

1 WILLIAM BLUMENTHAL
General Counsel

2 ROSEMARY ROSSO
3 SHIRA D. MODELL
Federal Trade Commission
4 600 Pennsylvania Ave., N.W., NJ-3212
Washington, D.C. 20580
5 Tel: (202) 326-2174
Fax: (202) 326-3259

2: 05 - CV - 377 - FTM-33 DNF

6 Attorneys for Plaintiff,
7 FEDERAL TRADE COMMISSION

8 **UNITED STATES DISTRICT COURT**
9 **MIDDLE DISTRICT OF FLORIDA**

2005 AUG -9 AM 10:00
CLERK U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FT. MYERS DIVISION

FILED

10 FEDERAL TRADE COMMISSION,

11 Plaintiff,

12 v.

13 EMERSON DIRECT, INC. d/b/a COUNCIL
14 ON NATURAL HEALTH,
15 MICHAEL J. CONNORS,
16 THOMAS DE BLASIO, M.D., and
SHERRY BRESNAHAN, D.C.

17 Defendants.

Hon.

Civil Action No.

**COMPLAINT FOR
PERMANENT INJUNCTION
AND OTHER EQUITABLE
RELIEF**

18 Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), through its
19 undersigned attorneys, for its Complaint alleges as follows:

20 1. The FTC brings this action under Section 13(b) of the Federal Trade
21 Commission Act ("FTC Act"), 15 U.S.C. § 53(b), to secure permanent injunctive relief and
22 other equitable relief against Emerson Direct, Inc. d/b/a Council on Natural Health, Michael
23 J. Connors, Thomas De Blasio, M.D., and Sherry Bresnahan, D.C. for engaging in deceptive
24 acts or practices and false advertising in connection with the advertising, marketing, and sale
25 of a multi-product "natural" smoking cessation system in violation of Sections 5(a) and 12 of
26 the FTC Act, 15 U.S.C. §§ 45(a) and 52.
27
28

1 **JURISDICTION AND VENUE**

2 2. This Court has jurisdiction over this matter pursuant to 15 U.S.C. §§ 45(a), 52,
3 53(b) and 28 U.S.C. §§ 1331, 1337(a), and 1345.

4 3. Venue in this District is proper under 15 U.S.C. § 53(b) and 28 U.S.C. §§
5 1391(b) and (c).

6 **PARTIES**

7 4. Plaintiff FTC is an independent agency of the United States Government
8 created by statute. 15 U.S.C. §§ 41-58. The Commission enforces Section 5(a) of the FTC
9 Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting
10 commerce. The Commission also enforces Section 12 of the FTC Act, 15 U.S.C. § 52, which
11 prohibits false advertisements for food, drugs, devices, services, or cosmetics in or affecting
12 commerce. The Commission, through its own attorneys, may initiate federal district court
13 proceedings to enjoin violations of the FTC Act and to secure such equitable relief as may be
14 appropriate in each case. 15 U.S.C. § 53(b).

15 5. Defendant Emerson Direct, Inc. d/b/a Council on Natural Health (“Emerson
16 Direct”) is a closely held Florida corporation with offices located at 14848 Old US 41,
17 Naples, Florida 34108. At all times relevant to the complaint, acting individually or in
18 concert with others, Emerson Direct has advertised, marketed, distributed, and/or sold the
19 Smoke Away, a multi-product smoking cessation program, to consumers throughout the
20 United States. Emerson Direct is the registrant of the websites, www.smokeaway.com and
21 www.smokeawayonline.com. Emerson Direct transacts business in the Middle District of
22 Florida.

23 6. Defendant Michael J. Connors (“Connors”) is the sole officer, director and
24 shareholder of Emerson Direct. At all times relevant to this Complaint, acting individually or
25 in concert with others, Mr. Connors has formulated, directed, controlled, or participated in
26 the acts or practices alleged in this Complaint. He transacts business in the Middle District of
27 Florida.

1 7. Defendant Thomas De Blasio is a medical doctor licensed to practice by the
2 State of New Jersey. Dr. De Blasio's business addresses include 193 US Highway 9,
3 Manalapan, NJ 07726, and other locations in New Jersey. He has aided in the promotion of
4 Smoke Away by providing endorsements for this program in advertisements. Dr. De Blasio
5 transacts business in this district.

6 8. Defendant Sherry Bresnahan is a chiropractor licensed to practice by the State
7 of Illinois. Dr. Bresnahan's business address is 2226 Teton Parkway, Algonquin, Illinois
8 60102-5433. She has aided in the promotion of Smoke Away by providing endorsements for
9 this program in advertisements. Dr. Bresnahan transacts business in this district.

10 **COMMERCE**

11 9. The acts and practices of the Defendants alleged in this Complaint have been
12 in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C.
13 § 44.

14 **DEFENDANTS' COURSE OF BUSINESS**

15 10. Since at least January 2003, Defendants Emerson Direct and Connors have
16 manufactured, labeled, advertised, offered for sale, sold, and distributed Smoke Away, a
17 purported smoking cessation system, to the public. The Defendants Emerson Direct and
18 Connors advertise and offer Smoke Away for sale through 60- and 120-second, nationally
19 disseminated television advertisements, through a 30-minute, nationally disseminated
20 television infomercial, and through 60-second nationally disseminated radio advertisements.
21 In addition, the Defendants advertise and offer Smoke Away for sale over the Internet,
22 including but not limited to the websites www.smokeaway.com and
23 www.smokeawayonline.com.

24 **The Smoke Away Smoking Cessation Program**

25 11. Defendants Emerson Direct and Connors currently offer or have offered two
26 versions of Smoke Away system: the "Standard Kit" (or "Premium Kit") and the "Deluxe
27 Kit." The Standard Kit includes three products, all of which are combinations of vitamins,
28

1 herbs and other ingredients. *Formula One* is for the initial seven days of use. It purportedly
2 eliminates nicotine from the body and prevents any side effects associated with nicotine
3 withdrawal. *Formula Two* is a “maintenance” formula for supporting “a smoke-free
4 lifestyle.” It is currently described as a “Free Bonus (limited time offer).” *Natural*
5 *Homeopathic Medicine*, a third product, is claimed to reduce cravings from smoking, curb
6 appetite, and “detoxify.” In addition, purchasers receive a booklet that includes consumer
7 testimonials and information on smoking cessation. The price of the Standard Kit is
8 approximately \$60 plus shipping fees.

9 12. The Deluxe Kit includes the booklet and all of the products found in the
10 Standard Kit. In addition, it includes three additional products, which are also combinations
11 of vitamins, herbs, and other ingredients. *Stress Manager* is claimed to “help with anxiety of
12 reducing your nicotine levels.” *Appetite Control* “curtail[s] the urge to eat while you are
13 quitting the habit.” *Nu Lung* is stated to help improve respiratory function. Both Appetite
14 Control and Nu Lung are listed as free bonuses for a limited time only. The Deluxe Kit also
15 includes a small vial of *Aromatherapy*, which is a blend of liquid herbal extracts and is
16 claimed to reduce or eliminate cravings from smoking. The Deluxe Kit also has a CD with a
17 message from a motivational speaker for support and to reduce the stress associated with
18 smoking cessation. The price of the Deluxe Kit is approximately \$150 plus shipping fees.

19 13. To induce consumers to purchase Smoke Away, Defendants Emerson Direct
20 and Connors disseminated or caused to be disseminated advertisements, including but not
21 limited to the attached Exhibits A through E. Defendants DeBlasio and Bresnahan endorsed
22 Smoke Away in certain of those advertisements. These advertisements contain, among other
23 things, the following statements or depictions:

24 **EXCERPTS FROM INFOMERCIAL**

- 25 a. **ON SCREEN and MALE ANNOUNCER: The following is a paid**
26 **presentation for the Smoke Away™ System, brought to you by the**
27 **Council on Natural Health.**
28

1 * * * * *

2 **ON SCREEN: (Scrolling on screen)** and MALE ANNOUNCER: If you've
3 ever tried to quit smoking and failed, stay tuned. The program you are about
4 to see could change your life.

5 * * * * *

6 **ON SCREEN: (Flashing on screen)** and MALE ANNOUNCER:

7 **ATTENTION! SMOKERS!**

8 **Sick of ruining your health?**

9 Tired of throwing your money away?

10 Sick and tired of being sick and tired?

11 Then don't go away because in the next few minutes --

12 -- you'll learn how you can kick the habit in only seven days --

13 **ON SCREEN: Patches Prescriptions Gums**

14 MALE ANNOUNCER: -- without expensive patches, prescriptions or gums -

15 -

16 **ON SCREEN: GUARANTEED!**

17 MALE ANNOUNCER: -- guaranteed, or we pay you \$100.

18 **ON SCREEN: Smoke Away**

19 **Natural**

20 **Doctor**

21 **Recommended**

22 MALE ANNOUNCER: Introducing Smoke Away, the natural, doctor-
23 recommended stop smoking system that lets --

24 **ON SCREEN: Quit Smoking!**

25 **Quickly, Easily and Naturally!**

26 MALE ANNOUNCER: -- you quit smoking quickly, easily and naturally --

27 **ON SCREEN: Virtually. . .**

28

1 **No Insomnia No Tension No Weight Gain**

2 **Based on consumer feedback!**

3 MALE ANNOUNCER: -- and with virtually no withdrawal symptoms, like
4 insomnia, tension or weight gain, no matter how long you've smoked or how
5 many times you've tried to quit before.

6 * * * * *

7 **ON SCREEN: Michelle**

8 **Smoked for 16 Years**

9 **Quit in 2 Days!**

10 **Individual results may vary.**

11 MICHELLE: I quit smoking in two days with Smoke Away.

12 **ON SCREEN: Brian**

13 **Smoked for 20 Years**

14 **Quit in 1 Day!**

15 **Individual results may vary.**

16 BRIAN: I quit smoking the very first day.

17 * * * * *

18 **ON SCREEN: Betty**

19 **Smoked for 40 Years**

20 **Quit in 3 Days!**

21 **Individual results may vary.**

22 BETTY: I smoked for 40 years and I quit in three days with Smoke Away,
23 and if I can do it after trying every other method there is, I know Smoke Away
24 will work for anyone.

25 * * * * *

26 **ON SCREEN: Certificate of Guarantee**

27 **"You quit or we pay you \$100.00"**

1 **Guarantee!**

2 MALE ANNOUNCER: And most importantly, you'll learn all about Smoke
3 Away's incredible you quit or we pay you \$100 guarantee.

4 * * * * *

5 **ON SCREEN: Kick the Habit!**

6 **Quickly, Easily and Naturally!**

7 CARRIE OLVER: But finally, they have developed a product that lets you
8 kick the habit quickly, easily and naturally and in only seven days.

9 * * * * *

10 **ON SCREEN: Virtually. . .**

11 **No insomnia**

12 **No tension**

13 **No weight gain**

14 **Based on consumer feedback**

15 CARRIE OLVER: And according to many who have actually quit using
16 Smoke Away with virtually no withdrawal symptoms, like insomnia, tension
17 or even weight gain.

18 * * * * *

19 CARRIE OLVER: But before the Smoke Away System, quitting was brutally,
20 brutally hard.

21 MIKE MOORE: How has the Smoke Away System changed all that?

22 **ON SCREEN: Quit Smoking!**

23 **Quickly, Easily and Naturally!**

24 DR. THOMAS DeBLASIO: Well, with Smoke Away, you can quit smoking
25 quickly, easily and naturally. In fact, you can quit in only seven days.

26 CARRIE OLVER: Doctor, what makes the Smoke Away System so
27 effective?

1 DR. THOMAS DeBLASIO: Well, you see, nicotine addiction works on three
2 levels. There's the physical level, which is the actual physical addiction, but
3 there's also a psychological level and an emotional level to the addiction, and
4 Smoke Away works on all three.

5 * * * * *

6 **ON SCREEN: Animation of human body with toxins floating around**

7 **1. Helps your body cleanse itself!**

8 DR. THOMAS DeBLASIO: First, it works on the physical level by helping
9 your body detoxify itself. In other words, you quickly metabolize away the
10 nicotine and other poisons associated with smoking and get them out of your
11 system.

12 **ON SCREEN: Animation of human head**

13 **2. Helps eliminate cravings!**

14 DR. THOMAS DeBLASIO: Second, it works on a psychological level by
15 helping to almost instantly eliminate the cravings, so you simply don't want to
16 reach for a cigarette anymore.

17 **ON SCREEN: 3. Helps you stay calm!**

18 DR. THOMAS DeBLASIO: Third, it works on the emotional level, by
19 helping you to stay calm, relaxed and satisfied. So, you don't need a smoke to
20 calm your nerves.

21 **ON SCREEN: 1. Helps your body cleanse itself of nicotine!**

22 **2. Helps eliminate cravings for nicotine!**

23 **3. Helps you stay calm!**

24 CARRIE OLVER: So, Smoke Away helps your body cleanse itself of
25 nicotine, it helps to eliminate your craving for nicotine and it helps you stay
26 relaxed, calm and satisfied while you're quitting.

27 DR. THOMAS DeBLASIO: Exactly. It covers everything and that's why it is
28

1 so effective.

2 * * * * *

3 **ON SCREEN: Maria**

4 **Smoked for 8 Years**

5 **Quit in 1 Day!**

6 **Individual results may vary.**

7 MARIA: I never thought quitting could be so easy until I tried Smoke Away.

8 * * * * *

9 CARRIE OLVER: Hi, we're here talking with Dr. Thomas DeBlasio about
10 Smoke Away, the natural stop smoking system that lets you quit smoking
11 quickly, easily and naturally in only seven days.

12 Now, Doctor, what's the difference between Smoke Away and some of these
13 other stop smoking products?

14 **ON SCREEN: Dr. Thomas DeBlasio, M.D.**

15 DR. THOMAS DeBLASIO: Smoke Away has virtually nothing in common
16 with those products. This product, for instance, is only available with a
17 prescription from your doctor and its primary use is to treat moderate to severe
18 depression.

19 CARRIE OLVER: Wow. Well, what about the nicotine patches and the
20 nicotine gum?

21 **ON SCREEN: Patches and gums put nicotine into your bloodstream. . .**

22 DR. THOMAS DeBLASIO: Basically, what both of these products do is
23 release regular ongoing doses of nicotine into your bloodstream.

24 **ON SCREEN: Nicotine increases risk of stroke or high blood pressure!**

25 DR. THOMAS DeBLASIO: And when you have nicotine in your blood, no
26 matter how it gets there, you have an increased risk of stroke or high blood
27 pressure --

1 **ON SCREEN: WARNING!**

2 **If you smoke while using a nicotine patch or nicotine gum, you could be**
3 **at risk of a serious nicotine overdose.**

4 DR. THOMAS DeBLASIO: -- and if you smoke when you're using a nicotine
5 patch or nicotine gum, you could be at risk of a serious nicotine overdose.

6 CARRIE OLVER: Really?

7 DR. THOMAS DeBLASIO: Absolutely. It says so right here in the warning
8 you get with each package. From a medical standpoint, that's one of the big
9 benefits of Smoke Away.

10 **ON SCREEN: Patches and gums put nicotine into your body. . .**
11 **. . .Smoke Away™ doesn't!**

12 DR. THOMAS DeBLASIO: These patches and gums put nicotine into your
13 body. Smoke Away doesn't.

14 * * * * *

15 **ON SCREEN: Kick the Habit**

16 **In only 7 days!**

17 MALE ANNOUNCER: Now, you can kick the habit in only seven days --

18 **ON SCREEN: Without prescriptions!**

19 MALE ANNOUNCER: -- without pricey prescriptions --

20 **ON SCREEN: Without patches!**

21 MALE ANNOUNCER: -- patches or --

22 **ON SCREEN: Without gums!**

23 MALE ANNOUNCER: -- gums, and with --

24 **ON SCREEN: Virtually. . .**

25 **No Tension No Insomnia No Weight Gain**

26 **Based on consumer feedback**

27 MALE ANNOUNCER: -- virtually no withdrawal symptoms, like tension,
28

1 insomnia or weight gain.

2 No matter how long you've smoked or how many times you've tried to quit
3 before, it's true. From California to New York, from Minnesota to Miami,
4 Americans everywhere are --

5 **ON SCREEN: Kick the Habit in**
6 **7 days or less!**

7 MALE ANNOUNCER: -- kicking the habit in seven days or less and you can,
8 too.

9 * * * * *

10 **ON SCREEN: Yvonne**
11 **Smoked for 20 Years**
12 **Quit in 3 Days!**

13 **Individual results may vary.**

14 YVONNE: I was on the patch for five months with absolutely no results. I
15 did Smoke Away for three days and I've been smoke-free ever since.

16 * * * * *

17 **ON SCREEN: Natural**
18 **Doctor**
19 **Recommended!**

20 MALE ANNOUNCER: Smoke Away is the natural, doctor-recommended
21 stop smoking system.

22 **ON SCREEN: Dr. Sherry Bresnahan, D.C.**
23 **Safe!**
24 **Highly Effective!**
25 **Individual results may vary.**

26 DR. SHERRY BRESNAHAN: I love the Smoke Away program. It's safe, it's
27 highly effective. I've had tremendous success with my patients using the
28

1 Smoke Away program. In fact, I had a patient who had smoked for 25 years
2 and quit in two days using the Smoke Away program. I love it. I highly
3 endorse the Smoke Away program.

4 * * * * *

5 **ON SCREEN: Dr. Sherry Bresnahan, D.C.**

6 DR. SHERRY BRESNAHAN: I've been recommending Smoke Away to my
7 patients ever since I've been in private practice.

8 CARRIE OLVER: Now, how do your patients feel when they come in and
9 they've tried to quit smoking and they can't do it?

10 DR. SHERRY BRESNAHAN: Oh, they feel so dejected. They're unhappy,
11 they feel like failures.

12 MIKE MOORE: And what have the results been like?

13 DR. SHERRY BRESNAHAN: Ooh, that's the flip side of the coin. They're
14 very happy. They're -- they feel like they succeed. I do follow-up telephone
15 calls with my patients and, for example, there was this one 26-year-old who
16 had been smoking since he was 9 years old. He was ecstatic.

17 **ON SCREEN: Individual results may vary.**

18 DR. SHERRY BRESNAHAN: By day three, he had no cravings, he had no
19 insomnia, he wasn't getting the munchies. He was thrilled.

20 CARRIE OLVER: What have some of your other patients said?

21 DR. SHERRY BRESNAHAN: There was an older woman. She had been
22 smoking since she was in her thirties. She was now 65. And by day seven,
23 she had kicked the habit. She was done.

24 CARRIE OLVER: Amazing.

25 DR. SHERRY BRESNAHAN: She was ecstatic, very happy.

26 CARRIE OLVER: Um-hum.

27 **ON SCREEN: Dr. Thomas DeBlasio, M.D.**

1 DR. THOMAS DeBLASIO: Dr. Sherry, are there patients who have been
2 smoking for a long time?

3 DR. SHERRY BRESNAHAN: The patients that I've seen have been
4 smoking anywhere from 10 to 30 years on average.

5 CARRIE OLVER: And what do your patients tell you about quitting using
6 this system, using the Smoke Away System?

7 DR. SHERRY BRESNAHAN: The thing that I hear most often from the
8 patients is that if they would have known it was this easy, they would have
9 gotten it sooner. They're thrilled.

10 MIKE MOORE: I want to know, did they experience a lot of withdrawal
11 symptoms?

12 **ON SCREEN: Dr. Sherry Bresnahan, D.C.**

13 DR. SHERRY BRESNAHAN: None of my patients have experienced any
14 symptoms, no withdrawal symptoms, no tension, no weight gain, no insomnia.
15 It's wonderful.

16 CARRIE OLVER: Well, tell me, what do you think about the other stop
17 smoking kind of products that are on the market?

18 DR. SHERRY BRESNAHAN: I ask my patients if they've tried anything else
19 and all of them have tried something. Mostly they've tried the patches or the
20 gums and they've not had good results with them.

21 MIKE MOORE: Why do you think Smoke Away is so effective?

22 **ON SCREEN: Dr. Sherry Bresnahan, D.C.**

23 DR. SHERRY BRESNAHAN: For the very fact, I believe that it takes the
24 poisons out of the system. It does not introduce anything artificial back into
25 the system. There's no nicotine, no toxins, no poisons going back in. It
26 cleanses.

27 DR. THOMAS DeBLASIO: And, Doctor, what would you say to others who
28

1 are looking for a way to quit smoking?

2 DR. SHERRY BRESNAHAN: Ooh, try Smoke Away.

3 * * * * *

4 CARRIE OLVER: With Smoke Away, you can quit smoking quickly, easily
5 and naturally. It has worked for thousands of people just like you and it can
6 work for you, too.

7 * * * * *

8 CARRIE OLVER: Now, I would like you to meet a couple of Smoke Away
9 users in person. Our first guest, enjoying his third year as a non-smoker, is
10 Dave Fulton (phonetic).

11 MIKE MOORE: I want to know how long you smoked for.

12 **ON SCREEN: Dave**

13 **1-800-993-3405**

14 **www.smokeawayonline.com**

15 DAVE FULTON: Altogether, almost 25 years.

16 MIKE MOORE: Twenty-five years.

17 DAVE FULTON: Yes, sir.

18 CARRIE OLVER: And what kinds of methods have you used to quit
19 smoking?

20 DAVE FULTON: Guided meditation, hypnosis, patches, gum, prescription
21 anti-anxiety medications, cold turkey.

22 CARRIE OLVER: And nothing worked?

23 DAVE FULTON: Nothing worked effectively, no.

24 MIKE MOORE: I'll bet you spent a lot of money on those products, too.

25 DAVE FULTON: Oh, yes. I figured out one day it was between \$700 and
26 \$1,000.

27 **ON SCREEN: Dr. Thomas DeBlasio, M.D.**

28

1 **1-800-993-3405**

2 **www.smokeawayonline.com**

3 DR. THOMAS DeBLASIO: Dave, how long did it take you to quit smoking
4 using the Smoke Away System?

5 DAVE FULTON: Well, using the Smoke Away System, I was able to
6 actually quit smoking in three days.

7 CARRIE OLVER: And you smoked for how many years?

8 DAVE FULTON: Almost 25.

9 **ON SCREEN: Dave**

10 **Smoked for 25 Years**

11 **Quit in 3 Days!**

12 **1-800-993-3405**

13 **Individual results may vary.**

14 DAVE FULTON: Smoke Away made quitting so easy that it was -- it was
15 really unbelievable. It was like I had never smoked before.

16 **ON SCREEN: 1-800-993-3405**

17 **www.smokeawayonline.com**

18 CARRIE OLVER: Were you surprised that you didn't experience the
19 withdrawal symptoms that -- experience the tension and the stress?

20 DAVE FULTON: Yes, I was surprised at that. I mean, the other methods I
21 had gone through, I was still raiding the refrigerator in the middle of the night,
22 you know. I was eating all the high-fat foods and everything to substitute for
23 smoking. But I had none of the withdrawal effects that I had had before.

24 * * * * *

25 CARRIE OLVER: What would you say about Smoke Away to people
26 watching now who are thinking, I want to quit? What would you tell them
27 about the Smoke Away program?

1 **ON SCREEN: Dave**

2 **Smoked for 25 Years**

3 **Quit in 3 Days!**

4 **1-800-993-3405**

5 **Individual results may vary.**

6 DAVE FULTON: If you want to do something for yourself that's really good,
7 if you want to do something that's easy and if you want to improve your
8 lifestyle, order Smoke Away. It's the best investment you'll ever make.

9 Exhibit A, transcript of infomercial, pp. 3, 3, 3-5, 5-6, 6, 6-7, 7,
10 7, 8-9, 9-10, 10-11, 12-13, 16-17, 17, 17-18, 26-29, 31, 41-43,
44-45

11 **EXCERPTS FROM TELEVISION ADS**

12 b. **ON SCREEN: (Flashing on screen)**

13 **Attention Smokers!**

14 MALE ANNOUNCER: Attention all smokers.

15 **ON SCREEN: KICK THE HABIT!**

16 **In Just 7 Days**

17 MALE ANNOUNCER: Now you can kick the habit in just seven days.

18 That's right.

19 **ON SCREEN: Quit Smoking in Just 7 Days!**

20 **100% Guaranteed!**

21 * * * * *

22 **ON SCREEN: Patches . . . Prescriptions . . . Gums**

23 MALE ANNOUNCER: Fed up with expensive patches, prescriptions and
24 gums that often don't work?

25 **ON SCREEN: Smoke Away . . . Quit Smoking in Just 7 Days! . . .**

26 **100% Guaranteed!**

27 MALE ANNOUNCER: For less than the price of all of them, you can stop
28

1 smoking in seven days guaranteed.

2 * * * * *

3 **ON SCREEN: Smoke Away**

4 **Yvonne**

5 **20 Yr. Smoker**

6 **Quit in 3 Days!**

7 **Individual results may vary.**

8 YVONNE: I was on the patch for five months with absolutely no results. I
9 did Smoke Away for three days and I've been smoke-free ever since.

10 * * * * *

11 **ON SCREEN: Contains all-natural herbal ingredients**

12 MALE ANNOUNCER: The secret is the unique combination of all-natural
13 herbal ingredients --

14 **ON SCREEN: Smoke Away**

15 **eliminate craving for nicotine**

16 MALE ANNOUNCER: -- that work to completely and naturally eliminate
17 your body's craving for nicotine --

18 **ON SCREEN: no side effects**

19 **No Insomnia**

20 **No Tension**

21 **No Weight Gain**

22 **Individual results may vary**

23 MALE ANNOUNCER: -- with no side effects, like insomnia, tension, or
24 weight gain.

25 **ON SCREEN: NO withdrawal symptoms**

26 MALE ANNOUNCER: So, now you can quit quickly and effortlessly without
27 the agony of withdrawal.

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ON SCREEN: Smoke Away

Dr. Sherry Bresnahan, DC

DR. SHERRY BRESNAHAN: It's safe, it's highly effective. I've had tremendous success with my patients using the Smoke Away Program.

ON SCREEN: Doctor Recommended!

1-800-395-5013

DR. SHERRY BRESNAHAN: In fact, I had a patient who had smoked for 25 years and quit in two days using the Smoke Away Program.

* * * * *

MALE ANNOUNCER: Smoke Away is the only all-natural program that's guaranteed to help you quit smoking in only seven days. No matter how long you've smoked, no matter how many times you've tried to quit before. It's true.

Exhibit B, transcript of 120-second television ad, pp. 3, 4, 6-7,

7

c. **ON SCREEN: (Flashing on screen.) Attention Smokers!**

MALE ANNOUNCER: Attention all smokers.

ON SCREEN: KICK THE HABIT!

Quit Smoking . . . in 7 Days!

MALE ANNOUNCER: Now you can kick the habit in just seven days.

ON SCREEN: Quit Smoking . . . in 7 Days!

100% Guaranteed!

MALE ANNOUNCER: That's right. You can quit smoking easily in only seven days guaranteed.

* * * * *

Dr. Sherry Bresnahan

Doctor Recommended!

1 **1-800-764-1356**

2 DR. SHERRY BRESNAHAN: It's safe, it's highly effective. I've had
3 tremendous success with my patients using the Smoke Away Program.

4 * * * * *

5 **ON SCREEN: Smoke Away**
6 **eliminate craving for nicotine**

7 **1-800-764-1356**

8 MALE ANNOUNCER: -- that work to completely and naturally eliminate
9 your body's craving for nicotine.

10 **ON SCREEN: \$ (crossed out)**

11 **Patches**

12 **Gums**

13 **1-800-764-1356**

14 MALE ANNOUNCER: Why spend hundreds of dollars on patches and gums
15 that just put more nicotine in your system?

16 **ON SCREEN: Smoke Away . . . Quit Smoking . . . in Just 7 Days!**

17 **100% Guaranteed!**

18 **1-800-764-1356**

19 MALE ANNOUNCER: For less than the price of any of them, you will stop
20 smoking in seven days --

21 **ON SCREEN: Stop Smoking in 7 Days!**

22 **GUARANTEED! (flashing)**

23 **1-800-764-1356**

24 MALE ANNOUNCER: -- guaranteed or your money back.

25 Exhibit B, transcript of 60-second television ad, pp. 9-10, 11,

26 12-13

EXCERPTS FROM RADIO ADVERTISEMENTS

d. Smoke Away. The Smoke Away system guarantees you'll quit smoking in one week.

* * * * *

Smoke Away is doctor approved. Doesn't have any side effects, like insomnia, tension, or weight gain. Smoke Away contains some strong homeopathic medicine to curb your cravings and crush your habit.

* * * * *

Smoke Away. Kick those nasty cigarettes forever.

Exhibit C, WHO-AM-Des Moines: March 17, 2003, 7:54 AM;

e. WOMAN: Well, Sue, I finally quit smoking for good.

SUE: I wish I could quit smoking.

WOMAN: You can. With Smoke Away, they guaranteed I'd kick the habit within 7 days or I'd get my money back. And I quit.

SUE: What about cravings and withdrawal?

WOMAN: Not with Smoke Away. It helps wipe out nicotine cravings so you can quit fast and easy, and without the agony of withdrawal. Since Smoke Away, I've never even wanted another cigarette.

SUE: But I've been smoking for 17 years. Can it really help me quit too?

WOMAN: Over 100,000 smokers have used Smoke Away's all natural formula to help them quit smoking. If you're serious about quitting, Smoke Away is what you need.

* * * * *

MALE ANNCR: Don't be a slave to cigarettes anymore. Quit smoking for good the safe, all natural way with Smoke Away. Call now . . . to quit cigarettes completely in just 7 days or your money back.

* * * * *

1 Exhibit D, WCBS-AM – New York: June 7, 2003, 1:10 AM

2 **EXCERPTS FROM INTERNET WEBSITE**

3 f. **Are you still smoking?**

4 Many smokers are quickly smoking again after whatever they tried, like
5 patches and gums, failed to build long-term resistance. Even those who have
6 successfully quit occasionally have temptations. That's where Smoke Away is
7 different. It keeps working as long as you need it in order to stick with your
8 effort to quit for good.

9 **Smoke Away's** maintenance formulas help fortify you so you don't fall back
10 into the old habits. This long-term support and ease in dealing with cravings
11 is why over 300,000 people have used Smoke Away in their attempt to quit
12 smoking after everything else has failed them.

13 If you are determined to stop smoking, let Smoke Away be the aid that finally
14 makes the difference between another failed attempt and success! To find out
15 more, simply click on the tabs above, and soon you will be Smoke Free! It's
16 that simple. What's it worth to you to find out if it works? What do you have
17 to lose? If you are truly serious about quitting, then Smoke Away will be your
18 last stop.

19 For the past 6 years Smoke Away has been helping people finally kick the
20 habit. Smoke Away is so different, effective and amazing because it works to
21 help ALL the difficult aspects of quitting -- the cravings, the withdrawal, and
22 the stress. Researchers have combined the all-natural balancing properties of a
23 unique variety of traditional herbal formulas that are completely safe and
24 completely effective to help maintain your sense of health and well being
25 while you break your habit.

26 It's apparent that you have finally reached the crossroads of your smoking
27 addiction, or you would not be here right now. With Smoke Away you could
28

1 finally become smoke free and live the life you have always wanted, without
2 cigarettes. It's up to you.

3 * * * * *

4 **Q: If it will only take 7 days to quit, why do I need a 30 day supply?**

5 A: Because the other products encompass the maintenance portion of the
6 program. After taking Formula 1 for the first 7 days, you should be a non-
7 smoker. In the event that the cravings still exist, we provide additional
8 portions of the program which include 30 day supply's of Formula 2, Appetite
9 Control, Stress Manager, Nu Lung, Homeopathic medicine and Aromatherapy.

10 * * * * *

11 Two highly effective kits to meet your financial and comfort needs:

12 **Smoke Away™ Standard Kit**

13 **Smoke Away™**

14 **Deluxe Kit**

15 The Standard Kit has everything in it you absolutely need to quit smoking at a
16 cost that is roughly half of the average smoking experience per month.

17 Our Deluxe Kit has everything in the Standard Kit plus five additional
18 components that will make the process easier, less stressful and without some
19 of the normal side effects common to recent quitters (weight gain being most
20 common). We are also including our exclusive supplement, "Nu Lung" to
21 begin the process of rebuilding your damaged health system.

22 Exhibit E, excerpts of website

23 www.smokeawayonline/smokeawayonline.com

24 **THE FTC ACT**

25
26 14. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits unfair or deceptive
27 acts or practices in or affecting commerce. Section 12(a) of the FTC Act, 15 U.S.C. § 52(a),
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1 prohibits the dissemination of any false advertisement in or affecting commerce for the
2 purpose of inducing, or which is likely to induce, the purchase of food, drugs, devices,
3 services, or cosmetics. For the purposes of Section 12 of the FTC Act, several of the
4 products included in the Smoke Away kits are either “foods” or “drugs” as defined in Section
5 15(b) and (c) of the FTC Act, 15 U.S.C. § 55(b) and (c). As set forth below, the Defendants
6 have engaged in such unlawful practices in connection with the marketing and sale of Smoke
7 Away.

8
9 **UNFAIR OR DECEPTIVE ACTS OR PRACTICES**
10 **IN VIOLATION OF THE FTC ACT**

11 **COUNT I**

12 **Efficacy and Performance Claims**

13 15. Through the means described in Paragraph 13, including but not limited to the
14 statements contained in the advertisements attached as Exhibits A through E, Defendants
15 Emerson Direct and Connors have represented, expressly or by implication, that:

- 16 a. Smoke Away enables smokers to quit smoking in 7 days or less;
17 b. Smoke Away enables smokers to quit smoking quickly, effortlessly, and
18 permanently;
19 c. Smoke Away eliminates nicotine cravings;
20 d. Smokers who use Smoke Away have no withdrawal symptoms and no side
21 effects, such as weight gain, insomnia or tension; and
22 e. Smoke Away is more effective than nicotine patches, nicotine gum and
23 prescription medications for smoking cessation.

24 16. The representations set forth in Paragraph 15 are false or were not
25 substantiated at the time the representations were made. Therefore, the making of the
26 representations set forth in Paragraph 15 constitutes a deceptive practice, and the making of
27 false advertisements, in or affecting commerce, in violation of Sections 5(a) and 12 of the
28

1 FTC Act, 15 U.S.C. §§ 45(a) and 52.

2 **COUNT II**

3 **Expertise Claim**

4 17. Through the means described in Paragraph 13, including but not limited to the
5 statements contained in the advertisements attached as Exhibits A through E, Defendants
6 Emerson Direct, Connors, and Bresnahan have represented, expressly or by implication, that
7 Defendant Bresnahan is an expert in nicotine addiction or smoking cessation.

8 18. In truth and in fact, Dr. Bresnahan is not an expert in nicotine addiction or
9 smoking cessation. Therefore, the making of the representation set forth in Paragraph 17
10 constitutes a deceptive practice, and the making of false advertisements, in or affecting
11 commerce, in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

12 **COUNT III**

13 **DeBlasio Expert Endorsement**

14 19. Through the means described in Paragraph 13, including through the
15 statements contained in the advertisements attached as Exhibits A through E, Defendant
16 DeBlasio has represented, expressly or by implication, that:

- 17 a. Smoke Away enables smokers to quit smoking in 7 days or less;
- 18 b. Smoke Away enables smokers to quit smoking quickly, effortlessly, and
19 permanently;
- 20 c. Smoke Away eliminates nicotine cravings;
- 21 d. Smokers who use Smoke Away have no withdrawal symptoms and no side
22 effects, such as tension; and
- 23 e. Smoke Away is more effective than nicotine patches, nicotine gum and
24 prescription medications for smoking cessation.

25 20. Defendant DeBlasio did not possess and rely upon a reasonable basis for his
26 representations set forth in Paragraph 19 at the time the representations were made.

27 Moreover, Defendant DeBlasio did not exercise his purported expertise in the fields of
28

1 nicotine addiction or smoking cessation in the form of an examination or testing of Smoke
2 Away at least as extensive as an expert in those fields would normally conduct, in order to
3 support the conclusions presented in his endorsement. Therefore, the making of the
4 representations set forth in Paragraph 19 constitutes a deceptive practice, and the making of
5 false advertisements, in or affecting commerce, in violation of Sections 5(a) and 12 of the
6 FTC Act, 15 U.S.C. §§ 45(a) and 52.

7 **COUNT IV**

8 **Bresnahan Expert Endorsement**

9 21. Through the means described in Paragraph 13, including through the
10 statements contained in the advertisements attached as Exhibits A through E, the Defendant
11 Bresnahan has represented, expressly or by implication, that:

- 12 a. Smoke Away enables smokers to quit smoking in 7 days or less;
- 13 b. Smoke Away enables smokers to quit smoking quickly, effortlessly, and
14 permanently;
- 15 c. Smoke Away eliminates nicotine cravings;
- 16 d. Smokers who use Smoke Away have no withdrawal symptoms and no side
17 effects, such as tension; and
- 18 e. Smoke Away is more effective than nicotine patches, nicotine gum and
19 prescription medications for smoking cessation.

20 22. Defendant Bresnahan did not possess and rely upon a reasonable basis for her
21 representations set forth in Paragraph 21 at the time the representations were made.

22 Moreover, Defendant Bresnahan did not exercise her purported expertise in the fields of
23 nicotine addiction or smoking cessation in the form of an examination or testing of the
24 Smoke Away System at least as extensive as an expert in those fields would normally
25 conduct, in order to support the conclusions presented in her endorsement. Therefore, the
26 making of the representations set forth in Paragraph 21 constitutes a deceptive practice, and
27 the making of false advertisements, in or affecting commerce, in violation of Sections 5(a)
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1 and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

2 **COUNT V**

3 **Failure to Make a Prompt Refund**

4 23. Through the means described in Paragraph 13, above, Defendants Emerson
5 Direct and Connors have represented, expressly or by implication, that they provide timely
6 refunds to consumers who request refunds pursuant to their unconditional money back
7 guarantee.

8 24. In truth and in fact, in many instances, Defendants Emerson Direct and
9 Connors have not provided timely refunds to consumers who have requested refunds
10 pursuant to these Defendants' unconditional money back guarantee. Therefore, the making
11 of the representation set forth in Paragraph 23 constitutes a deceptive practice, and the
12 making of false advertisements, in or affecting commerce, in violation of Section 5(a) of the
13 FTC Act, 15 U.S.C. § 45(a).

14 **INJURY**

15 25. Consumers throughout the United States have suffered and continue to suffer
16 substantial monetary loss as a result of Defendants' unlawful acts or practices. In addition,
17 the Defendants have been unjustly enriched as a result of their unlawful practices. Absent
18 injunctive relief by this Court, the Defendants are likely to continue to injure consumers, reap
19 unjust enrichment, and harm the public interest.

20 **THIS COURT'S POWER TO GRANT RELIEF**

21 26. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant
22 injunctive and such other relief as the Court may deem appropriate to halt and redress
23 violations of the FTC Act. The Court, in the exercise of its equitable jurisdiction, may award
24 ancillary or other relief, including, but not limited to rescission of contracts and restitution,
25 and the disgorgement of ill-gotten gains, caused by Defendants' law violations.

26 **PRAYER FOR RELIEF**

27 WHEREFORE, plaintiff requests that this Court, as authorized by Section 13(b) of
28

1 the FTC Act, 15 U.S.C. § 53(b), and pursuant to its own equitable powers:

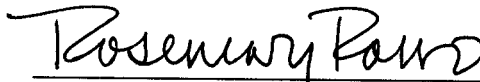
2 (1) Enjoin Defendants permanently from violating Sections 5 and 12 of the FTC Act,
3 in connection with the advertising or sale of food, drugs, devices, cosmetics, or other
4 products, services or programs;

5 (2) Award such equitable relief as the Court finds necessary to redress injury to
6 consumers resulting from Defendants' violations of Sections 5(a) and 12 of the FTC Act,
7 including but not limited to rescission of contracts and restitution, and the disgorgement of
8 ill-gotten gains; and

9 (3) Award plaintiff the costs of bringing this action and any other equitable relief as
10 the Court may determine to be just and proper.

11
12 Dated: August 8, 2005

13 Respectfully submitted,
14 WILLIAM BLUMENTHAL
15 General Counsel

16 

17 ROSEMARY ROSSO
18 SHIRA D. MODELL
19 FEDERAL TRADE COMMISSION
20 601 New Jersey Avenue, NW, Rm NJ 3212
21 Washington, D.C. 20580
22 Tel.: (202) 326-2174, -3116
23 Fax: (202) 326-3259

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Attorneys for Plaintiff