

**AGREEMENT BETWEEN**

**ABENAKIE ENTERPRISES/ CHOICE TOBACCO**

**(“Abenakie”)**

**- and -**

**THE COMMISSIONER OF COMPETITION**

**(“Commissioner”)**

**WHEREAS** the Commissioner is responsible for the administration and enforcement of the *Competition Act*, R.S.C. 1985, c. C-34 (the “*Act*”), and has commenced an Inquiry pursuant to s. 10 of the *Act* in regard to cigarettes and other tobacco products (“Tobacco Products”) for sale to the public, described as “light” and “mild” and variants thereof, such as, but not limited to, “extra light”, “ultra light”, “extra mild” and “ultra mild” (“L/M Descriptors”) in Canada;

**AND WHEREAS** Abenakie is engaged in Canada in the manufacture and/or distribution of Tobacco Products bearing L/M Descriptors;

**THE PARTIES HEREBY AGREE AS FOLLOWS:**

**1. Application of this Agreement**

- 1.1 The provisions of this Agreement are subject to the definitions set forth in Appendix “A.”
- 1.2 Nothing in this Agreement is intended to modify Abenakie’s obligations under the *Tobacco Act*.

**2. Cessation of Use of the L/M Descriptors**

- 2.1 As of December 31, 2007, Abenakie will cease using L/M Descriptors on its Tobacco Products and packaging. A list of Abenakie’s Brand Names covered by this Agreement are contained in Appendix “B”.

**3. Sale of Existing Stock**

- 3.1 Any Tobacco Products bearing L/M Descriptors may be sold or distributed in Canada by Abenakie, provided they were manufactured and packaged prior to December 31, 2007.

**4. Other Manufacturers and Distributors**

- 4.1 The Commissioner shall use reasonable best efforts to obtain from other manufacturers and/or distributors in Canada of Tobacco Products, comparable commitments to discontinue their use of L/M Descriptors not later than December, 2007.

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## **5. General**

- 5.1 This Agreement is entered into without any admission of liability on the part of Abenakie, and it does not constitute a finding of fact or law on any issue as against Abenakie.
- 5.2 This Agreement is entered into by Abenakie solely for the purpose of voluntarily cooperating with a request by the Commissioner to discontinue the use of L/M Descriptors and in anticipation of regulatory changes under the *Tobacco Act*.
- 5.3 This Agreement shall be governed by and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
- 5.4 This Agreement may be executed in counterpart and by facsimile and each such counterpart shall constitute an original and all of which taken together shall constitute one and the same instrument, dated as of the date set forth below.

## **6. Modification or Default**

- 6.1 If Abenakie believes that some modification of this Agreement is justified due to changed circumstances, Abenakie and the Commissioner agree to engage in good faith efforts to resolve the matter.
- 6.2 In the event of any dispute between the Parties as to the interpretation or application of this Agreement, including a dispute as to whether there has been a default in the performance of any of the obligations in this Agreement, the Parties agree to first engage in good faith efforts to resolve such dispute, before taking any other steps to resolve the dispute. In the event that Abenakie does not cease use of the L/M descriptors in accordance with clause 2.1 of this Agreement, the Commissioner may deliver a notice of default to Abenakie. Abenakie shall have 30 days to remedy any default. If the default has not been remedied during such 30 day period the Commissioner may, following the expiry of the 30 day period, file this Agreement with the Competition Tribunal for registration as a Consent Agreement between the Commissioner and Abenakie, pursuant to s.74.12 of the *Act*. Abenakie irrevocably consents to the registration of this Agreement as a Consent Agreement in such case and to the filing of the signed consent form which is attached as Appendix "C."

## **7. Term of this Agreement**

- 7.1 This Agreement shall remain in force from the date of its signing until such time as regulations pursuant to the *Tobacco Act* come into force prohibiting the use of L/M Descriptors in regard to Tobacco Products, and/or their packaging, whereupon this Agreement will terminate automatically. 230

**8. Notice**

8.1 Any notice required to be given pursuant to any terms of this Agreement is valid if given by facsimile transmission or registered mail to:

**a. The Commissioner:**

Sheridan Scott  
Commissioner of Competition  
Competition Bureau Canada  
Place du Portage, Phase I,  
50 Victoria Street  
Gatineau, Quebec K1A 0C9

Telephone: 819-997-5300  
Facsimile: 819-953-5013

With copies to:

Jim Marshall  
Senior Counsel  
Competition Law Division

Justice Canada  
Place du Portage, Phase I,  
50 Victoria Street  
Gatineau, Quebec K1A 0C9

Telephone: 819-997-2834  
Facsimile: 819-953-9267

**b. Abenakie:**

Richard O'Bomsawin  
President and Owner  
Abenakie Enterprises/ Choice Tobacco  
2425 Chemin Asban  
Odanak, Quebec  
J0G 1H0

Telephone: 450-568-1001  
Facsimile: 450-568-0303

*am*

Dated at Gatineau, Quebec, this 10 day of ~~June~~, 2007.



July

Sheridan Scott

Commissioner of Competition

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July 3

Dated at Odanak, Quebec, this \_\_\_\_\_ day of ~~June~~, 2007.



Richard O'Bomsawin

President and Owner

Abenakie Enterprises/ Choice Tobacco

## Appendix "A"

### Definitions

In accordance with Clause 1.1 of this Agreement, the following definitions shall apply:

- A. "Abenakie" means Abenakie Enterprises/ Choice Tobacco, a company incorporated under the laws of Canada;
- B. "Agreement" means this Agreement as entered into by Abenakie and the Commissioner;
- C. "Brand Name" means word(s) used by Abenakie to identify its products to consumers and includes, but is not limited to, trademark names of cigarettes and any words forming part of such trademark names;
- D. "Commissioner" means the Commissioner of Competition, appointed pursuant to section 7 of the *Act*, and authorized representatives of the Commissioner;
- E. "L/M Descriptors" means the words "light" and "mild", and combinations and variants thereof such as, but not limited to, "extra light," "ultra light," "extra mild" and "ultra mild" as descriptors on cigarette packages or elsewhere;
- F. "Parties" means the Commissioner and Abenakie;
- G. "Tobacco Products" means cigarettes, tobacco sticks and fine cut tobacco currently distributed by Abenakie;

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**Appendix "B"**

**Abenakie Brand Names**

In accordance with Clause 2.1 of this Agreement, the following Abenakie Brand Names are covered by this Agreement:

<b><u>Cigarette Products</u></b>
Advantage Light
Rocky's Light
My Brand Light

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**Appendix "C"**


**Consent Form**

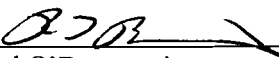
To: The Competition Tribunal

1. The Commissioner of Competition and Abenakie Enterprises/ Choice Tobacco ("Abenakie") consent to the filing of an Agreement dated July 3, 2007, with the Competition Tribunal for immediate registration as a consent agreement between the Commissioner of Competition and Abenakie pursuant to s. 74.12 of the *Competition Act*.
2. The name and address of the persons in respect of whom the consent agreement is made are:

Commissioner of Competition  
50 Victoria Street  
Gatineau, Quebec  
K1A 0C9

Abenakie Enterprises/ Choice Tobacco  
2425 Chemin Asban  
Odanak, Québec  
J0G 1H0

Per:   
Sheridan Scott  
Commissioner of Competition

Per:   
Richard O'Bomsawin  
President and Owner  
Abenakie Enterprises/ Choice  
Tobacco