Lambert, 562 F.2d at 762–63.[4] An affirmative disclosure remedy, on the other hand, requires only that the disclosure be ''reasonably related'' to the alleged violations. In my view, it is important to distinguish between corrective advertising and affirmative disclosures because the Commission should not evade the more demanding standard for corrective advertising where it is clearly applicable.

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

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

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

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BILLING CODE 6750–01–P

[File Nos. 952 3093, 952 3094, 952 3095, 952 3450, and 952 3096

General Motors Corp., American Honda Motor Co., Inc., American Isuzu Motors, Inc., Mazda Motor of America, Inc., and Mitsubishi Motor Sales of America, Inc., Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreements.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, these five consent agreements, accepted subject to final Commission approval, would require, among other things, five major automobile manufacturers to provide consumers with clear, readable, and understandable cost information in their car lease and financed purchase advertising. The agreements prohibit the manufacturers from featuring low monthly payments or low amounts ''down'' in large, bold print, while hiding additional costs and sometimes contradictory information in ''mouse print'' that is difficult or impossible to read.

DATES: Comments must be received on or before February 3, 1997.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: David Medine, Federal Trade Commission, S–4429, 6th and Pennsylvania Ave., NW, Washington, DC 20580. (202) 326–3224.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreements containing consent orders to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, have been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the five consent agreements, and the allegations in the accompanying complaints. Electronic copies of the full text of the five consent agreement packages can be obtained from the Commission Actions section of the FTC Home Page (for November 21, 1996), on the World Wide Web, at ''http://www.ftc.gov/os/actions/htm.'' Paper copies can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Orders To Aid Public Comment

The Federal Trade Commission has accepted separate agreements, subject to final approval, to proposed consent orders from General Motors Corporation (''General Motors''), American Honda Motor Corporation, Inc. (''Honda''), American Isuzu Motors Inc. (''Isuzu''), Mazda Motor of America, Inc. (''Mazda''), and Mitsubishi Motor Sales of America, Inc. (''Mitsubishi'') (collectively referred to as ''respondents'').

The proposed consent orders have 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 (60) days, the Commission will again review the agreements and the comments received and will decide whether it should withdraw from the agreements or make final the agreements' proposed orders.

The complaints allege that each of the respondents' automobile lease advertisements violated the Federal Trade Commission Act (''FTC Act''), the Consumer Leasing Act (''CLA''), and Regulation M. The complaints also allege that General Motors and Mitsubishi's automobile credit advertisements violated the FTC Act, the Truth in Lending Act (''TILA''), and Regulation Z. Section 5 of the FTC Act prohibits false, misleading, or deceptive representations or omissions of material information in advertisements. In addition, Congress established statutory disclosure requirements for lease and credit advertising under the CLA and the TILA, respectively, and directed the Federal Reserve Board (''Board'') to promulgate regulations implementing such statutes—Regulations M and Z. *See* 15 U.S.C. §§ 1601–1667e; 12 C.F.R. Part 213; 12 C.F.R. Part 226. On September 30, 1996, Congress passed revisions to the CLA that will be implemented by the Board through future changes to Regulation M and will become optionally effective immediately. See Title II, Section 2605 of the Omnibus Consolidated Appropriations Act for Fiscal Year 1997, Pub. L. No. 104–208, 110 Stat. 3009, _______ (Sept. 30, 1996)(''revised CLA''), as amended, and Section 213.7(d)(2) of revised Regulation M, 61 Fed. Reg. at 52,261 (to be codified at 12 C.F.R. § 213.7(d)(2)), as amended.

The complaints against General Motors, Honda, Isuzu, Mazda, and Mitsubishi allege that respondents' automobile lease advertisements represented that a particular amount stated as ''down'' is the total amount consumers must pay at the initiation of a lease agreement to lease the advertised vehicles. This representation is false, according to the complaints, because consumers must pay additional fees beyond the amount stated as ''down,'' such as the security deposit and first month's payment, to lease the advertised vehicles. The complaints also allege that respondents failed to disclose adequately these additional fees in their advertisements. These practices, according to the complaints, constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act.

The complaints further allege that respondents' lease advertisements failed to disclose the terms of the offered lease in a clear and conspicuous manner, as required by the CLA and Regulation M. According to the complaints, respondents' television lease disclosures were not clear and conspicuous because they appeared on the screen in small type, against a background of similar shade, for a very short duration, and/or over a moving background. The General Motors, Honda, Mazda, and Mitsubishi complaints also allege that these respondents' fine print disclosures of lease terms in print advertisements were not clear and conspicuous. The complaints, therefore, allege that respondents' failure to disclose lease terms in a clear and conspicuous manner violates the CLA and Regulation M.

The General Motors and Mitsubishi complaints also allege that these respondents' credit advertisements represented that consumers can purchase the advertised vehicles at the terms prominently stated in the ad, such as a low monthly payment and/or a low amount ''down.'' This representation is false, according to the complaints, because consumers must also pay a final balloon payment of several thousand dollars, in addition to the low monthly payment and/or amount down, to purchase the advertised vehicles. The complaints further allege that respondents General Motors and Mitsubishi failed to disclose adequately in their credit advertisements additional terms pertaining to the credit offer, including the existence of a final balloon payment of several thousand dollars and the annual percentage rate. These practices, according to the complaints, constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act.

The General Motors and Mitsubishi complaints further allege that these respondents' credit advertisements failed to disclose required credit terms in a clear and conspicuous manner, as required by the TILA and Regulation Z. According to the complaints, respondents' television advertisements contained credit disclosures that were not clear and conspicuous because they appeared on the screen in small type, against a background of similar shade, for a very short duration, and/or over a moving background. The complaints also allege that these respondents' fine print disclosures of credit terms in print advertisements were not clear and conspicuous. The complaints, therefore, allege that General Motors and Mitsubishi's failure to disclose credit terms in a clear and conspicuous manner violates the TILA and Regulation Z.

The proposed consent orders contain provisions designed to remedy the violations charged and to prevent the respondents from engaging in similar acts and practices in the future. Specifically, subparagraph I.A. of the proposed orders prohibits respondents, in any lease advertisement, from misrepresenting the total amount due at lease inception, the amount down, and/or the downpayment, capitalized cost reduction, or other amount that reduces the capitalized cost of the vehicle (or that no such amount is required). Subparagraph I.B. of the proposed orders also prohibits respondents, in any lease advertisement, from making any reference to any charge that is part of the total amount due at lease inception or that no such amount is due, not including a statement of the periodic payment, more prominently than the disclosure of the total amount due at lease inception. The ''prominence'' requirement prohibits the companies from running deceptive advertisements that highlight zero dollars or other low amounts ''down,'' with inadequate disclosures of actual total inception fees. This ''prominence'' requirement for lease inception fees also is found in the revised Regulation M recently adopted by the Board.

Moreover, subparagraph I.C. of the proposed orders prohibits respondents, in any lease advertisement, from stating the amount of any payment or that any or no initial payment is required at consummation of the lease, unless the ad also states: (1) that the transaction advertised is a lease; (2) the total amount due at lease inception; (3) that a security deposit is required; (4) the number, amount, and timing of scheduled payments; and (5) that an extra charge may be imposed at the end of the lease term where the liability of the consumer at lease end is based on the anticipated residual value of the vehicle. The information enumerated above must be displayed in the lease advertisement in a clear and conspicuous manner. This approach is consistent with the lease advertising disclosure requirements of the revised CLA.

Paragraph II of the proposed orders provides that lease advertisements that comply with the disclosure requirements of subparagraph I.C. of the orders shall be deemed to comply with Section 184(a) of the CLA, as amended, or Section 213.7(d)(2) of the revised Regulation M, as amended.

Paragraph III of the proposed orders provides that certain future changes to the CLA or Regulation M will be incorporated into the orders. Specifically, subparagraphs I.B. and I.C. will be amended to incorporate future CLA or Regulation M required advertising disclosures that differ from those required by the above order paragraphs. In addition, the definition of ''total amount due at lease inception,'' as it applies to subparagraphs I.B. and I.C. only, will be amended in the same manner. The orders provide that all other order requirements, including the definition of ''clearly and conspicuously,'' will survive any such revisions.

Subparagraph IV.A. of the proposed General Motors and Mitsubishi orders prohibits these respondents, in any credit advertisement, from misrepresenting the existence and amount of any balloon payment or the annual percentage rate; subparagraph IV.B. also prohibits these respondents from stating the amount of any payment, including but not limited to any monthly payment, in any credit advertisement unless the amount of any balloon payment is disclosed prominently and in close proximity to the most prominent of the above statements.

Subparagraph IV.C. of the proposed General Motors and Mitsubishi orders also enjoins these respondents from disseminating credit advertisements that state the amount or percentage of any downpayment, the number of payments or period of repayment, the amount of any periodic payment, including but not limited to the monthly payment, or the amount of any finance charge without disclosing, clearly and conspicuously, the following items of information: (1) the amount or percentage of the downpayment; (2) the terms of repayment, including but not limited to the amount of any balloon payment; and (3) the correct annual percentage rate, using that term or the abbreviation ''APR,'' as defined in Regulation Z and the Official Staff Commentary to Regulation Z. If the annual percentage rate may be increased after consummation of the credit transaction, that fact must also be clearly and conspicuously disclosed.

The information required by subparagraphs I.C. (lease advertisements) and IV.C. (credit advertisements) must be disclosed ''clearly and conspicuously'' as defined in the proposed orders. The ''clear and conspicuous'' definition requires that respondents present such lease or credit information within the advertisement in a manner that is readable [or audible] and understandable to a reasonable consumer.

The definition lends specificity to and is consistent with the general ''clear and conspicuous'' requirement in

Regulations M and Z, which requires readable and understandable disclosures. Similar to prior Commission orders and statements that interpret Section 5's prohibition of deceptive acts and practices, these orders require respondents to include certain disclosures in advertising that are readable (or audible) and understandable to reasonable consumers.

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

Donald S. Clark,

Secretary.

[FR Doc. 96–30945 Filed 12–4–96; 8:45 am]

BILLING CODE 6750–01–P

[File No. 932–3180]

Phaseout of America, Inc.; Products & Patents, Ltd.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, the Lynbrook, New York-based company to possess competent and reliable scientific evidence to substantiate all claims about the performance, efficacy, or benefits of any smoking-cessation or cigarette-modification product. The agreement also prohibits the company from making claims challenged as false in the future. The agreement settles allegations that advertising claims for PhaseOut, a device marketed as helping smokers to stop smoking and making cigarettes less harmful are unsubstantiated.

DATES: Comments must be received on or before February 3, 1997.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Lesley Anne Fair, Federal Trade Commission, S–4002, 6th and Pennsylvania Ave., NW, Washington, DC 20580. (202) 326–3081. Shira Modell, Federal Trade Commission, S–4002, 6th and Pennsylvania Ave., NW, Washington, DC 20580. (202) 326–3116.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the accompanying complaint. An electronic copy of the full text of the consent agreement package can be obtained from the Commission Actions section of the FTC Home page (for November 14, 1996), on the World Wide Web, at ''http://www.ftc.gov/os/actions/htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

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.