

A COMPREHENSIVE PLAN TO END THE 'LIGHT' AND 'MILD' DECEPTION.

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A comprehensive plan to end the ‘light’ and ‘mild’ deception.

For over thirty years, Canadian tobacco companies have deceived smokers into thinking that ‘light’ cigarettes are less harmful than ‘regular’ cigarettes. They have designed their cigarettes and their cigarette packaging and marketing to perpetuate this deception.

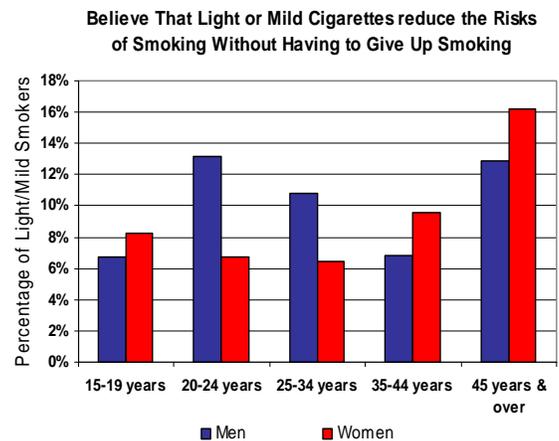
For over twenty years, Health Canada has known that the measurements of tar, nicotine and other compounds produced by smoking machines do not reflect the amount of harmful substances inhaled by real smokers. For over six years, Health Ministers and the department have admitted that this deception is harming Canadians, but have done nothing to stop change the way tobacco companies use packaging marketing and cigarette design to deceive smokers.

For over ten years, health groups have been calling for an end to the deception and have called on Health Canada to use its regulatory power to ban deceptive packaging and labelling and have called on the Competition Bureau and other consumer protection bodies to intervene.

Many Canadians still believe that these cigarettes are less harmful, even though governments and other health authorities have cautioned that this is not the case. More than 600,000 Canadians who smoke so-called ‘light’ and ‘mild’ cigarettes believe that they will get less tar from these cigarettes.¹

To protect consumers, Health Canada must **ban each of the deceptive practices** used by tobacco companies, including:

1. The use of misleading brand descriptors that falsely convey differences in ‘strength,’ such as ‘light,’ ‘ultra-light,’ ‘mild,’ ‘ultra-mild,’ ‘smooth,’ etc.
2. The use of misleading colours and packaging elements that falsely convey differences in strength, such as the use of lighter colours or more white space to falsely imply that these products are less harmful.
3. The display of numbers on packages that falsely convey differences in the amount of compounds inhaled between brands or sub-brands of cigarettes, and that fail to tell consumers how much they are inhaling.
4. The marketing and display of cigarettes in ways that falsely conveys distinctions between types of cigarettes.
5. The use of brand extensions (several types of one brand of cigarettes) that falsely convey distinctions between types of cigarettes.
6. The use of cigarette designs that falsely convey a smoking experience of ‘reduced-strength,’ and that facilitate changes in smoking behaviour that are unperceived or barely perceived by the smoker.



Health Canada surveys show that the light and mild deception harms many smokers

Step 1: Ban misleading brand descriptors

Health Canada's continued delays in banning the use of the terms 'light' and 'mild' have become cause for wide concern. More than three years have passed since a previous Minister of Health requested tobacco companies to voluntarily remove these labels, and subsequently issued a notice of his intent to implement regulations requiring them to do so.

Other countries have not been so slow to take this important first step. Since September 30, 2003 the European Union has required its (now) 25 member states to ensure that "texts, names, trade marks and figurative or other signs suggesting that a particular tobacco product is less harmful than others shall not be used on the packaging of tobacco products."² Brazil and Israel have introduced similar provisions.³

Canada recently ratified the global tobacco treaty, the Framework Convention on Tobacco Control, which requires that parties to the treaty:

*"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. These may include terms such as "low tar", "light", "ultra-light", or "mild";"*⁴

Tobacco industry tactics in the countries which have banned terms suggest that additional measures are necessary.

The companies have attempted to subvert the purpose of the European and Brazilian regulations by introducing colour-coding to replace the newly-banned terms. Red is most often used to convey "full strength", blue to convey "light," silver to convey "extra light" and green to convey menthol.

The tobacco companies' willingness to continue communicating false differences in their brands illustrates why it is necessary to ban the use of misleading descriptors, but that doing *only* this is not sufficient to end the deception.



In Europe and Brazil, tobacco companies replaced words like 'light' with colour coding.

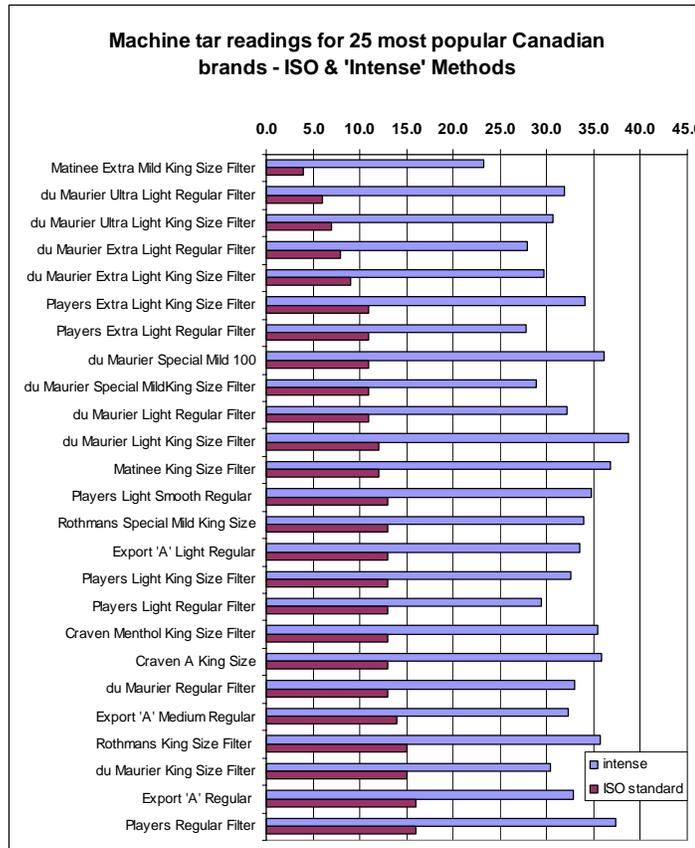
**Step 2:
Remove misleading numbers from cigarette packages**

In 1976, Canada’s tobacco companies adopted a voluntary code to display ratings for tar and nicotine content of their cigarettes. The same year, the first ‘light’ brand (Players’ Light) was introduced. It quickly became the best-selling brand. In 1989, the first federal laws on cigarette labelling came into effect, and the formerly voluntary listing on packages of tar, nicotine and carbon monoxide became mandatory. In 2000 the government imposed new requirements that other compounds also be disclosed, and that a second machine measurement also be used.⁵ The first method (ISO or FTC) was developed by tobacco companies, the second was adapted from the first by Health Canada and intended to show a more ‘realistic’ measurement of smoker exposure.

It is now well established that the machine readings shown on cigarette packages (both the historic and recent measurements) have little relationship to how much an individual actually smokes. Yet many smokers believe that the numbers on the side of the package can provide a guide to how much smoke they will inhale.⁶

The development by Health Canada of a second test method was helpful in illustrating that the apparent differences between brands under one system had little relationship to the differences under a second system. By requiring the results of both tests to be shown on each cigarette package, they have provided smokers with more information, but there is no evidence that this information has been helped smokers understand that there is no relationship between those values and their own smoke exposure.

While smokers are likely to inhale toxic substances in amounts somewhere between the lowest number and the highest number on the side of the package, there is about a threefold difference between these numbers and there is no way of knowing how much a given smoker will inhale. The information is thus, at best, useless and, at worst, dangerously deceptive to individual consumers.



Canadian cigarette packages must now display readings from two machine tests. The dark bars are the standard test developed by tobacco companies, the light bars are the ‘intense’ method developed by Health Canada.

Neither of these values do not help smokers understand how much they are inhaling and help continue the deception that some cigarettes are less harmful than others.

Step 3: Ban deceptive package imagery

Tobacco companies have developed package imagery to reinforce the deception that leads smokers to think that some brands are less harmful than others.

As the industry's own studies put it:

*"a pack not only generates powerful independent images, but also provides important and predictable cues or suggestions about the type of smoke which may be expected from a cigarette contained in such a pack, and even the type of person who might typically smoke such cigarettes."*⁷

Canada's largest tobacco company, Imperial Tobacco/BAT researched how package design affected the perceived strength of their products, that is to say they measured how the package reinforced the deception that there were differences in the strength/harmfulness of their products.

"Brand name does have connotations which may shift product perception. However the more important influences appear to be the product itself and the pack in which it is presented.

*Subjective evaluation can be manipulated by imagery variables."*⁸

We have learnt that tar level isn't the only determinant of strength. Other main contributors would be the qualifier (strong, medium light), packaging and other elements that contribute to the trademark image. A good illustration of this is Player's Medium versus Player's Light; the tar level of these two brands is practically identical (14 vs 13) - yet in image terms, they are perceived to be significantly different on strength (6.4 versus 5.1)."

*When we position our brands, we use all the tools to place the brands at the desired position in relation to the parent and the competition."*⁹

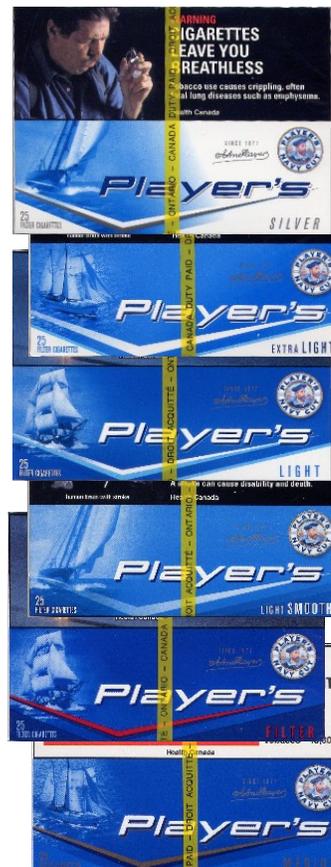
The current package of Player's cigarette brand family shows how imagery in the form of:

- different styles of boats
- different intensities of the chevron
- different amount of white on the package
- different descriptors, and
- different intensities of blue

are combined to convey deceptive differences within the brand.

Imperial Tobacco says it does this to help smokers "navigate the tar spectrum"¹⁰ That is to say, they admit that they intend smokers to believe that there is a difference between brands.

Eliminating only the descriptors (i.e. 'light', 'smooth,' and 'silver') would not eliminate the deception. The use of colours, imagery and other devices that contribute to the deception must also be banned.



Step 3: Ban brand extensions

In the tobacco market, a 'brand extension' is a model of cigarettes that is sold under the same brand name but which produces a different reading on smoking machines.

Imperial Tobacco, for example, markets six brand extensions in its du Maurier family, eight brand extensions in its Player's family and eight versions of Matinee.

Tobacco companies began to introduce 'brand extensions' in the 1970s to allow them to promote 'light' cigarettes to smokers who felt they should quit, but who could be encouraged to keep smoking if there was a 'healthier' cigarette available.¹¹ By using the same brand name, the companies found they could capitalize on the imagery they had already developed for that trademark.¹²

If smokers are faced with multiple types of cigarettes under one brand name they can be expected to look for and find differences in those brands, and to ascribe a meaning to those differences. Because these cigarettes were marketed to convey a hierarchy of 'strength'/harmfulness, this will be the meaning that smokers ascribe to any within-brand distinctions.

Tobacco companies recently showed in Europe how quickly brand extensions allow them to use new descriptors (like colours) to convey deceptive health information.

As the pictures of currently available Player's brands shows, Canadian cigarette brand families are already colour-coded. Removal of the misleading words only and not the associated imagery would not sufficiently reduce the deception.

BAT/Imperial Tobacco Canada's three major brand families

du MAURIER
du MAURIER Light
du MAURIER Extra Light
du MAURIER Ultra Light
du MAURIER Special Mild
du MAURIER Edition

Player's Plain
Player's Filter
Player's Medium
Player's Light
Player's Light Smooth
Player's Extra Light
Player's Silver
Player's Special Blend)

Matinée
Matinée Extra Mild
Matinée Menthol
Matinée Select
Matinée Silver
Matinée Slims
Matinée Slims Menthol
Matinée Ultra Mild

Step 5: Ban deceptive cigarette designs

It is not only by marketing their cigarettes with terms like 'light,' deceptive machine readings and package designs and brand extensions that tobacco companies have deceived smokers into thinking that some cigarettes are less harmful than others. The cigarettes themselves have been designed to create and sustain this deception.

Modern cigarettes are made with highly ventilated paper and filters. Originally, this was thought to dilute the smoke with air, and thus reduce the amount of smoke inhaled. In fact, it merely allowed smokers to control the dilution, and to easily adjust the amount of smoke they inhaled so that they received the right dose of nicotine at the right puff (smokers will try to get more nicotine out of the first puffs of a cigarette than out of the last ones).

Because smokers have to inhale more deeply to get the dose of nicotine they crave, the cigarette gives the impression of being 'lighter.' The smoke from a ventilated cigarette is less dense, but smokers forget that because they inhale more of it they are actually getting the same amount of toxic substances. The smoking sensation perpetuates the impression.¹³ The adjustment of smoking is called 'compensation,' and these cigarettes are designed to be 'compensatable.'

This is, by way of analogy, similar to the drinkers' experience: a one-ounce shot of scotch tastes 'stronger' than a one-ounce shot of rum mixed with fruit juice, but they both have equal alcohol effects).

Recent research suggests that the modern cigarette is a defective design, in the same way that a car that explodes is a defective design.

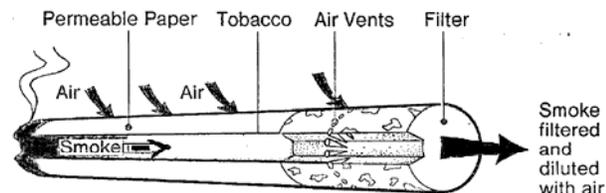
Health Canada can use its existing powers in section 5 of the Tobacco Act to demand that tobacco companies stop using deceptive cigarette designs and that they start making cigarettes less compensatable.

There are dozens of ways that cigarette design can be manipulated to make cigarettes compensatable. Attempts to regulate one or more design features may result in companies subverting the intent of the regulation by devising alternate ways to make cigarettes compensatable.

**Researchers are now calling for an end to filter-ventilation
(see Kozlowski, reference 13)**

Filter ventilation is a nearly ubiquitous design feature in cigarettes. Smokers increase puff volume, number of puffs, and number of cigarettes smoked, and block filter vents to compensate for the smoke yields of lower tar cigarettes as measured by standard smoking machine tests.

This paper explains the complex role of filter ventilation in compensatory smoking as seen in industry documents and published research. Ventilation is found to cause lighter taste, promote larger puffs, and, with heavy ventilation, promote behavioural blocking of vents. Filter vents are judged to be a defective, misleading design feature. Policy and regulation of cigarettes needs to attend to the problems of filter ventilation.



A better strategy would be to require by regulation of overall performance standards that achieve the desired effect.

One example of a performance-based regulation to reduce compensatability would be to require that there be no more than a 50% difference between the two types of current machine readings (the ISO method and Health Canada's intense method) for each brand.

Health Canada should concurrently set performance-based regulations to reduce the elasticity of cigarette brands (elasticity is a specific dimension of compensatability, which allows smokers to get proportionately more nicotine from a cigarette when they increase the amount they inhale).

Step 6: Support regulatory requirements with good health programming

In addition to banning these deceptive practices of the tobacco industry, Health Canada can help ensure that Canadians are no longer deceived by:

- integrating messages about product design and marketing into its communication activities.
- making public which tobacco products are ‘identical’ (the government is provided with a list of identical products currently sold under different brand names, but has made the decision to keep this information secret).

Du Maurier light, for example, is identical to Matinee, but the different packaging and marketing results in some smokers thinking that it is “stronger”.

- Banning retail displays. Tobacco companies display packages in ways which communicate false distinctions.
- Using consumer protection law to hold tobacco companies accountable for deceptive marketing.

A staged approach to implementation of this comprehensive plan to end the deception

Some parts of this plan have already benefited from more reflection and research than others. In particular, steps 4 and 5 have not received much attention to date, and could well benefit from being more carefully researched, as part of the preparation for the introduction of effective regulation.

Accordingly, the following schedule is suggested for the adoption of regulations to implement the six steps in this comprehensive plan.

2005

- Step 1: Ban misleading brand descriptors
- Step 2: Remove misleading numbers from cigarette packages
- Step 3: Ban deceptive package imagery
- Step 6: Support regulatory requirements with good health programming

2006

- Step 4: Ban brand extensions

2007

- Step 5: Ban deceptive cigarette designs

Background: Chronology of court and government actions on ‘Light and Mild’ cigarettes since 2000.

January 24, 2001: The government of British Columbia (under Premier Ujjal Dosanjh) re-filed a lawsuit against the tobacco industry. The lawsuit includes claims that the industry “sold ‘light’ cigarettes as an alternative to give false reassurance to smokers who were concerned about their health – even though these cigarettes deliver about the same amount of tar and nicotine as regular cigarettes.” ([B.C. statement of claim](#))

May 31, 2001: World No Tobacco Day. Hon. Allan Rock asks tobacco companies to voluntarily remove "light" and "mild" terms from cigarette packages within 100 days, and asks the Ministerial Advisory Council on Tobacco Control to recommend actions in the event the companies do not comply. ([Health Canada press release](#))

21 August 2001: Environics reports that two-thirds of Canadian support ending the use of "light" on cigarette labels. ([Environics news release](#))

8 September 2001: 100 days pass without the cigarette companies removing misleading descriptors from their packages. ([Imperial Tobacco's response](#))

1 November 2001 – The Health Minister Allan Rock releases the findings of the Expert Panel, which advises that regulations under the *Tobacco Act* be passed to ban the use of the descriptors. ([Health Canada press release](#))

27 November 2001: United States' National Cancer Institute scientific report concludes no benefit from lower tar cigarettes. ([Press release](#))

1 December 2001: Notice of Intent published in Canada Gazette proposing ban on the terms “light” and “mild”. ([Gazette](#)) Deadline for public responses to notice of intent is January 15, 2002..

January 2002: Brazil bans use of "any type of descriptor, on the packaging or in advertising material, such as: classes (s), ultra low tar, low tar, smooth, light, soft, leve, moderate tar, high or any others that could induce consumers to an erroneous interpretation as to the tar contained in cigarettes.” ([Brazilian regulation](#))

November 2002: [The World Health Organization Scientific Advisory Committee](#) on Tobacco Product Regulation recommended a ban on all misleading health and exposure claims and related packaging. ([SACTOB recommendations](#))

December 2002: Health Canada research shows that 2 of every 3 smokers of 'light' cigarettes switched to light based on the belief that there would be fewer health risks. ([Health Canada overview of 2001 CTUMS findings](#))

December 10, 2002: The European Court of Justice rejected a tobacco industry challenge to the EU directive banning the terms 'light' and 'mild', 'low-tar', etc. ([Court ruling](#))

December 13, 2002: The Quebec Superior Court upheld the federal Tobacco Act against an industry claim of unconstitutionality. The law allows the federal government to regulate how cigarettes are labelled. ([Justice Denis' ruling](#))

March 21, 2003: Illinois judge Nicholas Byron rules in favour of a class action suit against Philip Morris for the sale of 'light' cigarettes (the “Price” suit). He ordered the company to pay US\$10 billion in damages and said that "the course of conduct by Philip

Morris related to its fraud in this case is outrageous, both because Philip Morris' motive was evil and the acts showed a reckless disregard for the consumers' rights."

May 8, 2003: Lawyers from the Klein Lyons firm file a class action lawsuit in the name of Kenneth Knight against Imperial Tobacco for damages associated with the deceptive trade practice of 'light' labels on cigarette packages. ([Statement of Claim](#))

May 20, 2003: World Health Organization adopts text for a global tobacco treaty, the Framework Convention on Tobacco Control. The treaty calls for an end to all misleading descriptors, including the use of such terms as "low-tar" and "light." ([WHO press release](#))

June 16, 2003: Complaint filed by the Non Smokers Rights Association with federal Competition Bureau regarding the deceptive trade practice of labelling cigarettes as "light" or "mild." ([NSRA Press Release](#))

July 15, 2003: Canada signs the framework Convention on Tobacco Control - but doesn't say when it will ratify the treaty, or whether it will implement the requirement to ban the terms "light" and "mild" ([Health Canada Press Release](#))

September 30, 2003: "Low-tar" and similar misleading terms are banned on all cigarettes sold in the European Union. ([EU directive](#))

February 2004: The Australian government announces that it will abandon the use of machine tests as they "bear no relation to what smokers actually ingest." ([Press release](#))

April 30, 2004: Imperial Tobacco files its response to the Knight case filed in British Columbia, arguing that it never represented that "light" or "mild" products reduced the risk of disease and that it was the federal government that directed Imperial Tobacco toward "developing and marketing lower delivery products."

Imperial Tobacco files a "Third Party Notice," deflecting responsibility for liability in the Knight case to the federal Government. If consumers were misrepresented about "light" and "mild," cigarettes, ITL states "then the Federal Government breached the standard of care in the operation of its health programmes," and should pay any damages awarded in this case.

August 16, 2004: Massachusetts court certifies a class action suit ("Aspinall" suit). "We conclude that a class action is not only an appropriate method to resolve the plaintiff's allegations, but, pragmatically, the only method whereby purchasers of Marlboro Lights in Massachusetts can seek redress for the alleged deception," Justice John M. Greaney wrote in the majority opinion.

September 14, 2004: Missouri court certifies 'light' class action suit against Philip Morris ("Craft" suit). ([news report](#))

October 14, 2004: The Federal government replies to Imperial Tobacco's Third Party Notice by recommending that the court throw-out the class action suit.

December 2, 2004. Health Minister Ujjal Dosanjh announces that Canada is among the first 40 countries to ratify the Framework Convention on Tobacco Control. The treaty is scheduled to come into effect on February 27, 2004. ([press release](#))

January 10, 2005. Non-Smoker's Rights Association seeks an application for judicial review to compel the Competition Bureau to rule on its complaint regarding the 'light' deception. ([press release](#))

References

- 1 Canadian Tobacco Use Monitoring Survey, (CTUMS), 2003.
- 2 European Union Directive on the Manufacture, Presentation and Sale of Tobacco Products. http://europa.eu.int/eur-lex/pri/en/oj/dat/2001/l_194/l_19420010718en00260034.pdf
- 3 Brazil Resolution - RDC n. 46, of March 28, 2001 http://www.anvisa.gov.br/eng/tobacco/rdc_46.htm
- 4 World Health Organization. Framework Convention on Tobacco Control, Article 11. http://www.who.int/tobacco/fctc/text/en/fctc_en.pdf accessed January 2005.
- 5 Health Canada. Tobacco Products Information Regulations, June 2000. http://www.hc-sc.gc.ca/hecs-sesc/tobacco/legislation/prop_may_13.html#toxic
- 6 need to find reference
- 7 The Influence of Brand Identification and Imagery on Subjective Evaluation of Cigarettes. Report No. RD 1752-C R.P. Ferris. Guildford via HC 202, beginning page 102227170
- 8 Imperial Tobacco Canada. A summary of Brand imagery studies on Canadian products. Research Report No. 183. 402374210
- 9 Letter from Don Brown to Ulrich Herter (BAT industry head), 1993 page 202200796
- 10 Imperial Tobacco's response to Health Canada's regulatory notice of December 1, 2001.
- 11 Bob Bexon, "Post Lights" <http://www.hlth.gov.bc.ca/guildford/pdf/013/00001365.pdf>
- 12 Imperial Tobacco. Switching Analysis, 1991.
- 13 L T Kozlowski and R J O'Connor. Cigarette filter ventilation is a defective design because of misleading taste, bigger puffs, and blocked vents. *Tob. Control*, Mar 2002; 11: 40 - 50.