

**AGREEMENT BETWEEN
WALKING SMOKE DISTRIBUTION INC.**

("WSDI")

- 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 WSDI 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 WSDI's obligations under the *Tobacco Act*.

2. Cessation of Use of the L/M Descriptors

- 2.1 As of December 31, 2007, WSDI will cease using L/M Descriptors on its Tobacco Products and packaging. A list of WSDI'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 WSDI, 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

P.D. 1
W

discontinue their use of L/M Descriptors not later than December, 2007.

5. General

- 5.1 This Agreement is entered into without any admission of liability on the part of WSDI, and it does not constitute a finding of fact or law on any issue as against WSDI.
- 5.2 This Agreement is entered into by WSDI 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 WSDI believes that some modification of this Agreement is justified due to changed circumstances, WSDI and the Commissioner agree to engage in good faith efforts to resolve the matter. PD.
- 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 WSDI 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 WSDI. WSDI 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 WSDI, pursuant to s.74.12 of the *Act*. WSDI 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.

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. WSDI:

Peter Dorion
Executive Director
Walking Smoke Distribution Inc.
Asimakaniseekan Askiy Reserve #102A
#122-335 Packam Avenue
Saskatoon, Saskatchewan
S7N 4S1

Telephone: 306-384-5556
Facsimile: 306-384-5552

Dated at Gatineau, Quebec, this 25th day of April, 2007.

Sheridan Scott
Sheridan Scott
Commissioner of Competition

Dated at Saskatoon, Saskatchewan, this 13th day of April, 2007.

Peter Dorion
Peter Dorion
Executive Director
Walking Smoke Distribution Inc.

PD . 4
JS

Appendix "A"

Definitions

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

- A. "Agreement" means this Agreement as entered into by WSDI and the Commissioner;
- B. "Brand Name" means word(s) used by WSDI 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;
- C. "Commissioner" means the Commissioner of Competition, appointed pursuant to section 7 of the *Act*, and authorized representatives of the Commissioner;
- D. "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;
- E. "Parties" means the Commissioner and WSDI;
- F. "Tobacco Products" means cigarettes, tobacco sticks and fine cut tobacco currently distributed by WSDI;
- G. "WSDI" means Walking Smoke Distribution Inc., a company incorporated under the laws of Canada;

Appendix "B"

WSDI Brand Names

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

<u>Cigarette Products</u>
Pihtwātān Light

Appendix "C"

Consent Form

To: The Competition Tribunal

1. The Commissioner of Competition and Walking Smoke Distribution Inc. ("WSDI") consent to the filing of an Agreement dated April 13, 2007, with the Competition Tribunal for immediate registration as a consent agreement between the Commissioner of Competition and WSDI 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

Walking Smoke Distribution Inc.
Asimakaniseekan Askiy Reserve #102A
#122-335 Packam Avenue
Saskatoon, Saskatchewan
S7N 4S1

Per: Sheridan Scott
Sheridan Scott
Commissioner of Competition

Per: Peter Dorion
Peter Dorion
Executive Director
Walking Smoke Distribution Inc.