UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

In the Matter of PHASEOUT OF AMERICA, INC. and PRODUCTS & PATENTS, LTD., corporations.	FILE NO. 932-3180 AGREEMENT CONTAINING CONSENT ORDER

The Federal Trade Commission has conducted an investigation of certain acts and practices of Phaseout of America, Inc. and Products & Patents, Ltd., corporations ("proposed respondents"). Proposed respondents, having been represented by counsel, are willing to enter into an agreement containing a consent order resolving the allegations contained in the attached draft complaint. Therefore,

IT IS HEREBY AGREED by and between Phaseout of America, Inc. and Products & Patents, Ltd., by their duly authorized officers, and their attorneys, and counsel for the Federal Trade Commission that:

1.a. Proposed respondent Phaseout of America, Inc. is a Delaware corporation with its principal office or place of business at 140 Broadway, Lynbrook, New York 11563.

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

2. Proposed respondents admit all the jurisdictional facts set forth in the draft complaint.

3. Proposed respondents waive:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft complaint, will be placed on the public record for a period of sixty (60)

days and information about it publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft complaint, or that the facts as alleged in the draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order in disposition of the proceeding, and (2) make information about it public. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery of the complaint and the decision and order to proposed respondents by any means specified in Section 4.4 of the Commission's Rules shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order. No agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the draft complaint and consent order. They understand that they may be liable for civil penalties in the amount provided by law and other appropriate relief for each violation of the order after it becomes final.

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 C.F.R. § 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. 20580.

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 twenty (20) years from the date of its issuance, 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.

Signed this _____ day of _____, 199__.

PHASEOUT OF AMERICA, INC.,

By: _____
IRWIN PEARL
President

PRODUCTS & PATENTS, LTD.,

By: _____
BERNARD GUTMAN
President

_____
DAVID CLANTON
Baker & McKenzie
Attorney for Respondents

_____
DAVID LEVY
Kraver & Levy
Attorney for Respondents

_____
SHIRA D. MODELL
Counsel for the Federal Trade Commission

_____
LESLEY ANNE FAIR
Counsel for the Federal Trade Commission

_____
MICHAEL OSTHEIMER
Counsel for the Federal Trade Commission

APPROVED:

_____
C. LEE PEELER
Associate Director
Division of Advertising Practices

_____
JOAN Z. BERNSTEIN
Director
Bureau of Consumer Protection

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.

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 Postcard

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 Center at 1-800-4CANCER.

Sincerely,

[Date] Irwin Pearl, President of Phaseout of America, Inc.

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

In the Matter of

PHASEOUT OF AMERICA, INC. and PRODUCTS & PATENTS, LTD., corporations.	DOCKET NO.

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. 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:

<u>Results after Phase four</u>

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:

<u>Results after Phase one</u>

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 *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 (Exhibit E).

PRINT ADVERTISEMENT #2

AA. **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 PhaseOut lets smokers gradually and easily withdraw form [sic] 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. (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 **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.

* * *

PHASE OUT prevents up to 80% of the deadly tar, nicotine, and other poisons from <u>ever entering your body</u>.
And the taste, flavor and draw of your cigarettes aren't changed!

* * *

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. Through the means described in Paragraph 6, 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 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 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 6, respondents have represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representation set forth in Paragraph 13, 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 13, at the time the representation was made. Therefore, the representation set forth in Paragraph 14 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.

THEREFORE, the Federal Trade Commission this day of , , 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.]

ANALYSIS OF PROPOSED CONSENT ORDER
TO AID PUBLIC COMMENT

The Federal Trade Commission has accepted an agreement to a proposed consent order from Phaseout of America, Inc. and Products & Patents, Ltd. This matter concerns advertising for PhaseOut, a device which punches one or more small holes in cigarettes and which was advertised as both aiding in smoking cessation and making cigarettes less harmful.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission's complaint in this matter challenges three sets of representations made by respondents regarding the performance of PhaseOut: its ability to reduce smokers' intake of smoke constituents, allow smokers to quit smoking, and reduce health risks for smokers who continue smoking.

According to the Commission's complaint, the respondents made unsubstantiated representations that PhaseOut reduces by certain specified percentages the amount of nicotine, tar, and carbon monoxide that smokers, get, and does so without changing a cigarette's taste or draw; and that smokers using PhaseOut will not compensate for its effects by increasing the number of cigarettes they smoke per day. The complaint also alleges that the respondents misrepresented that a particular study conducted at The Johns Hopkins University proves that PhaseOut significantly reduces the amount of tar, nicotine, and carbon monoxide smokers get under normal smoking conditions. According to the complaint, the study was conducted under carefully controlled conditions that did not reflect how smokers actually smoke. The complaint explains that the study did not take into account compensatory smoking -- the tendency of some smokers who switch to lower yield cigarettes to smoke more cigarettes or to smoke each one more intensively (e.g., taking bigger or more frequent puffs), often without realizing it.

The complaint further alleges that the respondents made unsubstantiated representations that PhaseOut enables smokers to quit and to do so without withdrawal symptoms; and that the respondents falsely claimed that PhaseOut's effectiveness in enabling smokers to quit smoking is proven by the Johns Hopkins study.

The complaint also alleges that the respondents made unsubstantiated representations that PhaseOut significantly reduces the risk of smoking-related health problems, including lung cancer and heart disease, for smokers who continue to smoke and that it also provides immediate health benefits including reduced congestion, coughing or windedness. The complaint further challenges the related misrepresentation that the Johns Hopkins study proves that smokers who use PhaseOut and continue to smoke significantly reduce their risk of smoking-related health problems.

In addition, the complaint alleges that the respondents represented without substantiation that testimonials contained in advertisements for PhaseOut reflect the typical or ordinary experience of consumers who use the product.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent the respondents from engaging in similar acts and practices in the future.

Part I of the order prohibits the respondents from making the representations challenged as false in the proposed complaint about the Johns Hopkins study's findings concerning PhaseOut.

Part II requires respondents to possess competent and reliable scientific evidence to substantiate claims that any smoking-cessation or cigarette-modification product: A) reduces the amount of nicotine, tar, carbon monoxide, or any other component of cigarette smoke that smokers get from smoking a cigarette; B) is effective in enabling or helping smokers to quit smoking; C) reduces the risk of smoking-related health problems for smokers who continue to smoke; D) 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; E) is effective in enabling or helping smokers to quit smoking without withdrawal symptoms; or F) provides immediate health benefits, such as reduced congestion, coughing or windedness, for smokers who continue to smoke. Part II also requires respondents to possess competent and reliable scientific evidence to substantiate claims that smokers using any such product will not compensate for the product's effects by increasing the number of cigarettes they smoke per day.

Part III requires respondents to possess competent and reliable scientific evidence to substantiate any performance, benefit or efficacy claims for smoking-cessation or cigarette-modification products.

Part IV prohibits the respondents from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test or study.

Part V requires respondents either to possess competent and reliable scientific evidence to substantiate claims that any endorsement reflects the typical or ordinary experience of consumers who use the product; or to clearly and prominently disclose either: a) what the generally expected results would be, or b) that consumers should not expect to experience similar results.

Part VI requires respondents to send a postcard to identifiable past purchasers of PhaseOut notifying them of the Commission's action in this case and advising them that PhaseOut has <u>not</u> been proven to reduce the risk of smoking-related diseases or to make cigarettes "safer." Part VI also requires respondents to send a letter to their purchasers for resale requesting the names and addresses of their customers and notifying them that if the purchasers for resale do not stop using advertising and promotional materials containing claims covered by this order, the respondents are required to stop doing business with them. Part VII requires the

respondents to maintain for five years copies of all communications with consumers and purchasers for resale pursuant to the terms of Part VI.

The proposed order also requires respondents to maintain materials relied upon to substantiate the claims covered by the order, to distribute copies of the order to certain current officers and employees, to notify the Commission of any changes in corporate structure that might affect compliance with the order, and to file one or more reports detailing compliance with the order. The order also contains a provision stating that it will terminate after twenty (20) years absent the filing in federal court, by either the United States or the FTC, of a complaint against the respondents alleging a violation of the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order, or to modify any of their terms.