

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

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| In the Matter of |) | |
| |) | |
| |) | |
| PHASEOUT OF AMERICA, INC. and |) | DOCKET NO. C-3716 |
| PRODUCTS & PATENTS, LTD., |) | |
| corporations. |) | |

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 11563.
2. Respondent Products & Patents, Ltd., is a Delaware corporation with its principal office or place of business at 140 Broadway, Lynbrook, New York 11563.
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.

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

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, nictines, 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

- 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. **PHASE OUT
NEW**

* * *

With **PHASE OUT** 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.

* * *

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.

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 8 were, and are, false or misleading.

10. Through the means described in Paragraph 6, 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 6, respondents have represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representations set forth in Paragraph 10, 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 10, at the time the representations were made. Therefore, the representation set forth in Paragraph 11 was, and is, false or misleading.

13. Through the means described in Paragraph 6, respondents have represented, expressly or

THEREFORE, the Federal Trade Commission this twelfth day of February, 1997, has issued this complaint against respondents.

By the Commission.

Donald S. Clark
Secretary

SEAL:

[Exhibits A-J attached to paper copies of complaint, but not available in electronic form.]