much to do it, you don't feel like you failed in any way, you never feel like you failed.

Q: There wasn't that starvation feeling, and that deprived feeling because the PhaseOut program works so slowly and, um, it weans you, is what it does, it weans you, it's not cold turkey.

R: My wife was a smoker, but she quit the hard way, she went cold turkey. I took the easy road, the PhaseOut road.

O: PhaseOut is something that everybody should try, because it works and it's easy and I wouldn't say it if I didn't mean it.

P: It wasn't as hard as I thought it was going to be, and nobody was more surprised than me, I couldn't believe it.

D: Try PhaseOut, because you're not losing either way. If you try it and you stay on PhaseOut for the rest of your life, you're still making an improvement. If you try it and go to phase two or three, and you're still smoking the same number of cigarettes that you smoked without PhaseOut, you're making an improvement for yourself, and you might surprise yourself, you know, if you do it long enough you may get to four, and you might as well just put it down and stop and that's great, you know, you've been PhasedOut, (laugh)

Adams: I urge you to try PhaseOut, for you or someone you love this may be the gift of life. This is Mason Adams, thank you for joining us and to all of you, good health.

P: If I knew then what I know now, I would have paid almost anything, because when your health is failing, all the money in the world doesn't bring it back

GRAPHIC: Blue Screen: "PhaseOut: The Smokers' Solution"

[BEGIN COMMERCIAL]
[END COMMERCIAL]

GRAPHIC: Blue Screen: "PhaseOut: The Smokers' Solution"

EXHIBIT C

**RADIO
TV REPORTS**

41 East 42nd Street, New York, NY 10017 (212) 309-1400

PRODUCT: PHASEOUT
TITLE: "STOP SMOKING OR YOUR MONEY BACK"
PROGRAM: HOWARD STERN
STATION: ETV

94-13957 M
10/14/94 :60
(NEW YORK) 11:08PM



(VARIOUS PEOPLE) ANNCR: Stop smoking or your money back.



(MUSIC IN) MAN: I'm just not ready to stop smoking.



ANNCR introducing PhaseOut, the stop smoking system



that actually lets you continue to smoke until you don't need to anymore.



ANNCR: Place your favorite brand of cigarettes inside the PhaseOut device and press down, that's all you have to do. PhaseOut actually



eliminates up to 92% of tar and 89% of carbon monoxide. PhaseOut reduces up to 81% of nicotine



to help break the cigarette addiction.



DR. A. BENSON: I'm a cardiologist, a former 2 pack per day smoker for over 40 years.



I haven't smoked in over 3 years.



MAN: Okay, I'll try it.



DR. A. BENSON: As a doctor, I must tell you the time to stop smoking is now.



ANNCR: PhaseOut, just 2 payments of \$19.95.



The doctors choice to gradually



ease your addiction to cigarettes.



so it's easier to quit. Yes with PhaseOut you can actually keep smoking.



because smoking is less harmful until you're ready to quit. 100% guaranteed or your money back. (MUSIC OUT)

ALSO AVAILABLE IN COLOR VIDEO-TAPE CASSETTE

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EXHIBIT D

PO-radio.djc

Client: PHASEOUT
Title: "Advertorial"
Code: Ad-A-J
Phone #: 1-800-982-6800

ANNCR: Here's an announcement smokers everywhere have been waiting to hear: Tests at Johns Hopkins University prove a revolutionary new system called PHASEOUT eliminates up to 80% of the nicotine and carbon monoxide in any brand of cigarettes. It doesn't change the flavor or satisfaction of your favorite brand, doesn't require patches or prescriptions. As a matter of fact, you can order PHASEOUT simply by calling 1-800-982-6800. This is the one you've seen on national TV... the only system sold with an unconditional money back guarantee. Smoke a pack a day? With PHASEOUT that's like cutting down to just 4 cigarettes. And as PHASEOUT gradually eliminates the nicotine it gradually eliminates your "need" for cigarettes. Now you can quit easily, without cold turkey, or continue smoking cigarettes that are far less dangerous to your health. More good news: during this special introduction, you can order PHASEOUT for just \$39.95. But you must call now. 1-800-982-6800. You owe it to yourself and the people who love you. That's 1-800-982-6800. PHASEOUT makes it safer to smoke, easier to quit.

EXHIBIT E

STOP SMOKING FOREVER —WITH PHASE OUT[®] *Guaranteed or your money back*

NEW EASY WAY—Clinically tested and validated by Johns Hopkins University School of Medicine to reduce up to 80% of nicotine and carbon monoxide in cigarette smoke.

- Works automatically—no will power needed
- Virtually no change in taste or draw
- Ends nicotine craving forever
- No cravings or urges • 100% safe
- No side effects or unpleasant withdrawal symptoms
- Recommended by doctors and health organizations
- Eliminates up to 80% of the tars, nicotine and poison in cigarette smoke—so even if you decide to keep smoking, you will no longer face the same danger of cancer and heart disease

77840 Phaseout[®] \$ 34.88 ✓



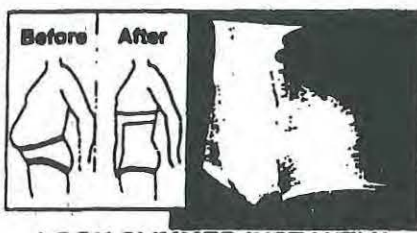
EXHIBIT E

See what Dr's say:

"A boon to mankind" —Dr. C.C. Blumberg, NY
"I strongly recommend" —Dr. S. Kertan, FL
"Very impressed" —Dr. M. Greenbaum, NY



Clip to your own prescription glasses and block out "Blue" light and painful glare that regular glasses can't. Makes everything look sharper and clearer.
30811 Amber-Optics Clip-ons \$4.88, 2 for only \$8.88
30810 Amber-Optics Frames \$4.88, 2 for only \$8.88



LOOK SLIMMER INSTANTLY (Best Value for Men)

Now zip away tummy bulge *immediately!* "Magic Zipper" lets you slip in and out easily—no struggling. Instantly slims tummy, hips and upper thighs. Corrects posture and supports back muscles. You'll look slimmer, trimmer, younger. Machine washable. State sizes M (34-36), L (38-40), XL (42-44). C.P.R.P. \$29.95—ours \$15.99.

3017 Slenderizer for Men \$ 15.99 ✓

TOILET SEAT BOOSTER

Add up to 5½ inches of height for easier sitting and rising. Ideal for bad-back or arthritis-sufferers. Fits over any toilet—no tools or installation needed. Competitor's published regular price \$49.95—our price only \$24.99.

NEVER STRUGGLE AGAIN!



Item #	Item Name	Your price
30732	5½" Booster w/arms (shown)	\$ 24.99 ✓
	SALE PRICE 2 only \$44.99	
30733	5" Booster w/hand grips	\$ 18.99 ✓
	SALE PRICE 2 only \$34.99	
30731	4½" Booster (standard)	\$14.99 ✓
	SALE PRICE 2 only \$27.99	

4 **BUY AT OUR LOW DR'S PRICES!** We have only one price—you pay same low price we charge Dr.'s & customers on our own mailing list.

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EXHIBIT F

EXHIBIT F

F A L L S A V I N G S I S S U E



First with the *New Ideas in Nutrition* for over 42 years

PHASE OUT

NEW Proven new device shown to reduce the dangers of cigarettes while helping even hardcore smokers quit.



Phase Out is a scientifically designed and patented mechanical device that eliminates toxins in cigarette smoke. Tests conducted at the U.S. Testing Company and confirmed in recent studies at

the Johns Hopkins School of Medicine show that Phase Out lets smokers gradually and easily withdraw from nicotine addiction without the stress and irritation of "cold turkey".

Simply place an unopened pack of cigarettes in Phase Out and press. Phase Out instantly puts tiny perforations into your filtered or unfiltered cigarette. This allows cool air to mix with the hot gases created when you smoke. The resulting condensation traps up to 90% of the tars, nicotine and other poisons, and keeps them from reaching your lungs.

Use the simple 8-week Phase Out program (included) to stop smoking entirely, or just use Phase Out to create safer cigarettes. Either way, your health will benefit. Try fast, simple and effective Phase Out now.

No. 2-0101 \$29.95

Complaint

EXHIBIT G

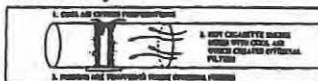
Would you spend the price of two cartons of cigarettes to protect your unborn child?

EXHIBIT G

Maternal smoking is one of the most significant causes of serious risk in pregnancy and is linked with complications including miscarriages, pre-term birth, low birth weight, and respiratory distress syndrome. If you're pregnant, you owe it to yourself and your unborn child to stop smoking!

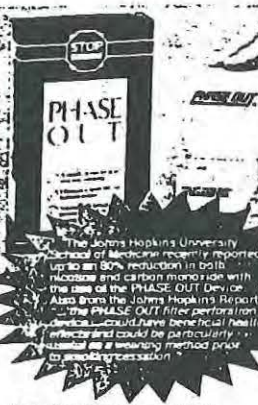
If you haven't been able to stop smoking before, the four-step PHASE OUT[®] SYSTEM will help win this important battle for you, your baby, and all your other family members who are affected by your second-hand smoke.

How does PHASE OUT work? The patented device, which utilizes a gradual withdrawal technique over an eight-week period of time, creates microfine perforations in the lip end of your cigarettes, one pack at a time — simply and conveniently.



PHASE OUT prevents up to 80% of the deadly tar, nicotine, and other poisons from ever entering your body.

And the taste, flavor and draw of your cigarettes aren't changed!



Step by step, the gradual elimination of nicotine through the patented PHASE OUT device makes quitting easier.

Completely natural and safe, and using no chemicals or drugs ... no withdrawal problems or possible harmful side-effects for pregnant women (like those associated with the nicotine patch).

ALL YOU DO IS PRESS ...

and the PHASE OUT System creates microfine perforations in the lip end of your cigarettes — one pack at a time — simply and conveniently.

Prevents up to 80% of the deadly tar, nicotine, and other tobacco poisons from ever entering your body.

And without changing the taste, flavor and draw of your cigarettes!

With PHASE OUT, you'll successfully wean yourself of smoking at your own pace, with your own timetable.

So, what about it? Is the health of your unborn child worth the price of a couple of cartons of cigarettes? The PHASE OUT System to stop smoking is **ONLY**

\$29.95

For MasterCard and

Ordering, Toll-free:

800/423-0102

24 HOURS A DAY — 7 DAYS A WEEK

WHAT DOCTORS SAY:

"The Johns Hopkins study by Sitzer and colleagues is exciting because it showed that by using the PHASE OUT device with regular cigarettes, the volunteers obtained progressively lower amounts of nicotine and carbon monoxide. This suggests that the PHASE OUT device might provide a practical and useful means for smokers to wean themselves from nicotine and their addiction to tobacco."

Dr. Jack E. Henningfield, Chief, Clinical Pharmacology Branch, Addiction Research Center, National Institute on Drug Abuse, Baltimore, MD

"I reviewed the test reports from the U.S. Testing Laboratories regarding the reduction of nicotine, tar and carbon monoxide in cigarette smoke. Inasmuch as these substances in smoke are deleterious to health, the use of PHASE OUT and its program will be of immediate benefit to smokers."

Dr. Theodore Reich, Cardiovascular Specialist, NYU Medical Center, NY

"This letter is being sent to you with my sincere gratitude and appreciation. I was amazed and could not believe the results from using PHASE OUT. There were absolutely no withdrawal symptoms. The day I smoked my last cigarette was the last day I had any desire to do so. Your PHASE OUT really works!"

"It is now more than a year since I have quit smoking. I am a true believer in what PHASE OUT can do and want to do everything possible to spread the word. This letter serves as my endorsement of your product which hopefully will induce others to take the big step forward to a healthier life."

Dr. Arnold Benson, Cardiologist and Former Chief of Medical Services, Pentagon, Washington, D.C.

"I strongly recommend PHASE OUT to anyone who wants to stop smoking."

Dr. Sanford Kalish, Cooper City, FL

YES! I want to stop smoking with the PHASE OUT System:

Name: _____

Address: _____

City: _____

State: _____ Zip: _____

Telephone: (_____) _____

I want PHASE OUT System (s) _____

@ \$29.95 per PHASE OUT System: \$ _____

Plus Shipping & Handling: \$ 4.00

In PA, add 6% State Tax: \$ _____

TOTAL _____

☐ Check/MO ☐ VISA ☐ MasterCard ☐ AMEX

Amount _____ Exp. Date _____

Signature _____

Make check/money order (no cash) payable to:

EPI/Glen Eagle Marketing
Route 727 West, P.O. Box 68
Bridgewater, VA 22812

Please allow 4-6 weeks shipping



90 DAY MONEY BACK GUARANTEE — For the PHASE OUT System ask for: If not completely satisfied, just return the system within 90 days for full refund. (Proof of purchase required.)

EXPENSE NO. 120-05

Complaint

123 F.T.C.

EXHIBIT H

EXHIBIT H



PRACTICE SAFE SMOKING.

PHASEOUT® ELIMINATES UP TO 80% OF THE NICOTINE IN CIGARETTES.

We all know that safe smoking is **NO** smoking. Everyone understands the nicotine, tars and carbon monoxide in cigarette smoke are hazardous to your health. But if you simply must smoke, or if you'd love to quit, PHASEOUT® can really help.

Clinical research by Johns Hopkins University and tests by US Testing Company prove PHASEOUT's patented microperforation system significantly reduces all harmful substances in the cigarette brand you're lighting up right now. It won't noticeably affect the taste or draw and you will still enjoy the pleasure and satisfaction of smoking your favorite brand. But by gently and gradually eliminating up to 80% of your nicotine

intake, PHASEOUT makes it easier to quit. Without cold turkey withdrawal symptoms or side effects.

Unlike patches, PHASEOUT requires no prescriptions, contains no drugs or chemicals, has absolutely no health risks or side effects, there's nothing to wear, and it's only a fraction of the cost.

Plus, PHASEOUT is guaranteed to work for you, or your money back. So you've got nothing to lose but your smoking habit.

Protect yourself with PHASEOUT. Because what you don't smoke can't harm you.

PHASEOUT.
MAKES IT SAFER TO SMOKE, EASIER TO QUIT.

CREDIT CARD HOLDERS MAY ORDER BY PHONE 24 HOURS 7 DAYS A WEEK 100% SATISFACTION GUARANTEED!
Please have credit card handy!

1-800-822-9800 Dept. 5G02

Please send me **PHASEOUT** devices at \$39.95 (each)

Merchandise subtotal \$ _____
Shipping/handling/insurance at \$6 per unit \$ _____
NY State residents, please add tax \$ _____
TOTAL \$ _____

____ Enclosed is my check or money order payable to PHASEOUT
Please bill my ☐ VISA ☐ Mastercard

Acct. # _____ Expiration Date _____

Signature _____

Name _____

Address _____

City _____ State _____ Zip _____

Mail To: **PHASEOUT**
507 Maple Leaf Dr., Nashville, TN 37210 Dept. 5G02

395

Complaint

EXHIBIT I

EXHIBIT I



123 F.T.C.

Complaint

EXHIBIT I

PHASEOUT NICOTINE IN
CIGARETTE SMOKE

We know that for many smokers, cigarettes are enjoyable and quitting is tough. PHASEOUT lets you smoke your regular brand of cigarettes without any noticeable change in taste. You just phase-out up to 80% of the nicotine, tar, carbon monoxide and other unwanted substances from your cigarettes. You still enjoy the pleasure and satisfaction of smoking until you are ready to quit.

PHASEOUT'S GRADUAL WEANING
COULD MAKE IT EASIER TO QUIT

Nine out of ten people who try to quit fail. By gently and gradually reducing the nicotine in your cigarettes, PHASEOUT can help you take control in your efforts to quit. You set your own pace and your own timetable, and this could make it easier to quit.

PHASEOUT
IS SCIENTIFICALLY PROVEN

Research confirms the effectiveness of PHASEOUT. Tests conducted by Johns Hopkins University and U.S. Testing Laboratories conclude that PHASEOUT gradually eliminates up to 80% of the nicotine, tar, carbon monoxide and total particulate matter found in cigarette smoke.

THIS IS WHAT THE JOHNS
HOPKINS RESEARCH REPORTED

"Use of the Phase-Out filter perforation device may allow smokers to continue smoking their preferred brand of cigarettes while reducing their exposure to tobacco smoke constituents. This could have beneficial health effects and could be particularly useful as a weaning method prior to smoking cessation."

"In conclusion, this study showed that filter perforation achieved with the PHASEOUT device significantly reduced human exposure to tobacco smoke constituents when tested in an acute smoking protocol under controlled laboratory conditions."

Controlled laboratory test on smokers conducted by Johns Hopkins School of Medicine

P H A S E O U T

MAJOR BENEFITS

- Reduces up to 80% of tar, nicotine, carbon monoxide and total particulate matter in cigarette smoke through a "gradual weaning" process.
- You quit at your own pace...your own timetable.
- Lets you continue to enjoy the flavor and taste of your favorite brand of cigarette.
- Inexpensive...one-time purchase.
- Easy to use.
- Non-invasive and thus risk-free.
- No drugs, chemicals or attachments.
- A progressive 4-step program that helps you gently phase out unwanted substances in cigarette smoke.

**The Choice Is Yours to Cut Down or Quit
Either Way, You Win! You Are In Control.**

HOW PHASEOUT WORKS

Here's how PHASEOUT works. Insert an unopened pack—hard or soft, king-size, or 100's—into the patented PHASEOUT and squeeze. It makes tiny, almost undetectable perforations in filtered or unfiltered cigarettes. These microfine openings let cool outside air mix with the hot air inside the cigarette forming a natural condensation filter trapping over 80% of these substances—without noticeably changing the taste, draw or pleasure of your cigarette.



HOW YOU BENEFIT:

As you progress through phases I to IV, more and more nicotine is removed; this should make it easier for you to quit. The average smoker can spend over \$1,000 a year on cigarettes. You'll save a lot of money on the cost of cigarettes and cleaning bills. You can take that extra vacation, buy the extra clothes or dress you've longed for. You may even save money on life insurance. You won't be treated like a second class citizen anymore. Your friends and family will love you. Most important, you will feel like a winner.

You can continue to smoke until you feel ready to quit completely. Either way, from day one with Phase I, you benefit!

PHASE I

Place the top lip (filter) end of an unopened standard pack of cigarettes into the receptacle. Push and hold the pack all the way in. Squeeze the top and bottom together and then release (see figure 1). Remove the pack or box. Each cigarette is now processed with a precision perforation. You have reduced 25.9% of nicotine, 40.8% of tar and 57.1% of carbon monoxide.**

Stay on Phase I for two weeks.

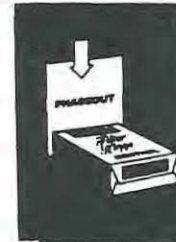


Figure 1

PHASE II

Repeat the procedure of Phase I. Then turn over the pack or box of unopened cigarettes still placing the top (filter) end into the receptacle and squeeze (see figure 2). Remove the pack or box. Each cigarette is now processed with two precision perforations. You have reduced 46.8% of nicotine, 65.8% of tar and 73.1% of carbon monoxide.**

Stay on Phase II for two weeks.

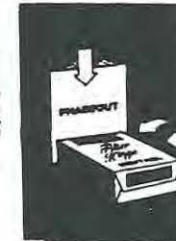


Figure 2

PHASE III

Repeat Phase I and Phase II. Then push the "Phase" switch located in the rear-bottom housing from top position to the bottom (see figure 3). If the switch is already in the down position, reverse the procedure. Place the unopened pack or box into the receptacle. Squeeze the top and bottom together and then release. Remove the pack or box. Each cigarette is now processed with three precision perforations. You have reduced 63.8% of nicotine, 80.1% of tar and 83.2% of carbon monoxide.**

Stay on Phase III for two weeks.

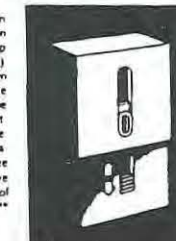


Figure 3

**Statistics based on independent test laboratory report I.T.C. 10/10/83. Averages based on numerous name brands.

T H E W E A N - M A C H I N E , T O H E L P Y O U Q U I T S M O K I N G

Complaint

EXHIBIT I

P H A S E O U T

PHASE IV

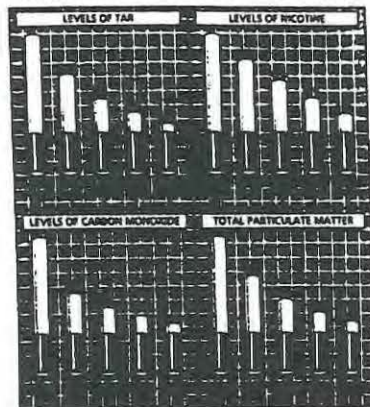
Repeat Phase I, Phase II and Phase III. While the "Phase" switch is still in place, turn the pack or box of unopened cigarettes (as in figure 2). Place the top (filter) end into the receptacle. Squeeze the top and bottom together and then release. Remove the pack or box. Each cigarette is now processed with four precision perforations. You have reduced 80.7% of nicotine, 91.6% of tar and 89.2% of carbon monoxide.**

Stay on Phase IV for two weeks.



Figure 4

UNITED STATES TESTING COMPANY RESULTS SHOW DRAMATIC REDUCTION OF NICOTINE AND OTHER POISONS!



Results of the United States Testing Company on the PHASEOUT System using U.S. Government methods. Illustrated are the reductions of nicotine and other toxins during each phase. The percentages are based on an average of all brands tested. Validated in controlled laboratory research by the Johns Hopkins University School of Medicine.

US Patent No. 4,231,378 US Patent No. 5,218,976
Worldwide Patents Pending

WHAT'S BEING SAID

"Before I knew it I had gone from a three pack a day habit down to about a half a pack a day. I strongly recommend PHASEOUT to anyone who wants to stop smoking."

Dr. Sanford Kalter
Cooper City, FL

"I reviewed the test reports from the U.S. Testing Laboratories regarding the reduction of nicotine, tars and carbon monoxide in cigarette smoke. The use of PHASEOUT and its program will be of immediate benefit to smokers."

Dr. Theodore Reich
NYU Medical Center, NY

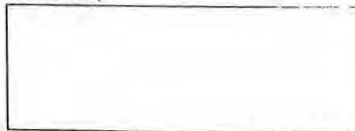
"This letter is being sent to you with my sincere gratitude and appreciation. I was amazed and could not believe the results from using PHASEOUT. The day I smoked my last cigarette was the last day I had any desire to do so. Your PHASEOUT really works. It is now more than one year since I have quit smoking. I am a true believer in what PHASEOUT can do and want to do everything possible to spread the word. This letter serves as my endorsement of your product which hopefully will induce others to take the big step."

Dr. Arnold Benson
Former Chief of Medical Services
Pentagon, Washington, D.C.

"I have been a two pack a day (and more) smoker for twenty years. I have tried almost every way to quit over the past fifteen years. None of the programs could deal with my major challenge, staying quit. I am in the third phase of the (PHASEOUT) program which means I am reducing tar by 77% and the nicotine by 66% but miraculously I am smoking less than ever. To me it is a miracle because I am trying to cut down. I want to thank everyone involved."

Donna Narducci
Akron, Ohio

Distributed by



PHASEOUT of America, Inc.
(A Publicly Owned Company)
Lynbrook, New York 11563
© Copyright 1994 Phaseout of America

THE WEAN-MACHINE, TO HELP YOU QUIT SMOKING

Complaint

123 F.T.C.

EXHIBIT J

Phaseout Home Page

<http://www.phaseout.com/phaseout>

EXHIBIT J

**The amazing scientific breakthrough that
gradually reduces NICOTINE and other
unwanted substances from cigarette smoke**

COMPLETELY SAFE
NO DRUGS
NO ATTACHMENTS
NEWLY PATENTED

**SMOKING RELATED ILLNESSES
KILL MORE THAN 430,000
AMERICANS EVERY YEAR...**

That's more than those caused by alcohol, cocaine, homicide, suicide, automobile accidents, fires and AIDS combined. It's a serious health issue, which makes it even more tragic because smoking is voluntary. And because high levels of nicotine make it hard to stop.

**PHASEOUT Goes After
The Problem...Your Cigarettes**

PHASEOUT is a treatment for your cigarettes, not you. It uses a revolutionary approach called "filter perforation" that actually decreases levels of nicotine and other toxins. So you're able to reduce your craving, reduce the number of cigarettes smoked... and finally quit for good.

Another reason why PHASEOUT works is that its patented design allows you to treat your cigarettes without losing any of the flavor. PHASEOUT lets you stick with your own brand of cigarettes while trapping over 80% of the toxins...so it's convenient and less intrusive.

Plus it's backed by doctors, scientifically proven by the United States Testing Company, and validated by the Johns Hopkins University School of Medicine.

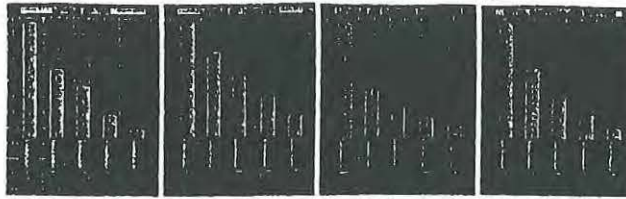
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395

Complaint

EXHIBIT J

Phaseout Home Page

<http://www.imsworld.com/phaseout>

Illustrated are the reductions of nicotine and other toxins during each phase.

HOME	STOP SMOKING GRADUALLY	HOW PHASEOUT WORKS	WHAT'S BEING SAID	ORDER PHASEOUT
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Complaint

123 F.T.C.

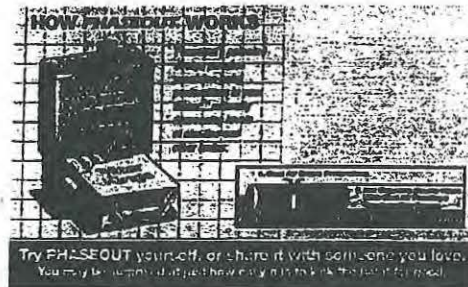
EXHIBIT J



STOP SMOKING THE SAME WAY YOU STARTED...GRADUALLY

PHASEOUT is a four-step program that slowly reduces the harmful and addictive effects of smoking, while allowing you to enjoy the full flavor of your favorite brand of cigarettes.

It uses a revolutionary approach called "filter perforation" that actually decreases levels of nicotine and other toxins from any brand of cigarettes. So you're able to reduce your craving, reduce the number of cigarettes smoked...and finally quit for good.



PHASEOUT is a *treatment for your cigarettes, not you*. Its patented design allows you to punch tiny, undetectable holes in your cigarettes, causing condensation...a natural filtering process that traps **over 80%** of the toxins.

Each phase adds more perforations, further decreasing the levels of nicotine, tar and carbon monoxide. It's a safe, effective method approved by doctors and validated by John Hopkins University School of Medicine.

HOME	STOP SMOKING GRADUALLY	HOW PHASEOUT WORKS	WHAT'S BEING SAID	ORDER PHASEOUT
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EXHIBIT J

- ASEOUT Works

<http://www.vyp.com/phaseout/about>

PHASEOUT NICKOTINE IN CIGARETTE SMOKE

We know that for many smokers, cigarettes are enjoyable and quitting is tough. PHASEOUT lets you smoke your regular brand of cigarettes without any noticeable change in taste. You just phase-out up to 80% of the nicotine, tar, carbon monoxide and other unwanted substances from your cigarettes. You still enjoy the pleasure and satisfaction of smoking until you are ready to quit.

PHASEOUT'S GRADUAL WEANING COULD MAKE IT EASIER TO QUIT

Nine out of ten people who try to quit fail. By gently and gradually reducing the nicotine in your cigarettes, PHASEOUT can help you take control in your efforts to quit. You set your own pace and your own timetable, and this could make it easier to quit.

PHASEOUT IS SCIENTIFICALLY PROVEN

Research confirms the effectiveness of PHASEOUT. Tests conducted by Johns Hopkins University and U.S. Testing Laboratories conclude that PHASEOUT gradually eliminates up to 80% of the nicotine, tar, carbon monoxide and total particulate matter found in cigarette smoke.

THIS IS WHAT THE JOHNS HOPKINS RESEARCH REPORTED

"Use of the Phase-Out filter perforation device may allow smokers to continue smoking their preferred brand of cigarettes while reducing their exposure to tobacco smoke constituents. This could have beneficial health effects and could be particularly useful as a weaning method prior to smoking cessations."

"In conclusion, this study showed that filter perforation achieved with the PHASEOUT device significantly reduced human exposure to tobacco smoke constituents when tested in an acute smoking protocol under controlled laboratory conditions."

MAJOR BENEFITS

- Reduces up to 80% of tar, nicotine, carbon monoxide and total particulate matter in cigarette smoke through a "gradual weaning" process.
- You quit at your own pace...your own timetable.
- Lets you continue to enjoy the flavor and taste of your favorite brand of cigarette.
- Inexpensive...one-time purchase.
- Easy to use.
- Non-invasive and thus risk free.
- No drugs, chemicals or attachments.
- A progressive 4-step program that helps you gently phase out unwanted substances in cigarette smoke.

Complaint

123 F.T.C.

EXHIBIT J

HASEOUT Works

<http://www.vyp.com/phaseout/about.html>

**The Choice Is Yours to Cut Down or Quit
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HOW YOU BENEFIT

As you progress through phases I to IV, more and more nicotine is removed...this should make it easier for you to quit. The average smoker can spend over \$1,000 a year on cigarettes. You'll save a lot of money on the cost of cigarettes and cleaning bills. You can take that extra vacation, buy the extra clothes or dress you've longed for. You may even save money on life insurance. You won't be treated like a second class citizen anymore. Your friends and family will love you. Most important, you will feel like a winner.

You can continue to smoke until you feel ready to quit completely. Either way, from day one with Phase I, you benefit!

HOME	STOP SMOKING GRADUALLY	HOW PHASEOUT WORKS	WHAT'S BEING SAID	ORDER PHASEOUT
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EXHIBIT J

ASEOUT Works

<http://www.vyp.com/phaseout/testimonial>**WHAT'S BEING SAID**

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Cooper City, FL

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Donna Narducci
Akron, Ohio

HOME	STOP SMOKING GRADUALLY	HOW PHASEOUT WORKS	WHAT'S BEING SAID	ORDER PHASEOUT
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Complaint

123 F.T.C.

EXHIBIT J

PHASEOUT Order Form



If you would like to have a secure transaction and have a browser that supports it please click here.

Order Phaseout for only \$39.95 + \$6.00 shipping and handling with a 30 day money-back guarantee.

Name:

Address:

City:

State:

Zip:

Credit Card:

Credit Card Number:

Expiration Date:

Qty Price

HOME	STOP SMOKING GRADUALLY	HOW PHASEOUT WORKS	WHAT'S BEING SAID	ORDER PHASEOUT
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DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of the agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Phaseout of America, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 140 Broadway, in the City of Lynbrook, State of New York.

Respondent Products & Patents, Ltd. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 140 Broadway, in the City of Lynbrook, State of New York.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

DEFINITIONS

For purposes of this order, the following definitions shall apply:

1. *"Johns Hopkins study"* shall mean the study that has been reported as Stitzer, Brigham and Felch, Phase-Out Filter Perforation: Effects on Human Tobacco Smoke Exposure, 41 Pharmacology, Biochemistry and Behavior 748 (1992).

2. *"Smoking-cessation product"* shall mean any product or program designed to aid or assist the user to stop or reduce the cigarette urge, break the cigarette habit, or stop or reduce smoking.

3. *"Cigarette-modification product"* shall mean any product or program designed to reduce the amount of tar, nicotine, carbon monoxide or other substance that smokers get from cigarettes, or reduce their risk of smoking-related health problems.

4. *"Substantially similar product"* shall mean any smoking-cessation product or cigarette-modification product that punches one or more holes in a cigarette or pack of cigarettes.

5. *"Competent and reliable scientific evidence"* shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results. Survey evidence may be appropriate depending on the representation made.

6. Unless otherwise specified, *"respondents"* shall mean Phaseout of America, Inc. and Products & Patents, Ltd., corporations, their successors, assigns, agents, representatives and employees.

7. *"Purchaser for resale"* shall mean any purchaser or other transferee of the PhaseOut device, or of the right or license to sell the PhaseOut device, other than respondents, who sells, or who has sold, the PhaseOut device to other purchasers or to consumers.

8. *"In or affecting commerce"* shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

I.

It is ordered, That respondents, directly or through any corporation, subsidiary, division or other device, in connection with

the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of the PhaseOut device or any substantially similar product in or affecting commerce, shall not represent, in any manner, expressly or by implication, that:

A. The Johns Hopkins study proves that such product significantly reduces the amount of tar, nicotine, or carbon monoxide smokers get under normal smoking conditions;

B. The Johns Hopkins study proves that such product is effective in enabling smokers to quit smoking; or

C. The Johns Hopkins study proves that smokers who use such product and continue to smoke significantly reduce their risk of smoking-related health problems.

II.

It is further ordered, That respondents, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any smoking-cessation product or cigarette-modification product in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, that:

1. The product reduces the amount of nicotine, tar, carbon monoxide, or any other component of cigarette smoke that smokers get from smoking a cigarette;

2. The product is effective in enabling or helping smokers to quit smoking;

3. The product reduces the risk of smoking-related health problems, including, but not limited to, lung cancer or heart disease, for smokers who continue to smoke;

4. The product reduces the amount of nicotine, tar, carbon monoxide, or any other component of cigarette smoke that smokers get without changing a cigarette's taste or draw;

5. Smokers using the product will not compensate for the product's effects by increasing the number of cigarettes they smoke per day;

6. The product is effective in enabling or helping smokers to quit smoking without withdrawal symptoms; or

7. The product provides immediate health benefits, including, but not limited to, reduced congestion, coughing or windedness, for smokers who continue to smoke;

unless, at the time it is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

III.

It is further ordered, That respondents, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any smoking-cessation product or cigarette-modification product in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the performance, benefits or efficacy of such product, unless, at the time it is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

IV.

It is further ordered, That respondents, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any smoking-cessation product or cigarette-modification product in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research.

V.

It is further ordered, That respondents, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any smoking-cessation product or cigarette-modification product in or affecting commerce, shall not represent, in any manner, expressly or by implication, that the experience represented by any user testimonial or endorsement of the product

represents the typical or ordinary experience of members of the public who use the product, unless:

A. At the time it is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation; or

B. Respondents disclose, clearly and prominently, and in close proximity to the endorsement or testimonial, either:

1. What the generally expected results would be for users of the product, or

2. The limited applicability of the endorser's experience to what consumers may generally expect to achieve, that is, that consumers should not expect to experience similar results.

For purposes of this Part, "endorsement" shall mean as defined in 16 CFR 255.0 (b).

VI.

It is further ordered, That respondents Phaseout of America, Inc. and Products & Patents, Ltd., and their successors and assigns shall:

A. Within forty-five (45) days after the date of entry of this order, compile a current mailing list containing the names and last known addresses of all purchasers of the PhaseOut device since January 1, 1992. Respondents shall compile this list by:

1. Searching their own files for the names and addresses of such purchasers; and

2. Using their best efforts to identify any other such purchasers, including but not limited to sending by first class certified mail, return receipt requested, within five (5) days after the date of entry of this order, to all purchasers for resale with which respondents have done business since January 1, 1992, an exact copy of the notice attached hereto as Attachment A. The mailing shall not include any other documents. In the event that any such purchaser for resale fails to provide any names or addresses of purchasers in its possession, respondents shall provide the names and addresses of all such purchasers for resale to the Federal Trade Commission within forty-five (45) days after the date of entry of this order.

In addition, respondents shall retain a National Change of Address System ("NCOA") licensee to update this list by processing the list through the NCOA database.

B. Within ninety (90) days after the date of entry of this order, send by first class postcard, postage prepaid, to the last known address of each purchaser of the PhaseOut device identified on the mailing list compiled pursuant to subparagraph A of this part, an exact copy of the notice attached hereto as Attachment B. The mailing shall not include any other documents.

C. For one (1) year after the date of entry of this order, make the mailing described in subparagraph B of this part to any person or organization not on the mailing list prescribed in subparagraph A of this part about whom respondents later receive information indicating that the person or organization is likely to have been a purchaser of the PhaseOut device, and to any purchaser whose notification postcard is returned by the U.S. Postal Service and for whom respondents obtain a corrected address, from the U.S. Postal Service or elsewhere. The mailing required by this subparagraph shall be made within ten (10) days of respondents' receipt of a corrected address or information identifying each such purchaser.

D. In the event that respondents receive any information that, subsequent to its receipt of Attachment A, any purchaser for resale is using or disseminating any advertising or promotional material that contains any representation prohibited by this order, immediately notify the purchaser for resale that respondents will terminate the use of said purchaser for resale if it continues to use such advertising or promotional material; and

E. Terminate the use of any purchaser for resale about whom respondents receive any information that such purchaser for resale has continued to use or disseminate advertising or promotional material that contains any representation prohibited by this order after receipt of the notice required by subparagraph D of this part.

VII.

It is further ordered, That respondents Phaseout of America, Inc. and Products & Patents, Ltd., and their successors and assigns shall, for five (5) years after the last correspondence to which they pertain, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. Copies of all notifications sent to purchasers pursuant to subparagraphs B and C of part VI of this order;

B. Copies of all notification letters sent to purchasers for resale pursuant to subparagraph A of part VI of this order;

C. Copies of all communications with purchasers for resale pursuant to subparagraphs D and E of part VI of this order.

VIII.

It is further ordered, That respondents Phaseout of America, Inc. and Products & Patents, Ltd., and their successors and assigns shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All advertisements and promotional materials containing the representation;

B. All materials that were relied upon in disseminating the representation; and

C. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

IX.

It is further ordered, That respondents Phaseout of America, Inc. and Products & Patents, Ltd., and their successors and assigns shall deliver a copy of this order to all current principals, officers, directors, and managers, and to all current employees, agents, and representatives having responsibilities with respect to the subject matter of this order. Respondents shall deliver this order to current personnel within thirty (30) days after the date of service of this order.

X.

It is further ordered, That respondents Phaseout of America, Inc. and Products & Patents, Ltd., and their successors and assigns shall notify the Commission at least thirty (30) days prior to any change in the corporation(s) that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that with respect to any proposed change in the corporation about which respondents learn less than thirty (30) days prior to the date such action is to take place, respondents shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C.

XI.

It is further ordered, That respondents Phaseout of America, Inc. and Products & Patents, Ltd., and their successors and assigns shall, within sixty (60) days after the date of service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

XII.

This order will terminate on February 12, 2017, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any Part in this order that terminates in less than twenty (20) years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

ATTACHMENT A

BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED

[To be printed on Phaseout of America, Inc. letterhead]

[date]

Dear [purchaser for resale]:

This letter is to inform you that Phaseout of America, Inc. recently settled a lawsuit with the Federal Trade Commission ("FTC") concerning certain claims we made for our product, PhaseOut, which the FTC has challenged as deceptive. Although we do not admit the FTC's allegations, we have agreed to notify our distributors, wholesalers and others who sell PhaseOut to consumers to stop using or distributing advertisements or promotional materials containing those claims. We are also asking PhaseOut sellers to provide us with the names of their customers so that we may contact them directly.

The FTC Settlement

The FTC claimed that we made unsubstantiated claims about PhaseOut's effectiveness in reducing the adverse health effects of smoking and in helping smokers to stop smoking. The FTC also alleged that the company made misrepresentations about a study conducted at The Johns Hopkins University using PhaseOut.

*Claims about reduced tar, nicotine and carbon monoxide yields.

The FTC alleged that the company made unsubstantiated claims that PhaseOut reduces the amount of tar, nicotine and carbon monoxide smokers get from smoking a cigarette by specific, substantial percentages. The company has agreed that it will substantiate any future claims that PhaseOut reduces the amount of any component of cigarette smoke that smokers get from smoking a cigarette.

The FTC also alleged that the company misrepresented the Johns Hopkins test results by claiming that the study proved that PhaseOut significantly reduces the amount of tar, nicotine and carbon monoxide smokers get under normal smoking conditions. Smokers often compensate when smoking low tar or nicotine cigarettes by taking more puffs from a cigarette, inhaling more deeply or blocking ventilation holes, such as the perforation holes produced by the PhaseOut device. The company has agreed that it will accurately represent the results of the Johns Hopkins study and any other test or study.

*Claims that PhaseOut is effective in enabling smokers to quit smoking.

The FTC alleged that the company made unsubstantiated claims that PhaseOut is effective in enabling smokers to quit smoking. The company has agreed that it will substantiate any future claims that PhaseOut is effective in enabling smokers to quit smoking.

The FTC also alleged that the company misrepresented the Johns Hopkins test results by claiming that the study proves PhaseOut is effective in enabling smokers to quit smoking. The company has agreed not to make this representation in the future.

*Claims that PhaseOut provides immediate health benefits and reduces the risk of smoking-related health problems for people who continue to smoke.

The FTC alleged that the company made unsubstantiated claims that smokers would derive substantial health benefits by using the PhaseOut product even if they continued to smoke. The company has agreed that it will properly substantiate any future claims of this type.

The FTC also alleged that the company misrepresented the Johns Hopkins test results by claiming that the study proved that smokers who use PhaseOut and continue to smoke significantly reduce their risk of smoking-related health problems. The company has agreed not to make this representation in the future.

*Claims that PhaseOut reduces tar, nicotine and carbon monoxide yields without changing a cigarette's taste or draw.

The FTC alleged that the company made claims that use of the PhaseOut device would not produce any change in a cigarette's taste or draw. The company has agreed to substantiate any future claims regarding taste or draw.

*Claims that PhaseOut is effective in enabling smokers to quit smoking without withdrawal symptoms.

The FTC alleged that the company made these claims without adequate substantiation. The company has agreed that it will have proper substantiation before making these claims in the future.

*Claims that users of PhaseOut will not compensate for the product's effects by increasing the number of cigarettes they smoke per day.

The FTC alleged that the company made these claims without adequate substantiation. The company has agreed to have proper substantiation before making these claims in the future.

*Claims that testimonials and consumer endorsements used in our ads reflect the typical or ordinary experiences of PhaseOut users.

The company has agreed that it will make these claims only if they reflect the typical experience of PhaseOut users or there is a proper qualifying disclosure to the effect that the results are not typical. No issue was raised regarding the authenticity of the actual testimonials and endorsements that have been used in PhaseOut advertising.

Our Obligations to Notify Distributors and Customers

In addition to our obligations discussed above, we have also agreed to provide notification of the FTC's allegations to consumers who have purchased PhaseOut. We need your assistance in complying with certain provisions of our settlement with the FTC.

First, we request that you discontinue using, relying on or distributing any PhaseOut advertising or promotional materials currently in your possession. We also ask that you notify any of your retail or wholesale customers who may have such materials to discontinue using them. These materials may contain claims that the FTC has alleged to be false or unsubstantiated. If you continue to use those materials, we are required by the FTC settlement to stop doing business with you. You should also avoid making any of the representations challenged by the FTC, as described in this letter.

Second, please send us immediately the names and last known addresses of all persons, including other resellers and consumers, to whom you have sold the PhaseOut device since January 1, 1992. We need this list in order to provide the notification required by our settlement with the FTC. If you do not provide this information, we are required to provide your name and address to the FTC.

If you have any questions, you may call us at (516) 599-1900 or you may call Devenette Cox at the FTC at (202) 326-3360. We apologize for any inconvenience this may cause you and thank you for your assistance.

Sincerely,

Irwin Pearl, President
Phaseout of America, Inc.

Decision and Order

123 F.T.C.

ATTACHMENT B

ATTACHMENT B

Front of Postcard

Phaseout of America, Inc.
140 Broadway
Lynbrook, New York 11563

[Name and address
of PhaseOut purchaser]

IMPORTANT HEALTH NOTICE!

*Back
of
Post
card*

Dear PhaseOut Purchaser:

Our records show that you bought the PhaseOut smoking cessation product. Phaseout of America, Inc. recently settled Federal Trade Commission charges that we made deceptive claims in our ads about the benefits of the PhaseOut product. Although we don't admit the FTC's allegations, we agreed to send this notice to people who bought the product.

According to the FTC, our ads deceptively claimed, among other things, that people who use PhaseOut could continue to smoke while substantially reducing the risk of smoking-related health problems, including lung cancer and heart disease. As part of our settlement, we agreed to stop making claims like this unless we have scientific proof to back them up. PhaseOut has not been proven to reduce the risk of smoking-related diseases or to make cigarettes "safer."

For more information about smoking-related health risks, call the National Cancer Institute's Cancer Information Service at 1-800-4CANCER.

Sincerely,

[Date]

Irwin Pearl, President of Phaseout of America, Inc.

IN THE MATTER OF

INTERNATIONAL ASSOCIATION OF
CONFERENCE INTERPRETERS, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket 9270. Complaint, Oct. 25, 1994--Final Order, Feb. 19, 1997

This final order requires, among other things, the International Association of Conference Interpreters, a Switzerland-based voluntary professional association of interpreters from 68 countries, and its U.S. affiliate members to eliminate Association rules and bylaws regarding, among other things, fees, travel expenses, pro bono work, and commissions.

Appearances

For the Commission: *Kent Cox* and *Michael D. McNeely*.

For the respondents: *James Meyers* and *Robert Skitol, Drinker, Biddle & Reaths*, Washington, D.C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that respondents, the International Association of Conference Interpreters, also known as the Association Internationale des Interprètes de Conférence (hereafter, "AIIC"), a corporation, and the United States Region of the International Association of Conference Interpreters (hereafter, "the U.S. Region"), an unincorporated association, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent AIIC is a corporation organized, existing and doing business under and by virtue of the laws of France, with its principal place of business located at 10, Avenue de Sécheron, 1202 Geneva, Switzerland. AIIC is a voluntary professional association of individuals in 68 countries engaged in the business of conference interpreting. Respondent the U.S. Region is

a voluntary, unincorporated professional association of individuals residing in the United States and engaged in the business of conference interpreting who are members of AIIC.

PAR. 2. Except to the extent that AIIC and the U.S. Region have restrained competition as described herein, AIIC members, including those in the U.S. Region, have been and are in competition among themselves and with other interpreters.

PAR. 3. AIIC and the U.S. Region engage in substantial activities that further their members' pecuniary interests. By virtue of these activities, AIIC and the U.S. Region are corporations within the meaning of Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

PAR. 4. The acts and practices of AIIC and the U.S. Region, including the acts and practices alleged herein, are in or affect commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. AIIC maintains a set of work rules that are binding on members performing services in the United States and that require members to refuse to work on inferior terms. AIIC members have agreed to abide by the work rules and can be investigated and expelled for violations. The U.S. Region has participated in formulating, securing agreement to, and enforcing those rules as they are applied in the United States.

PAR. 6. AIIC has periodically created and distributed fee schedules containing minimum fees for interpretation services in the United States. AIIC work rules state or have stated that members' rates of daily remuneration shall be the rates specified in the fee schedules. The U.S. Region has participated in formulating and securing agreement to those fee schedules as they apply in the United States.

PAR. 7. Within the United States the AIIC work rules require or have required:

A. Identical compensation for interpreters working on the same interpretation team and performing the same function regardless of differences in interpreters' experience, skill, or other characteristics;

B. Members to calculate conference interpretation fees on an indivisible full-day basis, regardless of the duration of the actual assignment during the day;

C. Members to charge an added fee when they whisper or interpret alone;

- D. Members to charge for cancellations; and
- E. Members to pay their own travel and subsistence expenses when providing services free of charge.

PAR. 8. Within the United States the AIIC work rules prescribe or have prescribed rates for:

- A. Reimbursement or allowances for travel, lodging, subsistence and other expenses;
- B. Compensation for travel time, briefing time, rest time, and weekends or other non-working days over the duration of a conference; and
- C. Recording of interpretations.

PAR. 9. Within the United States the AIIC work rules prescribe or have prescribed mandatory standards for:

- A. The maximum hours worked per day and per shift by interpreters;
- B. The composition of interpretation teams, including the minimum number of interpreters based on the number of target and source languages used at a conference;
- C. The quality of transportation to and from conferences; and
- D. Members' use of portable electronic simultaneous interpretation equipment.

PAR. 10. Within the United States the AIIC work rules prohibit or have prohibited:

- A. Members from accepting or paying commissions;
- B. Members from engaging in comparative advertising;
- C. Members from offering or accepting "package deals" (which combine interpretation with other cost items) and lump sum payment arrangements;
- D. Members from performing non-interpretation services at conferences for which they have been hired as interpreters;
- E. Members from entering into arrangements whereby particular interpreters are available exclusively through them;
- F. Members from accepting more than one assignment for the same period of time; and

G. Members who coordinate interpreters from operating under a trade name.

PAR. 11. As applied to members residing in or traveling to the United States, the AIIC work rules require or have required that travel expenses to a job be charged based on a member's declared professional address, regardless of the member's actual location and even if no travel is actually involved. The AIIC work rules also require or have required members to declare a single professional address, to change such professional addresses no more than once every six months, and to give three months' advance notice of any change.

PAR. 12. Within the United States the AIIC work rules:

A. Required or have required members selecting an interpretation team to hire freelance interpreters before hiring interpreters who have permanent positions; and

B. Discourage or have discouraged interpreters with permanent positions from competing with freelancers.

PAR. 13. By enacting, participating in, securing agreement to, or enforcing the fee schedules, work rules, and other restrictions, as set forth in paragraphs five through twelve, respondents AIIC and the U.S. Region have been and are acting as a combination of their members or in conspiracy with their members or others to fix or stabilize fees and to restrain competition by attempting to control the price, output and marketing of interpretation services performed in the United States.

PAR. 14. The combination or conspiracy and acts or practices described above have had and continue to have the purpose and actual or likely effects of unreasonably restraining competition and injuring consumers in the United States by, among other ways, depriving consumers of the benefits of price and other forms of competition among interpreters.

PAR. 15. The acts and practices herein alleged were and are to the prejudice and injury of the public, will continue in the absence of the relief herein requested, and constitute unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

INITIAL DECISION

BY JAMES P. TIMONY, ADMINISTRATIVE LAW JUDGE
JULY 26, 1996

The Commission's complaint in this matter, issued October 25, 1994, charges the International Association of Conference Interpreters ("AIIC") and the U.S. Region of AIIC with unfair methods of competition.

The complaint charges that AIIC maintains work rules binding on members; that AIIC members can be expelled for violations; that the U.S. Region of AIIC has participated in enforcing those rules; that AIIC has minimum fees for interpretation services in the United States; that members' rates of daily remuneration shall be the rates specified in the fee schedules.

The complaint alleges that AIIC rules require: (a) identical compensation for interpreters working on the same interpretation team regardless of differences in their experience or skill; (b) payment of interpretation fees on an indivisible full-day basis, regardless of the number of hours actually worked; (c) added fees for whispered or solo interpretation; (d) cancellation charges; and (e) restrictions on providing services free of charge.

The complaint alleges that AIIC rules prescribe rates for: (a) reimbursement for travel, lodging, and subsistence; (b) compensation for travel time, briefing time, rest time, weekends or other non-working days over the duration of a conference; and (c) recording of interpretations.

The complaint alleges that the AIIC work rules prescribe mandatory standards for: (a) the maximum hours worked per day and per shift by interpreters; (b) the composition of interpretation teams, including the minimum number of interpreters based on the number of languages used at a conference; (c) the quality of transportation to and from conferences; and (d) members' use of portable interpretation equipment.

The complaint alleges that AIIC work rules prohibit: (a) the acceptance or payment of commissions; (b) comparative advertising; (c) "package deals" that combine interpretation with other services, and lump sum payment arrangements; (d) the performance of non-interpretation services by interpreters; (e) exclusive availability arrangements for particular interpreters; (f) the acceptance of more

than one assignment for the same period of time; and (g) the use of trade names.

The complaint alleges that AIIC rules require members to declare a single professional address, to change such professional addresses no more than once every six months, and to give three months' advance notice of any change; and that, as to members residing in or traveling to the United States, travel expenses to a job be charged based on the member's declared professional address, regardless of the member's actual location and even if no travel is actually involved.

The complaint alleges that AIIC requires members selecting an interpretation team to hire freelance interpreters before hiring interpreters who have permanent positions; and discourages interpreters with permanent positions from competing with freelancers.

The complaint alleges that the AIIC and the U.S. Region conspire with their members to fix price and output of interpretation services in the United States; that the effect of this conspiracy is to unreasonably restrain competition and injure consumers in the United States by depriving consumers of the benefits of price and other forms of competition among interpreters; and that the acts and practices alleged are to the prejudice and injury of the public.

Respondents moved to dismiss the complaint on jurisdictional grounds on December 8, 1994. This motion was denied on January 24, 1995, and by modified order on February 7, 1995. Respondents subsequently filed an answer to the Commission's complaint on February 10, 1995. On October 13, 1995, respondents moved for partial summary decision, which was denied on November 20, 1995. On October 23, 1995, complaint counsel moved for partial summary decision on jurisdictional issues, which was denied on November 29, 1995, except as to the existence of interstate commerce jurisdiction and the amenability of the U.S. Region to personal jurisdiction, which respondents did not dispute.

Except for one witness who testified on November 27, 1995, the hearing in this matter began on December 4, 1995. The last witness testified on April 17, 1996. In total, complaint counsel called 16 witnesses, including an economist and a cognitive psychologist, and respondents called five witnesses, including an economist and a psychologist. There were a total of 26 days of trial and 4,000 pages of trial transcript. Approximately 1,000 complaint counsel exhibits

numbered CX-1 through CX-3007 were admitted into evidence.¹ Respondents introduced approximately 240 exhibits numbered RX-2 through RX-820.² The record also includes 94 stipulated facts, adopted by order on April 8, 1996.

FINDINGS OF FACTS

I. THE CONFERENCE INTERPRETATION INDUSTRY

A. Respondents

1. AIIC

1. Respondent International Association of Conference Interpreters, "AIIC" (CX-600-A) is an association of professional conference interpreters. (Stip. 6.) AIIC's Secretariat is located in Geneva, Switzerland. (Stip. 7.) AIIC's rules are in its "Basic Texts." (Stip. 9; CX-1; CX-2.)

2. AIIC's supreme body, the Assembly (all Association members), meets once every three years. (Stip. 10.) AIIC also has a "Council" (president, three vice presidents, a treasurer, and representatives from each of the Association's regions), nominated by their regions and elected to the Assembly. (Luccarelli, Tr. 1628; Stip. 11.) The Council implements Assembly decisions and adopts the annual budget. (Stip. 12.) AIIC also has a "Bureau" (the president, the three vice presidents and the treasurer), exercising the Council's functions. (Stip. 13.) AIIC has 2,000 members worldwide, and 141 in the United States. (CX-600-K; Stip. 36.)

3. AIIC publishes a Bulletin to members. (Stip. 67.) AIIC sends Bulletins to the United States reporting on the business of AIIC (including matters relating to the rates of remuneration and work rules.) (Stip. 17.) Proposed amendments to AIIC's Basic Texts are in the Bulletin. (Stip. 18.)

4. AIIC has two sectors. The "Agreement Sector" safeguards AIIC members working as freelance interpreters pursuant to AIIC's negotiated agreements with international organizations. (CX-2085-E; F. 492-97.) The "Nonagreement Sector," or "NAS," involves AIIC freelance interpreters working in the private sector not covered by

¹ By order of July 10, 1996, approximately 430 of complaint counsel's exhibits were withdrawn.

² By order of July 11, 1996, approximately 100 of respondents' exhibits were withdrawn.

AIIC's Agreements. (CX-278-Z-2; CX-242-E.) NAS meets twice annually. (CX-245-F.)

2. The U.S. Region of AIIC

5. Members of AIIC in any country with 15 members may form a "Region." (Stip. 32.) The membership of an AIIC region consists of the AIIC members then having their professional address in that region. (Stip. 33.) Currently, AIIC has 22 regions. (Stip. 35.) One of these is the U.S. Region of AIIC. (Stip. 33, 36.)

B. The American Association of Language Specialists

6. The American Association of Language Specialists ("TAALS") is an association of conference interpreters, translators, precis-writers and editors based in the Western Hemisphere, principally the United States. (CX-997-C, Q, Z-35 to Z-49; CX-995-C, J.)

7. TAALS has a professional code, binding on members, that, prior to 1994, included many of the restraints now challenged in the complaint against AIIC. (F. 304, 307-13.)

8. The Federal Trade Commission issued a consent order against TAALS (Aug. 31, 1994) prohibiting TAALS from price fixing or limiting price competition, agreements to restrict the time that interpreters work or the number of interpreters used and prohibiting restraints against advertising professional address rules and portable equipment restrictions.

C. The Conference Interpretation Industry in the United States

9. Interpretation refers to the conversion of the spoken word from one language into another. Translation involves written statements. (Luccarelli, Tr. 1572-73.)

10. Conference interpretation involves business meetings, meetings with audiences, seminars and conferences involving sensitive subjects or technical material. (Clark, Tr. 589/21.) There are two principal modes of conference interpretation, consecutive and simultaneous. (Stip. 1.)

11. In consecutive interpretation, interpreters listen to the speakers for a while, and then interrupt to interpret what they have heard into another language. (Stip. 2.) Consecutive interpretation is usually limited to two languages because of the time required when

multiple languages are involved. (CX-304-K (Motton); Obst, Tr. 265, 267-68.)

12. In simultaneous interpretation, the interpreter talks at the same time as the speaker. (Obst, Tr. 264.) Interpreters sit in soundproof booths with microphones and headsets and provide a running interpretation into another language, which conference participants hear with their own headsets. (Stip. 3; CX-300-Z-54 (Motton); Obst, Tr. 264.) Simultaneous interpretation is performed in half the time as consecutive. (Obst, Tr. 265.) While conference interpreters sometimes perform consecutive interpretation, simultaneous interpretation is used for larger conferences. (Hamann-Orci, Tr. 15, 18; Stip. 4; Van Reigersberg, Tr. 433.)

13. Whispered interpretation is simultaneous without equipment and with the interpreter sitting next to two or three listeners. (CX-300-Z-57 to Z-58 (Motton); Hamm-Orci, Tr. 19.) Whispered interpretation is used at state dinners, for heads of state and at press conferences. (Hamann-Orci, Tr. 19; Obst, Tr. 268.)

14. A conference interpreters usually interprets simultaneously in a booth. (Clark, Tr. 591.) Conference interpreters listen and speak at the same time as someone else. (Hamann-Orci, Tr. 17.) In addition to language fluency, a conference interpreter must switch easily between two cultures and languages, which ideally involves having lived extensively in the countries where the foreign languages are spoken. (Weber, Tr. 1164, 1178; CX-303-R to S (Moggio-Ortiz).) Conference interpreters usually undergo specialized training in simultaneous interpreting. (Hamann-Orci, Tr. 17.) They are usually university educated and knowledgeable in many fields. (Davis, Tr. 854; Van Reigersberg, Tr. 384-85.) The majority of them are trained from two to five years. (CX-242-J.)

15. The number of languages at private conferences in the United States can vary from one other than English, to six or seven, but are usually two or three; the attendees can range from a couple of dozen into the thousands. (Neubacher, Tr. 762.) English and Spanish are the most common languages, followed by French. (CX-300-Z-134 (Motton); Citrano, Tr. 520.) In the United States, typical speeches are in English with interpretation into other languages. (Clark, Tr. 627.)

16. At conferences, simultaneous interpreters work in teams. (Luccarelli, Tr. 1617; Moser-Mercer, Tr. 3450.) Under AIIC's current rules, a conference in English and Spanish could have a team of three members working together in one booth, or it could have two teams

of two persons each working in two separate booths: a team interpreting from Spanish into English and a team interpreting from English into Spanish. (F. 160-61.) If there are two booths, when English is spoken on the floor the interpreters in the Spanish booth would take turns interpreting from English into Spanish, but when Spanish is spoken on the floor the interpreters in the Spanish booth would be listening. (Clark, Tr. 628-29.)

17. In the United States, except for large organizations such as the State Department or United Nations, conference interpretation teams are most often organized by intermediaries. (Weber, Tr. 1121; CX-302-Z-311 to Z-312 (Luccarelli); Stip. 5.) Intermediaries supply conference interpreters to users of interpretation services such as international associations, corporations, museums and non-profits. (Davis, Tr. 838, 846; Clark, Tr. 595.) Berlitz, Brahler, Language Services International, and CACI are examples of intermediaries. (Saxon-Forti, Tr. 2600; Luccarilli, Tr. 1564-65; Swetye, Tr. 2759; Weber, Tr. 1123.)

18. Berlitz uses conference interpreters for all simultaneous interpretation and for any assignment that is complex in nature; for sensitive subject matter or highly technical material; for large audiences, media assignments, live interviews; where quality is of the utmost importance; and for assignments involving important business meetings. (Clark, Tr. 589-91.) Some business meetings are interpreted simultaneously, others consecutively. (Clark, Tr. 590.)

19. Intermediaries advise conference sponsors about the conference interpretation business. Most clients do not know what is needed to supply simultaneous interpretation for a conference. (Clark, Tr. 602, 644; Weber, Tr. 1150; Davis, Tr. 875.)

20. Intermediaries educate clients about how difficult it is to interpret simultaneously, and the number of interpreters required. (Clark, Tr. 630-31; Weber, Tr. 1151.) Most clients do not get involved in the details of organizing interpretation teams once they have selected an intermediary, and have never heard of TAALS and AIIC. (Clark, Tr. 602, 607-08; Jones, Tr. 705.)

21. According to intermediaries, a reputation for quality is important in the interpretation business. (Weber, Tr. 1152.) Berlitz has a name to uphold in the industry and wants to maintain a good reputation for quality service. (Clark, Tr. 597, 640-41.) In CACI's experience, prospective clients take reputation, as well as price, into consideration when choosing an intermediary. (Jones, Tr. 704.) The quality of interpretation is the most important factor to Brahler

because it has a reputation as a high-quality supplier. (Davis, Tr. 849, 872.)

22. Berlitz wants repeat business. (Clark, Tr. 596-97.) CACI gets repeat work because of its reputation for providing quality conference interpretation. (Jones, Tr. 704.) Half of Braehler's clients are repeat clients. (Davis, Tr. 838.)

23. Intermediaries decide the number of interpreters (Clark, Tr. 642; Davis, Tr. 862-65, 870; Jones, Tr. 697-99, 748-49), the length of the working day (Clark, Tr. 642-43; Davis, Tr. 862, 871; Lateiner, Tr. 972), and the type of equipment to use. (Davis, Tr. 871; Clark, Tr. 600-01, 643-44.)

24. The needs of clients vary with the subject matter of the meeting, the duration, the number languages that are required, and the level of quality desired. (Weber, Tr. 1151-52; Clark, Tr. 625-27.) Intermediaries can choose the working conditions when staffing a conference rather than adopting blanket rules. (Van Reigersberg, Tr. 467.)

II. CONSPIRACY

A. AIIC's Basic Texts

25. The Basic Texts include the basic rules of procedure and membership. (CX-300-Z-1, Z-163 to Z-243 (Motten).) The Basic Texts include AIIC's Statutes, Disciplinary Procedure, Admissions Procedure, Code of Professional Ethics, Professional Standards, and various Annexes to the Professional Standards. (CX-1-A to Z-55; RX-2, 1-80; Stip. 9.) The Basic Texts are published in the AIIC Bulletin, the AIIC publication disseminated world-wide to all its members. (Stip. 18.)

26. AIIC's Basic Texts bind all members of the association, including United States members. (CX-305-Z-341 (Sy); CX-218-L; CX-221-D; CX-284-D.) In 1994 the Council approved a resolution stating that "Council confirms the binding character of the professional standards." (CXT-501-T, p.2; CX-302-Z-388, Z-939 (Luccarelli); Luccarelli, Tr. 1860, 1862.) The Basic Texts are published in English and French. (CX-1-3.)

1. Code of Ethics and Professional Standards

27. AIIC's Code of Ethics ("Code") governs the professional conduct of members of the association. (CX-305-Z-29 (Sy).)

Professional Standards ("Standards") provide the base working conditions. (CX-1-Z-40; CX-2-Z-40; CX-3-F.) The Code and the Standards include rules on: "double-dipping," advertising, working without a booth, required paid briefing sessions, professional address, recording fees, cancellation fees, paid non-working days, rest days and travel fees, length of day, team strength, indivisible daily rates, same team/same rate, commissions, charity restrictions, daily rate, per diem, and travel conditions. (CX-2.)

28. Annexes attached to the Standards contain the Guidelines for Recruiting Interpreters (CX-1-Z-47 to Z-50; CX-2-Z-50 to Z-53; RX-2, 61-62, 65-66), and the Staff Interpreters' Charter (CX-1-Z-53; CX-2-Z-54; RX-2, 79).

29. AIIC's 1991 Code and Standards (including the Annexes) were adopted by vote at the AIIC 1991 General Assembly. (CX-301-Z-7, Z-10, Z-44, Z-153 to Z-172 (Bishopp); CX-300-Z-3, Z-102, Z-163 to Z-243 (Motton); CX-2.) At the 1991 Assembly, the members voted on whether to remove the monetary conditions from the Basic Texts, but the vote failed. (Luccarelli, Tr. 1851; CX-262-C to J.) Thus, the 1991 Basic Texts retained references to rates in the Standards. (CX-270-K; CX-441-B.)

30. AIIC called a 1992 Extraordinary Assembly "to determine the broad lines of the structure and guiding principles of the AIIC of the future, the actual texts remaining to be adopted at the next Ordinary Assembly." (CX-272-H; CX-273-F.) AIIC members voted "to remove all mention of monetary conditions . . . from out basic texts" and invited "the council to take all necessary steps for the immediate implementation of these decisions." (CX-273-G.) The Council decided that "All provisions of the Basic Texts that refer to financial conditions are immediately withdrawn. . . . The Basic Texts shall be amended consequently at the next Ordinary Assembly." (CX-279-I; CX-273-O, CXT-273-O, p.1.)

2. Annexes to the Code

31. Like the Basic Texts, Annexes to the Basic Texts are binding on AIIC's members. (Weber, Tr. 1340/2; CX-284-D; CX-221-D; CX-218-J.) Non-compliance with "any rules of the code of professional conduct and its annexes" could be the subject of disciplinary proceedings. (Weber, Tr. 1128/16.)

a. Guidelines for recruiting interpreters

32. AIIC's Guidelines for Recruiting Interpreters ("Recruiting Guidelines") are attached as Annex 1 to AIIC's Standards. (CX-1-Z-47; CX-2-Z-50; CX-214-M to N.) The Recruiting Guidelines were approved at the 1991 Assembly, and are part of the 1991 Basic Texts, (CX-300-Z-14 to Z-15 (Motton); Luccarelli, Tr. 1855/1), and the 1994 Basic Texts. (CX-1-Z-47 to Z-50; RX-2, 62, 65-66.) The Recruiting Guidelines contain five of the restraints challenged in this action: ban on package deals and lump-sum payments, commissions, and exclusive agency arrangements; restriction on trade names; and regulation of advertising. (CX-1-Z-49.) When a conference interpreter makes up a team, "she or he sees to it not only that the Association's rules, but also its recommendations are complied with." (CX-1-Z-47.) The coordinating interpreter must apply the guidelines to all interpreters he or she appoints, whether or not they are AIIC members. (CX-1-Z-47.)

33. The rules in the Recruiting Guidelines currently bind members. (Weber, Tr. 1154-56; CX-284-D; RX-336, 8145; Luccarelli, Tr. 1680-82.)

34. The precursor to the present version of the Recruiting Guidelines was originally adopted by the AIIC Assembly held in New York and published as Annex 2 to the 1983 Basic Texts. (CX-2422; CX-256-Z-45; CX-260-Z-106.)

b. Staff interpreters' charter

35. The Staff Interpreters' Charter was first adopted in 1977. (CX-215-D.) The 1991 Charter provides that "staff interpreters should...act as interpreters outside their organization only with the latter's consent, in compliance with local working conditions, and without harming the interests of the free-lance members of AIIC." (Stip. 89; CX-1-Z-53; CX-2113; CX-262-Z-129 to Z-130.)

c. Videoteleconferences

36. An annex to AIIC's 1994 Standards circumscribes members' ability to perform videoteleconferencing services. (CX-1-Z-54 to Z-55.) A videoteleconference is a remote conference where the interpreters are not at the same location as the speakers. (CX-1-Z-54.) The rules are in the 1994 Basic Texts. (CX-5-D; CX-2-Z-55 to Z-56;

CX-1-Z-54 to Z-55.) The videoteleconferencing rules restrict the number of hours an interpreter is allowed to work to not more than three hours a day, or else "manning strengths shall be correspondingly increased. If remote conferencing leads to night work, interpreters shall be entitled to appropriate compensation." (CX-1-Z-54.)

B. Creation of the Work Rules by Agreement

1. General Assembly Vote

37. AIIC's Assembly conducts the business of the association and sets polity by debates and votes on standards, the code of ethics, admissions procedure and budget. (CX-1-E to F, Art. 19; Luccarelli, Tr. 1628.) All members may vote, personally or by proxy. (CX-1-E to F, Art. 19; CX-1-P, Rule 7.)

38. The Standards and the Code are adopted by vote at the AIIC Assembly. (CX-305-Z-8 (Sy); CX-300-Z-4 (Motton).) A two-thirds majority of the Assembly is required to amend existing Basic Texts or to expel a member. (CX-1-T, Rule 14; Luccarelli, Tr. 1629.) Changes to the Annexes also can be made by the Assembly. (CX-253-D.) A simply majority of AIIC's members is otherwise acceptable for most Assembly votes. (CX-1-T, Rule 14.)

2. Council Action

39. Each AIIC Region nominates its representative to the AIIC Council, and the Assembly votes on those nominations. (Luccarelli, Tr. 1628.) The Council may oversee the daily activities of the association, implementing Assembly decisions, granting waivers to rules, resolving member disputes, maintaining disciplinary investigations and actions, and adopting the annual budget. (CX-1-G to H, Art. 24, Z-1; Stip. 12; Lucarrelli, Tr. 1630.)

40. The Council may adopt Council texts, recommendations of the NAS or self-generated texts. (Lucarrelli, Tr. 1631.) "As consensus develops on rules, binding on the profession as a whole, they are gradually included in the Code. Pending consensus on rules, however, AIIC intends to publish guidance material to make all members more familiar with their rights and responsibilities in private sector negotiations. . . ." (CX-206-C.)

41. The Council approves the rates and per diem published by the association, by country or by region. (CX-304-Z-49 (Motton).) The

Council grants waivers to the application of Basic Text provisions. (CX-1-Z-1, Rule 14; CX-300-Z-35 (Motton); F. 56-57.)

3. AIIC's Nonagreement Sector

42. The NAS includes interpretation markets not governed by agreements negotiated by AIIC. (CX-278-Z-2.) Within the NAS, interpreters are recruited solely on the basis of the AIIC Code and their contracts are governed by the AIIC Code. (CX-242-E.) The purpose of the NAS is to "promote interpretation in the NAS in an equally systematic and AIIC-subsidized manner as in the Agreement Sectors [and to prepare] AIIC Standards of Professional Practice applicable to the sector for ratification by Council and Assembly." (CX-278-Z-2.) The NAS accepts the AIIC texts regarding working conditions. (CX-272-F, CXT-272-F to G.) The NAS exhorted members to "comply with AIIC standard practices." (CX-222-H.)

C. Agreement to Follow the Basic Texts

43. To become an AIIC member, a candidate must have practiced professional conference interpretation in a booth for at least 200 days, without complaints from employers or colleagues, while following all of AIIC's rules. (Stip. 16; CX-1-B, Art. 1; CX-304-Z-110 (Motton).) Before becoming members of AIIC, all conference interpreters must enter into the commitment described in the application form. (CX-1-C; CX-2-C; F. 44-46.)

1. Applicants for Membership

44. There are two types of candidates for AIIC membership: pre-candidate and candidate. (CX-300-Z-5 (Motton).) Pre-candidates for AIIC admission are simultaneous conference interpreters who have worked less than 200 days in the booth. (CX-2053-A; CX-1-Z-29, Art. 4.) Pre-candidates agree to be "bound to observe [AIIC's] Statutes, its Code of Professional Ethics and all of its other rules and regulations." (CX-1-Z-30; CX-2-Z-30.) AIIC requires the pre-candidate to agree, in writing, that: "Having taken cognizance of the rules and regulations of the Association, and namely the provisions of the Code of Professional Ethics, I hereby undertake to abide by them." (CX-2053-A.)

45. Candidates for AIIC admission are conference interpreters who have worked at least 200 days in the booth. (CX-2054-C; CX-301-S to T, W (Bishopp); CX-300-Z-8 (Motton).) AIIC's Admissions Procedures require the applicant, "without exception," to observe the Code and all of its other rules and regulations. (CX-1-Z-30; CX-2-Z-30; CX-300-Z-8 (Motton).)

46. Five AIIC member-sponsors are required for each candidate. (CX-1-Z-30, Art. 5; Lucarrelli, Tr. 1558; CX-300-Z-7 (Motton).) The sponsors certify that: "to the best of our knowledge, the candidate possesses the required professional experience and that she/he observes the rules and regulations of the Association." (CX-2054-A; CX-300-Z-7 to Z-9 (Motton); CX-271-G.) The sponsors guarantee that the candidate has respected AIIC's rules. (CX-202-F.) The names of candidates are published in the AIIC Bulletin (CX-300-Z-10 (Motton)) and members are expected to challenge them on their "respect of AIIC rules (including the professional code)." (CX-202-F; CX-300-Z-10 (Motton).)

47. Once the 200-day period is complete, the application process itself takes approximately one and one-half years. (Hamann-Orci, Tr. 20.) During this period all candidates follow AIIC's professional standards. (CX-300-Z-10 to Z-13 (Motton).) The 200 working day requirement may mean that applicants will follow the AIIC rules five years before membership is granted because "beginners don't work as much [as] more experienced interpreters." (CX-306-Z-143/20 (Weide).)

2. AIIC Rules Are Binding

48. AIIC's Statutes require, as a condition of membership, that conference interpreters "enter into a commitment to respect the statutes, the Code of Professional Ethics, and all of the Association's other rules and regulations as well as the other rules of the profession." (CX-1-C; CX-2-C.) AIIC members are "bound to observe its Statutes, its Code of Professional Ethics, and all other rules and regulations." (CX-2-Z-30.) A member of AIIC pledges to abide by the rules set forth in AIIC's Basic Texts. (Luccarelli, Tr. 1558-59.)

49. AIIC's Basic Texts, including the Code, the Standards, and AIIC's rules and working conditions, are binding on all AIIC members. (CX-305-Z-4, Z-6 to Z-7 (Sy); CX-2-Z-30.) AIIC members in the United States understand that the Code applies to interpreters

in the United States. (CX-306-Z-134/1-15 (Weide); CX-284-C to D; CX-208-I.)

50. Article 8 of the 1991 version of AIIC's Code states that: "Members of the Association shall neither accept nor, a fortiori, offer for themselves or for other conference interpreters recruited through them, be they members of the Association or not, any working conditions contrary to those laid down in this Code or in the 'Standards of Professional Practice' applying to the work of members of the Association, which establish, in particular, rules concerning remuneration, travel, copyright, subsistence allowances and travel expenses." (CX-2-Z-39.)

51. The 1994 version of the Basic Texts states: "Members of the Association shall neither accept nor, a fortiori, offer for themselves or for other conference interpreters recruited through them, be they members of the Association or not, any working conditions contrary to those laid down in this Code or in the Professional Standards." (CX-1-Z-39.)

52. Malick Sy, the President of AIIC, explained that AIIC's working conditions are binding: in the March 1995 Bulletin, he wrote, "I wish to take this opportunity to state clearly and unequivocally once again on behalf of the Council, the Bureau, and myself as President, that our working conditions are binding upon all our members." (CX-284-D.) He confirmed that members of the association adhere to the association's rules. (CX-305-Z-4, Z-7 (Sy); CX-300-Z-9 (Motton).)

53. AIIC provides a standard form contract ("model") to be used by members in their dealings with clients. (CX-1-Z-49; CX-2059; CX-301-Z-25 to Z-27 (Bishopp); Hamann-Orci, Tr. 22-23.) TAALS also has such a model contract, approved by TAALS "and in conformity with the standard practices of the International Association of Conference Interpreters-AIIC." (CX-1063-A; Hamann-Orci, Tr. 23.) AIIC has provided such a model since at least 1963. (CX-206-D.) The model has been made available to U.S. Region interpreters. (CX-427-B; CX-428-A.) The AIIC contract implements AIIC's hours, package deals, provision of non-interpretation services, commissions, portable equipment, recording, travel fees, travel conditions, cancellation fees, per diem, and professional domicile restraints. (CX-2059-A to B.)

54. Interpreters use the AIIC contract when negotiating with clients because it provides the backing of a professional organization. (Hamann-Orci, Tr. 22.)

55. AIIC's Guidelines for Recruiting Interpreters state that the Association's contract should be used by members. (CX-1-Z-49.) AIIC members use the form contract. (Hamann-Orci, Tr. 21-23.) AIIC members cite to the associations' rules in their contract negotiations with intermediaries. (Clark, Tr. 602; Weber, Tr. 1153-54.)

3. Waivers of the Rules

56. AIIC's rules provide a waiver by which rules may be temporarily modified by the AIIC Council. (CX-1-Z-1, Rule 14; CX-300-Z-33 (Motton).) The waiver mechanism shows that the rules are mandatory rather than advisory. (CX-300-Z-34 to Z-37 (Motton).)

57. Waivers, if granted by the Council, are "authorized for a stated period only, and if renewal is requested, a further request must be made." (CX-208-H.)

4. Members Adhere to AIIC Rules

58. According to Claudia Bishopp, the U.S. Region Representative on the AIIC Council from 1978 to 1993, interpreters largely succeed in applying AIIC's working conditions. (CX-301-Z-140 (Bishopp).) AIIC members generally follow AIIC's Standards, Code, and other Basic Texts and Guidelines. (Luccarelli, Tr. 1621-23; Hamann-Orci, Tr. 28; Weber, Tr. 1155.)

59. Interpreters expect intermediaries to conform to AIIC's rules and are generally unwilling to negotiate rates and certain working conditions. (Citrano, Tr. 502-06, 509.) Interpreters view the AIIC and TAALS rules "like a bible. That was how the business was conducted." (Citrano, Tr. 507/4-14; Neubacher, Tr. 778-79; Jones, Tr. 696-97, 700.)

5. AIIC Enforces Its Rules

60. AIIC members are subject to punishment, including expulsion, for failure to follow the AIIC Code or the Standards. (CX-301-Z-8 (Bishopp); CX-1-H; CX-2-H; Luccarelli, Tr. 1630.) AIIC has taken formal measures to discipline members through warnings, threats, investigations, and inquiries into violation of AIIC rules by

U.S. members. (Wilhelm Weber, F. 181, 229, 242, 249, 344-60; Marc Moyens, F. 219, 277; Jeannine Lateiner, F. 182, 285, 316.)

61. Under AIIC's rules (CX-1-G, Art. 24 1-2), if anyone accuses a member of the Association "of failure to observe the Statutes, the Code of Professional Ethics or any other applicable rules and regulations," it will be referred to the Council. (CX-1-Z-26; CX-2-Z-26.) The Council then appoints a three-member committee to investigate disciplinary charges. (CX-1-Z-26.) The disciplinary committee has authority to gather information from complainants, third parties, and the accused. (CX-1-Z-26.) "The refusal of any person accused [of a violation of the rules] to supply such information may be interpreted as evidence against them." (CX-1-Z-26.) The Council usually adopts the recommendation of the disciplinary committee. (CX-301-Z-122 to Z-123 (Bishopp).)

62. The AIIC Council may warn, reprimand, or suspend a member for failure to follow AIIC's rules. (CX-1-Z-27; Luccarelli, Tr. 1815-16; CX-300-Z-111 (Motton).) There is no right of appeal for warnings, reprimand or suspension. (CX-1-Z-27.) If the Council deems the member's violation sufficient to warrant expulsion, it recommends to the Assembly that the member be expelled. (Luccarelli, Tr. 1630; CX-300-Z-111 (Motton).) Only the Assembly, by two-thirds vote, may expel a member. (CX-1-T, Rule 14; Luccarelli, Tr. 1629.)

63. Charges of non-adherence to the rates set forth in the Standards, including charges of undercutting, could be the subject of AIIC's disciplinary proceedings. (Weber, Tr. 1128-29.)

64. Whenever a member is reprimanded, suspended, or expelled, the disciplinary action "shall be ... made known to the members of the Association." (CX-1-Z-27.) AIIC announces disciplinary measures taken in the Bulletin. (CX-284-N; CX-1-Z-27.) The possibility of such publication is a credible threat of punishment. (Wu, Tr. 2166.)

65. Article 12, of the AIIC Statutes states that resignation from the Association "shall not prevent disciplinary proceedings arising out of any earlier occurrence." (CX-1-C; CX-2-C.) Censure could affect an interpreter's ability to get referrals and therefore make sales. (Wu, Tr. 2167-68.)

66. Someone expelled from AIIC might never be hired by another AIIC member ever again. (Weber, Tr. 1268/21.) Publication of disciplinary actions and investigations can damage interpreters' reputations among other interpreters. (Hamann-Orci, Tr. 26-27;

Citrano, Tr. 553; Wu, Tr. 2166.) Two complaints against AIIC member, Jeannine Lateiner, were sent, apparently by the complaining party, to the other members of her team. No formal disciplinary action was taken. (Lateiner, Tr. 904; F. 182, 285, 316.)

67. The Executive Secretary of AIIC reported that the AIIC Council "stressed the need to encourage members not to hesitate to raise such matters (failure to observe obligations under the Code) even though they may not personally be involved, through appropriate channels in the future." (CX-226-B.) Similarly, AIIC's President warned the membership that members must be vigilant against lapses in adherence to the rules, that "there is not unity without the cement of discipline." (CX-227-H to I.)

68. In 1995, AIIC referred penalty matters against seven members to a committee of inquiry, announced that it suspended three members, issued reprimands to eight members, and issued "number of warnings." (CX-284-N.)

69. Interpreter associations have used fear of retaliation to force adherence to their rules. According to Luigi Luccarelli, U.S. Region representative to the AIIC Council, speaking at a TAALS meeting, "we have operated with a lot of fear in the past" and young interpreters "had heard from their teachers that they should obey the rules in order not to make enemies." (CX-962-D; CX-302-Z-326, Z-335, Z-337, Z-853.)

70. Interpreters get work through word of mouth, and they need to establish a positive reputation among their colleagues to get work because a lot of referrals come from other interpreters. (Hamann-Orci, Tr. 26; Swetye, Tr. 2795/24 to 2796/2; Citrano, Tr. 553.)

71. Interpreters must get along with their boothmate. (Hamann-Orci, Tr. 26.) Requests to work with particular colleagues are often made by future boothmates when contacted by clients. (Hamann-Orci, Tr. 26-27.) "If you can't get a partner to work with you, then you're basically unemployed." (Citrano, Tr. 516, 553.) Interpreters ask who their partners will be before they ask other questions. (Citrano, Tr. 553-54.)

72. Price undercutters could be cut out of the referral network or blacklisted. (Jones, Tr. 690; Swetye, Tr. 2795-96; CX-300-Z-108 (Motton).)

73. One intermediary testified that interpreters have agreed to deviate from the AIIC rules, and asked him to keep the terms of the agreement secret, for fear of retaliation by other interpreters. (Citrano, Tr. 516-17.)

74. In the summer of 1995, Mr. Weber, acting as an intermediary, received two anonymous telephone calls threatening him with retaliation if he testified against AIIC in this proceeding. (Weber, Tr. 1347-48.) One anonymous caller told him that if he testified, there "will be consequences." (Weber, Tr. 1347/22, 1348/4.) The other caller threatened that if Mr. Weber testified, AIIC would boycott the 1996 summer Olympic games for which he is responsible for organizing the interpretation services. (Weber, Tr. 1348/7-12.)

D. Respondent U.S. Region and the Conspiracy

1. AIIC's Mandatory Rates

75. U.S. Region members discussed rates and voted at U.S. Region meetings to set daily freelance conference interpretation fees in the United States. (CX-409-A; CX-1136.)

76. The U.S. Region provided the AIIC Council with the rates for the United States to be published in the AIIC Bulletin. (CX-301-Z-45, Z-46, Z-175 to Z-182 (Bishopp).) When the AIIC Bulletin published the incorrect figure for the United States in a report from various regions in 1990, the U.S. Region Representative corrected the Bulletin figure at a U.S. Region meeting. (CX-436-F.)

77. In December 1981, AIIC's U.S. Region noted that, on the advice of antitrust lawyers, although "it is preferable not to appear with a fixed figure on the rate sheet," "there is a 'gentleman's agreement' not to ask for less than U.S. Dollars 250 per day." (CX-1226-A.)

78. In 1986, AIIC's U.S. Region agreed that "the region should publish suggested minimum rates. As far as per diem, the meeting agreed that the rules we have been applying in the U.S. are still the best for the region. . . ." (CX-427-B; CX-432-F; CX-434-C.)

79. In 1988, the U.S. Region noted that AIIC did not publish a daily nongovernmental freelance rate for 1989. (CX-432-E.) The Region agreed to "publish 'Available on request,' which is considered better than not indicating any rate at all." (CX-432-E.)

2. The U.S. Region Connection to AIIC's Rules

80. AIIC's U.S. Region members or their elected representatives voted on AIIC's fees, Standards, and Code of Ethics. (CX-441-B; CX-300-Z-100 to Z-103 (Motton).) The U.S. Region urged members to attend, or to tender proxies to those who would attend, AIIC General Assembly meetings. (CX-407-E; CX-436-E; CX-446-A; Stip. 40, 42.) The U.S. Region contributed funds to members to defray travel costs for trips to European AIIC meetings "on our behalf." (CX-427-A.)

81. In response to the prospect of litigation at the Federal Trade Commission, in 1994, AIIC's U.S. Region published a resolution urging the "AIIC Council to continue its support of the U.S. Region's effort to defend those Standards." (CX-448-A, E.) In 1995, the representative for the U.S. Region to the AIIC Council stated that the "major concern all along has been to maintain AIIC's right to set working conditions for its members." (CX-450-B, C.)

3. The U.S. Region and Compliance with AIIC's Work Rules

82. The U.S. Region has secured compliance with AIIC's work rules. (CX-1393; CX-1396; CX-1470-A; CX-1471.) The U.S. Region reminded U.S. members of their obligations under the AIIC rules and urged adherence to the work rules for the United States (CX-56; CX-407-F; CX-439-B), and informed members of the availability of AIIC's standard form contracts. (CX-428-A.)

83. The U.S. Region enforces the AIIC rules. In 1984, the AIIC Council passed a resolution opposing the use of unpaid students in place of professionals and requested "the U.S. Region to report to the Bureau as soon as possible. . . ." (CX-236-G.)

84. The U.S. Region agreed to recommend to the AIIC Council a change in universal minimum manning strengths, but decided that it would fix the charges for non-working days and travel days. (CX-427-B.)

4. AIIC's Work Rules Were Binding on U.S. Members

85. In May 1994, after receiving a report that the AIIC Council reaffirmed the binding nature of the professional standards on all the members of the association, the U.S. Region passed a resolution to maintain AIIC's standards. (Luccarelli, Tr. 1862-63.) Absent a waiver, it is not possible for any AIIC region to rescind any of AIIC's

Basic Texts. (CX-300-Z-34 (Motton); Luccarelli, Tr. 1813; CX-302-Z-295 to Z-296 (Luccarelli).)

86. In 1988, the U.S. Region requested a renewal of its waiver from the rule against solo interpretation. (CX-432-G.) The U.S. Region applied for, and received, waivers for an interpreter to work alone when a meeting is no more than 40 minutes long. (CX-300-Z-34 to Z-35 (Motton); CX-259-H; CX-268-F.) The U.S. Region applied for a renewal of this waiver once again the following year. (CX-435-A; CX-2452.)

87. In 1986, AIIC's U.S. Region considered, but did not request a waiver for interpreters to accept 80% of the standard fee for meetings of less than 2 and 1/2 hours duration. (CXT-245-Q; CX-428-B; CX-301-Z-136 (Bishopp).)

88. In December 1989, the AIIC Council member for the U.S. Region passed on to members of the U.S. Region caution about working for three agencies who purportedly did not respect AIIC conditions and noted that some regions had refused work from these agencies. (CX-434-B; CX-301-Z-151.12 (Bishopp); CX-253-D.)

89. In 1990, AIIC's U.S. Region representative prepared a provisional paper on the local working conditions in the U.S. Region in response to a request from AIIC. (CX-435-A; CX-1408-A, C to E; CX-439-D to F.) The paper, sent to members with the U.S. Region minutes for discussion or revision, was intended "to ensure the uniform application in the USA of the AIIC Code of Professional Conduct and its Annexes." (CX-439-D.) The local working conditions described AIIC's rules on team strength, including: a daily rate multiplier for solo consecutive work; rules for recruiting interpreters; rules for direct contracts between the interpreters and the conference organizer; provision for cancellation, preparation, non-working days, and travel fees; and recording, and films. (CX-439-D to F; CX-301-Z-152.18.)

III. AIIC'S RESTRAINTS

A. Minimum Daily Rates

90. AIIC specifies minimum rates charged by AIIC members for work done in the United States. (F. 102.) Article 8 of the 1991 Standards provides, "The rate of daily remuneration shall be the standard rate applicable in the region concerned and, more precisely in the appropriate cases, in the country concerned . . . in those