Eye on the tobacco industry

An update by the Smoking and Health Action Foundation
October–December 2007

Snus launched in Canada

In September 2007 Imperial Tobacco Canada launched what it refers to as a reduced harm product, compared to cigarettes. It introduced a Swedish-style du Maurier snus in Edmonton retail outlets. As the *New York Times* recently reported “Snus (rhymes with loose) is a moist ground tobacco that a user tucks between the cheek and the gum. Unlike chewing tobacco and moist smokeless tobacco — commonly known as dip — snus requires no spitting.”[1] According to Health Canada, snus is lower in nitrosamines than most tobacco products.

The company has been test marketing the product for months now. It says it will continue to do so because it believes it is the responsible thing to do. Imperial says it recognizes that there are no safe tobacco products, and that the best way to avoid the risks is to not use any tobacco products, but “many independent health studies believe that snus is substantially less risky than cigarette smoking.”[2]

The products are currently sold in ‘Original’ and ‘Freshmint’ flavours and are kept in small fridges on countertops in retail outlets. The refrigeration is apparently used to prevent excessive tobacco-specific nitrosamines (above and beyond the nitrosamines that already exist in tobacco) from developing in the product before sale.

Most public health organizations spoke out against the launch of snus in Canada, for a variety of reasons. Some claim that it could lead to more youth uptake of tobacco products, and thus, nicotine addiction. Others argue that by promoting snus under the du Maurier name, Imperial is trying to affiliate the new product with their cigarette brand of the same name. The end goal would be to encourage consumers to use both du Maurier products (snus and cigarettes), using snus when smoking is prohibited or not socially acceptable. Perhaps the chief reason most public health organizations spoke out against snus is that although it may be less risky than combustible tobacco products, it is not risk-free, and its use can still lead to disease and death.

The new smokeless tobacco snus product by Imperial Tobacco Canada has many people seeing red. ‘Original’ flavour at left and ‘Freshmint’ at right.

Alternatively, some health groups argue that for those addicted smokers who find it extremely difficult to quit, the risk of developing diseases and dying is far less with snus. So, as a harm reduction strategy, these smokers should be informed about the relative risks of snus compared to cigarettes. Those in tobacco control who hold this perspective believe that the government has an important role to play in ensuring less risky nicotine products are not placed at a disadvantaged position in the marketplace compared to cigarettes, the most risky and yet the most widely used nicotine delivery system in Canada.

In October the Royal College of Physicians (RCP) released a report claiming that the United Kingdom is failing heavily addicted smokers by not adopting a more balanced approach to nicotine addiction that includes harm reduction.[3] Also in October, the prestigious medical journal *The Lancet* came out in support of "tobacco harm reduction alongside rigorously applied tobacco control polices."[4]

Recent developments in smokeless tobacco

U.S. Loews Corp. separates from its cigarette subsidiary to assist launch of its snus product

In December, Loews Corp. announced that it would spin off its Lorillard cigarette subsidiary, the maker of Newport and Kent brands, to shareholders of Carolina Group and Loews. Loews hopes splitting from Lorillard will boost its market value as it loses the risks associated with tobacco manufacturing and sales.

The creation of an independent Lorillard will likely be completed in mid-2008. It would free Lorillard to take on debt to pursue acquisitions or develop its own alternatives to cigarettes, such as cigars, chewing tobacco and snus.

Lorillard will soon begin test marketing its own snus, under the brand Triumph. Triumph is part of a joint venture with Swedish Match North America Inc., the makers of Red Man chewing tobacco in the U.S., to develop smokeless tobacco products. Swedish Match has a long history of making snus in Europe.

With its launch of a snus product, Lorillard will be following in the footsteps of U.S. market leaders Philip Morris and R.J. Reynolds. R.J. Reynolds is currently test marketing a Camel-branded snus product.[5]

As part of its growth strategy,[6] Philip Morris USA (whose parent company Altria Group, Inc. owns 40% of Canada's Rothmans, Benson & Hedges), introduced into test market three smokeless tobacco products:[7]

- Toboka, in the Indianapolis area in July 2006
- Marlboro Snus in the Dallas area in August 2007
- Marlboro Moist Smokeless Tobacco in the Atlanta area in October 2007.

Meanwhile, in Canada …

Despite movement by its parent company, Rothmans, Benson & Hedges has not yet launched smokeless products in Canada.

To date, the National Smokeless Tobacco Company, Limited (NSTC) has the largest market share of smokeless tobacco products here. It imports and distributes the two top-selling brands of smokeless in Canada, Copenhagen and Skoal. It also sells the Access brand smokeless product. Access has fewer nitrosamines, and less lead and nicotine than the Skoal and Copenhagen brands, according to Health Canada.

Although sales have increased steadily for NSTC, very few people in Canada use smokeless tobacco. Health Canada reports that about 19% of Canadians over age 15 were smokers in 2005, while only 1% used smokeless tobacco.

Still, NSTC is marketing its products aggressively and has been running advertisements for its Skoal and Skoal Bandits products in free entertainment newspapers, such as Ottawa's *Xpress*, for many months now. These smokeless tobacco products, with flavours such as Citrus, Wintergreen and Mint, are marketed as having "Clean, crisp and refreshing flavour," and as "smooth, moist, refreshingly flavourful tobacco in a discreet pouch."

NSTC imports and distributes the products of U.S. Smokeless Tobacco Company (USSTC). Both companies are 100% owned by UST Inc. USSTC has a 90% share of the premium smokeless tobacco market in the United States, but will face stiff competition from the new smokeless products recently launched by Philip Morris and R.J. Reynolds Tobacco Co. Some stock market analysts are suggesting that UST has a great dependence on high margin products in a market that seems to be getting increasingly price competitive. So, despite very strong overall category growth, UST is seen as being in a weak financial position.[8]

Tobacco companies replace 'light' and 'mild' with 'rich' and 'smooth' descriptors and colour-coding

Last year, the Competition Bureau of Canada announced that it had reached a voluntary agreement with the country's three major cigarette manufacturers, Imperial Tobacco Canada, Rothmans, Benson & Hedges, and JTI-Macdonald, to remove the cigarette descriptors 'light' and 'mild', and variations thereof (such as 'ultra light' and 'extra mild') from their packages.[9] The Competition Bureau was forced to take action after the Non-Smokers' Rights Association filed a complaint in June 2003 alleging that the marketing of 'light' and 'mild' cigarettes constituted a deceptive trade practice in violation of the *Competition Act*.[10] After delays of close to two years and no assurance that the Bureau would act, the NSRA applied to the Federal Court of Canada for a decision that would force the Bureau to address what the NSRA continues to claim is a massive consumer fraud.[11]

But the 2007 agreement was seen by many health professionals as a sweetheart deal with the manufacturers. The cave-in to the industry enabled Competition Bureau lawyers to avoid defending the agency's failure to act in court. The crunch had arrived. After all, nearly three years after the complaint was filed, the NSRA-organized complaint and related litigation had reached the Federal Court of Appeal.

The Competition Bureau decision was discredited for several reasons. Among them, it failed to reach any finding with respect to whether or not the use of 'light' and 'mild' constituted a false or misleading representation, i.e. a consumer fraud. And the Bureau failed to refer the alleged fraud to the courts for either a civil or criminal remedy. The agreement allowed the manufacturers to avoid any penalties, any public condemnation or any remedial advertising. The industry got off scott-free for false representations that caused or contributed to thousands of deaths in Canada.

Equally disturbing, since the Competition Bureau agreement only covers the terms 'light' and 'mild', the cigarette companies have adapted quickly, launching new packaging using different means to suggest variations in strength. They now have new terms such as 'rich', 'smooth', 'select', 'elite', 'full flavour', 'original' and 'blue', as well as colour gradations on the packaging of various product lines (i.e. the lighter the shade of red, the 'milder' the cigarette).

As a signatory of the *Framework Convention on Tobacco Control*, an international public health treaty on tobacco, Canada is legally obliged by *Article 11* to ensure that:

> tobacco product packaging and labelling do not promote a tobacco product by any means that are false, misleading, deceptive or likely to create an erroneous impression about its characteristics, health effects, hazards or emissions, including any term, descriptor, trademark, figurative or any other sign that directly or indirectly creates the false impression that a particular tobacco product is less harmful than other tobacco products.[12]

Colour gradations have been added to the bottom of these Imperial Tobacco cigarette packages, along with the new names Distinct, Premiere, and Edition. These strategies are intended to mislead smokers into believing that there are strength variations within the du Maurier cigarette brand family.

Unfortunately, the regulations under the *Tobacco Act* proposed by Health Canada in August 2007 would only prohibit terms 'light' and 'mild'. The proposed regulations do not address the range of deceptive trade practices in question (i.e. eliminate all marketing that suggests that a particular cigarette brand is less harmful than other cigarettes).[13]

Clearly more action is needed. This is a shining example of the manufacturers always being two steps in front of the government. Many tobacco control experts believe that the only way to solve the problem is for the government to implement plain packaging.

A booklet distributed by JTI-Macdonald in March 2007 informs retailers how the 'light' and 'mild' cigarette descriptors will be replaced, in this case 'light' becomes 'Special 5' and 'ultra light' becomes 'One'.

'Mirage: Less Smoke Smell' cigarettes

With retail display bans just around the corner in Canada's four largest provinces—Ontario, Quebec, Alberta and British Columbia (see story on next page)—tobacco companies are doing all they can to make their cigarette packages as eye-catching as possible. Indeed, almost 30 years ago, tobacco companies foresaw the day when their entire marketing power would be relegated to the package:

> Under conditions of total ban, pack designs … have enormous importance…. An objective should be to enable packs, by themselves, to convey the total product message.[14]

A recent example of the depths these companies go to is found in the new 'Mirage: Less Smoke Smell' cigarettes that Canada's third-largest tobacco company, JTI-Macdonald, is now promoting. Now that the dangers of second-hand smoke are widely known, most Canadians choose not to be exposed to this human carcinogen. While some people may be grateful that the smoke smell has been lessened with these cigarettes, toxins are still present.

In an article in the *Edmonton Journal*, Andre Benoit, a JTI-Macdonald spokesperson, said “the cigarette paper for the new product has a vanilla aroma used to improve the smell of the smoke.”[15] The article goes on to say that:

> Japan Tobacco has applied for a Canadian patent for its smell-masking technique. The patent's title is “Method of fixing flavorant which improves sidestream smoke smell of tobacco and cigarette.” It states that a “smell-improving agent” comprising an ethanol or propylene glycol solution is applied to the cigarette paper.[16]

A recent ad for JTI-Macdonald’s new "Mirage: Less Smoke Smell" cigarettes, from the Canadian edition of Time, *November 2007.*

Some health groups suggest that recent ads promoting Mirage’s claims of “less smoke smell” are against the law. Specifically, Physicians for a Smoke-Free Canada argues that JTI-Macdonald is contravening section 20 of the federal *Tobacco Act*, in that the ads are “likely to create an erroneous impression about the characteristics, health effects or health hazards of the tobacco product or its emissions.”

It remains to be seen whether the federal government will intervene to stop JTI-Macdonald from getting away with this new deceptive marketing ploy.

Tobacco retail display bans on the way in four provinces

Canada is quickly becoming one of the most difficult places in the world for tobacco companies to promote their products in retail outlets.

On March 31, 2008, B.C. will become the latest Canadian province to ban tobacco industry displays in stores, after passing amendments to its *Tobacco Control Act* on Nov. 27, 2007. On May 31, 2008, both Ontario and Quebec will join Nunavut, Prince Edward Island and Nova Scotia in banning tobacco retail displays.

In addition to the complete bans in effect or about to take effect, retail display *restrictions* (i.e. tobacco products may not be visible in stores where minors have access) are in effect in Saskatchewan (2002), Manitoba (2004), and in the Northwest Territories (2006).

And even Alberta (sometimes referred to as the Marlboro country of the North), with its new *Smoke-free Places (Tobacco Reduction) Amendment Act, 2007*, will ban retail displays as of July 1, 2008.

This health strategy is effective in preventing the promotion and marketing of cigarettes, on shelves near products sought after by children, such as chocolate bars, chips and bubblegum. This is a restriction that has been opposed by the tobacco industry and convenience store owners across the country.

For more information on this topic, see the NSRA publication “Why tobacco powerwalls and other forms of retail promotion must be banned," available here.

CCSA contraband conference

The Canadian Convenience Store Association (CCSA) weighed in on the contraband tobacco problem in Canada in November 2007 when it hosted a tobacco-industry funded forum in Ottawa.[17] Forum invitees included tobacco manufacturers, First Nations representatives, educators, retailers, health groups, law enforcement and government officials.

There was a concerted effort by health groups to boycott the forum and to encourage government officials not to attend. Historically, there has been a close relationship between the convenience store sector, a critical component of tobacco marketing, and the manufacturers. In this case, because it appeared that the CCSA was fronting for Imperial Tobacco Canada, most, if not all, health interests rejected their invitations. They know that, because Big Tobacco lacks credibility, it must influence decision-takers by having its viewpoints and disinformation expressed through third parties, like the CCSA. Health groups believe that the CCSA forum was designed to promote responses to the contraband problem that Big Tobacco favours.

In this example, the forum keynote speech was delivered by tobacco consultant Norman Inkster, a former RCMP commissioner. In his speech, as expected, Inkster was highly critical of tobacco tax rates in Canada. The message was that taxes should be cut to discourage tobacco contraband.

Inkster's position was not surprising. Tobacco companies frequently have their allies speak out against high taxes. High price health strategies are very effective in driving down tobacco consumption.

What was surprising is that both the president of the CCSA and the president of Imperial Tobacco Canada, Benjamin Kemball, insisted in the lead-up to the forum that they would not issue a call for governments to lower taxes. And yet Inkster's speech included the following remarks: "High taxation, as a tool, doesn't discourage, it encourages [tobacco use]."[18]

In November 2007, Inkster was named the new chair of the federal Advisory Council on National Security.[19]

Inkster's ties to the tobacco industry have some people, including a Member of Parliament from Quebec, questioning his objectivity on national security issues related to tobacco contraband:

> I don't think he [Inkster] should advise the Prime Minister on cigarette contraband if he is on the payroll of the tobacco companies, that's quite obvious.[20]
>
> - Serge Ménard, Bloc Québecois

Despite the claims made by the Big Three tobacco companies in Canada of economic hardships related to contraband sales, the increase in illegal sales doesn't seem to be hurting their bottom lines. As the *Montreal Gazette* reported a few short weeks later, all of the tobacco companies are still reporting high profit margins.[21]

"We Expect ID"

Yet another example of collaboration between retailers and the tobacco industry is the new "We Expect ID" initiative between the Ontario Convenience Store Association (OCSA) and Imperial Tobacco Canada. Launched in March at the 2007 Convenience U CARWACS Show (a trade show for convenience store, gas station, and car wash operators) in Toronto, this program is similar to Operation I.D.

The tobacco industry's Operation I.D. purported to be a youth smoking prevention strategy. Not surprisingly, it did not include the critical components of successful programs to prevent tobacco sales to minors. Operation I.D. was discredited by the public health community as being nothing but a public relations sham. Given this history, it makes sense that Imperial would be looking for a new program to defuse public opposition of sales to kids and to prevent further legislative interventions.

What appears different with the "We Expect ID" initiative is that its application is not limited to tobacco. Anyone who looks 25 years old or younger and wants to buy lottery tickets, adult magazines/movies, and/or tobacco products, will be asked for a valid driver's licence. The licence will then be verified electronically through an Ontario Lottery Corporation video terminal. The program was said to have been developed by the OCSA,[22] but "We Expect ID" is at least partially funded by Imperial Tobacco Canada.[23] This calls into question the legitimacy of the entire project. Imperial says the program will likely be made national.

The tobacco manufacturers know that as they focus the public's attention on the prohibition of sales to minors they plant firmly in the minds of kids the idea that smoking is an adult activity. In this way, the manufacturers reinforce the image of smoking as a badge or symbol of entry into adulthood.

Tobacco companies would be committing corporate suicide if they were truly interested in implementing effective strategies to stop young people from buying their products. Eighty-five per cent of all smokers start before their 19th birthday. If they do not start before then they likely never will.[24] Because these types of programmes are not effective at preventing youth uptake of smoking, tobacco companies support them. Operation I.D.-type programmes help generate goodwill for retailers and tobacco manufacturers. They also reinforce the industry lie that it does don't want kids to start smoking.

Imperial Tobacco wants dialogue

In October 2006, Imperial Tobacco Canada launched its *Let's Talk* initiative, billing it as a "stakeholder engagement process" designed to solicit input from Canadians on key issues facing the tobacco industry. Imperial Tobacco says it met with "a total of 87 participants who represented different sectors, including government, the scientific community and health care, as well as socio-economic groups and business partners."[25] Most health groups refused to participate in the process so as not to legitimize it.

Following its stakeholder engagement process, Imperial published its *Social Report 2006-2007*. It summarized the results of the consultations and committed the company to action in three areas: harm reduction, youth access and contraband.

First, Imperial said it would do its part to try to reduce the harm associated with its tobacco products by initiating market tests of a smokeless Swedish-style snus product. Second, it would "support the organization" of a public forum to mobilize people and organizations concerned with illegal tobacco sales (see: CCSA contraband conference, noted previously in this update). Third, Imperial said it would "contribute financially to a new national program developed by retailers to prevent the sale of tobacco to youth (see "We Expect ID", previous page)."[26]

Other so-called Corporate Social Responsibility (CSR) initiatives by Imperial include the Imperial Tobacco Canada Foundation, which donates millions of dollars annually ($6 million in 2005) to hospitals, post-secondary institutions, arts organizations, and think tanks, including The Fraser Institute, which fronted for the tobacco industry and provided a base for a tobacco industry consultant.

Rothmans profits rise[27]

Rothmans Inc., which owns 60% of Canada's second largest tobacco company, Rothmans, Benson & Hedges (RBH), announced in October that it was increasing its regular quarterly dividend to shareholders by a full 16%. This significant dividend increase coincided with strong second quarter results for the six months ending September 30, 2007.

Rothmans is Canada's only publicly-traded tobacco company and is routinely considered one of the safest performers on the Toronto Stock Exchange. RBH sells the popular brands Number 7, Craven A and Benson & Hedges.

Thanks to strong sales, RBH earned $357.1 million in the first half of its 2008 fiscal year,[28] compared with $328.1 million in fiscal 2007.

Although sales volumes have been declining in the premium cigarette category (where manufacturers make most of their money), as more smokers started smoking discount or value-for-money cigarettes, RBH was able to offset volume shifts by raising prices across all product categories.

While complaining that significant growth in sales of contraband tobacco in Canada is negatively affecting all legitimate participants in the cigarette market, Rothmans Inc. reported profits for fiscal 2007 of $99.8 million, $300,000 above 2006 results. RBH believes it is gaining market share on its competitors in the legal market, including industry leader Imperial Tobacco Canada.[29]

New flashy packaging

Tobacco manufacturers have long referred to Canada as one of the "darkest markets on earth," because of our restrictions on the marketing and advertising of their products. However, the companies always manage to find ways around the restrictions; they seem to have a bottomless pit of marketing creativity from which to pull. With retail display bans and other advertising and promotion restrictions, tobacco companies are pouring resources into making their packages as eye-catching as possible. The changes include:

- Brighter colours (using different inks) which detract from the warnings.
- New package formats (see eight-sided du Maurier pack below), one reason for which may be to reduce the prominence/size of the health warnings.
- Increasing use of descriptors (see Peter Jackson's "sun ripened tobacco" on the next page), likely in an attempt to trademark descriptive terms should plain packaging be mandated.

Imperial Tobacco Canada cigarette packages

The 8-sided new sleeker looking du Maurier "signature pack" and much larger 4-sided traditional pack of 25 cigarettes.

Metallic-based paints add sheen and sophistication to du Maurier "signature packs."

At left: In this interior view of a *du Maurier* split pack, the half pack with a cover contains 7 cigarettes, bears no health warning on one side and lacks the pictorial warning on the other side.

Below: These bold, fluorescent-coloured *Peter Jackson* packs promote the "sun ripened tobacco inside" and "bright colour outside."

JTI-Macdonald cigarette packages

Picture graciously provided by PSC, 2006

At left: These packages sold in Québec (fleur-de-lys) and the rest of Canada (maple leaf) associate the *Macdonald Special* brand as a product that somehow expresses nationalistic sentiments.

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