

AGREEMENT BETWEEN
IMPERIAL TOBACCO CANADA LIMITED

("ITCAN")

- 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 WHEREAS ITCAN is engaged throughout Canada in the manufacture and distribution of 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");

AND WHEREAS the Commissioner commenced an Inquiry pursuant to s. 10 of the *Act* with respect to the use of L/M Descriptors in regard to Tobacco Products in Canada;

AND WHEREAS during the course of the Inquiry the Commissioner has requested that ITCAN discontinue use of L/M Descriptors in connection with Tobacco Products sold in Canada;

AND WHEREAS the position of ITCAN is that the introduction to the market of Tobacco Products bearing L/M Descriptors was at the request of Health Canada;

AND WHEREAS the Commissioner and ITCAN acknowledge that they have differing views of the circumstances surrounding the introduction to the market of Tobacco Products bearing L/M descriptors;

AND WHEREAS Health Canada has begun the process of introducing regulations to require discontinuance of L/M Descriptors;

AND WHEREAS in these circumstances ITCAN is prepared to cooperate with the Commissioner's request.

NOW THEREFORE THE PARTIES HERETO 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 The provisions of this Agreement shall apply to ITCAN and each of its Subsidiaries and Affiliates which are engaged in the sale or distribution of Tobacco Products in Canada.
- 1.3 Nothing in this Agreement is intended to modify ITCAN's obligations under the *Tobacco Act*.

2. Cessation of Use of the L/M Descriptors

- 2.1 Commencing no later than December 31, 2006, ITCAN will discontinue manufacturing and packaging Tobacco Products using L/M Descriptors according to a schedule for their discontinuance agreed upon between the Parties. A list of ITCAN's Brand Names covered by this Agreement and the schedule for their removal are contained in Appendix "B".
- 2.2 Subject to the limitations of the *Tobacco Act* and the other terms of this Agreement, ITCAN may provide information to persons involved in the manufacture, packaging, distribution or sale of Tobacco Products and to members of the public in Canada which explains the changes to the packaging arising out of the obligations in this Agreement.

3. Sale of Existing Stock

- 3.1 Nothing in this Agreement shall prevent ITCAN from selling or distributing any Tobacco Products in Canada bearing L/M Descriptors provided that such products were manufactured and packaged in the ordinary course by ITCAN before the dates set out in the schedule agreed upon by the parties pursuant to clause 2.1 of this Agreement.

4. Public Notice

- 4.1 ITCAN shall have published at its own expense a Public Notice. The Public Notice will be published in accordance with the arrangements agreed to by the Commissioner and ITCAN as set out in Appendix "C".
- 4.2 All information obtained by the Commissioner during the Inquiry that is not already in the public domain will remain confidential except: (a) as required by law or (b) as required to enforce the *Act* or this Agreement.

5. Other Manufacturers and Distributors

- 5.1 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.

6. General

- 6.1 This Agreement is entered into without any admission of liability on the part of ITCAN, its Subsidiaries or Affiliates, or any admission that it has engaged in any conduct which is in contravention of the *Act* including, without limitation, s.52(1) thereof, or any conduct which could form the basis for the issuance of any Order by the Competition Tribunal under any of the civil reviewable provisions of the *Act* including, without limitation, s. 74.01(1) thereof.
- 6.2 This Agreement does not constitute a finding of fact or law on any issue as against ITCAN, its Subsidiaries or Affiliates and shall not be read or construed as constituting, directly or indirectly, a finding of fact or law against ITCAN, its Subsidiaries or Affiliates on any issue in any Court, administrative tribunal, or in any proceeding.
- 6.3 Nothing in this Agreement shall be taken, directly or indirectly, as any kind of admission of any kind by ITCAN, its Subsidiaries or Affiliates now or in the future, nor shall it constitute a waiver of any rights or defences available to ITCAN, its Subsidiaries or Affiliates in any civil or penal proceeding at common law or Quebec civil law or under the *Act* or any other laws of Canada or a province, or otherwise.
- 6.4 This Agreement is entered into by ITCAN 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*.
- 6.5 This Agreement resolves all outstanding issues between the Commissioner and ITCAN, its Subsidiaries and Affiliates and its or their respective directors and officers in respect of the Commissioner's Inquiry into its use of L/M descriptors. Provided that ITCAN carries out its obligations under this Agreement, the Commissioner will not commence any proceedings in respect of the subject of this Inquiry against ITCAN, its Subsidiaries or Affiliates and its or their respective directors and officers.
- 6.6 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.
- 6.7 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.

7. Modification or Default

- 7.1 If ITCAN believes that some modification of this Agreement is justified due to changed circumstances, ITCAN and the Commissioner agree to engage in good faith efforts to resolve the matter.

7.2 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 ITCAN does not cease use of the L/M descriptors in accordance with clause 2.1 of this Agreement, or does not publish the Public Notice in accordance with clause 4.1 of this Agreement, the Commissioner may deliver a notice of default to ITCAN. ITCAN 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 ITCAN, pursuant to s.74.12 of the *Act*. ITCAN 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 “D.”

8. Term of this Agreement

8.1 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.

9. Notice

9.1 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. ITCAN:

Donald R. McCarty
Vice President, Law
Imperial Tobacco Canada Limited
3711 Sainte-Antoine Street West
Montreal, Quebec H4C 3P6

Telephone: 514-932-6161
Facsimile: 514-932-0169

With copies to:

Tim Kennish and Deborah Glendinning
Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
100 King Street West
Suite 6100
Toronto, ON M5X 1B8

Telephone: 416-862-6432 (Tim Kennish)
Telephone: 416-862-4714 (Deborah Glendinning)
Facsimile: 416-862-6666

Dated at Gatineau, Quebec, this _____ day of November, 2006.

Sheridan Scott
Commissioner of Competition

Dated at Montreal, Quebec, this _____ day of November, 2006.

Donald R. McCarty
Vice President, Law
Imperial Tobacco Canada Limited

Appendix “A”

Definitions

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

- A. “Affiliate” shall have the meaning ascribed to it in subsection 2(2) of the *Act*;
- B. “Agreement” means this Agreement as entered into by ITCAN and the Commissioner;
- C. “Brand Name” means word(s) used by ITCAN 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. “Descriptors” means the words used by ITCAN, either alone or in combination with each other, on its cigarette packages;
- F. “ITCAN” means Imperial Tobacco Canada Limited, a company incorporated under the laws of Canada;
- G. “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;
- H. “Parties” means the Commissioner and ITCAN;
- I. “Person” includes a partnership, firm, corporation, association, trust, unincorporated organization, or other entity;
- J. “Subsidiary” shall have the meaning ascribed to it in subsection 2(3) of the *Act*.
- K. “Tobacco Products” means cigarettes, tobacco sticks and fine cut tobacco currently distributed by ITCAN;

Appendix “B”

ITCAN Brand Names

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

<u>Cigarette Products</u>	
Avanti Light 100mm	Matinée Extra Mild
Avanti Light	Matinée Slims Extra Mild
Cameo Menthol Extra Mild	Matinée Slims Extra Mild 100mm
du Maurier Extra Light	Matinée Ultra Mild
du Maurier Extra Light 100mm	Medallion Ultra Mild
du Maurier Light	Player’s Extra Light
du Maurier Light 100’s	Player’s Light
du Maurier Ultra Light	Player’s XL Expedition Tin
du Maurier Light Smooth	Player’s Light Smooth
Peter Jackson Extra Light	Peter Jackson Light

<u>Fine Cut and “Stick” Products</u>	
Player’s Light	
Player’s Extra Light	
Matinee Extra Mild	

<u>Removal Schedule</u>	
<u>Product</u>	<u>Date</u>
Medallion	December 31, 2006
Cameo Extra Mild	December 31, 2006
Matinee family slogan	January 31, 2007
Peter Jackson	March 31, 2007
Avanti	April 15, 2007
Player's Fine Cut	April 30, 2007
Player's family	June 15, 2007
Matinee family	July 31, 2007
du Maurier family	July 31, 2007

Appendix “C”

Public Notice

In accordance with Section 4.1 of this Agreement, ITCAN’s Public Notice will read as follows:

NOTICE BY IMPERIAL TOBACCO CANADA LIMITED
RE: “LIGHT” AND “MILD” CIGARETTES

At the request of the Commissioner of Competition, Imperial Tobacco Canada Limited has voluntarily agreed to discontinue the manufacture and distribution of tobacco products using the words "light" and "mild", or variants of these terms, as brand-type descriptors, for the sale of tobacco products in Canada. Imperial Tobacco Canada Limited has agreed to accelerate removal of these terms from its tobacco products in advance of planned regulations requiring their removal, and to discontinue use of the terms, commencing no later than December 31, 2006, and ending no later than July 31, 2007.

ITCAN will publish the Public Notice on three occasions. The Public Notice will be published in the Wednesday and/or Saturday editions of the following newspapers. On the first occasion of publication, the Public Notice will be a one-sixth page format. On the second and third occasions of publication, the Public Notice will be a one-eighth page format. ITCAN may arrange the schedule for publication with another company or companies required to publish a similar notice provided that the initial publication of the Public Notice will be no later than 10 days following signing of this Agreement; that the Public Notice will be published on consecutive Wednesdays and Saturdays; and that the Public Notice of not more than one company will appear in a newspaper at one time. In the event a newspaper does not publish on Saturday, the Public Notice will be published in the next edition of that newspaper.

National Post	Globe & Mail
Toronto Star	Ottawa Citizen
Montreal La Presse (Fr)	Montreal Gazette

Quebec Le Soleil (Fr)	Saint John Telegraph Journal
Halifax Chronicle Herald	St. John's Telegram
Vancouver Province	The Charlottetown Guardian
Calgary Herald	Whitehorse Star
Regina Leader Post	The News of the North, Yellowknife
Winnipeg Free Press	

Appendix “D”

Consent Form

To: The Competition Tribunal

1. The Commissioner of Competition and Imperial Tobacco Canada Limited (“ITCAN”) consent to the filing of an Agreement dated _____, 2006, with the Competition Tribunal for immediate registration as a consent agreement between the Commissioner of Competition and ITCAN 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

Imperial Tobacco Canada Limited
3711 St. Antoine Street West
Montreal
H4C 3P6

Per: _____ [signed]
Sheridan Scott
Commissioner of Competition

Per: _____ [signed]
Donald R. McCarty
Vice President, Law
Imperial Tobacco Canada Limited