

**AGREEMENT BETWEEN**

**ROTHMANS, BENSON & HEDGES INC.**

**(“RBH”)**

**- 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** RBH 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 RBH discontinue use of L/M Descriptors in connection with Tobacco Products sold in Canada;

**AND WHEREAS** the position of RBH 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 RBH 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 RBH 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 RBH 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 RBH's obligations under the *Tobacco Act*.

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

2.1 Commencing no later than December 31, 2006, RBH 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 RBH'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, RBH 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 RBH 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 RBH 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 RBH 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 RBH 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 RBH, 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 RBH, its Subsidiaries or Affiliates and shall not be read or construed as constituting, directly or indirectly, a finding of fact or law against RBH, 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 RBH, its Subsidiaries or Affiliates now or in the future, nor shall it constitute a waiver of any rights or defences available to RBH, 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 RBH 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 RBH, 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 RBH carries out its obligations under this Agreement, the Commissioner will not commence any proceedings in respect of the subject of this Inquiry against RBH, 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 RBH believes that some modification of this Agreement is justified due to changed circumstances, RBH 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 RBH 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 RBH. RBH 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 RBH, pursuant to s.74.12 of the *Act*. RBH 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. RBH:**

Faryl Hausman  
Vice-President, Litigation and Regulatory Affairs  
Rothmans, Benson & Hedges Inc.  
1500 Don Mills Road  
Toronto, Ontario M5X 1A4

Telephone: 416-442-2580  
Facsimile: 416-442-3510

With copies to:

Steven Sofer  
Gowling Lafleur Henderson LLP  
Suite 1600, 1 First Canadian Place  
100 King St. W.  
Toronto, ON, M5X 1G5  
Telephone: 416-369-7240  
Facsimile: 416-862-7661

Dated at Gatineau, Quebec, this \_\_\_\_\_ day of November, 2006.

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Sheridan Scott  
Commissioner of Competition

Dated at Toronto, Ontario, this \_\_\_\_\_ day of November, 2006.

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Faryl Hausman  
Vice-President, Litigation and Regulatory Affairs

## **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 RBH and the Commissioner;
- C. “Brand Name” means word(s) used by RBH 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 RBH, either alone or in combination with each other, on its cigarette packages;
- F. “RBH” means Rothmans, Benson & Hedges Inc., 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 RBH;
- 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 RBH;

## Appendix “B”

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

<b>Cigarette Products:</b>
Accord Ultra Mild
Accord Ultra Mild Menthol
Belmont Milds
Belvedere Extra Mild
Belvedere Extra Mild Lights
Benson & Hedges Deluxe Ultra Light 100
Benson & Hedges Deluxe Ultra Light Menthol 100
Benson & Hedges Extra Mild King Size
Benson & Hedges Light 100
Benson & Hedges Light Menthol 100
Benson & Hedges Special Light King Size
Benson & Hedges Special Light Regular Length
Benson & Hedges Special Regular Length
Benson & Hedges Special Ultra King Size
Benson & Hedges Special Ultra Regular Length
Benson & Hedges Ultra Mild 100
Canadian Classics Extra Light
Canadian Classics Light
Craven A Extra Light
Craven A Light
Craven A Ultra Light
Craven Menthol Special Mild
Craven Menthol Special Mild 100's
Craven Milds Special Mild
Craven Milds Special Mild 100's
Craven Milds Ultra Mild
Gauloises Blondes Lights
Gauloises Blondes Ultra Lights
Mark Ten Full Flavour
Mark Ten Light
Mark Ten Medium
Number 7 Extra Mild
Number 7 Light

Number 7 Light 100's
Rothmans Extra Light
Rothmans Light
Rothmans Special Mild
Rothmans Ultra Light
Viscount #1 Ultra Mild
Viscount Extra Mild
Viscount Extra Mild 100's
Viscount Extra Mild Menthol
<b><u>Tobacco Sticks:</u></b>
Belvedere Extra Mild Custom Cut
Belvedere Extra Mild Presto Pak
Belvedere Extra Mild Superroll 200 II 90g
Craven A Light Superroll 200 II 90g
Number 7 Light Presto Pak
Number 7 Light Custom Cut
Number 7 Light Superroll 200 II 90g
<b><u>Fine Cut High Yield Tobacco Products:</u></b>
Belvedere Extra Mild 65% More 50g
Belvedere Extra Mild 70% More 200g
Belvedere Extra Mild 80% More 180g
Belvedere Extra Mild 80% More 40g
Belvedere Extra Mild 95% More 180g
Belvedere Extra Mild 95% More 30g
Belvedere Extra Mild 95% More 90g
Black Cat Light 80% 100g
Black Cat Light 80% 180g
Black Cat Light 80% 40g
Black Cat Light 95% 30g
Black Cat Light 95% 90g
Mark Ten Medium 95% More 90g
Number 7 Light 65% More 200g
Number 7 Light 65% More 50g
Number 7 Light 80% More 180g
Number 7 Light 80% More 40g
Number 7 Light 95% More 180g
Number 7 Light 95% More 30g
Number 7 Light 95% More 90g
Rockport Light 65% More 200g
Rockport Light 65% More 50g



**Removal Schedule:**

<b>Product:</b>	<b>Date:</b>
Craven A Light	January 31, 2007
Craven Menthol Special Mild	January 31, 2007
Gauloises Blondes Lights	January 31, 2007
Gauloises Blondes Ultra Lights	January 31, 2007
Mark Ten Full Flavour	January 31, 2007
Mark Ten Light	January 31, 2007
Mark Ten Medium	January 31, 2007
Number 7 Extra Mild	January 31, 2007
Number 7 Light	January 31, 2007
Number 7 Light 100's	January 31, 2007
Rothmans Light	January 31, 2007
Rothmans Special Mild	January 31, 2007
Rothmans Ultra Light	January 31, 2007
Benson & Hedges Deluxe Ultra Light 100	February 28, 2007
Benson & Hedges Deluxe Ultra Light Menthol 100	February 28, 2007
Benson & Hedges Light 100	February 28, 2007
Benson & Hedges Light Menthol 100	February 28, 2007
Benson & Hedges Special Light King Size	February 28, 2007
Benson & Hedges Special Ultra King Size	February 28, 2007
Benson & Hedges Ultra Mild 100	February 28, 2007
Canadian Classics Extra Light	February 28, 2007
Canadian Classics Light	February 28, 2007
Craven Milds Special Mild	February 28, 2007
Craven Milds Special Mild 100's	February 28, 2007
Craven Milds Ultra Mild	February 28, 2007
Belvedere Extra Mild	March 31, 2007
Viscount #1 Ultra Mild	March 31, 2007
Viscount Extra Mild	March 31, 2007
Viscount Extra Mild 100's	March 31, 2007
Viscount Extra Mild Menthol	March 31, 2007
Accord Ultra Mild	April 30, 2007
Accord Ultra Mild Menthol	April 30, 2007
Belmont Milds	April 30, 2007
Belvedere Extra Mild Lights	April 30, 2007
Benson & Hedges Extra Mild King Size	April 30, 2007
Benson & Hedges Special Light Regular Length	April 30, 2007
Benson & Hedges Special Regular Length	April 30, 2007
Benson & Hedges Special Ultra Regular Length	April 30, 2007
Craven A Extra Light	April 30, 2007
Craven A Ultra Light	April 30, 2007
Craven Menthol Special Mild 100's	April 30, 2007
Rothmans Extra Light	April 30, 2007

<b>Tobacco Sticks:</b>	
Belvedere Extra Mild Presto Pak	January 31, 2007
Number 7 Light Presto Pak	January 31, 2007
Belvedere Extra Mild Custom Cut	March 31, 2007
Belvedere Extra Mild Superoll 200 II 90g	March 31, 2007
Craven A Light Superoll 200 II 90g	March 31, 2007
Number 7 Light Custom Cut	March 31, 2007
Number 7 Light Superoll 200 II 90g	March 31, 2007
<b>Fine Cut High Yield Tobacco Products:</b>	
Belvedere Extra Mild 65% More 50g	Completed prior to December 31, 2006
Belvedere Extra Mild 70% More 200g	Completed prior to December 31, 2006
Belvedere Extra Mild 80% More 180g	Completed prior to December 31, 2006
Belvedere Extra Mild 80% More 40g	Completed prior to December 31, 2006
Belvedere Extra Mild 95% More 180g	Completed prior to December 31, 2006
Belvedere Extra Mild 95% More 30g	Completed prior to December 31, 2006
Belvedere Extra Mild 95% More 90g	Completed prior to December 31, 2006
Black Cat Light 80% 100g	Completed prior to December 31, 2006
Black Cat Light 80% 180g	Completed prior to December 31, 2006
Black Cat Light 80% 40g	Completed prior to December 31, 2006
Black Cat Light 95% 30g	Completed prior to December 31, 2006
Black Cat Light 95% 90g	Completed prior to December 31, 2006
Mark Ten Medium 95% More 90g	Completed prior to December 31, 2006
Number 7 Light 65% More 200g	Completed prior to December 31, 2006
Number 7 Light 65% More 50g	Completed prior to December 31, 2006
Number 7 Light 80% More 180g	Completed prior to December 31, 2006
Number 7 Light 80% More 40g	Completed prior to December 31, 2006
Number 7 Light 95% More 180g	Completed prior to December 31, 2006
Number 7 Light 95% More 30g	Completed prior to December 31, 2006
Number 7 Light 95% More 90g	Completed prior to December 31, 2006
Rockport Light 65% More 200g	Completed prior to December 31, 2006
Rockport Light 65% More 50g	Completed prior to December 31, 2006

**Appendix “C”**

**Public Notice**

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

**NOTICE BY ROTHMANS, BENSON & HEDGES INC.**  
**RE: “LIGHT” AND “MILD” CIGARETTES**

At the request of the Commissioner of Competition, Rothmans, Benson & Hedges Inc. has voluntarily agreed to discontinue the manufacture and packaging 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. Rothmans, Benson & Hedges Inc. 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 April 30, 2007.

RBH 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. RBH 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 Rothmans, Benson & Hedges Inc. (“RBH”) 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 RBH 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

Rothmans, Benson & Hedges Inc.  
1500 Don Mills Road  
Toronto, Ontario  
M5X 1A4

Per: \_\_\_\_\_  
Sheridan Scott  
Commissioner of Competition

Per: \_\_\_\_\_  
Rothmans, Benson & Hedges Inc.