

Complaint

116 F.T.C.

IN THE MATTER OF

ALAN V. PHAN

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

Docket C-3417. Complaint, March 12, 1993--Decision, March 12, 1993

This consent order prohibits, among other things, a California marketer of “Jazz cigarettes,” a non-tobacco product, from representing that smoking such products poses no health risk, that smoking such products does not pose any of the health risks associated with smoking cigarettes, and that the smoke contains no tar. In addition, the respondent is prohibited from making any representations about the comparative or absolute health or safety attributes, benefits or risks of any cigarette or smoking product, unless it is substantiated by competent and reliable scientific evidence.

Appearances

For the Commission: *Jeffrey Klurfeld* and *Kerry O'Brien*.

For the respondent: *Pro se*.

COMPLAINT

The Federal Trade Commission, having reason to believe that Alan V. Phan, an individual trading and doing business as Harcourt Companies (“respondent”), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent Alan V. Phan is the owner of Harcourt Companies, a California sole proprietorship. His principal office and place of business is located at 10915 Bloomfield Avenue, Los Alamitos, CA.

PAR. 2. Respondent has advertised, offered for sale, sold, and distributed smoking products, known as “Jazz Cigarettes” (“Jazz”),

to consumers. Jazz are non-tobacco products. Because Jazz do not contain tobacco, they are not “cigarettes,” as that term is defined in the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. 1332.

PAR. 3. The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act.

PAR. 4. Respondent has disseminated or has caused to be disseminated advertisements and promotional materials for Jazz, including but not necessarily limited to the attached Exhibits A-C. These advertisements and promotional materials contain the following statements (emphases in originals):

A. NO REASON TO QUIT SMOKING. A Revolutionary Product: Cigarettes Without Nicotine Means No Health Hazard. Now You Can Enjoy The Luxury of Smoking Without Worrying. (Exhibit A)

B. SHOW YOUR CONCERN BY SENDING THIS HEALTHY PRODUCT TO A FRIEND OR RELATIVE WHO ENJOYS SMOKING. (Exhibit A)

C. If cigarettes are such [sic] popular WITH the health hazard, what would you think if you could somehow have a cigarette WITHOUT the health hazard? If you could take the DANGER OUT of smoking? Do you think you have a WINNER? Well, our company did it. By taking the cancer-causing nicotine out of cigarettes, we have a harmless product that will revolutionize the cigarette market. (Exhibits B-1 and B-2)

D. The leaves used inside the cigarettes are called Anarastino Papasico, which is of the same family like tobacco leaves. However, it contains much less nicotine, thus, we are able to extract the nicotine out 100%. There is no tar either. The end result means a cigarette with NO nicotine, NO tar; therefore, we are NOT required to print Health Warning Label like regular cigarettes. (Exhibit C)

E. For those who are not used to the heavy taste of cigarettes like Pall Mall, Lucky Strike...they could get used to it by the third day of smoking. Just think that Jazz will not hurt you like other cigarettes will give you motivation to keep trying. (Exhibit C)

F. USING JAZZ TO QUIT SMOKING: Quite a few customers of ours turn this strong smell to their advantage: *they used JAZZ as a means to STOP smoking*. Whenever they have an urge to smoke, they light up 1 Jazz and it would stop the craving for at least a few hours. They smoke less and less, and some could quit permanently by the end of the 2nd week. (Exhibit C)

G. INTRODUCE TO A FRIEND: You would do your friends or relatives a great favor by let them try the JAZZ cigarettes. Even if they do not like the taste or the smell, they might be able to QUIT smoking all together. Save somebody's health is a great feeling... (Exhibit C)

PAR. 5. Through the use of the statements contained in the advertisements and promotional materials referred to in paragraph four, including but not necessarily limited to the advertisements and promotional materials attached as Exhibits A-C, respondent has represented, directly or by implication, that:

- A. Smoking Jazz poses no health risk for the user.
- B. Smoking Jazz does not pose any of the health risks associated with smoking tobacco cigarettes.
- C. Jazz smoke contains no "tar."
- D. Jazz packages do not display the Surgeon General's health warnings because smoking Jazz does not pose the health and safety risks that have been associated with smoking tobacco cigarettes.

PAR. 6. In truth and in fact:

- A. Smoking Jazz does pose a health risk for the user.
- B. Smoking Jazz poses some of the same health risks that are associated with smoking tobacco cigarettes.
- C. Jazz smoke does contain "tar." "Tar" refers to the total particulate matter that results from the incomplete burning of any organic material including the ingredients in Jazz.
- D. Jazz packages do not display the Surgeon General's health warnings because the Federal Cigarette Labeling and Advertising Act requires that the Surgeon General's warnings be displayed only on packages of "cigarette," 15 U.S.C. 1333. Because Jazz do not contain any tobacco, they are not "cigarettes" within the meaning of the Act and, therefore, are not required to display the Surgeon General's warnings.

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

PAR. 7. Through the use of the statements contained in the advertisements and promotional materials referred to in paragraph four, including but not necessarily limited to the promotional material attached as Exhibit C respondent has represented, directly

or by implication, that smoking Jazz is effective in aiding people to quit smoking tobacco products.

PAR. 8. Through the use of the statements contained in the advertisements and promotional materials referred to in paragraph four, including but not necessarily limited to the advertisements and promotional materials attached as Exhibits A-C, respondent has represented, directly or by implication, that at the time he made the representations set forth in paragraphs five and seven, respondent possessed and relied upon a reasonable basis that substantiated such representations.

PAR. 9. In truth and in fact, at the time he made the representations set forth in paragraphs five and seven, respondent did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in paragraph eight was, and is, false and misleading.

PAR. 10. The acts or practices of respondent as alleged in this complaint constitute unfair or deceptive acts or practices in unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

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EXHIBIT A

NO REASON TO QUIT SMOKING

ORDER TODAY
MONEY BACK GUARANTEE

ONLY **\$8.00** Carton
10 packs of 20 cigarettes each
More than 5 cartons only \$7.00/carton

For faster processing call:
(213) 799-8870

CASH IN BIG...
Become a Jazz Distributor
Full or Part Time at home or business
For details call or write to the above address

To: Hancourt Companies
10915 Bloomfield Ave.
P.O. Box 915
Los Alamitos, CA 90720

☐ Regular ☐ Menthol

Please send me _____ cartons @ \$8.00 ea. Total cost \$ _____
☐ Money Order ☐ Check (Payable to order)
Charge my ☐ Visa ☐ MasterCard
Account # _____ Exp. Date _____

Signature _____
Name (please print) _____
Address _____
City _____ State _____ Zip _____

SHOW YOUR CONCERN BY SENDING THIS HEALTHY PRODUCE
TO A FRIEND OR RELATIVE WHO ENJOYS SMOKING

☐ Send me and a gift

Name (please print) _____
Address _____
City _____ State _____ Zip _____

EXHIBIT B

THE HARCOURT EXPORTS COMPANY

MAKE MONEY THE SIMPLE WAY
SELL A BETTER MOUSETRAP

Dear Associate:

You have undoubtedly received many ad letters regarding MONEY MAKING schemes. All of them would paint a colorful image of you MAKING ALL KINDS OF MONEY WITHOUT LIFTING A FINGERS, WITHOUT INVESTING A DIME (except \$15 for their plan), WITHOUT ANY RISK, so on and so on. If you've ever tried, you understand the empty feeling of disappointment.

It's time to get back to basics. It's time to go back to the thousand-year old principle of good business: BUILD AND SELL A BETTER MOUSETRAP.

Three Steps Are Required:

1. Find THE PRODUCT that people want and use repeatedly;
2. Make it BETTER than your competitors;
3. Work diligently to SELL it.

Apply these 3 steps to ANY PRODUCT, you will be successful. It will truly be YOU who plays in the Bermuda beach, driving a Rolls, smiling next to a Hollywood celebrity. It's that SIMPLE.

After 5 years of working on these principal steps, I finally found it. I have perfected the first 2 steps and I am asking you to join me in Step 3.

Step 1 - THE PRODUCT : CIGARETTES

Even with the warning "Smoking is Dangerous to Your Health", and all other fuss about Smoking In Public Places, the number of smokers has increased every year. Among the Fortune-500, the tobacco companies have always enjoyed the highest profit. When people risk personal death to enjoy their cigarettes, you could be sure that there is no other product that is MORE POPULAR. The enjoyment of SMOKING is unsurpassed.

Step 2 - MAKE IT BETTER

If cigarettes are such popular WITH the health hazard, what would you think if you could somehow have a cigarette WITHOUT the health hazard? If you could take the DANGER OUT of smoking? Do you think you have a winner? Well, our company did it. By taking the cancer-causing nicotine out of cigarettes, we have a harmless product that will revolutionize the cigarette market.

STEP 3 - SELL IT

First of all, let me emphasize the 2 extra advantages in marketing this cigarette:

1. At present, there is no cigarette in the marketplace comparable to ours. It would take the competitors at least 3 years to catch up with our know-how. By then, you and I should already have our own condo in Bermuda.
2. The government requires no warning label on our cigarette and exempts it from the cigarette stamp tax (a savings of over \$18 in some states). The result is a much cheaper price for the consumer. A double WHAMMY: health product at a lower cost.

Now, I need YOU to sell these cigarettes for me. And share with me the profit. It's that SIMPLE.

Of course, I have other alternatives. I could set up a public company, raise millions of money, hire the best advertising executives, employ thousands of workers in hundreds of facilities across the country. But I've been through that route before. I made some money, but along with money, I also got a bad heart, some kind of ulcer, and countless headaches.

This time, I am taking a different route. I will depend on INDEPENDENT ENTREPRENEURS like YOU to market these cigarettes for me. The money I'll make will be a little less, but I'd rather let YOU have part of it, than giving them to those lawyers, accountants, bankers and tax collectors.

THE MARKETING PLAN IS SIMPLE:

It's just a numbers game. Out of 10 individual smokers you contact, you will get at least 5 buyers. What's more, they will be repeat buyers, as smoking is still a habit-forming activity. Out of 10 stores you contact, at least 3 will agree to sell it for you. And re-order through you.

The more people or stores you contact, the more money you are going to make. It's that SIMPLE.

All you need to start is a very MINIMUM inventory. I do NOT want you to order big load. You stock up as you go. Because cigarette is light and small, you do not need anything bigger than a closet for your inventory. I advise you working out of your home to save any unnecessary expense.

As we agree, the more you sell, the more PROFIT you are going to get. In addition, your cost will go down as your SALE is up. To qualify as a distributor, you must order a MINIMUM of 30 cartons. And our pricing is SIMPLE, as follows:

30 to 59 cartons:	25% off
60 to 119 cartons :	35 % off
Over 120 cartons:	50 % off

At present, our RETAIL PRICE is \$12 per carton. I figure if you could contact 100 smokers and 10 stores in your area, you could sell 120 cartons a week easily. You will make \$720. a week or \$37,440. a year. Not bad for about 5-hour work and initial investment of \$270.

Of course, you could start smaller or bigger. You control your own destiny. It's that SIMPLE.

That's all I could tell you. We all believe in ACTION, not WORDS. What I offer you is very SIMPLE and TANGIBLE. Not some pie in the sky. The product is THERE, the market is THERE, the profit is THERE. If you decide to roll up your sleeves and go to WORK, fill up the order form and enclose a check, money order, or credit card number. It's that SIMPLE.

Yours truly,

Dr Alan V Pasqualle

EXHIBIT C

SOME INFO BEFORE YOU SMOKE...

WHAT ARE THESE CIGARETTES MADE OF ???

The leaves used inside the cigarettes are called Anarastino Papasico, which is of the same family like tobacco leaves. However, it contains much less nicotine, thus, we are able to extract the nicotine out 100%. There is no tar either. The end result means a cigarette with NO nicotine, NO tar; therefore, we are NOT required to print Health Warning Label like regular cigarettes.

THE SMELL IS TOO STRONG FOR ME...

For those who are not used to the heavy taste of cigarettes like Pall Mall, Lucky Strike...they could get used to it by the third day of smoking. Just think that Jazz will not hurt you like other cigarettes will give you motivation to keep trying.

USING JAZZ TO QUIT SMOKING

Quite a few customers of ours turn this strong smell to their advantage: they used JAZZ as a means to STOP smoking. Whenever they have an urge to smoke, they light up 1 Jazz and it would stop the craving for at least a few hours. They smoke less and less, and some could quit permanently by the end of the 2nd week.

INTRODUCE TO A FRIEND

You would do your friends or relatives a great favor by let them try the JAZZ cigarettes. Even if they do not like the taste or the smell, they might be able to QUIT smoking all together. Save somebody's health is a great feeling...

NEW JAZZ LIGHT

We are working on a formula to make JAZZ real light for those who prefer Salem or Virginia Slim. Unfortunately, we project the completion of the manufacturing only by May 1992. We shall send you a FREE sample as soon as it is available.

THANKS FOR YOUR HELP AND SUPPORT IN THIS EXPERIMENT. YOUR HEALTH AND THE HEALTH OF OUR CITIZENS GIVE US THE BEST MOTIVATION IN OUR DAILY RESEARCH.

DR ALAN PASQUALLE

DECISION AND ORDER

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

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent 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 respondent that the law has been violated as alleged in such complaint, 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 respondent has 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 Alan V. Phan is the owner of Harcourt Companies, a California sole proprietorship. His principal office and place of business is located at 10915 Bloomfield Avenue, Los Alamitos, CA.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

I.

It is ordered, That respondent Alan V. Phan, an individual trading and doing business as Harcourt Companies, and his successors and assigns, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of Jazz or any product containing substantially similar ingredients, 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. Smoking such product poses no health risk for the user.
- B. Smoking such product does not pose any of the health risks associated with smoking tobacco cigarettes.
- C. Such product's smoke contains no “tar.”

II.

It is further ordered, That respondent Alan V. Phan, an individual trading and doing business as Harcourt Companies, and his successors and assigns, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any smoking product, in or affecting commerce, as “commerce” is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any misrepresentation, in any manner, directly or by implication, regarding the display of health warnings required by the Federal Cigarette Labeling and Advertising Act.

III.

It is further ordered, That respondent Alan V. Phan, an individual trading and doing business as Harcourt Companies, and his successors and assigns, in connection with the manufacturing,

labeling, advertising, promotion, offering for sale, sale, or distribution of any cigarette, as defined in 15 U.S.C. 1332, or any other smoking product, 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, the comparative or absolute health or safety attributes, benefits, or risks associated with smoking such product, unless such representation is true and, at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation. For purposes of this order, “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.

IV.

It is further ordered, That respondent Alan V. Phan, an individual trading and doing business as Harcourt Companies, and his successors and assigns, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product 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 using such product is effective in aiding people to quit smoking tobacco products, unless, at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

V.

It is further ordered, That respondent shall:

A. Within thirty (30) days from the date of service of this order,

distribute a copy of the complaint and order to each past or present distributor of Jazz.

B. Distribute a copy of the complaint and order to each new distributor of Jazz within thirty (30) days of the date that individual or entity becomes a distributor;

C. Distribute a copy of the complaint and order to each future purchaser of Jazz, or any other transferee, who acquires, with or without valuable consideration, more than thirty (30) cartons of Jazz.

D. For ten (10) years from the date of service of this order, distribute a copy of the complaint and order to each managerial employee of respondent, and to each salesperson of respondent's products, whether they are independent sales agents or employees of respondent.

E. Within ten (10) days from the date of the service of this order, distribute a copy of the complaint and order to any individual or entity who is involved in the preparation and placement of advertisements or promotional materials, or communicates with customers or prospective customers regarding the efficacy or safety of any product covered by this order.

VI.

It is further ordered, That for five (5) years after the last date of dissemination of any representation covered by this order, respondent, or his 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 test, reports, studies, surveys, demonstrations or other evidence in his possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaint from consumers.

VII.

It is further ordered, That response shall, for a period of ten (10) years after the date of service of this order upon him, promptly notify the Commission, in writing, of his discontinuance of his present business or employment and of his affiliation with a new business or employment. For each such new affiliation, the notice shall include the name and address of the new business or employment, a statement of the nature of the new business or employment, and a description of respondent's duties and responsibilities in connection with the new business or employment.

VIII.

It is further ordered, That respondent shall, within sixty (60) days from the date of service of this order upon him, 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 he has complied with this order.

IN THE MATTER OF

ALLIANT TECHSYSTEMS INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT*Docket 9254. Complaint, Dec. 7, 1992--Decision, March 16, 1993*

This consent order requires, among other things, a Minnesota-based defense systems contractor that provides ammunition, for a 10-year period, to obtain Commission approval before: acquiring the assets or stock of any company engaged in systems contracting for certain tank or lightweight ammunition; or selling or transferring Alliant's stock or assets to a company engaged in systems contracting for certain types of ammunition. In addition, the order requires the respondent to terminate its proposed acquisition of certain Olin Corporation assets.

Appearances

For the Commission: *Laura A. Wilkinson.*

For the respondent: *Ira S. Sacks, Fried, Frank, Harris, Shriver & Jacobson, New York, N.Y.*

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that the Respondent, Alliant Techsystems-Inc. ("Alliant"), a corporation subject to the jurisdiction of the Commission, has entered into an agreement to acquire certain stock and assets of Olin Corporation and the proposed acquisition, if consummated, would violate the provisions of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; that said acquisition agreement constitutes a violation of Section 5 of the FTC Act, 15 U.S.C. 45; and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, pursuant to Section 11 of the Clayton Act, 15 U.S.C. 21, and Section