

The 'light' and 'mild' consumer fraud

For 25 years tobacco manufacturers have led Canadians to believe that cigarettes they call 'light' or 'mild' are safer than full-strength, 'full flavour' cigarettes. Thousands have died as a result. The marketing of 'light' cigarettes is one of the most destructive and deadly practices in the history of business.

Here's what the tobacco industry kept from the public. Here's the fraud...

'Light and Mild' – A deadly consumer fraud

The public is being duped

The Canadian public is being duped by one of the most deceptive and dangerous consumer frauds in the history of business. Cigarette manufacturers have led the public to believe that cigarettes they label 'light' or 'mild' are less dangerous than full-strength cigarettes. They are not. The consequences of this deception have been devastating.

Thousands of Canadian smokers die every year from 'light' and 'mild' cigarettes. Yet the tobacco industry is fighting to continue the dishonest marketing of what it wants the public to believe are 'safer' cigarettes. The deception must end.

The health benefits from switching to 'light' or 'mild' cigarettes do not exist

For years, 'light' cigarettes have been promoted as less harmful, lower-risk products. Science shows the contrary. 'Lights' cigarettes are just as deadly as regular, full-strength products. There is no convincing evidence that smokers who switch to so-called 'low-tar' brands reduce their risk of smokers' diseases.

Consumers have a right in law to expect that a cigarette that promises to deliver less tar actually does deliver less tar. Yet there is a great deal of evidence that switching from regular cigarettes to 'light' and 'mild' products does nothing to reduce tar intake. In fact, like their full-strength counterparts, 'light' cigarettes will cause the deaths of about one out of every two of the industry's long-term customers.

Why are 'light' and 'mild' cigarettes as harmful as regular cigarettes?

The answer lies in compensation, cigarette engineering and the fact that most smokers are addicted to nicotine. To make a 'light', 'mild' or other so-called 'low-tar' cigarette (e.g. 'extra light'), the tobacco industry uses the same tobacco as in full-strength cigarettes. However, the manufacturers place microscopic ventilation holes in the filter. By bringing in outside air, these holes dilute the smoke that is inhaled by the smoking machines traditionally used to measure levels of toxins in smoke. Ventilation holes bring down the tar and nicotine numbers that have long been printed on the side of cigarette packs. On that basis, the tobacco industry claims that 'light' and 'mild' cigarette smoke contains fewer carcinogenic tars. This implies that these cigarettes are less harmful.

No matter what type of cigarette is smoked, smokers seek a specific dose of nicotine, and generally adjust their smoking behaviour until they get it — an adjustment that is largely automatic. Smokers who switch to a lighter brand of cigarette will sometimes block the ventilation holes on the filter with their lips and fingertips. And they will inhale more deeply and more frequently. Experts refer to this behaviour as compensation.

Compensation might not be a big problem if it affected only nicotine intake, since nicotine is not a significant direct source of disease. **But compensation also means that smokers who switch to a 'light' or 'mild' cigarette will continue to inhale approximately the same amount of cancer-causing tars** as they would by smoking full-strength products. In fact, smoked exactly as intended by the manufacturer, 'light' or 'mild' cigarettes are just as harmful as regular cigarettes.

The fraud

“fraud (frôd) noun: an act of trickery or deceit. An intentional misrepresentation, concealment, or non-disclosure for the purpose of inducing another in reliance upon it to part with some valuable thing [like cash]...”

A key element of the fraud is the fact that the industry knows that smokers are humans and not machines. Another is that the industry has an obligation to disclose what it knows about the absence of health benefits from low-tar cigarettes.

Evidence confirming the absence of reduced risk from low-tar products continues to mount. Reports such as *Findings of the International Expert Panel on Cigarette Descriptors* (2001) for Canada’s Ministerial Advisory Council on Tobacco Control and the report of the U.S. National Cancer Institute on low-tar cigarettes (2001)¹ both conclude that smokers who switch from full-strength to low-tar cigarettes do not reduce the amount of cancer-causing chemicals they absorb.

The industry’s failure to disclose

Health experts have known for years about changes in cigarette design to facilitate compensation. However, only recently was conclusive evidence uncovered in the courts. Thousands of pages of previously secret tobacco industry documents, obtained in litigation in Canada and the USA, show that the manufacturers had a sophisticated understanding of compensation since at least the early 1970s, several years before they launched their first ‘light’ brand. And more than 25 years ago, one tobacco manufacturer claimed that the issue of ‘light’ product safety does not matter:

“The question as to whether such cigarettes [‘light’ and ‘mild’] are really safer does not matter, although privately even our own Health people wonder whether low-tar and nicotine cigarettes are a good idea.”

Imperial Tobacco Ltd. letter²

Despite the evidence of deception, much of which has been discovered in their own files, cigarette manufacturers have refused to come clean. Imperial Tobacco, Canada’s largest tobacco manufacturer with 70% of the market, still contends that “smokers choosing a lower tar yield product will receive a lower intake of tar.”³

Thousands of deaths

“I am sometimes asked how many Canadians have died because, rather than quitting, they smoked what they were led to believe were ‘safer’ cigarettes? Exact numbers are difficult to calculate but, based on the tobacco industry’s own estimates of the effects of ‘light’ and ‘mild’ cigarettes on quitting, it would be reasonable to estimate the number of deaths to be in the tens of thousands.”

Mary Jane Ashley, MD
Professor, Department of Public Health Sciences,
University of Toronto
Chair, Expert Panel on the Renewal
of the Ontario Tobacco Strategy⁴

The question that must be asked, both legally and ethically, is “What did the tobacco industry do or say over the last two decades to warn the public that ‘light’ and ‘mild’ cigarettes are as harmful as full-strength cigarettes?” Nothing. Absolutely nothing. It chose to expand its markets rather than protect human lives.

The manufacturers have known for years that, at some point, governments would call them to account. Here is the parent of Canada’s largest tobacco company talking:

“It is felt that the time is close when government agencies world-wide will take more notice of compensation — and of the scale of the differences, for a given commercial product, between smoking machine numbers and the dose of smoke actually obtained by smokers.”

Minutes of 1981 British American Tobacco research conference. BAT now owns 100 per cent of Canada’s Imperial Tobacco.⁵

1 U.S. National Cancer Institute, *Risks Associated with Smoking Cigarettes with Low Machine-Measured Yields of Tar and Nicotine*, Monograph 13, 2001.

2 Letter from R.M. Gibb (Imperial Tobacco Ltd.) to Dr. S.J. Green (British American Tobacco), February 13, 1975, available in the Guildford depository at Bates numbers 107464110-136, or on-line via <http://www.ncth.ca/Guildford.nsf>.

3 Imperial Tobacco Canada Ltd., “Comments on Proposal, *Canada Gazette*, Part I, December 1, 2001, Department of Health, *Tobacco Act*, Proposed Tobacco Regulations,” January 14, 2002, p. 39.

4 Private communication from Professor Mary Jane Ashley to the Non-Smokers’ Rights Association, May 10, 2002.

5 British American Tobacco (parent of Canada’s Imperial Tobacco), “Research Conference, Pichlarn, Austria, 24-28 August 1981” (minutes), document classified as “restricted,” available in the Guildford depository at Bates numbers 109882558-574, or on-line at <http://www.hlth.gov.bc.ca/guildford/pdf/083/00008383.pdf>

However, since governments would ultimately catch on, it seemed logical in the tobacco industry culture to try to slow the pace of government intervention, even if it meant that the industry's customers would die in large numbers. Ending the fraud on their own initiative in the best interests of their customers appears not to have been a consideration of the manufacturers.

Scheming to slow the quit rate

In the 1960s and 1970s, Canadians were learning about the serious harmful effects of tobacco industry products. Many smokers began quitting, or trying to quit. At the same time, to prevent the decline of their industry, tobacco manufacturers scrambled to find ways to keep their customers smoking. Their denial of the health evidence was beginning to lose its effect. They needed another way to reassure smokers and to keep them in the market.

The industry's answer was to launch new brands of cigarettes that would dampen smokers' fears. Commenting on the success of their new so-called low-tar 'light' and 'mild' brands, the makers of du Maurier and Player's said:

"We have evidence of virtually no quitting among smokers of these brands, and there are indications that the advent of ultra low-tar cigarettes has actually retained some potential smokers in the cigarette market by offering them a viable alternative [to quitting]."

Imperial Tobacco, 1978⁶

Imperial Tobacco was indeed marketing 'light' cigarettes as healthier cigarettes. Another Imperial document says:

"Player's Extra Light continues to be positioned as a milder, therefore **healthier**, version of Player's Light. It remains a **health oriented** alternative for interested Player's smokers." [emphasis added]

Imperial Tobacco, 1988⁷



Anatomy of an 'extra mild' cigarette ad:

- the descriptor, 'extra mild,' suggests that this brand is less harsh and lower in risk
- the fit woman in aerobics gear is a clear association of the product with good health and fitness
- the light-coloured packaging is associated with health and purity
- 'slims' and 'slim' appeal to those who fear gaining weight.

The industry knew that quitting smoking was very difficult. It knew that smokers would rather switch to a cigarette they thought was safer than go through the ordeal of quitting. It also discovered that by marketing the appearance of decreased risk in 'light' cigarettes, it could convince concerned, health-conscious smokers that they could keep smoking without "worrying about their health."

Despite knowing that 'low-tar' cigarettes were no less harmful, the tobacco industry began an aggressive marketing campaign of 'light' and 'mild' brands as 'safer' cigarettes.

6 Imperial Tobacco document dated 1978, produced as Exhibit AG-30A in *RJR-MacDonald v. Attorney General of Canada*, p. 2.

7 Imperial Tobacco document dated 1988, produced as Exhibit AG-214 in *RJR-MacDonald v. Attorney General of Canada*, p. 4.

Industry documents also reveal that ‘light’ cigarettes were successful in delaying or preventing quit attempts. Imagine the industry’s delight when it discovered that ‘light’ brands were also becoming the hot new youth brands, particularly among girls:

“Whether it is scientifically valid or not, the simple marketing truth is that smokers believe that smoking jeopardizes their personal well-being... Pre-lights [i.e., before the introduction of ‘light’ brands], these concerned consumers had a limited range of options open to them — essentially quit or cut down... **Fortunately for the tobacco industry, neither of these two approaches proved very successful for smokers...** Very simply put — people who were smokers increasingly wished that they weren’t, in the face of mounting information on smoking and health — but could not find a means of dealing with their concern...

It is useful to consider lights more as a third alternative to quitting and cutting down — a branded hybrid of smokers’ unsuccessful attempts to modify their habit on their own.” [emphasis added]

Tobacco conference presentation by Bob Bexon of Imperial Tobacco, 1984. Bexon is now CEO of Imperial Tobacco.⁸

The industry keeps smokers in the market with ‘light’ and ‘mild’ labelling

“Sensitivity to personal health risk generates a range of responses including attempts to quit, consumption rationing and moves (real or perceived) to a lower T&N [tar and nicotine] count. Among those who move ‘down’ some are aware of a specific T&N count but many are not, relying more on nomenclature [the labelling of the ‘light’ and ‘mild’ family of low-tar cigarettes].”

Rothmans, Benson & Hedges document 1991⁹

The legal duty to correct misinformation

Governments do not tolerate false and dangerous claims by manufacturers about other products. In fact, government regulations specify the meaning of terms like ‘light’ and ‘mild’ when they apply to other products.

By law, ‘light’ beer means less alcohol. ‘Light’ yogurt means less fat. Given that most people know that cigarettes contain hazardous chemicals, then by logic and by extension, the public takes ‘light’ cigarettes to mean that they are **less** hazardous or contain **fewer** chemicals. But, of course, they don’t. The labels are false and deadly.

Even in the absence of specific regulations, cigarette manufacturers have two fundamental legal responsibilities. First, they have a duty not to lie, suggest or even imply a falsehood regarding the safety of their products. Second, if the public perceives a false health advantage from using the manufacturer’s products, the manufacturer has a responsibility to correct the misinformation. The tobacco industry has utterly ignored both of these duties. Andreas Seibert, of the law firm Sommers & Roth, who specializes in tobacco product liability litigation, says:

“Internal tobacco industry documents reflect an appreciation that addicted human smokers extract the body’s nicotine requirements irrespective of how a brand is categorized. According to these documents, human smokers are capable of extracting as much ‘tar’ and nicotine from a so-called ‘light’ cigarette as a regular one.

It is well established that, in law, misrepresentations may consist of any form of conduct creating a misleading impression. In this respect, **reassuring half-truths may be a false representation just as much as a complete lie. To state something which is true only with qualifications or additions known by the manufacturer but which are intentionally withheld can be the most insidious form of lie, and a deception in law.**” [emphasis added]¹⁰

8 British American Tobacco, “Paper 6: Bob Bexon” (paper presented at the 1984 BAT Smoking Behaviour and Marketing Conference), available in the Guildford depository at Bates numbers 400993243-318, or on-line at <http://www.hlth.gov.bc.ca/guildford/pdf/013/00001365.pdf>.

9 Johnston and Associates for Rothmans Benson & Hedges, Segmentation Phase I, Focus Group Research, Ontario/Quebec, February 1991, p. 5, Exhibit D-201, p. 27343, *JTI-MacDonald Inc. v. Procureur Général du Canada (2002) C.S.*

10 Private communication from Andreas Seibert to the Non-Smokers’ Rights Association, May 2, 2002.

There are two important elements in law in evaluating the urgency of correcting a deceptive trade practice. How serious are the consequences of the misinformation for those consumers who are misled? And, how many consumers are misled?

In the case of cigarette descriptors, the mistaken belief that some cigarettes are safer than others would likely dissuade some smokers from quitting — **a decision that has a high probability of killing them**. Thus, if even a small proportion of Canada's millions of smokers has this mistaken belief, thousands of smokers will inevitably die from it. This underlines the urgent need for action.

The industry promoted the deception

Tragically, the industry has “intentionally withheld” information, thus leaving a false impression that kept its customers smoking:

“LTNs [low-tar and nicotine cigarettes] allow consumers to continue to smoke under social duress. As a category, low-tar brands are seen as a means to yield to health consideration, social pressures and personal guilt feelings.”

Imperial Tobacco, 1982¹¹

When assessing the need for action to address the ‘light’ and ‘mild’ family of deceptions or the legal culpability of the industry, we know that cigarettes labelled ‘light’ and ‘mild’ **are not** less harmful than full-strength cigarettes. We also know that the tobacco industry has led Canadians to believe that they **are** less harmful.

However, to complete the assessment, we need an answer to this key question: Have consumers bought the industry's scam? The answer is “yes.” Thousands of Canadians have believed this deceptive trade practice. Sixty-five percent of Canadian smokers smoke ‘light’ or ‘mild’ brands. Many believe they contain less tar and nicotine. And many believe they are safer than full-strength cigarettes. According to a March 2002 Environics poll commissioned by Health Canada:

- two out of three ‘light’ smokers switched from full-strength or regular cigarettes and they made

the switch largely based on the false belief that the “milder” or ‘light’ brands present fewer health risks;

- one third of smokers of ‘light’ cigarettes would have quit smoking had regular cigarettes been the only ones available;
- half of those who switched said they believe that ‘light’ cigarettes contain less nicotine and toxic tar than regular brands which, as Health Canada knows, is false;
- 53% of respondents said they believe their brands have lower levels of tar and 18% think these cigarettes are less harmful to their health.¹²

Given that five million Canadians smoke, this poll suggests that more than one million Canadians have been caught at some level by this fraud. Even if the numbers of people deceived by the ‘light’ and ‘mild’ gambit are a small fraction of the percentages shown here, the industry still has a legal and ethical obligation to correct the problem.

The industry duped the government

The ‘light’ and ‘mild’ scam hasn't duped just smokers. The industry also hoodwinked the Canadian government and health agencies. Of course, legislators and health charities were not given access to the industry's far greater inventory of research.

In the 1970s, when very little research on the subject was in the public domain, the federal government negotiated with the tobacco industry and agreed that the machine readings of toxic emissions would be printed on cigarette packages. This seemed like a sensible move by the federal government at the time. But it had not done sufficient research to know that the industry's numbers were meaningless. How was it to know that during the negotiations the manufacturers failed to disclose their own laboratory studies showing that their machine yields grossly underestimated the chemicals most smokers would actually inhale?

The tobacco industry said nothing. Rather than correct any false beliefs, the industry modified cigarettes to make it easier for smokers to compensate.

¹¹ Imperial Tobacco document dated 1982, produced as Exhibit AG-40 in *RJR-MacDonald v. Attorney General of Canada*, p. 21.

¹² Environics Research Group Limited, *Knowledge, Attitudes and Behaviour of Light and Mild Brand Smokers*, study commissioned by Health Canada, March 2002.

And it accelerated its marketing of 'light' and 'mild' cigarettes as an alternative to quitting. With deadly effect.

The fraud can be stopped

The use of 'light,' 'mild' and other descriptors like 'extra light' and 'extra mild,' as well as language or design elements on packaging that suggest or imply reduced risks from some brands of cigarettes is a deceptive and dangerous trade practice. There are several actions that the federal government could take to stop this lethal activity:

1 prosecute cigarette manufacturers under Section 20 of the *Tobacco Act*, which states:

"No person shall promote a tobacco product by any means, including by means of the packaging, that are false, misleading or deceptive or that are likely to create an erroneous impression about the characteristics, health effects or health hazards of the tobacco product or its emissions;"

2 prosecute cigarette manufacturers under existing law against deceptive trade practices such as the *Consumer Packaging and Labelling Act*, or the *Competition Act*;

3 if the government feels the wording in the *Tobacco Act* is not specific enough, amend the Act to ban deception on tobacco packaging and make the law challenge-proof;

4 pass specific regulations under the *Tobacco Act* to ban all forms of deception on tobacco packaging, not just the limited deception related to the terms 'light' and 'mild' (see below).

Health and legal experts believe that the evidence is sufficient to justify any of these options. However, our preferred option is for the government to enact regulations under the *Tobacco Act* (option 4 above), the approach the government promised to adopt in December 2001 when it published a *Notice of Intent to Regulate*. Regulations could quickly address **all** misleading descriptors as well as other words, colours, symbols or numbering schemes that falsely suggest a health benefit from low-tar cigarettes.

Banning only the words 'light' and 'mild' will not end the fraud

The tobacco industry has a long history of undermining government health policy and evading legislation. It is a certainty that it will lobby to protect the low-tar deception. In case lobbying fails, the manufacturers are now developing strategies to circumvent or at least to diminish the effect of any prohibition of the 'light' and 'mild' family of deceptions.

In 2002, Imperial Tobacco launched its new brands Player's "Silver" and du Maurier "Edition." This appears to be a clear indication that Imperial intends to use an equally deceptive colour gradient scheme to replace 'light' and 'mild' descriptors.

Imperial may take a page out of the book of its sister company in Brazil where terms like 'light' and 'mild' were banned in January 2001. During the lead-up period to the ban, BAT subsidiary Souza Cruz changed the name of its brand Hollywood 'Regular' [full-strength] to Hollywood 'Red.' Hollywood 'Lights,' became Hollywood 'Blue.' Just to make sure smokers made the link, packs of Hollywood 'Blue' included an insert that explained that 'Blue' was indeed the "light version of Hollywood." Any Canadian regulatory response must close such loopholes.

A ban limited to just the two words 'light' and 'mild' is clearly not good enough. **The ban must be on all package deception, not on one or two limited forms of deception.** Tobacco companies will simply substitute colours, numbers, symbols or other slick devices to communicate false promises of lower risk.

The solution then is straightforward. Tobacco companies must be banned from using any means that falsely suggest a health benefit of using one brand of cigarette over another. And they should be held accountable for the damage they have inflicted on both the population and the economy.



“Lying is done with words as well as with silence”

Adrienne Rich, 1975
from *The Tobacco Atlas*,
World Health Organization (2002)

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