

Complaint

IN THE MATTER OF
ALTERNATIVE CIGARETTES, INC., ET AL.

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

Docket C-3956; File No. 9823022
Complaint, June 14, 2000--Decision, June 14, 2000

This consent order requires Respondent Alternative Cigarettes, Inc. to include the following disclosure, clearly and prominently, in certain advertising for its tobacco cigarettes: "No additives in our tobacco does NOT mean a safer cigarette." The order exempts Alternative Cigarettes from the disclosure requirement: (1) for cigarette advertisements not required to bear the Surgeon General's health warning; and (2) if Alternative Cigarettes possesses scientific evidence demonstrating that its "no additives" cigarette poses materially lower health risks than other cigarettes of the same type. Respondent is also required to include the following disclosure, clearly and prominently, in advertising and on packaging for herbal cigarettes: "Herbal cigarettes are dangerous to your health. They produce tar and carbon monoxide." The disclosure must be included in all advertising and on packaging for herbal smoking products that represent that the product has no tobacco, unless respondent possesses scientific evidence demonstrating that such herbal smoking products do not pose any material health risks. Respondent is required to possess competent and reliable scientific evidence prior to: (1) claiming that any herbal smoking product does not present the health risks associated with smoking tobacco cigarettes; or (2) making any claim about the health risks associated with the use of any herbal smoking product.

Participants

For the Commission: *Michael Ostheimer, Shira Modell, Matthew D. Gold, Linda K. Badger, Kerry O'Brien, C. Lee Peeler, and BE.*

For the Respondents: *Joseph Pandolfino, Alternative Cigarettes.*

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COMPLAINT

The Federal Trade Commission, having reason to believe that Alternative Cigarettes, Inc., a corporation, and Joseph Pandolfino, individually and as an officer of the corporation ("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 Alternative Cigarettes, Inc., is a New York corporation with its principal office or place of business at 125 Virgil Avenue, Buffalo, New York 14216.
2. Respondent Joseph Pandolfino is an officer of the corporate respondent. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of the corporation, including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of Alternative Cigarettes, Inc.
3. Respondents have advertised, promoted, offered for sale, sold and distributed tobacco cigarettes, including Pure cigarettes and Glory cigarettes, and non-tobacco herbal cigarettes, including Herbal Gold cigarettes and Magic cigarettes.
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. Respondents have disseminated or have caused to be disseminated advertisements for cigarettes, including but not necessarily limited to the attached Exhibits A through I. These advertisements contain the following statements:
 - A. "The major tobacco companies literally put hundreds of chemicals and additives in their cigarette brands. After years of pressure by American consumers and by Congress, this list was recently disclosed by the giant

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tobacco companies themselves. This exact list is enclosed for your review.

A number of these additives should give smokers cause for concern. Some of these are known carcinogens. Notice that ammonia is on this list. A recent finding shows that when ammonia is added to cigarettes it actually increases the amount of nicotine that the body absorbs. Other studies show that the most popular brands have up to 12 percent sugar. They also use a high percentage of reconstituted (recycled) tobacco.

Native Americans smoked all natural tobacco without the ills that are associated with smoking today. Could it be that the chemicals and additives cause more health problems than the natural tobacco itself? Much research needs to be done on this subject."

(Exhibit A: Alternative Cigarettes, Inc.'s World Wide Web site)

B. "PURE

100% Natural Tobacco Cigarettes...ADDITIVE FREE!

PREMIUM BRAND

Most popular cigarette brands contain many added chemicals, flavorings, and preservatives. They also contain recycled (reconstituted) tobacco. PURE is made from 100% natural tobacco. No additives are in our cigarettes. Smokers enjoy the natural taste of our premium tobacco without all the additives. PURE is filtered and comes in full flavor, lights, and menthol. PURE is how smoking was originally meant to be."

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(Exhibit B: Alternative Cigarettes, Inc.'s World Wide Web site)

C. "GLORY

100% Natural Tobacco Cigarettes...ADDITIVE FREE!

GLORY cigarettes are price competitive with any generic cigarette anywhere. However, unlike generic and premium brands manufactured by the major tobacco companies, GLORY tobacco is natural and additive free. It has no added chemicals, flavorings, preservatives, or recycled tobacco. GLORY is filtered and comes in regular and menthol."

(Exhibit C: Alternative Cigarettes, Inc.'s World Wide Web site)

D. "HERBAL GOLD

100% Nicotine Free Herbal Cigarettes!

NO NICOTINE

HERBAL GOLD does not contain any nicotine or tobacco. It is made from a special blend of smoking herbs: Marshmallow, Yerba Santa, Damiana, Passion Flower, Jasmine and Ginseng. HERBAL GOLD looks and smokes just like tobacco cigarettes. HERBAL GOLD is taking the country by storm since smokers can now enjoy a great tasting cigarette without any nicotine. Each carton has 10 king size packs of 20. Regular, menthol, vanilla and cherry are available.

What are HERBAL GOLD cigarettes?

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Herbal Gold is a revolutionary product that is nicotine and tobacco free. Herbal Gold offers a special blend of smoking herbs: Marshmallow, Yerba Santa, Damiana, Passion Flower, Jasmine and Ginseng. These herbs have very good reputations with the health food industry and herbalists. Their histories and other information can be found in numerous herbal and health books.

Our cigarettes are the highest quality non-tobacco smokes in the world. They are filtered and look and smoke just like tobacco cigarettes. Herbal Gold comes in regular, menthol, vanilla and cherry.

Most brands of tobacco cigarettes manufactured by the major tobacco companies have numerous unnatural components, including reconstituted tobacco. Reconstituted tobacco is recycled tobacco that the tobacco companies refuse to waste. The major tobacco companies also put hundreds of chemicals, additives, and preservatives in their brands.

What About HERBAL GOLD'S Taste and Aroma?

Herbal Gold offers a pleasant light taste. Its aroma is sweeter than that of tobacco. One can't expect Herbal Gold's aroma to be identical to tobacco cigarettes since Herbal Gold is tobacco free. The herbs in our cigarettes are natural and are not cured or processed like tobacco.

The vast majority of smokers and non-smokers alike say that the smoke from Herbal Gold is a lot less irritating to the eyes, nose, and throat than tobacco smoke.

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Everybody, except the folks from the major tobacco companies, agrees that the arrival of Herbal Gold has been long over due. Our cigarettes are considered by many to be a great alternative to tobacco. In fact, many Herbal Gold smokers believe our product is superior to tobacco."

(Exhibit D: Alternative Cigarettes, Inc.'s World Wide Web site)

E. "MAGIC

100% Nicotine Free Herbal Cigarettes!

NO NICOTINE

MAGIC does not contain any nicotine or tobacco. It is made from a special blend of smoking herbs: Marshmallow, Yerba Santa, Damiana, Passion Flower, Jasmine and Ginseng. MAGIC looks and smokes just like tobacco cigarettes. MAGIC is taking the country by storm since smokers can now enjoy a great tasting cigarette without any nicotine. Each carton has 10 king size packs of 20. Regular and menthol are available.

What are MAGIC cigarettes?

Magic is a revolutionary product that is nicotine and tobacco free. Magic contains the herbs Marshmallow, Yerba Santa, Damiana, Passion Flower, Jasmine and Ginseng. These herbs have very good reputations with the health food industry and herbalists. Their histories and other information can be found in numerous herbal and health books.

Our cigarettes are the highest quality non-tobacco smokes in the world. They are filtered and look and smoke just like tobacco cigarettes. Magic comes in regular and menthol.

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Most brands of tobacco cigarettes manufactured by the major tobacco companies have numerous unnatural components, including reconstituted tobacco. Reconstituted tobacco is recycled tobacco that the tobacco companies refuse to waste. The major tobacco companies also put hundreds of chemicals, additives, and preservatives in their brands.

What About MAGIC'S Taste and Aroma?

Magic offers a pleasant light taste. Its aroma is sweeter than that of tobacco. One can't expect Magic's aroma to be identical to tobacco cigarettes since Magic is tobacco free. The herbs in our cigarettes are natural and are not cured or processed like tobacco.

The vast majority of smokers and non-smokers alike say that the smoke from Magic is a lot less irritating to the eyes, nose, and throat than tobacco smoke.

Everybody, except the folks from the major tobacco companies, agrees that the arrival of Magic has been long over due. Our cigarettes are considered by many to be a great alternative to tobacco. In fact, many Magic smokers believe our product is superior to tobacco."

(Exhibit E: Alternative Cigarettes, Inc.'s World Wide Web site)

- F. "Water is the Only Ingredient Added to Tobacco in the Manufacturing of PURE and GLORY.

Do You Want to Smoke This?

Complaint

The 599 Ingredients Added to Tobacco in the Manufacture of Cigarettes by the Five Major American Cigarette Companies:

[List of Ingredients]"

(Exhibit F: Alternative Cigarettes, Inc.'s World Wide Web site)

- G. "The secret is finally out...on all the chemicals, flavorings, preservatives, and fillers that are added to the tobacco in most of the major cigarette brands.

Therefore, a countless number of smokers across the country are requesting our brands.

For Questions Call:
Alternative Cigarettes, Inc.

...

See us on the world wide web at: <http://www.altcigs.com>"

(Exhibit G: brochure)

- H. "PURE
100% NATURAL TOBACCO
ADDITIVE-FREE CIGARETTES

GLORY
100% NATURAL TOBACCO
ADDITIVE-FREE CIGARETTES"

(Exhibit H: Point-of-sale display)

- I. "NICOTINE FREE HERBAL CIGARETTES"

(Exhibit I: Point-of-sale display)

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CLAIMS REGARDING TOBACCO PRODUCTS

6. Through the means described in Paragraph 5, respondents have represented, expressly or by implication, that smoking Pure and Glory cigarettes, because they contain no additives, chemicals, flavorings or preservatives, is less hazardous to a smoker's health than smoking otherwise comparable cigarettes that contain additives, chemicals, flavorings or preservatives.

7. Through the means described in Paragraph 5, respondents have represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representation set forth in Paragraph 6, at the time the representation was made.

8. In truth and in fact, respondents did not possess and rely upon a reasonable basis that substantiated the representation set forth in Paragraph 6, at the time the representation was made. Among other reasons, the smoke from Pure and Glory cigarettes, like the smoke from all cigarettes, contains numerous carcinogens and toxins, including tar and carbon monoxide. Therefore, the representation set forth in Paragraph 7 was, and is, false or misleading.

CLAIMS REGARDING NON-TOBACCO PRODUCTS

9. Through the means described in Paragraph 5, respondents have represented, expressly or by implication, that smoking Herbal Gold and Magic herbal cigarettes does not pose the health risks associated with smoking tobacco cigarettes.

10. In truth and in fact, smoking Herbal Gold and Magic herbal cigarettes does pose many of the health risks associated with smoking tobacco cigarettes. Although Herbal Gold and Magic

Complaint

herbal cigarettes do not contain nicotine, their smoke, like the smoke from tobacco cigarettes, contains numerous carcinogens and toxins, including tar and carbon monoxide. Therefore, the representation set forth in Paragraph 9 was, and is, false or misleading.

11. Through the means described in Paragraph 5, respondents have represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representation set forth in Paragraph 9, at the time the representation was made.

12. In truth and in fact, respondents did not possess and rely upon a reasonable basis that substantiated the representation set forth in Paragraph 9, at the time the representation was made. Therefore, the representation set forth in Paragraph 11 was, and is, false or misleading.

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

THEREFORE, the Federal Trade Commission this fourteenth day of June, 2000, has issued this complaint against respondents.

By the Commission.

Complaint Exhibits

Complaint Exhibits



About Us

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Manufacturers
Put in Their
Cigarettes](#)[Get Your Local
Store To Carry
Alternative
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Alternative Cigarettes, Inc. is proud to offer our alternative cigarette brands to smokers across the country. These brands give consumers a choice over commercialized brands. The five major American tobacco companies could have offered such products to smokers years ago. However, they have refused to do so.

The major tobacco companies literally put hundreds of chemicals and additives in their cigarette brands. After years of pressure by American consumers and by Congress, this list was recently disclosed by the giant tobacco companies themselves. This exact list is enclosed for your review.

A number of these additives should give smokers cause for concern. Some of these are known carcinogens. Notice that ammonia is on this list. A recent finding shows that when ammonia is added to cigarettes it actually increases the amount of nicotine that the body absorbs. Other studies show that the most popular brands have up to 12 percent sugar. They also use a high percentage of reconstituted (recycled) tobacco.

Native Americans smoked all natural tobacco without the ills that are associated with smoking today. Could it be that the chemicals and additives cause more health problems than the natural tobacco itself? Much research needs to be done on this subject.

For Questions
Call TOLL FREE 1-800-225-1838

Alternative Cigarettes, Inc.
PO Box 678
Buffalo, NY 14207
1-800-225-1838 (716) 877-2983
Fax (716) 877-3064

SURGEON GENERAL'S WARNING:
Quitting Smoking Now Greatly
Reduces Serious Risks to Your Health.

EXHIBIT A

Complaint Exhibits



100% Natural Tobacco
Cigarettes...ADDITIVE
FREE!

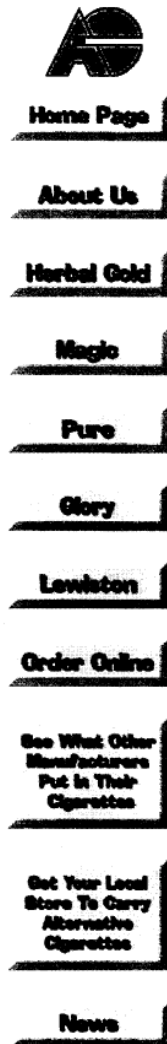
**PREMIUM BRAND**

Most popular cigarette brands contain many added chemicals, flavorings, and preservatives. They also contain recycled (reconstituted) tobacco. PURE is made from 100% natural tobacco. No additives are in our cigarettes. Smokers enjoy the natural taste of our premium tobacco without all the additives. PURE is filtered and comes in full flavor, lights, and menthol. PURE is how smoking was originally meant to be.

SURGEON GENERAL'S WARNING:
Quitting Smoking Now Greatly
Reduces Serious Risks to Your Health.

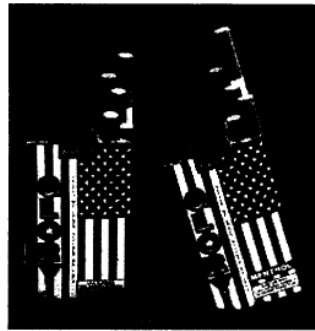
EXHIBIT B

Complaint Exhibits



GLORY

100% Natural Tobacco
Cigarettes...ADDITIVE
FREE!



GLORY cigarettes are price competitive with any generic cigarette anywhere. However, unlike generic and premium brands manufactured by the major tobacco companies, GLORY tobacco is natural and additive free. It has no added chemicals, flavorings, preservatives, or recycled tobacco. GLORY is filtered and comes in regular and menthol.

SURGEON GENERAL'S WARNING:
Quitting Smoking Now Greatly
Reduces Serious Risks to Your Health.

EXHIBIT C

Complaint Exhibits

[Home Page](#)[About Us](#)[Herbal Gold](#)[Magic](#)[Pure](#)[Glory](#)[Lewiston](#)[Order Online](#)[See What Other
Manufacturers
Put In Their
Cigarettes](#)[Get Your Local
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Cigarettes](#)[News](#)

HERBAL GOLD

100% Nicotine Free Herbal
Cigarettes!



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EXHIBIT D

Complaint Exhibits

Our cigarettes are the highest quality non-tobacco smokes in the world. They are filtered and look and smoke just like tobacco cigarettes. Herbal Gold comes in regular, menthol, vanilla and cherry.

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What About HERBAL GOLD'S Taste and Aroma?

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The vast majority of smokers and non-smokers alike say that the smoke from Herbal Gold is a lot less irritating to the eyes, nose, and throat than tobacco smoke.

Everybody, except the folks from the major tobacco companies, agrees that the arrival of Herbal Gold has been long over due. Our cigarettes are considered by many to be a great alternative to tobacco. In fact, many Herbal Gold smokers believe our product is superior to tobacco.

For more information and to find out if any stores near you carry our brands call: 1-800-225-1838
If there are no stores in your area that carry Herbal Gold, click the Order Online Button in the left panel.

SURGEON GENERAL'S WARNING:

Quitting Smoking Now Greatly
Reduces Serious Risks to Your Health.

Complaint Exhibits

[Home Page](#)[About Us](#)[Herbal Gold](#)[Magic](#)[Pure](#)[Glory](#)[Lewiston](#)[Order Online](#)[See What Other
Manufacturers
Put In Their
Cigarettes](#)[Get Your Local
Store To Carry
Alternative
Cigarettes](#)[News](#)

MAGIC

100% Nicotine Free Herbal Cigarettes!



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Our cigarettes are the highest quality non-tobacco smokes in

EXHIBIT E

Complaint Exhibits

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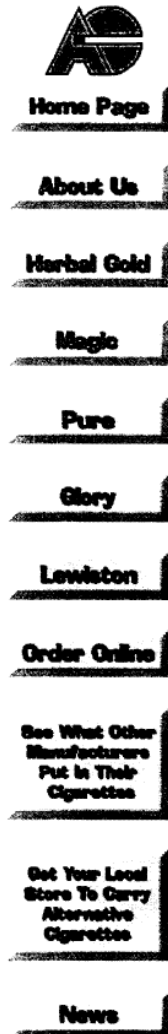
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For more information and to find out if any stores near you carry our brands call: 1-800-225-1838
If there are no stores in your area that carry Magic, click on the Order Online button on the left panel.

SURGEON GENERAL'S WARNING: Quitting Smoking Now Greatly Reduces Serious Risks to Your Health.
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Complaint Exhibits



**Water is the Only Ingredient Added to Tobacco
in the Manufacturing of PURE and GLORY.**

Do You Want to Smoke This?

*The 599 Ingredients Added to Tobacco in the
Manufacture of Cigarettes by the Five Major
American Cigarette Companies:*

Acetanisole, Acetic Acid, Acetoin, Acetophenone, 6-Acetoxydihydrotheaspirane, 2-Acetyl-3-Ethylpyrazine, 2-Acetyl-5-Methylfuran, Acetylpyrazine, 2-Acetylpyridine, 3-Acetylpyridine, 2-Acetylthiazole, Aconitic Acid, dl-Alanine, Alfalfa Extract, Allspice Extract, Oleoresin, And Oil, Allyl Hexanoate, Allyl Ionone, Almond Bitter Oil, Ambergis Tincture, Ammonia, Ammonium Bicarbonate, Ammonium Hydroxide, Ammonium Phosphate Dibasic, Ammonium Sulfide, Amyl Alcohol, Amyl Butyrate, Amyl Formate, Amyl Octanoate, alpha-Amylcinnamaldehyde, Amyris Oil, trans-Anethole, Angelica Root Extract, Oil and Seed Oil, Anise, Anise Star, Extract and Oils, Anisyl Acetate, Anisyl Alcohol, Anisyl Formate, Anisyl Phenylacetate, Apple Juice Concentrate, Extract, and Skins, Apricot Extract and Juice Concentrate, 1-Arginine, Asafetida Fluid Extract And Oil, Ascorbic Acid, 1-Asparagine Monohydrate, 1-Aspartic Acid, Balsam Peru and Oil, Basil Oil, Bay Leaf, Oil and Sweet Oil, Beeswax White, Beet Juice Concentrate, Benzaldehyde, Benzaldehyde Glyceryl Acetal, Benzoic Acid, Benzoin, Benzoin Resin, Benzophenone, Benzyl Alcohol, Benzyl Benzoate, Benzyl Butyrate, Benzyl Cinnamate, Benzyl Propionate, Benzyl Salicylate, Bergamot Oil, Bisabolene, Black Currant Buds Absolute, Borneol, Bornyl Acetate, Buchu Leaf Oil, 1,3-Butanediol, 2,3-Butanedione, 1-Butanol, 2-Butanone, 4(2-Butenylidene)-3,5,5-Trimethyl-2-Cyclohexen-1-One, Butter, Butter Esters, and Butter Oil, Butyl Acetate, Butyl Butyrate, Butyl Butyryl Lactate, Butyl Isovalerate, Butyl Phenylacetate, Butyl Undecylenate, 3-Butylidenephthalide, Butyric Acid, Cadinene, Caffeine, Calcium Carbonate, Camphene, Cananga Oil, Capsicum Oleoresin, Caramel Color, Caraway Oil, Carbon Dioxide, Cardamom Oleoresin, Extract, Seed Oil, and Powder, Carob Bean and Extract, beta-Carotene, Carrot Oil, Carvacrol, 4-Carvomenthenol, 1-Carvone, beta-Caryophyllene, beta-Caryophyllene Oxide, Cascarilla Oil and Bark Extract, Cassia Bark Oil, Cassie Absolute and Oil, Castoreum Extract, Tincture and Absolute, Cedar Leaf Oil, Cedarwood Oil Terpenes and Virginiana, Cedrol, Celery Seed Extract, Solid, Oil, And Oleoresin, Cellulose Fiber, Chamomile Flower Oil And Extract, Chicory Extract, Chocolate, Cinnamaldehyde, Cinnamic Acid, Cinnamon Leaf Oil, Bark Oil, and Extract, Cinnamyl Acetate, Cinnamyl Alcohol, Cinnamyl Cinnamate, Cinnamyl

EXHIBIT F

Complaint Exhibits

Isovalerate, Cinnamyl Propionate, Citral, Citric Acid, Citronella Oil, dl-Citronellol, Citronellyl Butyrate, Citronellyl Isobutyrate, Civet Absolute, Clary Oil, Clover Tops, Red Solid Extract, Cocoa, Cocoa Shells, Extract, Distillate And Powder, Coconut Oil, Coffee, Cognac White and Green Oil, Copaiba Oil, Coriander Extract and Oil, Corn Oil, Corn Silk, Costus Root Oil, Cubeb Oil, Cuminaldehyde, para-Cymene, 1-Cysteine, Dandelion Root Solid Extract, Davana Oil, 2-trans, 4-trans-Decadienal, delta-Decalactone, gamma-Decalactone, Decanal, Decanoic Acid, 1-Decanol, 2-Decenal, Dehydromenthofurolactone, Diethyl Malonate, Diethyl Sebacate, 2,3-Diethylpyrazine, Dihydro Anethole, 5,7-Dihydro-2-Methylthieno(3,4-D) Pyrimidine, Dill Seed Oil and Extract, meta-Dimethoxybenzene, para-Dimethoxybenzene, 2,6-Dimethoxyphenol, Dimethyl Succinate, 3,4-Dimethyl-1,2-Cyclopentanedione, 3,5-Dimethyl-1,2-Cyclopentanedione, 3,7-Dimethyl-1,3,6-Octatriene, 4,5-Dimethyl-3-Hydroxy-2,5-Dihydrofuran-2-One, 6,10-Dimethyl-5,9-Undecadien-2-One, 3,7-Dimethyl-6-Octenoic Acid, 2,4-Dimethylacetophenone, alpha,para-Dimethylbenzyl Alcohol, alpha,alpha-Dimethylphenethyl Acetate, alpha,alpha-Dimethylphenethyl Butyrate, 2,3-Dimethylpyrazine,2,5-Dimethylpyrazine, 2,6-Dimethylpyrazine, Dimethyltetrahydrobenzofuranone, delta-Dodecalactone, gamma-Dodecalactone, para-Ethoxybenzaldehyde, Ethyl 10-Undecenoate, Ethyl 2-Methylbutyrate, Ethyl Acetate, Ethyl Acetoacetate, Ethyl Alcohol, Ethyl Benzoate, Ethyl Butyrate, Ethyl Cinnamate, Ethyl Decanoate, Ethyl Fenchol, Ethyl Furoate, Ethyl Heptanoate, Ethyl Hexanoate, Ethyl Isovalerate, Ethyl Lactate, Ethyl Laurate, Ethyl Levulinate, Ethyl Maltol, Ethyl Methyl Phenylglycidate, Ethyl Myristate, Ethyl Nonanoate, Ethyl Octadecanoate, Ethyl Octanoate, Ethyl Oleate, Ethyl Palmitate, Ethyl Phenylacetate, Ethyl Propionate, Ethyl Salicylate, Ethyl trans-2-Butenoate, Ethyl Valerate, Ethyl Vanillin, 2-Ethyl (or Methyl)-(3,5 and 6)-Methoxypyrazine, 2-Ethyl-1-Hexanol, 3-Ethyl -2-Hydroxy-2-Cyclopenten-1-One, 2-Ethyl-3, (5 or 6)-Dimethylpyrazine, 5-Ethyl-3-Hydroxy-4-Methyl-2(5H)-Furanone, 2-Ethyl-3-Methylpyrazine, 4-Ethylbenzaldehyde, 4-Ethylguaiaicol, para-Ethylphenol, 3-Ethylpyridine, Eucalyptol, Farnesol, D-Fenchone, Fennel Sweet Oil, Fenugreek, Extract, Resin, and Absolute, Fig Juice Concentrate, Food Starch Modified, Furfuryl Mercaptan, 4-(2-Furyl)-3-Buten-2-One, Galbanum Oil, Genet Absolute, Gentian Root Extract, Geraniol, Geranium Rose Oil, Geranyl Acetate, Geranyl Butyrate, Geranyl Formate, Geranyl Isovalerate, Geranyl Phenylacetate, Ginger Oil and Oleoresin, 1-Glutamic Acid, 1-Glutamine, Glycerol, Glycyrrhizin Ammoniated, Grape Juice Concentrate, Guaiac Wood Oil, Guaiacol, Guar Gum, 2,4-Heptadienal, gamma-Heptalactone, Heptanoic Acid, 2-Heptanone, 3-Hepten-2-One, 2-Hepten-4-One, 4-Heptenal, trans -2-Heptenal, Heptyl Acetate, omega-6-Hexadecenlactone, gamma-Hexalactone, Hexanal, Hexanoic Acid, 2-Hexen-1-Ol, 3-Hexen-1-Ol,

Complaint Exhibits

cis-3-Hexen-1-Yl Acetate, 2-Hexenal, 3-Hexenoic Acid, trans-2-Hexenoic Acid, cis-3-Hexenyl Formate, Hexyl 2-Methylbutyrate, Hexyl Acetate, Hexyl Alcohol, Hexyl Phenylacetate, 1-Histidine, Honey, Hops Oil, Hydrolyzed Milk Solids, Hydrolyzed Plant Proteins, 5-Hydroxy-2,4-Decadienoic Acid delta- Lactone, 4-Hydroxy-2,5-Dimethyl-3(2H)-Furanone, 2-Hydroxy-3,5,5-Trimethyl-2-Cyclohexen-1-One, 4-Hydroxy-3-Pentenoic Acid Lactone, 2-Hydroxy-4-Methylbenzaldehyde, 4-Hydroxybutanoic Acid Lactone, Hydroxycitronellal, 6-Hydroxydihydrotheaspriane, 4-(para-Hydroxyphenyl)-2-Butanone, Hyssop Oil, Immortelle Absolute and Extract, alpha-Ionone, beta-Ionone, alpha-Irone, Isoamyl Acetate, Isoamyl Benzoate, Isoamyl Butyrate, Isoamyl Cinnamate, Isoamyl Formate, Isoamyl Hexanoate, Isoamyl Isovalerate, Isoamyl Octanoate, Isoamyl Phenylacetate, Isobornyl Acetate, Isobutyl Acetate, Isobutyl Alcohol, Isobutyl Cinnamate, Isobutyl Phenylacetate, Isobutyl Salicylate, 2-Isobutyl-3-Methoxypyrazine, alpha-Isobutylphenethyl Alcohol, Isobutyraldehyde, Isobutyric Acid, d,l-Isoleucine, alpha-Isomethylionone, 2-Isopropylphenol, Isovaleric Acid, Jasmine Absolute, Concrete and Oil, Kola Nut Extract, Labdanum Absolute and Oleoresin, Lactic Acid, Lauric Acid, Lauric Aldehyde, Lavandin Oil, Lavender Oil, Lemon Oil and Extract, Lemongrass Oil, 1-Leucine, Levulinic Acid, Licorice Root, Fluid, Extract and Powder, Lime Oil, Linalool, Linalool Oxide, Linalyl Acetate, Linden Flowers, Lovage Oil And Extract, 1-Lysine, Mace Powder, Extract and Oil, Magnesium Carbonate, Malic Acid, Malt and Malt Extract, Maltodextrin, Maltol, Maltol Isobutyrate, Mandarin Oil, Maple Syrup and Concentrate, Mate Leaf, Absolute and Oil, para-Mentha-8-Thiol-3-One, Menthol, Menthone, Menthyl Acetate, dl-Methionine, Methoprene, 2-Methoxy-4-Methylphenol, 2-Methoxy-4-Vinylphenol, para-Methoxybenzaldehyde, 1-(para-Methoxyphenyl)-1-Penten-3-One, 4-(para-Methoxyphenyl)-2-Butanone, 1-(para-Methoxyphenyl)-2-Propanone, Methoxypyrazine, Methyl 2-Furoate, Methyl 2-Octynoate, Methyl 2-Pyrrolyl Ketone, Methyl Anisate, Methyl Anthranilate, Methyl Benzoate, Methyl Cinnamate, Methyl Dihydrojasmonate, Methyl Ester of Rosin, Partially Hydrogenated, Methyl Isovalerate, Methyl Linoleate (48%), Methyl Linolenate (52%) Mixture, Methyl Naphthyl Ketone, Methyl Nicotinate, Methyl Phenylacetate, Methyl Salicylate, Methyl Sulfide, 3-Methyl-1-Cyclopentadecanone, 4-Methyl-1-Phenyl-2-Pentanone, 5-Methyl-2-Phenyl-2-Hexenal, 5-Methyl-2-Thiophenecarboxaldehyde, 6-Methyl-3,-5-Heptadien-2-One, 2-Methyl-3-(para-Isopropylphenyl) Propionaldehyde, 5-Methyl-3-Hexen-2-One, 1-Methyl-3Methoxy-4-Isopropylbenzene, 4-Methyl-3-Pentene-2-One, 2-Methyl-4-Phenylbutyraldehyde, 6-Methyl-5-Hepten-2-One, 4-Methyl-5-Thiazoleethanol, 4-Methyl-5-Vinylthiazole, Methyl-alpha-Ionone, Methyl-trans-2-Butenoic Acid, 4-Methylacetophenone,

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para-Methylanisole, alpha-Methylbenzyl Acetate, alpha-Methylbenzyl Alcohol, 2-Methylbutyraldehyde, 3-Methylbutyraldehyde, 2-Methylbutyric Acid, alpha-Methylcinnamaldehyde, Methylcyclopentenolone, 2-Methylheptanoic Acid, 2-Methylhexanoic Acid, 3-Methylpentanoic Acid, 4-Methylpentanoic Acid, 2-Methylpyrazine, 5-Methylquinoxaline, 2-Methyltetrahydrofuran-3-One, (Methylthio)Methylpyrazine (Mixture Of Isomers), 3-Methylthiopropionaldehyde, Methyl 3-Methylthiopropionate, 2-Methylvaleric Acid, Mimosa Absolute and Extract, Molasses Extract and Tincture, Mountain Maple Solid Extract, Mullein Flowers, Myristaldehyde, Myristic Acid, Myrrh Oil, beta-Naphthyl Ethyl Ether, Nerol, Neroli Bigarde Oil, Nerolidol, Nona-2-trans,6-cis-Dienal, 2,6-Nonadien-1-ol, gamma-Nonalactone, Nonanal, Nonanoic Acid, Nonanone, trans-2-Nonen-1-ol, 2-Nonenal, Nonyl Acetate, Nutmeg Powder and Oil, Oak Chips Extract and Oil, Oak Moss Absolute, 9,12-Octadecadienoic Acid (48%) And 9,12,15-Octadecatrienoic Acid (52%), delta-Octalactone, gamma-Octalactone, Octanal, Octanoic Acid, 1-Octanol, 2-Octanone, 3-Octen-2-One, 1-Octen-3-ol, 1-Octen-3-Yl Acetate, 2-Octenal, Octyl Isobutyrate, Oleic Acid, Olibanum Oil, Opoponax Oil And Gum, Orange Blossoms Water, Absolute, and Leaf Absolute, Orange Oil and Extract, Origanum Oil, Orris Concrete Oil and Root Extract, Palmarosa Oil, Palmitic Acid, Parsley Seed Oil, Patchouli Oil, omega-Pentadecalactone, 2,3-Pentanedione, 2-Pentanone, 4-Pentenoic Acid, 2-Pentylpyridine, Pepper Oil, Black And White, Peppermint Oil, Peruvian (Bois De Rose) Oil, Petitgrain Absolute, Mandarin Oil and Terpeneless Oil, alpha-Phellandrene, 2-Phenethyl Acetate, Phenethyl Alcohol, Phenethyl Butyrate, Phenethyl Cinnamate, Phenethyl Isobutyrate, Phenethyl Isovalerate, Phenethyl Phenylacetate, Phenethyl Salicylate, 1-Phenyl-1-Propanol, 3-Phenyl-1-Propanol, 2-Phenyl-2-Butenal, 4-Phenyl-3-Buten-2-ol, 4-Phenyl-3-Buten-2-One, Phenylacetaldehyde, Phenylacetic Acid, 1-Phenylalanine, 3-Phenylpropionaldehyde, 3-Phenylpropionic Acid, 3-Phenylpropyl Acetate, 3-Phenylpropyl Cinnamate, 2-(3-Phenylpropyl)Tetrahydrofuran, Phosphoric Acid, Pimenta Leaf Oil, Pine Needle Oil, Pine Oil, Scotch, Pineapple Juice Concentrate, alpha-Pinene, beta-Pinene, D-Piperitone, Piperonal, Pipsissewa Leaf Extract, Plum Juice, Potassium Sorbate, 1-Proline, Propenylguaethol, Propionic Acid, Propyl Acetate, Propyl para-Hydroxybenzoate, Propylene Glycol, 3-Propylidenephthalide, Prune Juice and Concentrate, Pyridine, Pyroligneous Acid And Extract, Pyrrole, Pyruvic Acid, Raisin Juice Concentrate, Rhodinol, Rose Absolute and Oil, Rosemary Oil, Rum, Rum Ether, Rye Extract, Sage, Sage Oil, and Sage Oleoresin, Salicylaldehyde, Sandalwood Oil, Yellow, Sclareolide, Skatole, Smoke Flavor, Snakeroot Oil, Sodium Acetate, Sodium Benzoate, Sodium Bicarbonate, Sodium Carbonate, Sodium Chloride, Sodium Citrate, Sodium Hydroxide, Solanone, Spearmint Oil, Styrax Extract, Gum and Oil, Sucrose Octaacetate, Sugar Alcohols, Sugars, Tagetes Oil, Tannic Acid, Tartaric Acid, Tea Leaf and Absolute, alpha-Terpeneol, Terpinolene, Terpinyl Acetate,

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5,6,7,8-Tetrahydroquinoxaline,
1,5,5,9-Tetramethyl-13-Oxatricyclo(8.3.0.0(4,9))Tridecane,
2,3,4,5, and 3,4,5,6-Tetramethylethyl-Cyclohexanone,
2,3,5,6-Tetramethylpyrazine, Thiamine Hydrochloride,
Thiazole, 1-Threonine, Thyme Oil, White and Red, Thymol,
Tobacco Extracts, Tocopherols (mixed), Tolu Balsam Gum
and Extract, Tolualdehydes, para-Tolyl 3-Methylbutyrate,
para-Tolyl Acetaldehyde, para-Tolyl Acetate, para-Tolyl
Isobutyrate, para-Tolyl Phenylacetate, Triacetin,
2-Tridecanone, 2-Tridecenal, Triethyl Citrate, 3,5,5-Trimethyl
-1-Hexanol, para,alpha,alpha-Trimethylbenzyl Alcohol,
4-(2,6,6-Trimethylcyclohex-1-Enyl)But-2-En-4-One,
2,6,6-Trimethylcyclohex-2-Ene-1,4-Dione,
2,6,6-Trimethylcyclohexa-1,3-Dienyl Methan,
4-(2,6,6-Trimethylcyclohexa-1,3-Dienyl)But-2-En-4-One,
2,2,6-Trimethylcyclohexanone, 2,3,5-Trimethylpyrazine,
1-Tyrosine, delta-Undercalactone, gamma-Undecalactone,
Undecanal, 2-Undecanone, 10-Undecenal, Urea, Valencene,
Valeraldehyde, Valerian Root Extract, Oil and Powder,
Valeric Acid, gamma-Valerolactone, Valine, Vanilla Extract
And Oleoresin, Vanillin, Veratraldehyde, Vetiver Oil,
Vinegar, Violet Leaf Absolute, Walnut Hull Extract, Water,
Wheat Extract And Flour, Wild Cherry Bark Extract, Wine
and Wine Sherry, Xanthan Gum, 3,4-Xylenol, Yeast

SURGEON GENERAL'S WARNING:

Quitting Smoking Now Greatly
Reduces Serious Risks to Your Health.

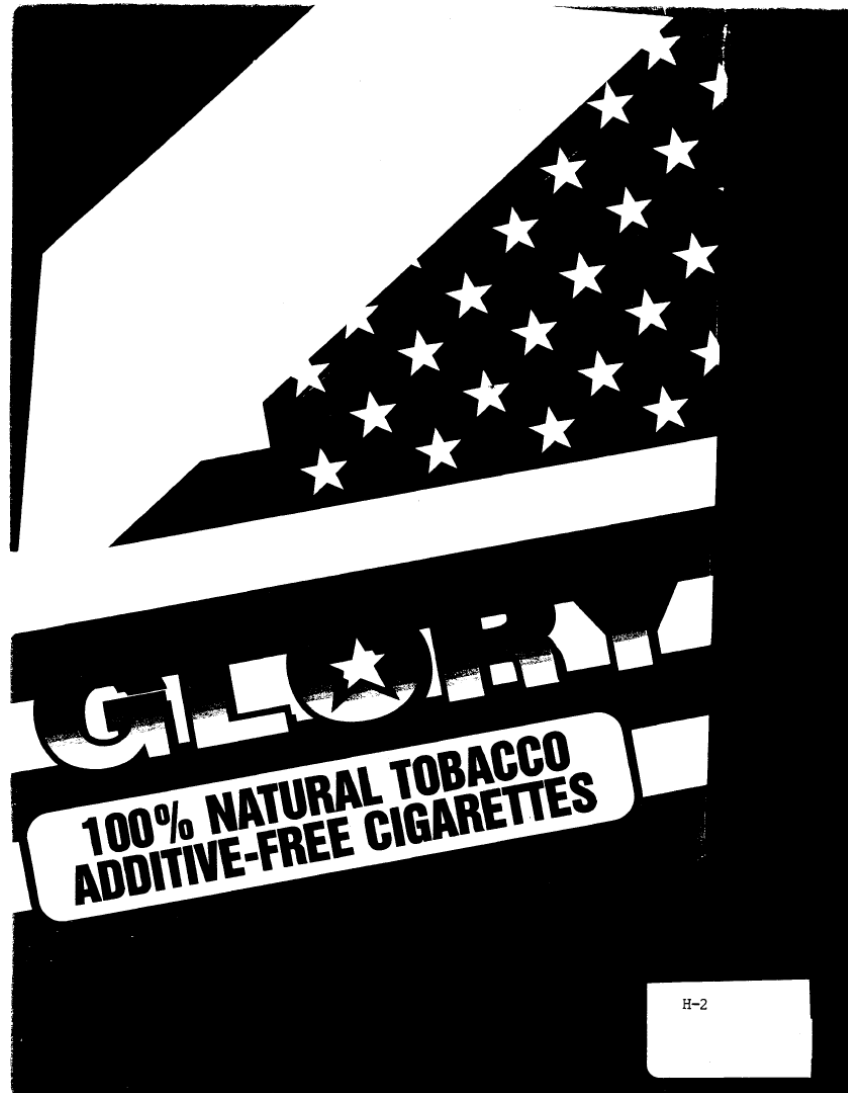
Complaint Exhibits



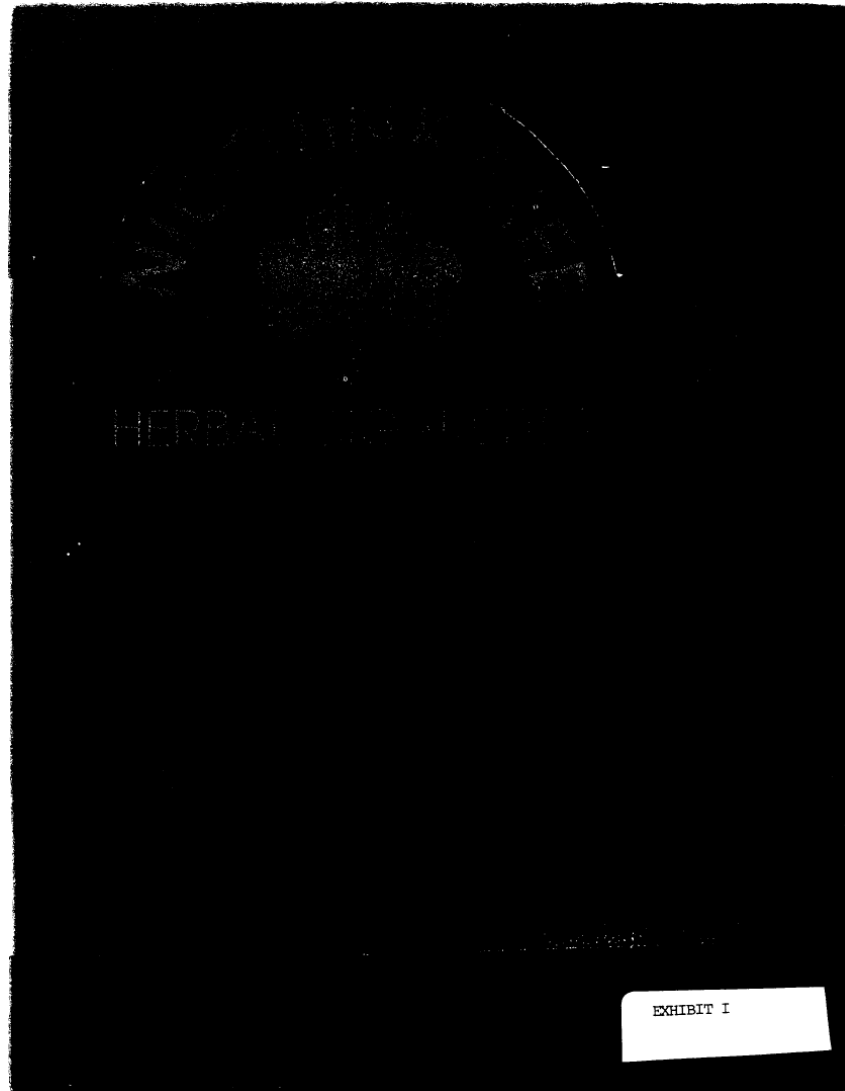
EXHIBIT G



Complaint Exhibits



Complaint Exhibits



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

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that 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 thirty (30) days, now in further conformity with the procedure prescribed in § 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

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1.a. Respondent Alternative Cigarettes, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 125 Virgil Avenue, Buffalo, New York 14216.

1.b. Respondent Joseph Pandolfino is an officer of the corporate respondent. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of the corporation. His principal office or place of business is the same as that of Alternative Cigarettes, Inc.

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

DEFINITIONS

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

1. "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.

2. Unless otherwise specified, "respondents" shall mean Alternative Cigarettes, Inc., a corporation, its successors and assigns and its officers; Joseph Pandolfino, individually and as an officer of the corporation; and each of the above's agents, representatives, and employees.

3. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

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4. "Advertisement" shall mean any written or verbal statement, illustration, or depiction that is designed to effect a sale or create interest in the purchasing of any product, including but not limited to a statement, illustration or depiction in or on a brochure, newspaper, magazine, free standing insert, pamphlet, leaflet, circular, mailer, book insert, letter, coupon, catalog, poster, chart, billboard, transit advertisement, point of purchase display, specialty or utilitarian item, sponsorship material, package insert, film, slide, or the Internet or other computer network or system.
5. "Tobacco product" shall mean cigarettes, cigars, cigarillos, little cigars, smokeless tobacco, cigarette tobacco, pipe tobacco, and any other product made or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product.
6. "Herbal smoking product" shall mean cigarettes, cigars, cigarillos, little cigars and any other product made or derived from plant material other than tobacco, that is intended for human smoking, including any component, part, or accessory of an herbal smoking product.
7. "Clearly and prominently" shall mean:
 - a. With regard to advertisements for tobacco and herbal smoking products, in black type on a solid white background, or in white type on a solid red background, or in any other color combination that would provide an equivalent or greater degree of print contrast as objectively determined by densitometer or comparable measurements of the type and the background color. In advertisements, the color of the ruled rectangle shall be the same color as that of the type; and

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- b. i. With regard to advertisements for tobacco products, centered, both horizontally and vertically, in a ruled rectangle. The area enclosed by the rectangle shall be no less than 40% of the size of the area enclosed by the ruled rectangle surrounding the health warnings for tobacco cigarettes mandated by 15 U.S.C. § 1333. The width of the rule forming the rectangle shall be no less than 50% of the width of the rule required for the health warnings for tobacco cigarettes mandated by 15 U.S.C. § 1333.

Provided that, if, at any time after this order becomes final, 15 U.S.C. § 1333 is amended, modified, or superseded by any other law, the area enclosed by the ruled rectangle shall be no less than 40% of the area required for health warnings for tobacco cigarettes by such amended, modified, or superseding law, and the width of the rule forming the rectangle shall be no less than 50% of the width of any surrounding rule required for health warnings for tobacco cigarettes by such amended, modified, or superseding law; and

- ii. With regard to advertisements for herbal smoking products, centered, both horizontally and vertically, in a ruled rectangle. The area enclosed by the rectangle shall be no less than the size of the area enclosed by the ruled rectangle surrounding the health warnings for tobacco cigarettes mandated by 15 U.S.C. § 1333. The width of the rule forming the rectangle shall be no less than the width of the rule required for the health warnings for tobacco cigarettes mandated by 15 U.S.C. § 1333.

Provided that, if, at any time after this order becomes final, 15 U.S.C. § 1333 is amended, modified, or superseded by any other law, the area enclosed by the ruled rectangle shall be no less than the area required for health warnings for tobacco cigarettes by such

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amended, modified, or superseding law, and the width of the rule forming the rectangle shall be no less than the width of any surrounding rule required for health warnings for tobacco cigarettes by such amended, modified, or superseding law; and

- c. In the same type style and type size as that required for health warnings for tobacco cigarettes pursuant to 15 U.S.C. § 1333.

Provided that, if, at any time after this order becomes final, 15 U.S.C. § 1333 is amended, modified, or superseded by any other law, the type style and type size of the disclosure shall be the same as the type style and type size required for health warnings for tobacco cigarettes by such amended, modified, or superseding law; and

- d. In a clear and prominent location but not immediately next to other written or textual matter or any rectangular designs, elements, or similar geometric forms, including but not limited to any warning statement required under the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. § 1331 *et seq.*, or the Comprehensive Smokeless Tobacco Health Education Act, 15 U.S.C. § 4401 *et seq.* In addition, the disclosure shall not be positioned in the margin of a print advertisement. A disclosure shall be deemed “not immediately next to” other geometric or textual matter if the distance between the disclosure and the other matter is as great as the distance between the outside left edge of the rule of the rectangle enclosing the health warning required by 15 U. S. C. § 1333 and the top left point of the letter “S” in the word “SURGEON” in that health warning; and

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- e. For audiovisual or audio advertisements, including but not limited to advertisements on videotapes, cassettes, discs, or the Internet; promotional films or filmstrips; and promotional audiotapes or other types of sound recordings, the disclosure shall appear on the screen at the end of the advertisement in the format described above for a length of time and in such a manner that it is easily legible and shall be announced simultaneously at the end of the advertisement in a manner that is clearly audible.

Provided, however, that in any advertisement that does not contain a visual component, the disclosure need not appear in visual format, and in any advertisement that does not contain an audio component, the disclosure need not be announced in audio format.

I.

IT IS ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of Pure Cigarettes, Glory Cigarettes, or any other tobacco product in or affecting commerce, shall display in advertisements as specified below, clearly and prominently, the following disclosures (including the line breaks, punctuation, bold font and capitalization illustrated):

In cigarette advertisements:

No additives in our tobacco
does **NOT** mean a safer cigarette.

In advertisements for any other tobacco product:

No additives in our tobacco
does **NOT** mean safer.

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These disclosures shall be displayed beginning no later than thirty (30) days after the date of service of this order in any advertisement that, through the use of such phrases as “no additives,” “100% tobacco,” “additive-free,” “pure tobacco,” “does not contain additives,” “no chemicals,” “no flavorings,” “no preservatives,” or substantially similar terms, represents that a tobacco product has no additives, chemicals, flavorings or preservatives.

Provided, that the above disclosures shall not be required in any cigarette advertisement that is not required to bear a health warning pursuant to 15 U.S.C. § 1333.

Provided further, that the above disclosures shall not be required if respondents possess and rely upon competent and reliable scientific evidence demonstrating that such cigarette or other tobacco product poses materially lower health risks than other cigarettes or other products of the same type.

Nothing contrary to, inconsistent with, or in mitigation of any disclosure provided for in this part shall be used in any advertisement. *Provided, however*, that this provision shall not prohibit respondents from truthfully representing, through the use of such phrases “no additives,” “100% tobacco,” “additive-free,” “pure tobacco,” “does not contain additives,” “no chemicals,” “no flavorings,” “no preservatives,” or substantially similar terms, that a tobacco product has no additives, chemicals, flavorings or preservatives, where such representation is accompanied by the disclosure mandated by this provision.

II.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale,

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or distribution of Herbal Gold cigarettes, Magic cigarettes, or any other herbal smoking product in or affecting commerce, shall display in advertisements and on packaging as specified below, clearly and prominently, the following disclosure (including the line breaks, punctuation and capitalization illustrated):

In advertisements and on packaging for herbal cigarettes:

Herbal cigarettes are dangerous to your health.
They produce tar and carbon monoxide.

In advertisements and on packaging for other herbal smoking products:

Smoking this product is dangerous to your health.
It produces tar and carbon monoxide.

These disclosures shall be displayed beginning no later than thirty (30) days after the date of service of this order in any advertisement and on any package that, through the use of such phrases as “no nicotine,” “nicotine-free,” “no tobacco,” “tobacco-free,” “herbal,” or substantially similar terms, represents that an herbal smoking product has no tobacco or nicotine.

Provided, that the above disclosures shall not be required if respondents possess and rely upon competent and reliable scientific evidence demonstrating that such herbal smoking products do not pose any material health risks.

Nothing contrary to, inconsistent with, or in mitigation of any disclosure provided for in this part shall be used in any advertisement. *Provided, however*, that this provision shall not prohibit respondents from truthfully representing, through the use of such phrases as “no nicotine,” “nicotine-free,” “no tobacco,” “tobacco-free,” “herbal,” or substantially similar terms, that an herbal smoking product has no nicotine or tobacco, where such representation is accompanied by the disclosure mandated by this provision.

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III.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of any herbal smoking product, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication:

- A. That such product does not present the health risks associated with smoking tobacco cigarettes; or
- B. About the health risks associated with the use of such product,

unless the representation is true and, 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 shall:

- A. Provide, within forty-five (45) days after the date of service of this order, an exact copy of the notice attached hereto as Attachment A to each retailer, distributor, or other purchaser for resale to whom respondents have supplied Pure or Glory tobacco cigarettes, or Herbal Gold or Magic herbal cigarettes, since January 1, 1998. Respondents shall send the notice by first class mail. The mailing shall not include any other documents.
- B. Discontinue dealing with any retailer, distributor, or other purchaser for resale once respondents have actual

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knowledge, or knowledge fairly implied on the basis of objective circumstances, that such retailer, distributor, or other purchaser for resale has continued to use or disseminate:

(1) any of respondents' advertisements for any of respondents' tobacco products that:

- a) represents, through the use of such phrases as "no additives," "100% tobacco," "additive-free," "pure tobacco," "does not contain additives," "no chemicals," "no flavorings," "no preservatives," or substantially similar terms, that the tobacco products have no additives, chemicals or preservatives; and
- b) does not include the disclosure specified in Part I of this order; or

(2) any of respondents' advertisements for any of respondents' herbal smoking products that:

- a) represents, through the use of such phrases as "no nicotine," "nicotine-free," "no tobacco," "tobacco-free," "herbal," or substantially similar terms, that the herbal smoking products have no tobacco; and
- b) does not include the disclosure specified in Part II of this order;

unless, upon notification by respondents, such retailer, distributor, or other purchaser for resale immediately ceases using or disseminating such advertisements. If, after such notification, respondents obtain actual knowledge, or knowledge fairly implied on the basis of objective circumstances, that such retailer, distributor, or other purchaser for resale has not permanently ceased using or disseminating such advertisements, respondents

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must immediately and permanently discontinue dealing with such retailer, distributor, or other purchaser for resale.

C. For five (5) years after the date of service of this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

(1) copies of all notification letters sent to retailers, distributors, or other purchasers for resale pursuant to subparagraph A of this part; and

(2) copies of all communications with retailers, distributors, or other purchasers for resale pursuant to subparagraph B of this part.

V.

IT IS FURTHER ORDERED that respondent Alternative Cigarettes, Inc., and its successors and assigns, and respondent Joseph Pandolfino 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 packaging 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

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complaints and other communications with consumers or with governmental or consumer protection organizations.

VI.

IT IS FURTHER ORDERED that respondent Alternative Cigarettes, Inc., and its successors and assigns, and respondent Joseph Pandolfino shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondents shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities. Respondents shall maintain and upon request make available to the Federal Trade Commission for inspection and copying a copy of each signed statement acknowledging receipt of the order.

VII.

IT IS FURTHER ORDERED that respondent Alternative Cigarettes, Inc., and its successors and assigns shall notify the Commission at least thirty (30) days prior to the sale of any of its tobacco products or herbal smoking products for which the composition or formula has been changed in such a manner as may affect compliance obligations arising under this order, including but not limited to the addition of any additives to any variety of such products. 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, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

Decision and Order

VIII.

IT IS FURTHER ORDERED that respondent Alternative Cigarettes, Inc., and its successors and assigns shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including but not limited to a 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 respondent learns less than thirty (30) days prior to the date such action is to take place, respondent 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, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

IX.

IT IS FURTHER ORDERED that respondent Joseph Pandolfino, for a period of ten (10) years after the date of issuance of this order, shall notify the Commission of the discontinuance of his current business or employment, or of his affiliation with any new business or employment. The notice shall include respondent's new business address and telephone number and a description of the nature of the business or employment and his duties and responsibilities. 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, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

Decision and Order

X.

IT IS FURTHER ORDERED that respondent Alternative Cigarettes, Inc., and its 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.

XI.

This order will terminate on June 14, 2020, 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 effect 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.

By the Commission.

Analysis to Aid Public Comment

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Alternative Cigarettes, Inc., and its President, Joseph Pandolfino (hereinafter AAAlternative Cigarettes@). The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) 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.

This matter involves alleged misleading representations for Alternative Cigarettes= Pure and Glory tobacco cigarettes, and the company=s Herbal Gold and Magic herbal cigarettes. Alternative Cigarettes advertised that Pure and Glory cigarettes contain no additives. According to the FTC complaint, through these advertisements respondents represented that because Pure and Glory cigarettes contain no additives, smoking them is less hazardous to a smoker's health than smoking otherwise comparable cigarettes that contain additives. The complaint alleges that respondents did not have a reasonable basis for the representation at the time it was made. Among other reasons, according to the complaint, the smoke from Pure and Glory cigarettes, like the smoke from all cigarettes, contains numerous carcinogens and toxins, including tar and carbon monoxide.

The FTC complaint further alleges that Alternative Cigarettes represented that smoking Herbal Gold and Magic herbal cigarettes does not pose the health risks associated with smoking tobacco cigarettes. According to the complaint, this claim is false, as Herbal Gold and Magic cigarette smoke, like the smoke from

Analysis to Aid Public Comment

tobacco cigarettes, contains numerous carcinogens and toxins, including tar and carbon monoxide.

The proposed consent order contains provisions designed to prevent Alternative Cigarettes from engaging in similar acts and practices in the future. Part I of the order requires Alternative Cigarettes to include the following disclosure, clearly and prominently, in certain advertising for its tobacco cigarettes: "No additives in our tobacco does NOT mean a safer cigarette." (The order requires a similar disclosure in advertising for other tobacco products Alternative Cigarettes advertises as having no additives.) The disclosure must be included in all tobacco advertising that represents (through such phrases as "no additives" or "100% tobacco") that the product has no additives. Part I exempts Alternative Cigarettes from the disclosure requirement: (1) for cigarette advertisements not required to bear the Surgeon General's health warning; and (2) if Alternative Cigarettes possesses scientific evidence demonstrating that its "no additives" cigarette poses materially lower health risks than other cigarettes of the same type. In general, the disclosure required by Part I must be in the same type size and style as the Surgeon General's warning and must appear within a rectangular box that is no less than 40% of the size of the box containing the Surgeon General's warning.

Part II of the order requires Alternative Cigarettes to include the following disclosure, clearly and prominently, in advertising and on packaging for herbal cigarettes: "Herbal cigarettes are dangerous to your health. They produce tar and carbon monoxide." (The order requires a similar disclosure for other herbal smoking products.) The disclosure must be included in all advertising and on packaging for herbal smoking products that represent (through such phrases as "no tobacco," "tobacco-free," or "herbal") that the product has no tobacco. Part II also contains an exemption from the disclosure requirement if Alternative Cigarettes possesses scientific evidence demonstrating that such herbal smoking products do not pose any material health risks. In general, the disclosure required by Part II must be in the same

Analysis to Aid Public Comment

type size and style as the Surgeon General's warning and for advertisements must appear within a rectangular box that is the same size as the box containing the Surgeon General's warning.

Part III of the order requires Alternative Cigarettes to possess competent and reliable scientific evidence prior to: (1) claiming that any herbal smoking product does not present the health risks associated with smoking tobacco cigarettes; or (2) making any claim about the health risks associated with the use of any herbal smoking product.

Part IV requires Alternative Cigarettes to send a letter to its purchasers for resale notifying them that they should discontinue the use of certain existing Alternative Cigarettes advertisements and promotional materials and that Alternative Cigarettes is required to stop doing business with purchasers for resale that do not comply with this request.

Parts V VIII of the order contain requirements that Alternative Cigarettes keep copies of relevant advertisements and materials substantiating claims made in the advertisements; provide copies of the order to certain of its current and future personnel; notify the Commission of changes in the composition or formula of its tobacco products or herbal smoking products that may affect compliance with the order; and notify the Commission of any changes in the corporate structure that might affect compliance with the order. Part IX requires that the individual respondent notify the Commission of changes in his employment status for a period of ten years. Part X requires Alternative Cigarettes to file one or more reports detailing compliance with the order. Part XI provides that the order will terminate after twenty (20) years under certain circumstances.

Analysis to Aid Public Comment

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 in any way their terms.

Complaint

IN THE MATTER OF
EFAMOL NUTRACEUTICALS, INC.

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

Docket C-3958; File No. 9923027
Complaint, June 22, 2000--Decision, June 22, 2000

This consent order requires Respondent Efamol Nutraceuticals, Inc. to possess competent and reliable scientific evidence for any claim about the health benefits, efficacy or safety of any food, drug or dietary supplement that contains essential fatty acids. The order permits respondent to make drug claims that have been approved by the FDA pursuant to either a new drug application or a tentative final or final standard and to make claims that the FDA has approved pursuant to the Nutrition Labeling and Education Act of 1990.

Participants

For the Commission: *Matthew D. Gold, Linda K. Badger, Kerry O'Brien.*

For the Respondents: *Stephen H. McNamara and A. Wes Siegner, Jr., Hyman, Phelps & McNamara, P.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Efamol Nutraceuticals, Inc. ("respondent"), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges: