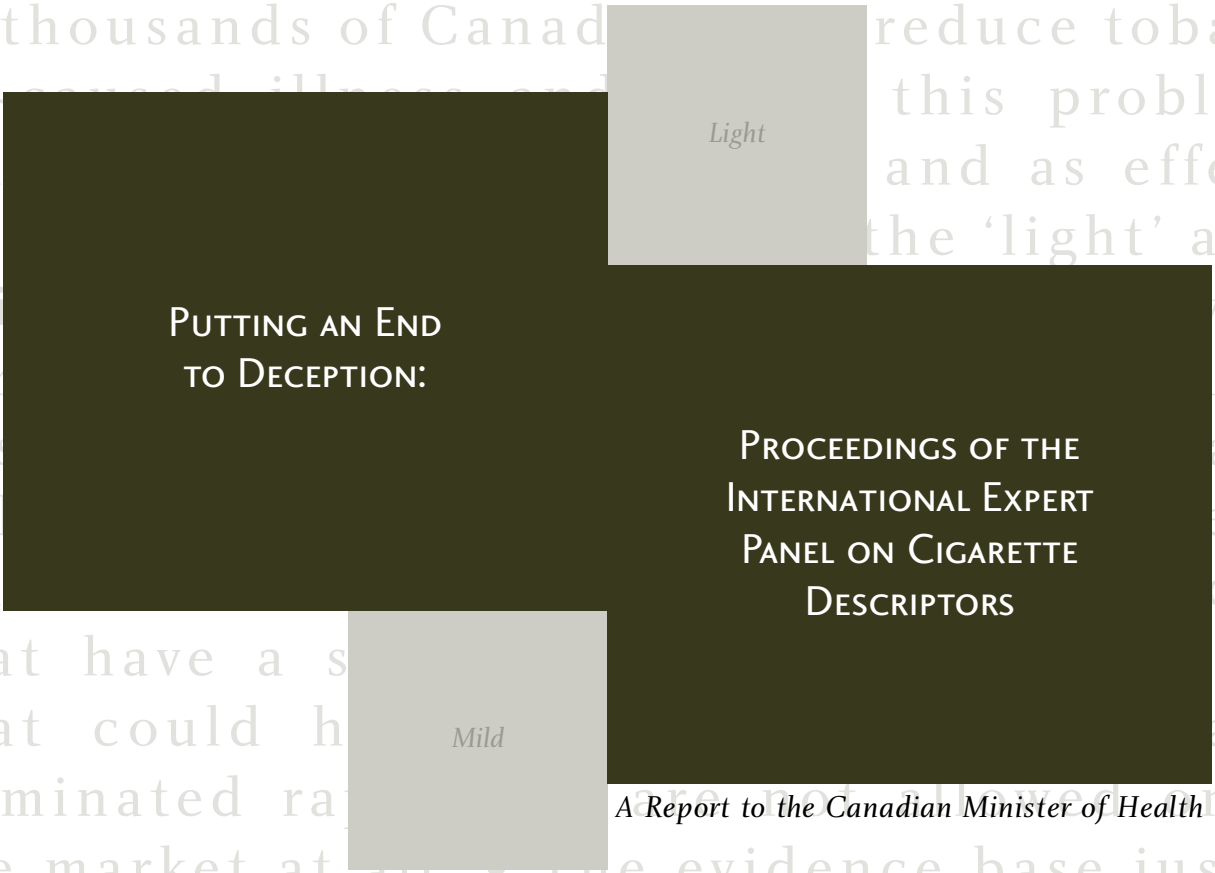

Putting an End to Deception:

Proceedings of the International Expert Panel on Cigarette Descriptors

A Report to the Canadian Minister of Health

Canada

Foreword

On May 31st, 2001, Health Minister Allan Rock asked his newly constituted Ministerial Advisory Council on Tobacco Control (MAC) to provide advice on how to deal with the problems caused by descriptors such as 'light' and 'mild' on cigarette packages. At its inaugural meeting on July 30th and 31st, 2001, the MAC decided to convene an international expert panel to examine the scientific evidence on this issue.

The International Expert Panel met in Hull, Quebec on August 27 and 28, 2001 for two days of presentations, discussion and debate by some of the foremost experts in the field. This volume is a full account of the work of the Expert Panel. The Proceedings of the International Expert Panel on Cigarette Descriptors is divided into two parts. Part I, which includes the Recommendations and Findings, provides an overview of the most salient points to emerge from the proceedings. Part II includes the actual presentations, and ensuing discussion, of the international experts.

It is felt that the information contained in these pages can be of use to governments and health advocates worldwide, especially those who are currently debating the issue of cigarette descriptors.

Recommendations

After convening an international expert panel and considering the 'light' and 'mild' issue, the Ministerial Advisory Council made the following recommendations:

- Cigarette descriptors such as 'light' and 'mild' are a major public health problem that have already contributed to the deaths of thousands of Canadians. To reduce tobacco-caused illness and death, this problem must be corrected as quickly and as effectively as possible.
- An end to the 'light' and 'mild' deception can only be achieved through a complete ban on misleading descriptors, accompanied by appropriate public education efforts.
- The government must ensure that other terms and devices that have a similarly misleading effect, or that could have a misleading effect, are eliminated rapidly or are not allowed onto the market at all.
- The evidence base justifies strong, effective and rapid government action to correct the 'light' and 'mild' deception.
- The Minister should opt for the quickest and most effective route to achieve the public health objective. It is our considered opinion that new regulations under the Tobacco Act are the best course of action.
- Public education on the 'light' and 'mild' issue should focus specifically on the nature and the causes of the deception.

Findings

The findings by the expert panel on four questions were the basis of the Ministerial Advisory Council's recommendations. Each question was debated at length before reaching a final conclusion.

Question 1:
In what measures are cigarettes that are marked as 'light' or 'mild'
- *more hazardous than other cigarettes?*
- *less hazardous than other cigarettes?*
- *about the same level of hazard as other cigarettes?*
- *of unknown differential hazard?*

The expert panel found that there is no convincing evidence of a meaningful health benefit to either individuals not to the whole population resulting from cigarettes marked as 'light' or 'mild.

Question 2:
What information can the expert panel provide as to whether or not these descriptors are false or misleading in Canada or elsewhere?

The panel concludes that terms such as 'light' and 'mild' in tobacco marketing in Canada are both false and misleading. Substantial proportions of Canadian smokers are being deceived in that they believe these products deliver less tar and nicotine and are less harmful to smokers' health.

Question 3:
What lessons can be learned for decision-making on the use of terms like 'light' and 'mild' from their use, their meaning and regulatory practice on food, alcohol and other consumer products?

According to the expert panel, it is specious to equate the labelling of tobacco products with food labelling, because tobacco products and their use are fundamentally different from food products.

Question 4:
On the basis of your answers to the previous three questions, what options are available to the Government of Canada with respect to the descriptors? Which option(s) would you recommend, and for what reasons?

We conclude that a complete prohibition of the use of deceptive descriptors such as 'light' and 'mild' on cigarette packaging and marketing is necessary to ensure that past deception is redressed and ongoing deception is prevented. In addition, in order to prevent future deception, the regulations should also restrict the use of other words, colours or devices that result in an erroneous perception of a difference in health risks and/or tar/nicotine deliveries. To be effective, these regulations should be accompanied by a substantial education component to correct this dangerous and persistent misperception and by a mechanism to implement further measures if warranted.

Proceedings

Part I of this volume presents the Recommendations of the Ministerial Advisory Council and the Findings of the International Expert Panel on Cigarette Descriptors. Part II contains eight presentations from expert panel members and two presentations from guest speakers. The presentations, which were the starting point for the recommendations and findings, covered a variety of fields including: epidemiology, cigarette design, public perception of descriptors, the use of legislation to ban descriptors, advertising, the use of descriptors in food labelling, and case studies from Europe and Brazil.

Putting an End to Deception:

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Proceedings of the International Expert Panel on Cigarette Descriptors

Summary

After convening an international expert panel and considering the 'light' and 'mild' issue, the Ministerial Advisory Council makes the following recommendations:

- Cigarette descriptors such as 'light' and 'mild' are a major public health problem that have already contributed to the deaths of thousands of Canadians. To reduce tobacco-caused illness and death, this problem must be corrected as quickly and as effectively as possible.
- An end to the 'light' and 'mild' deception can only be achieved through a complete ban on misleading descriptors, accompanied by appropriate public education efforts.
- The government must ensure that other terms and devices that have a similarly misleading effect, or that could have a misleading effect, are eliminated rapidly or are not allowed onto the market at all.
- The evidence base justifies strong, effective and rapid government action to correct the 'light' and 'mild' deception.
- The Minister should opt for the quickest and most effective route to achieve the public health objective. It is our considered opinion that new regulations under the *Tobacco Act* are the best course of action.
- Public education on the 'light' and 'mild' issue should focus specifically on the nature and the causes of the deception.

Introduction

On May 31st, 2001, Health Minister Allan Rock asked his newly constituted Ministerial Advisory Council on Tobacco Control (MAC) to provide advice on how to deal with the problems caused by descriptors such as 'light' and 'mild' on cigarette packages. At its inaugural meeting on July 30th and 31st, the MAC decided to convene an international expert panel to examine the scientific evidence on this issue. (See expert panel findings.) In the next sections, we will summarize some of the lessons we have drawn from the panel's work.

The panel was specifically asked not to focus on the technical aspects of the Canadian regulatory framework. One of the most important decisions in the coming days or weeks concerns the specifics of government action on the 'light' and 'mild' issue, and we felt it was incumbent on us to provide our best advice on this aspect also.

Lessons from the expert panel

1. The use of descriptors such as 'light' and 'mild' on cigarettes is far more than merely 'confusing'. Contrary to recent tobacco industry claims, these terms mislead smokers who are attempting to reduce the amount of tar they inhale. Indeed, industry documents show they are deliberately designed to create false impressions about the quantities of harmful substances to which smokers are actually exposed. It is reasonable for consumers to assume that a 'light' brand with a low tar rating will give them significantly less tar per cigarette than a regular brand ('full-flavour' in industry parlance); in fact, they will likely get the same quantity of tar. Cigarette brands have been carefully designed to hit a particular tar rating under the standard ISO machine test, so as to indicate a gradation in risk.

   Under plausible conditions for human smoking (the modified parameters used as a second testing standard by Health Canada), differences between brand variants largely disappear. Smokers can easily get more than twice as much tar from the 'ultra-light' version of any of Canada's biggest three brand families as the standard smoking machine extracts from the 'full-flavour' version of the same brand, under ISO conditions. (See Figure 1.)

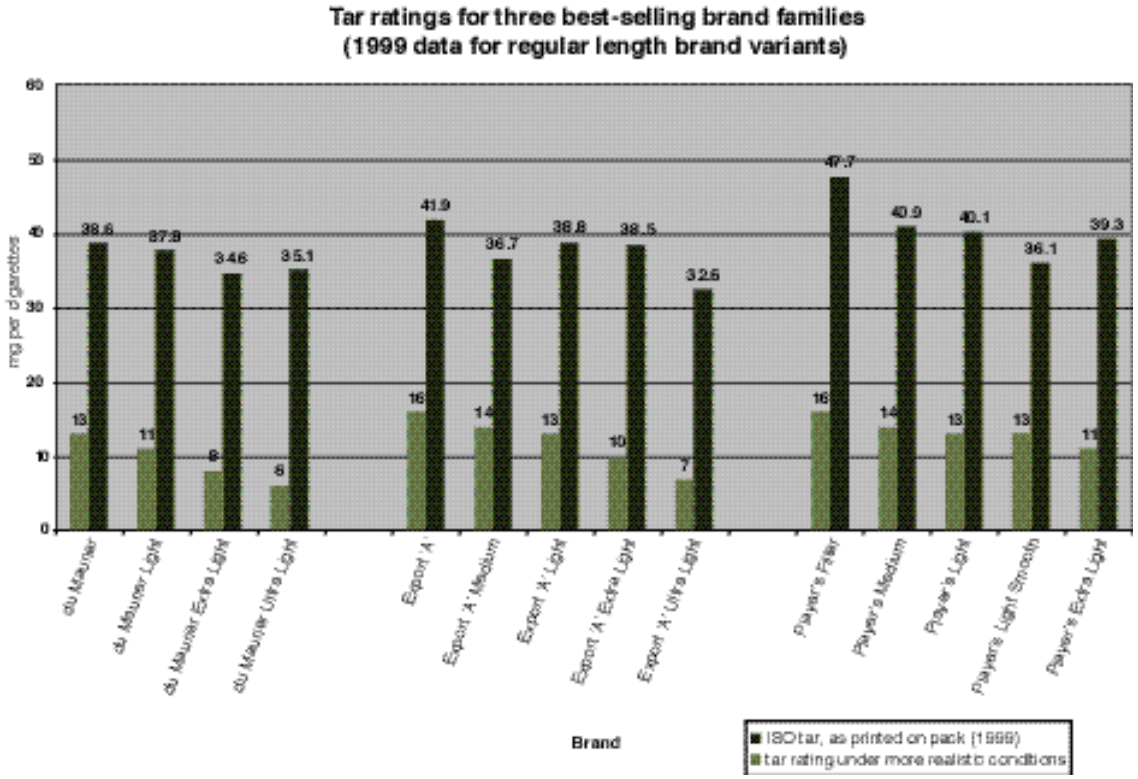
   Though machine-measured tar ratings have declined very substantially since the 1950s, there is no convincing evidence that there has been any meaningful decline in disease risk for continuing smokers as a result.

   To the extent that false health-related reassurance delays quitting by concerned smokers, the deceptive use of the terms 'light' and 'mild' may already have contributed to the deaths of thousands of Canadians. Any delay in action to eliminate the 'light' and 'mild' deception will cost further lives.

2. The expert panel spent a good deal of time looking at options to deal with an entrenched deception such as the use of 'light' and 'mild' on cigarettes. The panel concluded — and we fully agree — that nothing short of a complete ban on these terms, and on similar terms and design elements the industry may attempt to replace them with to achieve the same purpose, is likely to put an end to the deception.

3. The expert panel also noted serious problems with publishing machine-measured tar ratings on cigarette packs. Whether cigarettes are tested under standard ISO conditions or under more realistic conditions (i.e. the higher value now included alongside ISO numbers on Canadian packs), the numbers do not provide a reliable indication of human exposure. Should terms such as 'light' and 'mild' be removed from packages, companies will likely rely increasingly on these numbers in their efforts to mislead smokers. The expert panel recommended that consideration should be given to removing from packages such numeric reporting of yields of toxic substances. We concur.

4. The use of colours to reinforce perceptions of relative risk is another major area of concern. Cigarette manufacturers have already colour-coded their brands; when descriptors are removed, this colour coding is likely to play an even bigger role in shaping consumers' perceptions. The obvious solution for eliminating these difficulties is to introduce plain packaging. We draw a more general conclusion from the expert panel's work: that the government needs to put the onus on



manufacturers to demonstrate that elements of their packaging and marketing do not mislead smokers about issues that are vital to their health.

5. The panel spent some time discussing differences in the smoking experience of 'regular', 'light' and 'mild' cigarettes. The smoke from highly ventilated cigarettes is easier to inhale and seems less harsh. This physical experience reinforces the false impression that these cigarettes have less chemicals and are thus less harmful. Since smokers are likely to inhale larger volumes of this diluted smoke, they inhale no fewer harmful chemicals, and often inhale them deeper into the lung.Once the government has addressed the issue of de-ceptive cigarette marketing, it should consider the issue of cigarette engineering that is misleading to smokers.

4. Use the government's existing power, under the *Tobacco Act*, to adopt regulations regarding the packaging of tobacco products (e.g., s. 23).

We believe the evidence is sufficient to justify any of these options. The issue, then, is which course of action is most likely to achieve the desired health objective quickly and effectively – and which course of action makes it easiest for the government to deal in the future with manufacturers' efforts to provide false health reassurance to consumers.

We recommend the government adopt regulations under the *Tobacco Act*. Such regulations could be adopted quickly, would provide for uniform treatment of misleading descriptors, could be easily extended to deal with similarly misleading terms and design devices, and

6. The wealth of evidence considered by the expert panel gives us great confidence that the government is wholly justified in taking whatever action is necessary to rapidly and effectively ban misleading cigarette descriptors. There is ample evidence that these descriptors are, in fact, misleading consumers about their level of exposure to harmful substances and the resulting health damage.

Options for banning 'light' and 'mild'

The government has at least four possibilities for eliminating the use of misleading descriptors such as 'light' and 'mild'.

1. Prosecute 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 manufacturers under general statutory provisions against misleading marketing (such as the *Consumer Packaging and Labelling Act, or the Competition Act*).

3. Amend the *Tobacco Act* to include a prohibition of specific terms.

would likely not be tied up in the courts for any significant time. Though the tobacco industry continues to challenge the constitutionality of the *Tobacco Act*, it was unsuccessful in attempts at obtaining a stay against regulations under the Act mandating health warnings; it would likely be equally unsuccessful in obtaining a stay against regulations banning misleading descriptors.

That being said, a strong case can be made that tobacco companies are already in violation of Section 20 of the *Tobacco Act*, and that prosecution would therefore eventually succeed. The terms 'light' and 'mild' are "false, deceptive and misleading" and "likely to create an erroneous impression about the characteristics, health effects or health hazards" of cigarettes and their emissions. However, experience suggests that proceeding by way of prosecution gives the tobacco industry many possibilities for delay and obstruction. It might take years to secure a conviction, particularly if the courts were to decide to wait until the industry's challenge to the *Tobacco Act's* constitutionality has been disposed of.

Prosecution under general consumer protection legislation risks taking the issue out of the health arena.

As for the possibility of amending the *Tobacco Act*, putting a ban on specific descriptors right in the Act could take considerable time, and would mean that efforts to deal with future tobacco industry tactics to provide false health reassurance to consumers might require regular trips back to Parliament.

Because the government should work to eliminate not just the terms 'light' and 'mild', but also the use of others terms or devices that achieve the same deceptive end, Health Canada must carefully monitor whether differences in perceived risk between cigarette brands persist and seek to identify what marketing elements contribute to these false perceptions.

Public education efforts

The expert panel noted, and we concur, that the government should undertake serious efforts to educate the public about the 'light' and 'mild' deception and about the reasons for any government actions on this file. *These public education efforts are no replacement for regulatory/legal action; they should be designed to increase the effectiveness of such action.*

We have several recommendations with respect to the nature of such public education efforts:

- General messages that "all cigarettes kill" or that "light cigarettes can be as bad for you as regular cigarettes" are not likely to be sufficient. These risk being misinterpreted as unfocussed reminders that smoking of any kind is bad for your health. Rather, smokers should be informed that they have been misled about how much poison they are exposed to.

- Talk of 'myths' around 'light' and 'mild' cigarettes suggests that smokers who believe 'lights' are less dangerous are somehow naive or even stupid. It is important to identify *who* caused the deception (i.e., the tobacco industry), and to make it clear that smokers are not at fault because some powerful and resourceful corporations succeeded in deceiving them.

- Differences in taste between 'light' and 'regular' brand variants need to be explained to smokers in clear and simple terms. Without a credible explanation for taste differences, the message that "you get the same amount of tar" from both types of cigarettes is likely to be discounted by some consumers.

- Accumulated experience, new information, a substantially changed situation, and deliberate tobacco industry activity to deceive have all combined to lead to an apparent change in public health recommendations from the recommendations of two decades ago. Public information campaigns should find honest, simple and straightforward ways to explain why the promise of lighter cigarettes of twenty years ago – some modest reduction in risk – has not been fulfilled. There has not been any marked risk reduction, only marked consumer deception.

Introduction

On May 31st, 2001, Canadian Health Minister Allan Rock requested that Canadian tobacco product manufacturers voluntarily remove descriptors such as 'light' and 'mild' from cigarette packaging, based on long-standing concerns that such descriptors are confusing to consumers. He also requested that his newly formed Ministerial Advisory Council suggest a course of action in the event that the industry does not opt for a voluntary withdrawal.

At its inaugural meeting on July 30th-31st, the Ministerial Advisory Council decided to convene a panel of international experts on the epidemiological, consumer behaviour, marketing, legal and regulatory aspects of the 'light' and 'mild' issue, so as to ensure that the Council's recommendations to the Minister are based on authoritative and up-to-date science. The Council agreed on four questions to ask the expert panel. (See Terms of Reference, attached.)

These findings constitute the Expert Panel's unanimous response to the four questions asked, and our best advice on the most appropriate regulatory response to a major public health issue.

History of 'light' and 'mild' descriptors on tobacco products

'Light' brand extensions of existing cigarette brands were introduced in Canada in 1976, and rapidly came to account for a significant portion of the Canadian market. As in other countries in which the descriptors 'light' and 'mild' were introduced around this time, smokers' concern about the health hazards inherent in tobacco products had been rising for some time. By 1976, according to Imperial Tobacco's tracking data, fully 67% of Canadian smokers agreed with the statement that "smoking is dangerous for anyone" — substantially up from 48% five years earlier.[1]

It is important to recall the regulatory context within which the introduction of 'light' and 'mild' occurred.[2] At the time, there were essentially no significant tobacco-specific rules or regulations; the primary restriction on tobacco industry behaviour came from a series of voluntary measures agreed upon by the major manufacturers, sometimes in consultation with government officials. In 1968, the Department of National Health and Welfare began publishing a 'league table' of cigarette brands by tar yields, as measured by a Canadian variation of the FTC test method. In 1968-1969, the House of Commons Standing Committee on Health, Welfare and Social Affairs held extensive hearings on the tobacco issue, leading to the 1969 Isabelle Report, proposing comprehensive tobacco control legislation. Amongst other measures, the Isabelle Report recommended warnings on cigarettes packs, including figures for tar and nicotine yields. The report further suggested maximum tar and nicotine yields.

In September 1971, a few months after the introduction of a government tobacco bill, the tobacco industry adopted a series of voluntary measures, including an end to broadcast advertising, a health warning on cigarette packages, and a maximum tar yield of 22 mg per cigarette. The bill died on the order paper.

In 1974, following discussions with departmental officials, this voluntary code was amended.[3] Tar and nicotine yields would henceforth be printed on cigarette packs, and the pack warning was amended to include the advice that smokers should 'avoid inhaling.' Moreover, until well into the 1980s, the industry and the government agreed on targets for reductions in 'sales-weighted average tar' (SWAT) in the Canadian market.

The precise meaning of terms 'light' and 'mild,' or comparable terms such as 'smooth' or 'medium,' has never been defined for Canadian cigarettes, either by government regulation or by voluntary agreement between manufacturers. There is nothing to prevent the 'light' brand in one brand family from having a higher ISO[4] tar rating than a 'regular' entry from another brand family; indeed, the highly popular Imperial Tobacco brand Player's Light (13 mg) has a higher tar rating than the regular version of another Imperial Tobacco brand, Matinée (9 mg), and long had the same tar rating as the 'regular' version of the company's other big brand, du Maurier (was 13 mg, now 15 mg).

By 1984, the agreed sales-weighted average tar (SWAT) target of 12 mg had been met.[5] The tobacco industry had chosen to ignore a target of a maximum of 1 mg of

nicotine that had been proposed by Health Canada for all brands. Because there was no evidence that any health benefit would arise from further reductions in SWAT, no further reductions in SWAT were requested. Later, the government sponsored research that led to the development of a modified version of the ISO testing standard, designed to approximate tar yields under conditions of substantial compensatory smoking.[6] Under these more realistic smoking conditions, all major brands of cigarettes have a higher tar rating than the highest tar rating noted under ISO conditions as reported on cigarette packages; moreover, in the case of some brand families, the differences in tar rating shrink considerably (See Figure 1).

As of June 26th, 2001, cigarette packs manufactured for sale in Canada must list both the standard and modified tar ratings, in a format that suggests a range of possible tar yields. For example, Player's Extra Light (regular size) has a tar rating of 11-29 mg/cigarette. It is not yet known how consumers interpret these numbers.

In the year 2000, 65% of Canadian smokers smoked 'light' or 'mild' brands.[7]

Relative hazard of 'light', 'mild' and 'regular' cigarettes

The panel has addressed Question 1:

In what measures are cigarettes that are marketed as 'light' or 'mild'
- **more hazardous than other cigarettes?**
- **less hazardous than other cigarettes?**
- **about the same level of hazard as other cigarettes?**
- **of unknown differential hazard?**

The panel considered early studies that found an association between lower-yield cigarettes and a reduced risk of lung cancer and that interpreted this association as causal. It is now recognized that this conclusion was premature because it did not adequately consider:

- The self-selection of smokers to brands of lower yields.
- Smokers' tendency to regulate their nicotine intake (compensation), which has the consequence that tar rating is a very poor indicator of actual exposure.
- Other potentially adverse effects of these products and their accompaning marketing in delaying cessation or promoting initiation.

It is now recognized that smokers of lower-tar cigarettes are distinct from other smokers in characteristics that could influence health outcomes, such as socio-economic status and level of addiction.

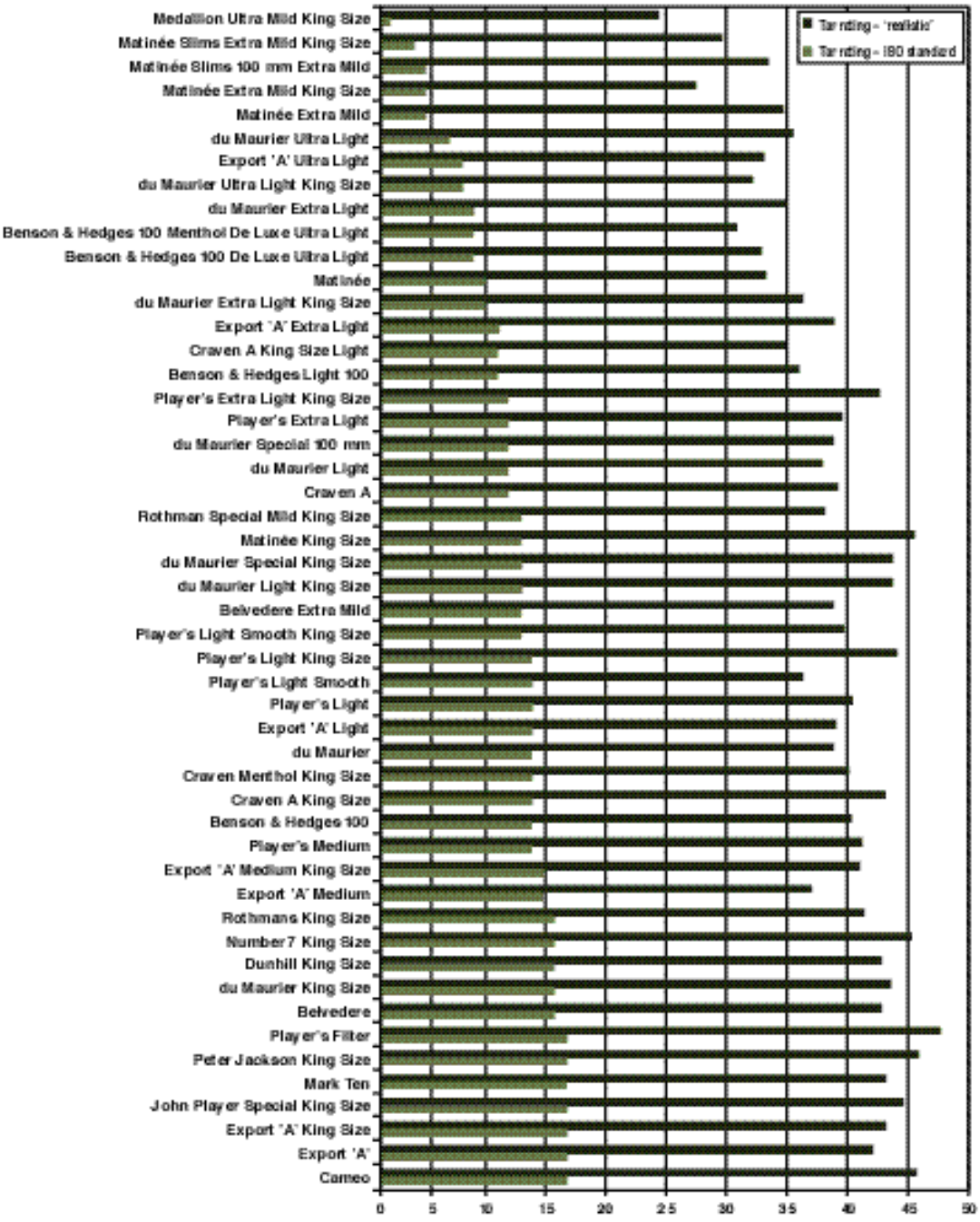
Available studies make it clear that the relationship of yield as measured by machine and exposure of smokers is very weak. Actual nicotine intake per cigarette smoked remains relatively constant regardless of the cigarette smoked (see Figure 2).[8] Even when smokers switch from one brand to another they have been shown to quickly compensate to receive a satisfactory dose of nicotine. Internal corporate documents show this compensatory behaviour was well understood by the tobacco companies as early as the 1970s.[9]

The panel concluded that the evidence does not convincingly demonstrate a meaningful reduction in risk associated with smoking low-yield cigarettes. The evidence now suggests that most or all previously observed differences in health risks are due to differences between smokers of cigarettes of different yields, rather than to differences in the cigarettes they smoke. Inappropriate correction for number of cigarettes smoked by smokers switching to lower-yield brands may also have contributed to the estimation of reduced risk.

In addition, the design characteristics that led to reduced tar ratings in the 1970s, 1980s and 1990s are different in nature from those that led to earlier reductions. There is no reason to assume that a 20% reduction in tar rating in 2001 has a similar effect as a 20% reduction in tar rating in 1960. Similarly, caution is needed when comparing today's smokers with previous populations. Smoking prevalence has dropped dramatically in Canada since the 1960s, and the composition of the smoking population has changed substantially. So if, for example, present-day smokers are more likely to be highly addicted to nicotine than their counterparts in 1960, it is likely their reaction to 'lighter' cigarettes would also be different.

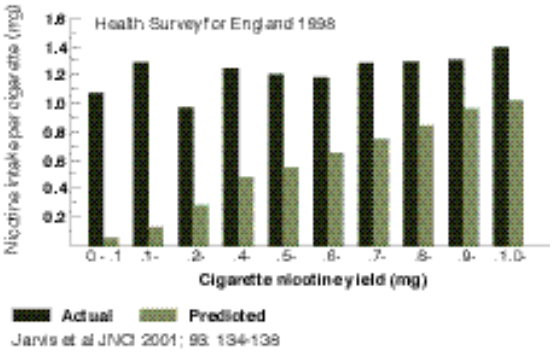
The panel further concluded that the machine smoking yields are irrelevant to assessing human disease risk.

Figure 1: Machine tar readings in milligrams per cigarette for 50 Canadian brands – ISO and 'realistic' methods.



Source: Health Canada, Yields of "Tar", Nicotine and CO by Selected Brands of Canadian Tobacco Products, 1999, as reported in Protégez-vous, January 2000, p. 6.

Figure 2: Predicted and actual nicotine intakes per cigarette smoked by nominal nicotine yield



Jarvis et al JNCI 2001; 93: 134-138

Nicotine-seeking results in smokers obtaining a set addiction-satisfying dose of nicotine from any design of cigarette. As a result, machine yield numbers have no significant health meaning for individual smokers.

This means that the machine smoking yields provided by companies are as misleading to regulators as they are to consumers. This deception is augmented by the use of deceptive branding descriptors which offer false health reassurance and may be perceived as describing a product that is less harmful, and therefore an alternative to quitting.

Smokers report that low-yield cigarettes have a milder 'taste.' This is in part the experience of inhaling diluted smoke. Because of compensation, however, smokers do not receive a lighter burden of toxins, they simply inhale a greater amount of air-diluted smoke. This subjective smoking experience with low-yield cigarettes compounds the deception of 'light' and 'mild' descriptors, as it reinforces the false impression that these cigarettes are safer.[10]

Importantly, inhaling the diluted smoke produced by low-yield cigarettes may actually increase some forms of lung cancer. Thun et al. have observed a rise in adenocarcinoma of the lung (cancer found in the far reaches of lung tissue) in recent years, and have suggested that one possible explanation of this trend is a widespread modification of smoking habits due to attempts to extract satisfactory nicotine doses from 'light' cigarettes.[11] While this evidence is indirect, it points to another difficulty in attempting to make the link between tar yields and disease risk.

The panel emphasizes that it is important to address evidence about the lack of health benefits of cigarette design (such as low-yield cigarettes) from several perspectives. The health of an individual smoker who continues to smoke is one question. Another involves the impact on individual health of those who delay or forgo quitting because of the availability of lower-yield products. A third element concerns the impact on public health if such products increase the number who start.

While studies of health risks have not focused on these latter questions, they are all crucial to the development of public policy.

Finding on Question 1

There is no convincing evidence of a meaningful health benefit to either individuals nor to the whole population resulting from cigarettes marketed as 'light' or 'mild'. Any false perception of health benefit may exacerbate the tobacco epidemic as it may delay quitting or increase initiation.

False and misleading nature of cigarette descriptors

The panel has addressed Question 2:

> **What information can the expert panel provide as to whether or not these descriptors are false or misleading in Canada or elsewhere?**

The panel reviewed recent polling data obtained from North American populations, including extensive data from Canadian surveys. It found substantial evidence to conclude that the descriptors 'light' and 'mild' are deceiving and misleading to a sizeable proportion of smokers.

Specifically, many smokers believe that 'light' and 'mild' cigarettes are lower in tar and nicotine. Further, substantial percentages of smokers of 'light' and 'mild' brands believe that by smoking these cigarettes they are reducing the health risks of smoking,[12] including heart disease and lung cancer,[13] without having to quit. Many

say that they would be more likely to stop smoking if they found out that 'light' and 'mild' cigarettes could deliver the same amount of tar and nicotine as regular cigarettes.[14] Polling data suggest that smokers of 'ultra-light' cigarettes are most deceived. Finally, only a minority of 'light' and 'mild' smokers know that 'light' cigarettes can deliver the same amount of tar as regular cigarettes,[15] and that blocking filter vent holes increases tar delivery.[16]

The perception associated with the term 'mild' may be different compared to the term 'light'. The former contains a mixture of taste and health connotations.[17] However, the expert panel considers the distinction to be immaterial within the context of this report. Tobacco industry documents state that both 'light' and 'mild' descriptors carry health connotations. Because 'mild' cigarettes may provide a milder taste, this contributes to the deception about the health risks. The tobacco industry has marketed 'mild' cigarettes both in terms of taste and low-yields.

The history of 'light' and 'mild' marketing in North America clearly shows the kind of messages that the tobacco industry wants to communicate with respect to these brands. Using colours, packaging, imagery, graphics and wording, 'light' and 'mild' cigarette advertising and packaging, over decades, directly or indirectly conveyed health connotations and positioned these brands on a sliding scale of perceived 'strength' within a particular brand family, regardless of machine yields or realistic consumption.[18]

To achieve these goals, tobacco industry advertising has presented these brands as an alternative to quitting and cutting down. Ads for 'light' and 'mild' cigarettes have suggested that there is no need to quit if you smoke 'properly'. By associating these brands with affluent lifestyles and intellectual activity, they suggest that the choice of smoking 'light' and 'mild' cigarettes is one made by smart people.[19]

They also implied a promise of health benefits through brand associations with healthy activities and pristine environments. As with most tobacco advertisements, specific information on the product itself, such as cigarette technology, additives and consequences of smoking, was not provided. Though direct lifestyle advertising is now prohibited in Canada, the colours and designs of cigarette packages continue to reinforce the notion that some brands are less harmful. The hue and density of the colours applied within a brand family follow a natural spectrum of intensity, with the lightest colours matched to the 'lightest' brand.

The panel also believes that 'light' and 'mild' marketing preys on the vulnerabilities of certain groups. For example, to the extent that smokers are desperate to reduce their health risks, and that they experience much difficulty in quitting, they are vulnerable to this type of deception. The health connotations of 'light' cigarettes are also important to young women. For example, health-conscious, educated white women are almost the exclusive smokers of 1 mg brands. Industry documents state that because women are generally more health conscious, 'light' and 'mild' cigarettes are more attractive to female smokers. Finally, a less harsh sensory experience is a very important factor in overcoming the negative sensations experienced by first-time smokers. To the extent that lighter-tasting cigarettes make it easier to start smoking, one could also consider children and adolescents as a vulnerable group.

Finding on Question 2

The panel concludes that terms such as 'light' and 'mild' in tobacco marketing in Canada are both false and misleading. Substantial proportions of Canadian smokers are being deceived in that they believe these products deliver less tar and nicotine and are less harmful to smokers' health. Allusions to milder taste, as well as actual taste differences, compound this deception.

Tobacco industry documents attest that one consequence of this false representation is reduced propensity to quit smoking.[20] Failure to quit smoking is highly likely to have fatal consequences.

Lessons from other consumer products

The panel has addressed Question 3:

> **What lessons can be learned for decision-making on the use of terms like 'light' and 'mild' from their use, their meaning and regulatory practice on food, alcohol and other consumer products?**

The panel looked at current and proposed food labelling requirements in Canada and elsewhere. Food is essential for survival, and it is generally recognized as safe. Current food labelling practices remain imperfect but do serve a valuable role in informing consumers about products. They aim at facilitating informed and healthier food choices by consumers. Health claims and nutritional facts on food products must meet standards that reflect actual consumption and that are based on scientific evidence. For certain food constituents (e.g., calories, fibre, saturated fat, sodium), there is extensive scientific documentation that shows that modifying intake can have important impacts on health. Furthermore, the content of foods in a given portion size corresponds to the intake ingested by all consumers all of the time. For example, one cup of 2% milk will provide the same amount of fat for everyone.

Tobacco labelling, however, cannot be compared to food labelling. Cigarettes are fundamentally different, in that they are not essential for either survival or health. On the contrary, every cigarette causes harm. Further, cigarettes contain nicotine, an addictive drug.

In the case of 'light' and 'mild' descriptors of tobacco products, we are dealing with a long-standing perception of a non-existent health benefit, created and promoted by tobacco industry product engineering and marketing. This entrenched deception cannot be corrected by or compared to an approach similar to that of food labelling. The approach underlying food labelling promotes overall healthy choices, and therefore cannot apply to a product for which there is no safe level or method of consumption. The entire premise of labelling cigarettes as 'light' is false.

Finding on Question 3

It is specious to equate the labelling of tobacco products with food labelling, because tobacco products and their use are fundamentally different from food products.

Options for government action

The panel has addressed Question 4:

> **On the basis of your answers to the previous three questions, what options are available to the Government of Canada with respect to the descriptors? Which option(s) would you recommend, and for what reasons?**

Use of the terms 'light' and 'mild' to label cigarettes compounds a serious and continuing health hazard for Canadians:

- Current scientific evidence does not establish there are meaningful differences in risk or in tar and nicotine exposure across cigarettes with and without these labels.
- There is an existing and false perception regarding cigarettes that are labelled with terms such as 'light' and 'mild'. Evidence establishes that Canadian smokers mistakenly believe that there is a reduction in disease risk that results from smoking cigarettes labelled with the terms 'light' and 'mild'. Evidence also establishes Canadian smokers mistakenly believe the use of cigarettes labelled 'light' and 'mild' will reduce their intake of tar and nicotine.

Historically, this perception was created by tobacco industry marketing which suggested that 'light' and 'mild' cigarettes deliver less tar and nicotine to the smoker. The perception was compounded by public health pronouncements that said that reducing tar intake would likely reduce the risk of smoking-related diseases. However, due to cigarette design, human smoking behaviour (e.g., addiction), and the product modification and promotional activities of the tobacco industry, no actual reduction in tar intake was achieved. As a result, there is an urgent need to prevent further deception and to remedy existing misconceptions.

In contrast to the legitimate use of the term of 'light' in food labelling, meaningful differences in intake of smoke are not present with cigarettes labelled 'light' or 'mild'. With respect to food products labelling the term 'light' refers to actual content of the labelled constituent and allows consumers to compare foods accurately with respect to fat, salt, calories, etc. This is not the case with 'light' and 'mild' cigarettes. Incorrect beliefs about the meaning of these terms allow smokers to continue to smoke believing that they have reduced their disease risk, instead of taking other steps that would actually reduce their risk, such as quitting or reducing their consumption.

This major public health issue is compounded by decades of persistent tobacco industry advertising and promotion. Government efforts to warn consumers of the misleading nature of cigarette descriptors are necessary, but insufficient to correct the problem. Measures short of a ban on 'light' and 'mild' would be futile, given many smokers' belief that 'light' and 'mild' present a lowered health risk, the seriousness of the harm if the deception is not eliminated, and the evidence which indicates that disclaimers are ineffective in redressing deceptive health claims.[21]

The ultimate goal should be to end the deception, and do so as quickly and effectively as possible. The only way to effectively correct the existing historical misperception is to ban the use of 'light' and 'mild' descriptors in conjunction with a substantive public education effort. Brazil has chosen to do so by regulation, while the European Union has adopted a directive that will lead to national legislation in all member states.

The considered judgement of the panel is that it is not enough to simply ban the terms 'light' and 'mild.' Even if the terms 'light' and 'mild' are banned, other means can be used to convey the health misperceptions currently promoted by these descriptors. For example, a numbered range of brands within a family (such as Players' 1, Players' 2, etc.) can suggest a difference in 'strength' and risk. The issue at hand is not only with the descriptors 'light' and 'mild' per se. The real problem is that the terms are false and misleading and may prevent smokers from choosing options, such as quitting, that could actually reduce their health risk. As such, the panel recommends that any words, colours or other devices that result in an erroneous perception of a difference in health risk by consumers should also be prohibited. We recommend that consideration should also be given to a look-back provision that would trigger more stringent restrictions to prevent future misperceptions.

Finding on Question 4

We conclude that a complete prohibition of the use of deceptive descriptors such as 'light' and 'mild' on cigarette packaging and marketing is necessary to ensure that past deception is redressed and ongoing deception is prevented. In addition, in order to prevent future deception, the regulations should also restrict the use of other words, colours or devices that result in an erroneous perception of a difference in health risks and/or tar/nicotine deliveries. To be effective, these regulations should be accompanied by a substantial education component to correct this dangerous and persistent misperception and by a mechanism to implement further measures if warranted.

Further considerations

In response to the terms of reference, answers to the four questions asked have been provided. However, several other related matters also merit attention. The following comments and recommendations are offered for consideration.

Product design

The tobacco industry considers the labelling and marketing of 'light' cigarettes in conjunction with cigarette design and manufacture. Deception that has arisen from the use of terms such as 'light' and 'mild' bears some relationship to how tobacco companies have been designing cigarettes in recent years (e.g., the increasingly extensive use of filter ventilation).[22] At a minimum, public health policy in the future should ensure that tobacco product design does not result in a worsening of the public health consequences of tobacco use.

It is therefore recommended that a program of research be undertaken with a view to developing knowledge of how cigarettes can be designed so as not to create new or increased threats to public health. Research should also be conducted into how cigarette design could be altered to improve public health.

Printing of yields of toxic substances on packages

Canada is to be commended for the leadership that it has shown in requiring tobacco companies to implement significant changes to their product packaging such as reporting yields of toxic substances in tobacco smoke, and listing the yield of selected substances on the package under ISO and more realistic human smoking conditions. The tobacco companies have shown themselves to be particularly adept at using ISO toxic

substance ratings to help them sell cigarettes in the past. It is expected that they will even be able to use the new yields as reported for more realistic human smoking conditions to help them market cigarettes of higher or lower toxic substance yield. The detailed yield information, whether under ISO conditions or the more realistic human smoking conditions does not tell the individual smoker the amount he or she will get when smoking a particular brand of cigarettes. If descriptors, such as 'light' and 'mild' were to be removed, the numeric yield information on the package may be used by consumers to mistakenly rank the safety of different brands. Members of the Expert Panel agree that all information currently being reported to the government under the Tobacco Reporting Regulations should continue to be required. The government should also continue to require that lists of toxic substances in tobacco smoke be printed on cigarettes packages.

However, should the government choose to ban the use of terms like 'light' and 'mild' or go further and also ban other related words, colours, imagery or other devices, then, for consistency, consideration should also be given to ending the practice of the printing of numerical yields of selected toxic substances on packages of tobacco products.

Public information and education

Many of the issues considered in this report are complex. Various policy and regulatory changes have been recommended that may not be easily understood by members of the public.

Accordingly, it is recommended that all changes undertaken with respect to cigarette labelling be accompanied by well-designed and executed public information strategies.

Appendix 1– Terms of Reference

Expert Panel, August 2001

Descriptors like 'light' and 'mild' on cigarette packages

Terms of Reference

Tobacco companies use descriptors such as 'light' and 'mild' on their packages in their marketing to describe their products.

The Honourable Allan Rock, Canadian Minister of Health is concerned with the use of these descriptors. He has written to the tobacco companies and requested voluntary action on their part to dispel confusion around terms like 'light' and 'mild'.

> *"The time has come to dispel the myths that exist around such terms as 'light' and 'mild' on cigarette packages. I have asked my officials and advisors to further investigate this issue, to gather the science and other evidence, and to advise me on a course of action, which could include regulation or prohibition.*
>
> *Meanwhile, I am soliciting your co-operation in carrying out two voluntary actions immediately, actions which will make a major contribution to a solution to this problem. Specifically, I respectfully make the following two requests of Canada's tobacco manufacturers:*
>
> 1. *For the sake of public health, please remove all confusing descriptors such as 'light', 'mild', 'special' and 'medium' from the brand names and packages of your cigarettes.*
>
> 2. *Please inform your customers and potential customers that the reason for this removal is that smoking 'light' or 'mild' or similarly named cigarettes is not safer for their health."*

Mr. Rock has also asked his officials and the new Ministerial Advisory Council to study this question in depth and to report back within 100 days on ways to regulate or ban these terms in the event that the tobacco industry does not respond positively to his request that they remove the terms voluntarily. On World No-Tobacco Day, he stated:

> *"[Translation] In addition, I have asked my officials and the new Ministerial Advisory Council to study this question in detail and suggest options to me within 100 days on a preferred course of action with regard to these descriptors on cigarette packages, should the tobacco industry not respond positively to this request."*

To date, the tobacco companies have not responded affirmatively to either of the two requests made by Mr. Rock.

The Ministerial Advisory Council wishes to have scientific and technical advice about the use of descriptors like 'light' and 'mild' on tobacco products, about the messages these descriptors communicate to consumers, and about the resulting effects on human health. Members of the Ministerial Advisory Council will consider such information in responding to the Minister by September 8, 2001 (100 days following the May 31 announcement). Accordingly, members of the expert panel are invited to deliberate and provide answers the following questions.

Question 1: In what measures are cigarettes that are marketed as 'light' or 'mild'
- **more hazardous than other cigarettes?**
- **less hazardous than other cigarettes?**
- **about the same level of hazard as other cigarettes?**
- **of unknown differential hazard?**

Question 2: What information can the Expert Panel provide as to whether or not these descriptors are false and misleading in Canada and elsewhere?

Question 3: What lessons can be learned for decision-making on the use of terms like 'light' and 'mild' from their use, their meaning and regulatory practice on food, alcohol and other consumer products?

Question 4: On the basis of your answers to the previous three questions, what options are available to the Government of Canada with respect to the descriptors? Which option(s) would you recommend, and for what reasons?

Expert Panel members are encouraged to focus their attention on the substance of various options. Substantive issues should be thought of in terms of what is needed in order to ensure that consumers do not receive misleading information on their packages of cigarettes. Expert Panel members are encouraged not to dwell on technical, legal and regulatory considerations that could arise, especially with respect to discussions around question 4.

Appendix 2– Participants

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Endnotes

1 Bob Bexon, "New Brand Development: Post-Lights", paper presented at the British American Tobacco 1994 Smoking Behaviour and Marketing Conference, p. 4. Available in the Guildford document depository at Bates numbers 400993243-318, or on-line at http://www.hlth.gov.bc.ca/guildford/pdf/013/00001365.pdf.

2 This short summary of regulatory history is based on Chapter 6 of Rob Cunningham's history of the tobacco issue. See *Smoke & Mirrors*: The Canadian Tobacco War, pp. 54-62. International Development Research Centre, 1996.

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9 Wade RS. Compensation by smokers for changes in cigarette composition. Letter to DG Felton. Internal Imperial Tobacco Limited correspondence, March 24, 1972. http://www.hlth.gov.bc.ca/guildford/pdf/111/00011224.pdf.

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12 Ashley MJ *et al.* 'Light' and 'mild' cigarettes: Who smokes them? Are they being misled? Manuscript under review.

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5 Morrison AB. Letter from A.B. Morrison, Assistant Deputy Minister, Health Protection Branch, Health and Welfare Canada addressed to Mr William H.

Webb, President, Benson & Hedges, July 27, 1983. www.pmdocs.com, Bates page numbers 2025823247-8.

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18 Brown RD, Re: Tar Levels – Canadian Market. Imperial Tobacco Limited. Letter to Mr Ulrich Herter, BAT, July 6, 1983. Provided to the Province of British Columbia from the BAT Guildford Depository on 16 April 1999. http://www.hlth.gov.bc.ca/guildford/pdf/033/00003364.pdf.

19 Pollay R. *"Light" and "Mild" Cigarette Advertising: Canadian Examples*. History of Advertising Archives, Faculty of Commerce, UBC, Vancouver, Working Paper 01.3 Presented to the International Expert Panel on Cigarette Descriptors, 2001.

20 In 1978, an Imperial Tobacco document commented on ultra-lights:

"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."

"Response of the market and Imperial Tobacco to the smoking and health environment", c. 1978, exhibit AG-41 in proceedings surrounding the Tobacco Products Control Act. On-line at: http://www.nsra-adnf.ca/english/lights/AG41%20market.pdf.

In 1982, Imperial Tobacco's Project Eli found that 63% of smokers of 'low-tar' cigarettes feel "a lot less concerned" or "somewhat less concerned" about their health. The Project Eli report stated:

"The desire to quit smoking altogether and rationalization offered by many consumers that their going down in tar and nicotine brings them closer to the

inevitable step of giving up and may actually increase the market considerably."

Marketing Systems Inc. "Project Eli: Focus Groups – Final Report," for Imperial Tobacco Limited, July 1982, exhibit AG-40 in legal proceedings surrounding the Tobacco Products Control Act. On-line at http://www.nsra--adnf.ca/english/lights/AG40%20Eli.pdf.

21 Cf. Murphy D et al., *Generic Copy Test of Food Health Claims in Advertising: A Joint Staff Report of the Bureaus of Economics and Consumer Protection, [US] Federal Trade Commission*, 1998. On-line at: http://www.ftc.gov/ os/1998/9811/netfood.pdf. This test of health disclaimers on non-deceptive, fictional advertisements demonstrates starkly that even apparently clear disclaimers can confuse large proportions of consumers.

22 Kozlowski, L.T., Mehta, N.Y, Sweeney, C.T., Schwartz, S.S., Vogler, G.P., Jarvis, M.J., West, R.J. "Filter ventilation and nicotine content of tobacco in cigarettes from Canada, the United Kingdom, and the United States," *Tobacco Control* 1998; 7:369-375.

Part II
Presentations to the Expert Panel

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Introduction

Over the past 25-30 years, tar yields of manufactured cigarettes have been steadily and progressively declining. However, at any given time, it has remained apparent that smokers resist smoking very low-yield brands (i.e. 5 mg or less).

The question is whether the change in yields has had an impact on health over the years. According to much of the literature, low-tar cigarettes do reduce health risks among smokers. However, there are fundamental problems with the interpretation of these epidemiological studies.

We encounter two major problems when interpreting the possible significance of associations between low-tar cigarettes and reduced health risks;

1. Smokers are not randomly assigned to cigarettes; they self-select their brands;
2. Smokers compensate; extensive evidence demonstrates that when smokers change to low-yield cigarettes, they change the way they smoke.

Examining the Epidemiology

The epidemiology of low-yield cigarettes got off on an unfortunate footing. For example, in 1980 Ernst Wynder interpreted the association between yield and exposure as follows:

> "One of the things that has always appealed to me about science is that if I find something that makes biological sense, then I feel reassured. Thirty years ago, when we had a 40 mg tar cigarette, if you smoked 30 cigarettes a day you were exposed to about 1200 mg tar a day. Today's cigarettes have 20 mg tar, so you are exposed to 600 mg daily. If there's one thing everybody can agree on, it is that all tobacco-related cancers are dose related."[1]

This epidemiological analysis started from the assumption that tar yields of cigarettes are, in fact, a quantitative index of the dose that the smoker receives. We now know that this is simply untrue.

A number of analyses of the association between yield and risk have been done. One approach looked either at comparisons between people smoking higher-yielding and lower-yielding brands (case-control studies) or looked prospectively at risk in people smoking higher- or lower-yielding brands (cohort studies).

Here, for example, is the conclusion of Stellman in his 1986 review for an IARC Monograph:

> "Relative risk for lung cancer is in rough proportion to tar yield…. It is very likely that as successive cohorts of smokers are exposed to cigarettes of much lower yield for much greater proportions of their lives, the associated risks will decline even further."[2]

Stellman's strong statement accepts that lower yields will have positive effects on the risks of smoking.

Another approach, by Richard Peto, suggests that time trends in a population as yields decrease should be studied, as opposed to comparing people smoking high- or low-yield brands. His analysis, based mainly on age-specific lung cancer risks in the United Kingdom population, suggested that:

> "introduction of cigarette tar-level reductions might ultimately avoid about half of all cigarette-induced lung cancer."[3]

Peto concluded that reducing yields in a population over time does confer a public health benefit in lowering risk. Other epidemiological analyses have come to similar conclusions.

For example, a study done by Tang et al in 1995, looked at lung cancer risk in smokers of higher- and lower-yielding cigarettes and concluded that a 15 mg tar reduction is associated with a 25% reduction in lung cancer, a 23% decrease in heart disease, a 14% decrease in stroke and a 22% decrease in chronic obstructive pulmonary disease (COPD).[4]

The results of these studies suggest that a real correlation between tar yields and lowered health risks exists. However, one major caveat is that there is minimal or no control for socio-economic status. The extent to which different kinds of smokers are self-selecting to different cigarettes simply does not show up in the analysis.

The literature on cigarette yields and heart disease is inconclusive.

Some examples of these studies are:

1. Kaufman (1983) – Out of 502 cases and 835 controls, no correlation between nicotine and myocardial infarction (MI) was found.[5]
2. Petitti (1985) – Found the increase in relative risk for cardiovascular disease (CVD) per 5 mg of tar to be 1.15. This study was adjusted for race, but not for any other socio-economic factor.[6]
3. Parish (1995) – Concluded that smokers of medium-tar (10 mg or more) cigarettes versus low-tar (less than 10 mg) cigarettes had a 10.4% higher incidence of nonfatal myocardial infarction (MI).[7]

Some studies have found that there is a reduction in risk with lowered tar, and others have not. However, once again, these analyses contain very little adjustment for factors like socio-economic status or other possible risks for heart disease.

Of all the studies, Peto's[8] argument is perhaps the most powerful. Comparing smokers of higher- and lower-yielding cigarettes, at any given time, results in the problem of smokers self-selecting to different brands. However, if in a population, over time, a big reduction in the lung cancer risk is apparent, an explanation is required. Age-specific lung cancer rates among younger adults in the United Kingdom have decreased very steeply over the last 25 years. As Peto has argued, the decline in risk is greater than can plausibly be ascribed to the decline in smoking prevalence. Peto, at his most conservative, suggests that there have probably been changes to the product that may have contributed to the decline. At other times he has implied that the reduction in yield has been the key factor.

The major flaw in this argument is that the strong secular decline in lung cancer rates among young adults has not occurred in the United States. Thus, despite lower tar brands becoming the norm, and sales-weighted yields declining, there has not been a correlated decline in lung cancer risk.

As we've seen, until a few years ago there was an epidemiological consensus that a benefit or reduced risk from lower-tar brands existed. We now need to be confident that this interpretation is not the best one.

The first issue is that of self-selection to brands. Very few of the studies of risk by yield have taken this into account.

Striking associations exist between who chooses which brand. A whole series of socio-economic markers relate to who chooses to smoke a higher- or lower-yielding brand. People who live in rented housing, who don't have a car, who work in manual jobs, who live in crowded accommodations, or who have low education qualifications tend to choose higher-yielding brands. All of these factors, independently, predict choosing a higher-yielding rather than a lower-yielding brand.

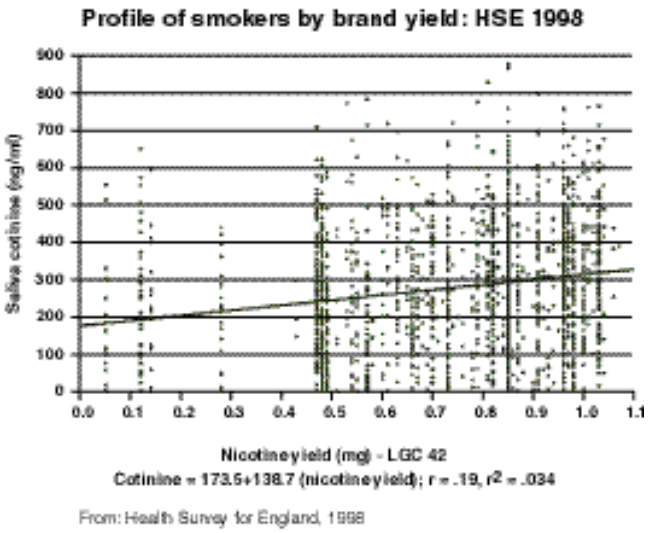
Given that all of these deprivation indicators are also related to lung cancer risk, a real problem of confounding exists if you don't take these socio-economic factors into account when looking at the relationship between brand yield and risk.

Saliva cotinine by brand nicotine yield in 2031 smokers of 0+ cigarettes per day: HSE 1996

	[illegible]	[illegible]	[illegible]
	[illegible]	[illegible]	[illegible]
Mean nicotine yield (mg)	0.14	0.87	0.91
Mean tar yield (mg)	1.39	8.09	11.83
Mean carbon monoxide yield (mg)	1.89	7.49	13.14
Daily cigarette consumption, no.	13.9	13.9	16.9
% smoking <8 cigarettes/day	17.9	10.5	6.1
Sex (% male)	31	34	49
Mean age, y	44.9	40.7	38.9
% with degree level education	19	13	6
% with no educational qualifications	26	29	34
% unemployed	3	5	7
% manual occupation	41	52	68
% rented accommodation	33	39	48
% with no car ownership	17	29	37

From: Jarvis MJ, Primatesta P, Bryniarski R, et al.

The second very major issue, the most critical issue, is the relationship between tar yield and measured dose, or up-take, of smoke components. Many studies show that the relationship between nominal tar, or nicotine yield, and measured intake is very weak. When looking at cotinine as a measure of smoke intake by nicotine yield of the cigarette brand smoked, there is an enormous variation in intake at any given level of nicotine yield. Overall, there is a very shallow slope relating intake to nominal yield (slightly lower intake on average), but that slope is not as steep as the change in yield would suggest. The data indicates that people who smoke low-yield brands tend to compensate (over-smoke) compared with people who smoke high-yield brands.



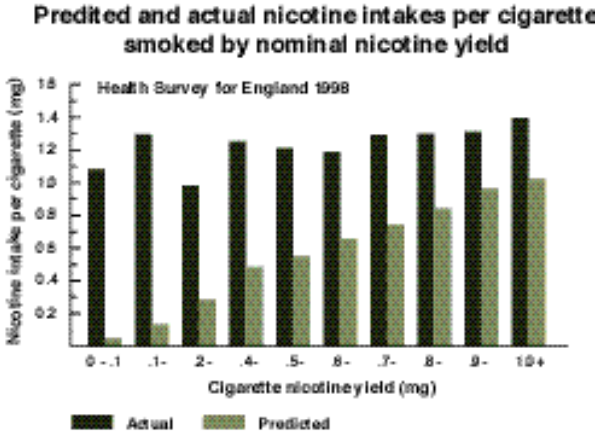
From: Health Survey for England, 1998

This study[9], like many others, has the problem of self-selection of smokers to brands by a whole series of factors. The people choosing low-yielding brands tend to be highly educated, employed, etc. Also, in our data, people smoking low-yielding brands have somewhat lower cigarette consumption rates.

These kinds of associations raise the possibility that the slope that we do see between nominal yield and intake actually reflects the self-selection of different kinds of smokers to different brands. Lighter smokers, requiring less nicotine intake, may be selecting lower-yielding brands.

Another way of looking at the relationship between yield and intake is to consider the nicotine intake per cigarette smoked by the nominal nicotine yield of the cigarette.

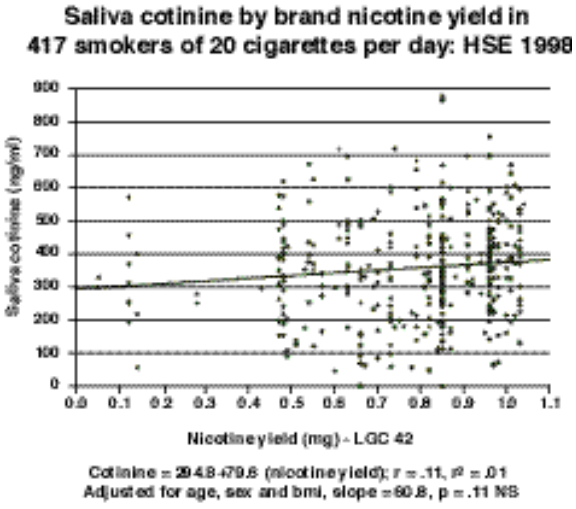
If nicotine yield is a true measure of dose for the smoker, we would observe that smokers take in 0.1 mg of nicotine for a nicotine yield of 0.1 mg, 1 mg of nicotine for a nicotine yield of 1 mg, and so on. However, our



From: Health Survey for England, 1998

data suggests that at the lowest yield, people were taking in about 8-10 times the nominal nicotine yield of the cigarette they were smoking. In addition, there was very little relationship between nominal yield and the actual nicotine intake per cigarette smoked.

Taking into account the problems of self-selection, we took the view that our data cannot exclude the nul hypothesis that compensation for lower yield may indeed be complete.



From: Health Survey for England, 1998

As an example, we did one analysis that included only people smoking 20 cigarettes a day – thus holding cigarette consumption constant. When we plotted the relationship between nominal yield and nicotine intake we found that there was no significant slope in the relationship with yield. At any yield people were taking in the same amount of nicotine.

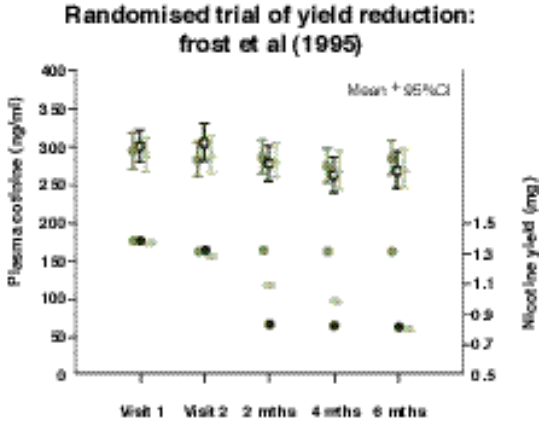
This kind of information poses an enormously important challenge for those interpreting the epidemiological data as a causal association. If the nominal nicotine yield does not actually index real differences in human smoking dose then it is very hard to see there could be an actual health benefit.

Another way of trying to look at this issue of nicotine compensation is to look at switching studies where people have been randomly allocated to cigarette yields.

In one study[10] smokers were randomly switched to one of three conditions and followed for six months.

Conditions:

1. Switched from their usual brand to a different brand yielding slightly less nicotine.
2. Switched in a series of steps to a brand yielding about half as much nicotine as their usual brand.
3. Switched in one stage to a brand yielding about half as much nicotine as their usual brand.



From: Frost C, Fullerton FM, Stephen AM, et al.

Whether the switching was fast or slow made almost no impact on measured nicotine intake as indexed by cotinine, suggesting that compensation for nicotine yield is more or less complete.

The industry has been aware of this compensation for quite some time, as can be seen from this 1984 industry quote.

> "Consumers may have been obtaining 14-16 mg PMWNF (and normal equivalent nicotine delivery) for a very long time, i.e. compensating down to 16 mg when cigarettes delivered 25 mg and compensating up if they are now smoking a 13 mg… It is accepted that nicotine is both the driving force and the signal (as impact) for compensation in human smoking behaviour."[11]

Other possibilities

If we accept that nicotine compensation and self-selection undermine the interpretation of the epidemiological association, are there other things that could have led to lower observed risks of disease that could have been associated with lower yields, but not caused by them?

There are some other possibilities that we could point to. For example, in 1970 the industry suggested that if you use reconstituted tobacco sheet as a means of processing tobacco, it has an advantage that it not only reduces the total particulate matter delivery, but also its carcinogenicity per unit rate.[12]

Over the last 20 years we have seen changes in tobacco processing and more use of reconstituted tobacco sheet in the cigarette. Thus, one possibility is that changes in tobacco processing, which have not been well documented, may have led to a change in the carcinogenicity of tar on a gram-per-gram basis. Even if smokers have been getting the same tar exposure over time, there may have been some reduction in risk.

Another possibility is that cigarettes over time may have had different tar-to-nicotine ratios. To the extent that tar-to-nicotine ratios have improved over time, even if you have 100% compensation for nicotine you may get a somewhat lower tar exposure over time.

Two things that we have seen that could have led to lower risk of disease are:

1. Tar to nicotine ratios in all brands did show an improvement from the 1970s to 1980s - cigarettes delivered less tar per unit of nicotine measured on ISO machines over that period.
2. Low-tar brands had more favourable tar-to-nicotine ratios than high yielding brands.

To the extent that tar-to-nicotine ratios are indicative of what humans actually derive, this would be consistent with the associations between yield to risk that we see in some of the studies.

One issue that needs to be resolved is the epidemiological near-consensus. However, views do seem to be changing. For example, Sir Richard Doll, in a recent deposition in Los Angeles stated that he had changed his views:

> "so my views about the reduction [below 20-25 mg] in the so-called tar delivery… is that it has not been beneficial… I have changed quite definitely the opinion that reducing tar delivery was good, and I certainly don't say that now."[13]

Conclusions

Smokers of low-yield cigarettes tend to have a lower risk of lung cancer, but the evidence suggests that this difference is due to differences between smokers of low- and high-yield cigarettes, rather than to differences in the cigarettes they smoke. Furthermore, the evidence does not suggest that shifting to low-yield cigarettes produces a meaningful reduction in risk.

Nicotine-seeking defeats cigarette design and makes the numbers irrelevant. These numbers are, in addition to being irrelevant, misleading to both regulators and consumers. These numbers are confusing and offer false health reassurance. In addition, these false assurances may be perceived as a valid alternative to quitting.

air pollution, etc.) that could have caused the high rates of lung cancer in the mid-century. Thus, the whole line of evidence is not a sufficient basis for direct or indirect health claims.

2. Lung cancer in the young can be seen as the genetically more susceptible people being afflicted first. To the extent that misperceptions allow people to defer cessation this will prevent the decline in lung cancer seen among the young from being carried forth to older ages.

Tar-to-nicotine ratios

Neil Collishaw:
Low tar-to-nicotine ratio is not necessarily good. If the tar nicotine ratio changes, does the doctoring of the cigarette keep people in the market who may have otherwise quit?

Discussion

Explaining the epidemiology of 'Light' and 'Mild' cigarettes

Michael Thun:
The issue has been framed around addicted smokers. We need to broaden the perspective to the population in general (i.e., non-smokers who may begin smoking because cigarettes are not perceived as hazardous). Neither epidemiological studies nor the trends compare, for example, the likelihood of being a smoker or continuing to smoke.

Both direct health claims and implied health claims mislead smokers about what factors are really important in risk. Martin talked about lung cancer rates among older smokers and while the interpretation is complex, whatever the impact of these products, filters and lower-tar, they did not prevent a major increase in lung cancer risk in these cohorts. These products changes deflect attention away from behaviours and factors that really influence risk (i.e. age of initiation, how much you smoke, etc.).

As Martin indicates, there have been decreases in lung cancer risks in the young that are strong in the United Kingdom. Two things are essential in interpreting this:

1. Ecological data do not establish what has caused this reduction. Differences in tobacco products vary from country to country and there is no way of considering other factors (i.e., changes in diet,

Martin Jarvis:
Smokers will take the nicotine dose they seek from whatever the product is. If you accept that smokers will regulate nicotine, they will get less tar – which is a good thing.

What we lack is good data showing what the nicotine intake in smokers has been over time as all of these changes in cigarette design, tar yields, etc. have occurred. To the extent that changes in the product actually led to changes in smokers' intake, you could argue that nicotine intakes may have decreased. However, if nicotine is really driving the whole business you could predict that nicotine intakes in the population now are similar to intakes in the 1960s.

Lynn Kozlowski:
Tar-to-nicotine ratios change radically with compensation smoking so it is foolish to make epidemiological generalizations about tar-to-nicotine ratios that are based on standard smoking conditions. The other issue that changes tar-to-nicotine ratio is filter ventilation.

Francis Thompson:
With the new Canadian reporting regulations, as you know we have data for all brands under two sets of smoking conditions, the ISO standard parameters and the 'intense' or realistic conditions. A quick look at popular brands suggests that tar-to-nicotine ratios increase substantially as you move to the 'intense' conditions, particularly for the 'lighter' brands.

Martin Jarvis:
The more general point is that it may not be yields or ratios, or changes in design, but a whole series of things that have changed the risk.

David Burns:
There are some differences between population use in the United Kingdom and the United States; the United Kingdom has a high rate of occasional smokers in the low-tar category. This may explain the slope in the number of cigarettes per day.

In California data (with no cotinine analysis), when you fall below 0.9 mg of nicotine you see an increasing number of cigarettes smoked per day on average in the population, with a falling nicotine level. I have interpreted that as above 0.9 mg you can compensate within the cigarette by changing your smoking pattern.

How did we get it wrong?

Neil Collishaw:
In his presentation, Martin Jarvis referred to several statements of public health officials and researchers about the supposed benefits of 'light' and 'mild' cigarettes from the 1960s to the 1980s. We now know that these earlier conclusions were erroneous. Reasons for these erroneous conclusions were discussed.

David Burns:
People are self-selected. This impacts the epidemiology by demographic and other characteristics. However, it may well be that people who can switch to lower-tar cigarettes (and almost all of the people in the studies were people who had switched) are different. It may be that the very intense, heavily addicted smoker, with a high demand for nicotine cannot get sufficient nicotine from low-tar and nicotine cigarettes and therefore is not successful in switching.

Another possibility is that these people may be very different for other health behaviours such as exercise, diet or other factors that are important for heart disease risk. One particular characteristic that they may be quite different on is that the people who switched to low-tar and nicotine cigarettes were more likely to quit smoking. The people who were the early adopters of these products (the people who were used for these epidemiological studies) appeared to be those who were interested in reducing their risk and eventually quitting. In fact, these people eventually had higher rates of cessation. Many epidemiological studies do not continue to follow people regularly to determine who smokes after the initial measurement – you lose track of the fact that people have quit and if there is excess cessation among people smoking lower-yield cigarettes, there will be less disease risk and less cancer. This will be misinterpreted as a relationship with low-tar and nicotine cigarettes.

The last direct relationship is that most people in these studies are people who have switched. If you look at the American Cancer Society data you see a small shift in the number of cigarettes smoked per day in the people who switch from one brand of cigarettes to another (in the order of 2.8 cigarettes per day per mg of nicotine). If you look at the high-yield groups in these studies, that difference is about 1.3-1.4 mg of nicotine (machine measured) between the high group and the low group. This results in a 3.4 cigarettes per day difference in those smokers. The difference in risk between the American Cancer Society high-and low-tar group is completely eliminated by a shift in number of cigarettes smoked per day. Thus, it may well be that what we saw was an accident of the way we do epidemiology – that you take a cross-section in time and are not able to look at some of these complete descriptions.

Another issue is related to differences between two countries – the United Kingdom and the United States. The United States has not seen the reduction in lung cancer death rates at younger ages to the magnitude that has been seen in Britain. We need to put this in perspective. Britain adopted filters on average about 8 years later than the United States, they also adopted low-tar and nicotine cigarettes later than the United States. In addition, in the United States and in Britain the people who smoke low-tar and nicotine cigarettes are not the young people. The young population adopt the cigarettes that are most heavily marketed.

If you look at the upstroke of lung cancer with age in the population, that upstroke is very sensitive to shifts in age of initiation and shifts in the intensity of smoking. Those two factors are very important to examine if you are going to look at shifts in lung cancer under the age of 45.

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The Standard Smoking Machine

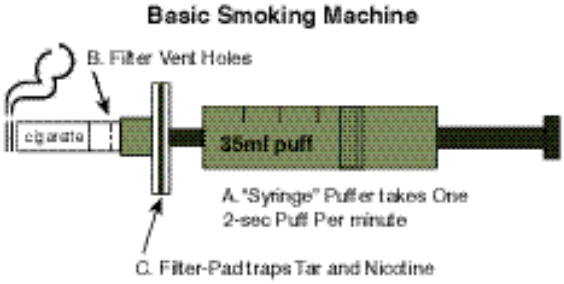

Figure 1. A schematic drawing of a basic smoking machine. The syringe puffer (A) draws smoke from the cigarette - one 2-sec, 35-ml puff every minute until a fixed butt length is left. A major design feature of most modern cigarettes is vents or air-dilution holes on the cigarette filter. (B). Air is drawn through the vents to reduce the smoke getting through the cigarette. A filter-pad (C) traps smoke for analysis. "Tar" is basically measured as the change in weight of the filter as a result of smoking cigarettes. Reprinted from Kozlowski, Henningfield and Brigham, 2001.

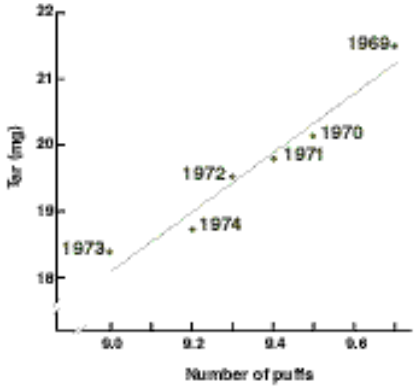

Figure 2. Mean tar (tar = total particulate matter - nicotine) and mean number of puffs per cigarette for survey years 1969 to 1974 for 12 brands of filter cigarettes. If two surveys were conducted in one year, the data are based on the mean values. Linear regression: TPM = 4.44 (puffs) - 21.85, r-squared = .94. Smoking machines do take fractions of puffs (0.1 puff = 3.5 ml of smoke).

Reprinted with permission from Science, Vol 209, Kozlowski LT, Robert W, Robinson J, Grunberg, NE. Have tar and nicotine yields of cigarettes changed?, pp.1550-1551. Copyright 1980 American Association for the Advancement of Science.

faster on a hotter day, what do you do? Watch it melt away or eat faster? You would eat faster. The same is true

Standard tar and nicotine yields can be reduced by either reducing the number of puffs taken from the cigarette or by reducing the concentration of smoke in each puff. The number of puffs taken is reduced by decreasing the length of the available tobacco column (this is done by using either longer filter overwraps or longer filters) or by increasing the burn-rate of the column width. The burn rate can be increased by using chemical additives in the paper, by using a higher-porosity paper, by using less tobacco (by weight) or by decreasing the diameter of the tobacco column.

Generally, the number of puffs taken from an average cigarette ranges from 7 to 14; after the first puff, 1 puff is taken every 60 seconds. Tobacco industry documents reveal that they routinely provide the number of puffs taken in their tests, but these are not generally included in official reports. A study done in 1980, by the Addiction Research Foundation (ARF) and Labstat, demonstrates that changes in the number of puffs were, in fact, being used to change tar and nicotine levels.[1] As seen in Figure 2, over the years, the number of puffs per cigarette decreased by almost 1 and the tar yields changed accordingly. If your ice cream cone is melting of cigarettes. A small adjustment in the burn rate would lead to a small adjustment in the puff rate on a cigarette.

Tar and Nicotine Concentrations

The concentration of tar and nicotine per puff can be reduced by increasing the filter efficiency, increasing the air dilution of mainstream smoke, decreasing the density of tobacco or by using a variety of tobacco blends.

Filter Efficiency
Filter efficiency can be increased with ventilated filters, longer filters, denser filters or "active" filters. Increasing the air dilution of mainstream smoke can be achieved by using ventilated filters (the preferred way), or with a higher porosity paper.

Density
The density of the tobacco can be decreased by using reconstituted sheet tobacco, by using puffed or expanded tobaccos (this is the same mechanism used to puff breakfast cereals), by adding flavourings and additives, or by decreasing the circumference of cigarettes.

Blending
Tobacco blending is another method used to decrease the tar and nicotine per puff. This can be achieved through the use of lower nicotine yield tobacco strains, using a variety of blends such as flue-cured, burley or oriental tobaccos, or by using different parts (or leaf positions) of the tobacco plants.

Compensation

There are four ways for smokers to compensate for the lower nicotine dose produced by most 'light' and 'ultra-light' cigarettes in the standard smoking-machine test. These compensation methods include:

1. increasing the volume per puff (likely the most common method);
2. increasing the number of puffs taken;
3. increasing the number of cigarettes smoked; or
4. by reducing air dilution (i.e. by covering vents). Reducing air dilution will likely be a negligible compensation mode because increased puff volume can achieve all the desired compensation.

For less popular, heavily diluted 'ultra-ultra-light' cigarettes, (defined as 60-85% ventilated, with a 1-2 mg tar yield), up to 85% of a puff under standard conditions will be air, not smoke. Blocking vents with lips or fingers can reduce air dilution. Other methods to decrease air dilution include using laser filter vents that become less effective with increased puff volumes, or by using filter designs that promote vent compromise (this method was used for Barclay cigarettes).

Although ventilation is not the only design feature that affects yields or exposures, it is the most important one for the modern cigarette. From the manufacturer's perspective it is also the easiest way to reduce ISO tar, nicotine and carbon monoxide yields. The ventilation method was used in the United Kingodm, for example, when ceilings were lowered on maximum tar. In order to increase ventilation, and thus reduce tar, manufacturers simply punched more holes in the filter.[2] Figure 3 demonstrates that percent dilution is strongly related to tar. In contrast, Figure 4 shows that the nicotine content of the tobacco does not have a relationship with standard yield or with dilution.

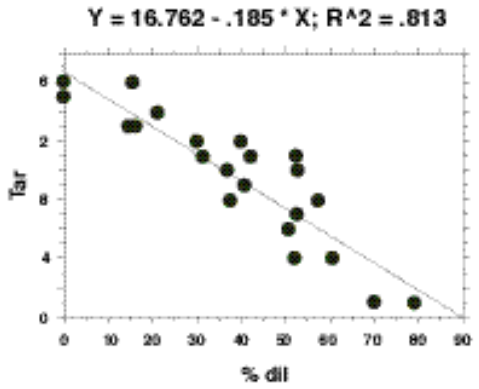

Figure 3. Filter dilution (%) is strongly related to standard tar yield (in mg) in a sample of Canadian cigarettes. Data from Kozlowski, Mehta, Sweeney, et al. (1998)

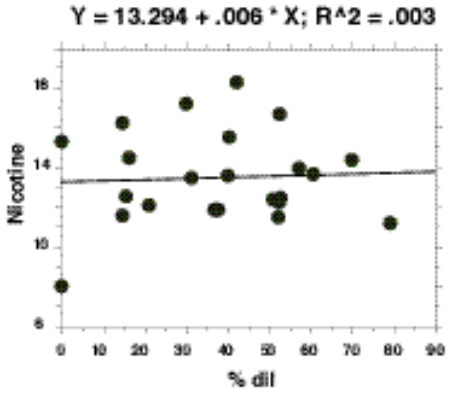

Figure 4. Filter dilution (%) is not related to standard nicotine content (mg/cigarette) in a sample of Canadian cigarettes. Data from Kozlowski, Mehta, Sweeney, et al. (1998).

Problems with Filter Ventilation

Filter ventilation, as a design feature influencing smoke yields, is fundamentally defective and should be banned. There are three core problems with filter ventilation:

1. lighter taste;
2. increased puff volumes (facilitated by filter ventilation) and;
3. blocked vents.

Lighter taste
Here is selected evidence from tobacco industry documents about 'light' cigarettes, beginning in 1955:

1955: ". . . if they [consumers] can see it's longer burning – can taste it's mildness – and be shown it's cooler, that this would bring credibility to our advertising."[3]

1956: "subjectively decreased irritation by the smoke."[4]

1979: Vented & unvented versions of regular Marlboro® with equal standard tar; diluted version was 'milder' and better tasting.[5]

1980: BATCO found increasing ventilation from 0 to just 12% reduced 'impact' and irritation of mouth, nose, & throat.[6]

Smokers say that "lights are milder and easier on the chest." These cigarettes taste 'lighter' to the smoker and the testimony of their senses tells smokers that they are smoking a less risky cigarette. However, a bigger air-diluted puff can taste milder than a smaller undiluted puff and deliver equal doses of toxins to the smoker.[7]

Other factors, such as chemical additives, can also influence the lighter taste of the cigarette.

Increased Puff Volumes
One of the most senior executives at Philip Morris gave a presentation to stockholders in 1974 and said:

1974: "people smoke in such a way that they get much more than predicted by machine. This is especially true for dilution cigarettes."[8]

According to a major researcher at BAT "increased ventilation generally decreases resistance-to-draw which generally facilitates taking bigger puffs".[9] Companies often tested cigarettes on "50/30" regimens (50 ml puffs every 30 seconds).

1982: Philip Morris scientists concluded that: "[r]esults from a series of puff parameter manipulations made on the smoking machine indicate that puff volume is the critical variable in determining nicotine delivery to the smoker."[10]

In research performed by a Philip Morris scientist in 1974, one subject was observed to take a total puff volume of 1397 ml from a single Carlton cigarette, a 1mg tar, 80% ventilated cigarette, while the machine-smoked volume was only 315 ml, over a 4-fold difference.[11]

For a 1 mg standard tar cigarette we can calculate that you need a 206 ml puff to compensate for the increased ventilation. This represents a challenging size puff for any smoker. The inability to adequately compensate by increasing puff volume is one of the reasons why vent blocking is common for highly ventilated cigarettes.

Blocked vents
Vent blocking is most common among 1-2 mg tar cigarettes.[12] Vent blocking is probably not important on moderately ventilated cigarettes because puff volume changes easily produce compensation.

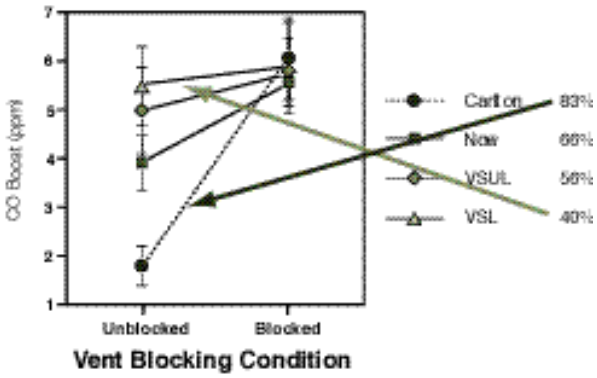

Figure 5. Mean carbon monoxide boosts with standard errors for all four brands of cigarettes under both blocking conditions.

Reprinted from Pharmacology, Biochemistry and Behaviour, Vol. 63, No. 1, Sweeney, Christine T., Kozlowski, Lynn T., Parsa, Partea, Effect of Filter Blocking Blocking on Carbon Monoxide Exposure from Selected Lower Tar Cigarette Brands, pp. 167-173, Copyright 1999, with permission from Elsevier Science.

Figure 5 shows what happens in a lab when a smoker is tested for carbon monoxide before and after they smoke to measure carbon monoxide boost, the change in expired carbon monoxide.[13] For Virginia Slims Lights, blocking with the lips has a negligible effect on carbon monoxide boost. We've also done several studies showing that Marlboro Lights have a negligible effect of blocking on carbon monoxide boost. In contrast, for Carlton cigarettes (an 83% vented cigarette) there is a dramatic effect, essentially a tripling of carbon monoxide boost on human smoke exposure as a result of vent blocking. As can be seen in Figure 5, there is a gradation, as the cigarettes become more and more vented the effects of vent blocking are greater.

Published industry research generally compares vented with unvented cigarettes. This hides the very few heavily vented cigarettes among the many low to moderately vented cigarettes. These studies generally conclude that vent blocking is rare. But for heavily vented cigarettes, the industry documents show greater evidence of vent blocking.[14]

A Proposal for Changing Smoking-machine Testing of Cigarettes

I want to conclude with a proposal for changing the standard test. Basically, for low- to high-tar (in some countries the standard tar-yield ranges from 1 mg to 15 mg), the industry says that most of the proposals for more intense smoking end up with a flatter line but with ranks preserved. Why bother change the test if the ranks are preserved?

We propose a two-stage, sliding-scale test that simulates compensation.[15] In this test, at the first stage a standard ISO tar and nicotine test is performed and the nicotine yield limit is set to 1 mg. The stage-two machine settings are determined by the stage-one results. If the standard nicotine reached 1 mg per cigarette, the machine is set in the second stage to take a 40 ml puff every 60 seconds. With every decrease of 0.1 mg nicotine per cigarette, puff volumes increase by 4 ml and puff frequency decreases by 4 seconds. If the standard nicotine yield is 0.5 mg, then, the machine is set to take a 60 ml puff every 40 seconds. If the standard is 0.1 mg, the machine is set to take a 76 ml puff every 24 seconds. Further, 50% vent blocking may be needed for some cigarettes, particularly at the bottom end of the scale.

Discussion

Modifying the standard test

David Burns:
What is your take on using various devices to mimic how a smoker actually uses a cigarette and then programming the machine to use that exact pattern? The industry has done this and I wonder if it would be possible to take a sample of people who smoke different brands and look at the variability in they way they smoke them and develop standard testing that would give us ranges?

Lynn Kozlowski:
There is no doubt that it is possible, but it would be difficult for a government, which may not be able to defend the results, to adopt this type of system. However, a rich NGO could undertake this type of work and publish the results.

Tar-to-nicotine ratio

Michael Thun:
What are the factors that influence tar-nicotine ratio?

Lynn Kozlowski:
Filter ventilation is the key way to decrease tar-nicotine ratio in standard tests. However, blocking vents has a dramatic effect on tar-nicotine ratio. Puff volume can also change the tar-nicotine ratio unfavourably. Laser perforation is a problem, because when you increase your puff volume on a laser-vented cigarette, the ventilation level decreases rapidly. This facilitates compensation, and affects actual tar-nicotine ratios.

Michael Chaiton:
We took data from a Rickert study and measured the elasticity of cigarettes (elasticity is the ease with which a cigarette may be compensated). We found that when you increase puff volume the nicotine elasticity increased, but the tar elasticity increased much more slowly. This means that the tar-nicotine ratio actually went down when you took a larger puff. This was true for popular cigarette brands only, 70% of cigarettes did not do this.

Reducing the tar-nicotine ratio also increases pH level, which increases the free nicotine and the impact of nicotine that the smoker actually feels. Less nicotine will feel like more and will affect the smoker in the same way.

Neil Collishaw:
This was true for only 20 brands, where the tar-nicotine ration actually changed when the puff volume was increased from 44 ml to 56 ml. Interestingly these 20 brands make up more than 2/3 of sales in Canada.

Ventilation and mildness

Marvin Goldberg:
We have a situation across many products where it is essentially impossible to make a reasoned expert judgement, so consumers end up using proxies. Mildness is a clear proxy, however irrelevant, for consumers. Thus, the smoothness of the taste, linked to ventilation, is a difficult attribution to overcome.

Endnotes

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Dr. Joanna Cohen

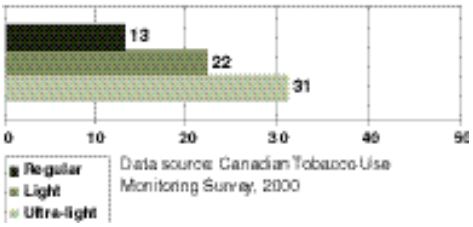
Principal Investigator,
Ontario Tobacco Research Unit

My presentation will focus on:

- the public perceptions of the risks of disease of 'light' and 'mild' cigarettes;
- perceptions about tar delivery;
- perceptions about filter vents;
- people's reasons for smoking 'light' and 'mild' cigarettes;
- their likelihood of quitting if the 'light' and 'mild' deception is exposed; and
- research that counter-marketing of 'light' and 'mild' terms can promote cessation.

Risks of disease

Figure 1. Proportions of Canadian Smokers Who Think 'Lights' and 'Ultra-lights' are Less Harmful than Regular Cigarettes, By Type of Cigarette Smoked

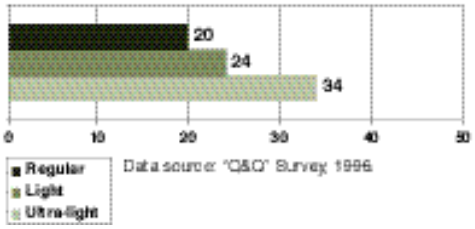


Substantial numbers of 'light' and 'mild' smokers think that 'light' and 'mild' cigarettes reduce the risks of disease and smokers of 'ultra-light' and 'ultra-mild' cigarettes appear to be the most deceived.

In this survey, smokers were asked "do you think that 'light' and 'mild' cigarettes are less harmful to smokers than regular cigarettes?"

According to these results, 31% of 'ultra-light' smokers said yes, 22% of 'light' smokers and 13% of regular smokers thought that 'light' cigarettes are less harmful than regular cigarettes.[1]

Figure 2. Proportions of Ontario Smokers Who Believe That, Compared to Regular Cigarettes, 'Light' or 'Mild' Cigarettes Decrease Their Risk of Getting Heart Disease, By Type of Cigarette Smoked

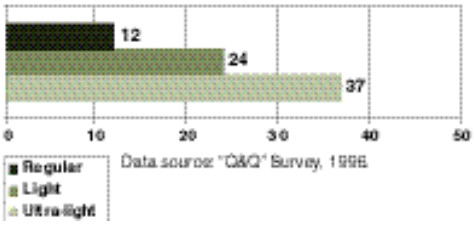


This 1996 survey sampled 1764 adults in Ontario aged 18 and over, and included 428 smokers.

Smokers were asked, "compared to smoking regular cigarettes, does smoking 'light' and 'mild' cigarettes increase, decrease or have no effect on your risk of getting heart disease?"

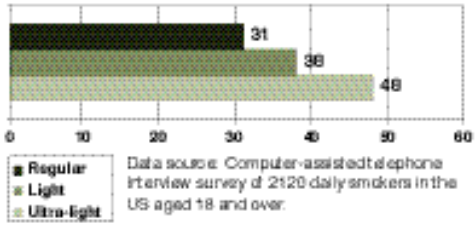
About 1/3 of 'ultra-light' smokers, 1/4 of 'light' smokers and 1/5 of regular smokers thought that 'light' and 'mild' cigarettes would decrease their risk of getting heart disease.[2]

Figure 3. Proportions of Ontario Smokers Who Believe That, Compared to Regular Cigarettes, 'Light' or 'Mild' Cigarettes Decrease Their Risk of Getting Lung Cancer, By Type of Cigarette Smoked



A similar question from the same study asked about the risk of lung cancer. Of the respondents, 37% of 'ultra-light' smokers, 24% of 'light' smokers and 21% of regular smokers thought that smoking 'light' and 'mild' cigarettes would decrease their risk of getting lung cancer.[3]

Figure 4. Proportions of US Daily Smokers Who Believe that 'Ultra-Light' Cigarettes Reduce the Risks of Smoking by 50% or More, By Type of Cigarette Smoked



These data were presented at the Society for Research on Nicotine and Tobacco (SRNT) Conference earlier this year. Unfortunately, this is from a poster presentation and therefore data regarding the methods of this study are scant. However, the authors concluded that these daily smokers reported that the risk from regular cigarettes was greater than the risk from 'light' cigarettes, which was greater than the risk from 'ultra-light' cigarettes. Respondents were also asked whether they thought that 'ultra-light' cigarettes reduced the risk of smoking by 50% or more. About half of all 'ultra-light' smokers, 38% of 'light' smokers and 31% of regular smokers felt that 'ultra-light' cigarettes reduced the risks of smoking by 50% or more.

Tar delivery

Only a minority of smokers know that 'light' cigarettes can deliver the same amount of tar as regular cigarettes.

In a US study people were asked, "How many 'light' cigarettes would someone have to smoke to get the same amount of tar as from one regular cigarette?" [5] Less than 10% of respondents said that you would only have to smoke one 'light' cigarette and a large number (between1/3-2/3) indicated that they didn't know.

In a different study from the United States, daily smokers were asked the same question.[6] Over 80% believed that you need at least two 'light' or 'ultra-light' cigarettes to get the same amount of tar as a regular cigarette. About 70% said that you would have to smoke at least three 'ultra-light' cigarettes.

Filter vents

Data suggests that only a minority of 'light' and 'mild' smokers know that blocking filter vent holes increases tar delivery.

In a 1996 Ontario survey respondents were asked, "Do you think that blocking filter holes would increase, decrease or have no effect on the amount of tar a smoker gets from these cigarettes?" Only 37% responded that it would increase the amount of tar.

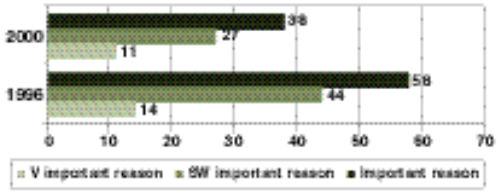
The same survey asked, "Have you ever tried to block the filter holes on cigarettes?" Of those who had seen or heard of filter holes (just over half of all 'light' and 'mild' smokers), 39% reported that they have tried to block the holes.

Similarly, data from the United States suggests that about 40% of smokers knew that some cigarette brands have filter vents, but less than 20% of smokers of vented brands knew that their own brand has vents.

Reasons for smoking 'light' and 'mild'

About one half of 'light' and 'mild' smokers say they smoke 'light' and 'mild' cigarettes to reduce the risks of smoking. Over half say they smoke 'light' and 'mild' cigarettes as a step toward quitting.

Figure 5. Proportion of Ontario 'Light' and 'Mild' Smokers Who Smoke 'Light' or 'Mild' Cigarettes to Reduce the Risks of Smoking Without Having to Give Up Smoking, 1996 and 2000



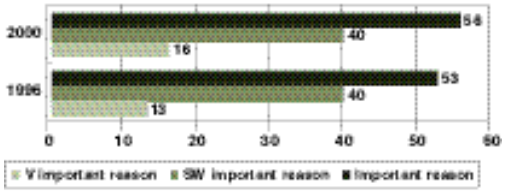
Note: "Important reason" is the combination of "Very important reason" plus "Somewhat important reason".

Data source: "C2000" Study, 2000.

Data from a 2000 study of Ontario adult smokers reveal that 38% of 'light' and 'mild' smokers said that an important reason why they smoke 'light' and 'mild' cigarettes is to reduce the risks of smoking without having to quit completely – 27% of 'light' and 'mild' smokers

indicated that it was a somewhat important reason and 11% said that it was a very important reason.[9]

Figure 6. Proportion of Ontario 'Light' and 'Mild' Smokers Who Smoke 'Light' or 'Mild' Cigarettes as a Step Toward Quitting Smoking Completely, 1996 and 2000

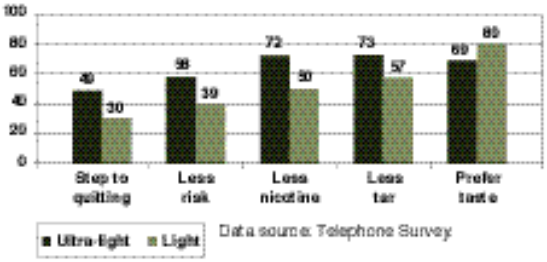


Note: "Important reason" is the combination of "Very important reason" plus "Somewhat important reason".

Data source: "Q2000" Study, 2000.

Similarly, this graph shows the proportion (56%) who indicated that an important reason for smoking 'light' and 'mild' cigarettes was as a step toward quitting smoking completely.[10]

Figure 7. Reported Reasons for Smoking 'Light' Cigarettes Among US Daily 'Light' and 'Ultra-light' Smokers, By Type of Cigarette Smoked



In the United States, 'ultra-light' and 'light' daily smokers were asked their reasons for smoking 'light' and 'mild' cigarettes. Forty-nine percent of 'ultra-light' and 30% of 'light' smokers said they smoked these cigarettes as a step towards quitting. Fifty-eight percent of 'ultra-light' and 39% of 'light' smokers say they smoke these cigarettes because they are less risky than regular cigarettes. Also, high proportions smoke these cigarettes because they believe they have less nicotine or tar. High proportions also say they prefer the taste of these cigarettes.[11]

Likelihood of quitting if the 'light' and 'mild' deception is exposed

Substantial numbers of 'light' and 'mild' smokers say they would be likely to stop smoking if they found out that 'light' and 'mild' cigarettes could deliver the same amount of tar and nicotine as regular cigarettes.

The Ontario survey in both 1996 and 2000 asked, "If you learned that 'light' and 'mild' cigarettes could give you the same amount of tar and nicotine as regular cigarettes, would you be likely to stop smoking?"[12] In 2000, 4 out of 10 respondents said yes, the same proportion as in 1996.

In the United States, 'ultra-light' and 'light' smokers were asked the same question.[13] Thirty-two percent of 'ultra-light' and 26% of 'light' smokers said that they would be likely to quit smoking if they knew that their cigarette could give them the same amount of tar and nicotine as regular cigarettes.

In Ontario we performed further analyses to determine who say they would be likely to stop smoking if they learned the truth about 'light' and 'mild'. We found that the reported likelihood of quitting does not appear to vary by sex, age, education, nicotine dependence or knowledge about the health risks of 'light' and 'mild' smokers. The only difference appears to be that those who report they smoke 'light' and 'mild' cigarettes as a step towards quitting are more likely to say they would quit altogether if they knew the truth about 'light' and 'mild' cigarettes (26% vs 15%).[14] Similar findings were reported in the United States.[15]

Counter-marketing can promote cessation

There is now some research done by Lynn Kozlowski and others showing that counter-marketing of 'light' and 'mild' terms can promote smoking cessation. According to experimental studies in the United States,[16] those who heard a simulated radio message on the risks of 'lights' were more likely to say that one 'light' cigarette could deliver the same amount of tar as one regular cigarette and they were more likely to say that 'light' cigarettes were more dangerous. It also appears that information about the dangers of 'light' cigarettes increased intentions to quit smoking.

Another study used a quasi-experimental design comparing smokers and recent quitters in Massachusetts (Massachusetts had a media campaign focusing on 'light' and 'mild' deception) to their counterparts in the rest of the United States.[17] It was found that compared

to the US sample, the Massachusetts sample contained more recent ex-smokers and more smokers of higher-tar cigarettes, suggesting that the 'light' cigarette smokers had quit.

The Massachusetts campaign to counter-market 'light' cigarettes appeared to promote cessation and inform smokers of the risks of 'light' cigarettes.

In addition, work by Shiffman and colleagues tested the effects of different types of counter-marketing advertisements. They reported the ads that address the sensory experience that 'light' cigarettes feel less harsh were more effective (at shifting preference away from cigarettes) than ads educating smokers about how 'light' cigarettes can deliver normal amounts of tar.[18]

The Bottom Line

Smokers are being deceived by 'light' and 'mild' terminology and it appears that smokers choose these brands because they believe they are less risky. Specifically:

- Substantial numbers of 'light' and 'mild' smokers think that 'light' and 'mild' cigarettes reduce the risks of disease, and smokers of 'ultra-light' and 'ultra-mild' cigarettes are the most deceived.
- Only a minority of smokers know that 'light' cigarettes can deliver the same amount of tar as regular cigarettes.
- Only a minority of 'light' and 'mild' smokers know that blocking filter vent holes increases tar delivery.
- About one half of 'light' and 'mild' smokers say they are smoking 'light' and 'mild' cigarettes to reduce the risks of smoking, and over half say they smoke 'light' and 'mild' cigarettes as a step toward quitting.
- A majority of 'light' and 'mild' smokers say they smoke 'light' and 'mild' cigarettes because they prefer the taste.
- Four out of ten 'light' and 'mild' smokers say they would be likely to stop smoking if they found out that 'light' and 'mild' cigarettes could deliver the same amount of tar and nicotine as regular cigarettes.

Regarding truth in labelling, we can conclude that these 'light' and 'mild' descriptors appear to be deceptive.

Discussion

Effectiveness of telephone surveys

Lynn Kozlowski:
The telephone survey work tends to underestimate the problem. In the Massachusetts study we asked a probing question and found that there was an increase in the number of respondents (from 32% to 49%) who thought that 'light' cigarettes reduced the risks of having health problems. Basically, in a personal management of risk reduction, people are hoping that there is a chance that they may be better off if they use 'light' cigarettes as opposed to another product.

'Light' vs. 'mild'

Luk Joossens:
In my experience 'light' is very different from 'mild'. Do you have specific data on 'mild' alone? Can we really say that 'mild' is deceptive?

Joanna Cohen:
In Ontario, if the person smoked a 'mild' cigarette we changed the question to "Do you think a 'mild' cigarette…?".

Richard Pollay:
This is reinforced by the available corporate documents that talk about both 'light' brands and 'mild' brands, which are perceived to be more gentle and benign than the facts would support. For example, du Maurier Special Mild is perceived to be milder than its true position on the tar scale. This anomaly works in favour of the brand. They have a better reputation because of the description of 'mild'.

Neil Collishaw:
Is there a fundamental difference between 'mild' and 'light'? Are they perceived differently by consumers?

Francis Thompson:
In the 1998 Environics survey, somewhat more respondents say the term 'mild' refers to taste than is the case for the term 'light'.

Marvin Goldberg:
In going through industry documents, it appears that the industry feels they can impact the word 'mild' with things like colour of package and other advertising attributes.

Lynn Kozlowski:
To my knowledge 'mild' is not used as a descriptor for any cigarette in the United States.

Luk Joossens:
From the industry point of view, I'm sure that 'light' and 'mild' are different, but is there a difference from the consumer point of view? In non-English speaking countries 'mild' has a different connotation from 'light'. I think that there is more evidence to ban 'light' than 'mild'.

Marvin Goldberg:
Inherently, 'mild' is also closer to a psychophysical term that people intuitively understand as akin to how much sweetness there is a soft drink.

The patterns of data suggest that there is self-justification. People who smoke 'ultra-light' cigarettes are even more convinced than people who smoke 'light' cigarettes about the relative merits of the cigarette.

Luk Joossens:
There are a whole variety of descriptors such as 'medium', 'ultra', 'special'. Are all of these misleading descriptors? We need to make sure that all of these descriptors are misleading.

David Burns:
There is no evidence that 'light' as a quantitative term has any substantial data to support it delivering less to the smoker. The same is true of mild, the smoker may perceive a sense of mildness that is real. Both deceive the smoker as to whether or not the product carries less risk. In a sense there are two levels at which you can deal with deception:

1. Quantitative measures of delivery.
2. Interpretation of the word relative to the disease risks that the person will accrue.

Neil Collishaw:
There may be some cultural differences, but I've seen very little data from Canada to persuade me that these terms are different in the perception of Canadian consumers.

Joanna Cohen:
In the Ontario data we did separate out 'light' and 'mild' smokers and there wasn't much of a difference. We haven't yet done statistical testing, but, if anything, smokers of 'mild' cigarettes seem to be as or more likely than smokers of 'light' cigarettes to say that smoking 'light'/'mild' cigarettes reduces the risks of smoking, and that they would be likely to quit if they found out their cigarette could give them the same amount of tar and nicotine as regular cigarettes. Also, at least one quarter of 'mild' smokers believe their cigarettes reduce the risks of getting heart disease and lung cancer.

Neil Collishaw:
For the Matinée family, by the use of colour and imagery, and who it is advertised to, most people would perceive it as 'light' without any descriptors on the package.

Endnotes

1 Dr. Murray Kaiserman, Interview on National Public Radio, August 15, 2001.

2 Ashley MJ, Cohen JE, Ferrence R. "Light" and "mild" cigarettes: who smokes them? Are they being misled? *Canadian Journal of Public Health* (in press).

3 Ashley MJ, Cohen JE, Ferrence R. "Light" and "mild" cigarettes: who smokes them? Are they being misled? *Canadian Journal of Public Health* (in press).

4 Shiffman S, Burton SL, Pillitteri JL, Gitchell JG, Di Marino ME, Sweeney CT, Wardle PA. Test of light cigarette counter-advertising using a standard test of advertising effectiveness. Poster presentation at the 7th Annual Meeting of the Society for Research on Nicotine and Tobacco. Seattle, 2001.

5 Kozlowski LT, Goldberg ME, Yost BA, White EL, Sweeney CT, Pillitteri JL. Smokers' misperceptions of light and ultra-light cigarettes may keep them smoking. *American Journal of Preventive Medicine* 1998;15:9-16.

6 Shiffman S, Burton SL, Pillitteri JL, Gitchell JG, Di Marino ME, Sweeney CT, Wardle PA. Test of light cigarette counter-advertising using a standard test of advertising effectiveness. Poster presentation at the 7th Annual Meeting of the Society for Research on Nicotine and Tobacco. Seattle, 2001.

7 Ferrence R, Kozlowski LT, Ashley MJ, Cohen J, Pederson L, Poland B, Bull S. The meaning of light and mild: what smokers and non-smokers believe and how they respond. Presentation at the 2nd National Conference on Tobacco or Health. Ottawa, 1996.

8 Kozlowski LT, White EL, Sweeney CT, Yost BA, Ahern FM, Goldberg ME. Few smokers know their cigarettes have filter vents. *American Journal of Public Health* 1998;88:681-2.

9 Ashley MJ, Cohen JE, Ferrence R. "Light" and "mild" cigarettes: who smokes them? Are they being misled? *Canadian Journal of Public Health* (in press).

10 Ashley MJ, Cohen JE, Ferrence R. "Light" and "mild" cigarettes: who smokes them? Are they being misled? *Canadian Journal of Public Health* (in press).

11 Kozlowski LT, Goldberg ME, Yost BA, White EL, Sweeney CT, Pillitteri JL. Smokers' misperceptions of light and ultra-light cigarettes may keep them smoking. *American Journal of Preventive Medicine* 1998; 15:9-16.

12 Ashley MJ, Cohen JE, Ferrence R. "Light" and "mild" cigarettes: who smokes them? Are they being misled? *Canadian Journal of Public Health* (in press).

13 Kozlowski LT, Goldberg ME, Yost BA, White EL, Sweeney CT, Pillitteri JL. Smokers' misperceptions of light and ultra-light cigarettes may keep them smoking. *American Journal of Preventive Medicine* 1998; 15:9-16.

14 Ferrence R, Cohen J, Kozlowski LT, Ashley MJ, Pederson L, Poland B, Bull S. Targeting smokers of lights: who misunderstands filter ventilation? Presentation at the 4th Annual Meeting of the Society for Research on Nicotine and Tobacco. New Orleans, 1998.

15 Kozlowski LT, Goldberg ME, Yost BA, White EL, Sweeney CT, Pillitteri JL. Smokers' misperceptions of light and ultra-light cigarettes may keep them smoking. *American Journal of Preventive Medicine* 1998; 15:9-16.

16 Kozlowski LT, Goldberg ME, Sweeney CT, Palmer RF, Pillitteri JL, Yost BA, White EL, Stine MM. Smoker reactions to a "radio message" that Light cigarettes are as dangerous as Regular cigarettes. *Nicotine & Tobacco Research* 1999;1:67-76.

17 Kozlowski LT, Yost B, Stine MM, Celebucki C. Massachusetts' advertising against light cigarettes appears to change beliefs and behavior. *American Journal of Preventive Medicine* 2000;18:339-42.

18 Shiffman S, Burton SL, Pillitteri JL, Gitchell JG, Di Marino ME, Sweeney CT, Wardle PA. Test of light cigarette counter-advertising using a standard test of advertising effectiveness. Poster presentation at the 7th Annual Meeting of the Society for Research on Nicotine and Tobacco. Seattle, 2001.

Dr. Richard Pollay

Curator of the History of Advertising Archives,
University of British Columbia

Let me begin with an interesting quote, a summation by Imperial Tobacco (1984) of their view of how 'light' products had been marketed from the late 70s to early 80s. "The executional elements, by and large, battered away at creating correct product perception. 'Light – lighter – lightest' were achieved by insistance on lighter presentations – product story imagery – white packs – pale colours – mildness dominated copy – common generic qualifiers, all struggling to establish a precise place in a sliding relative strength scale." [1]

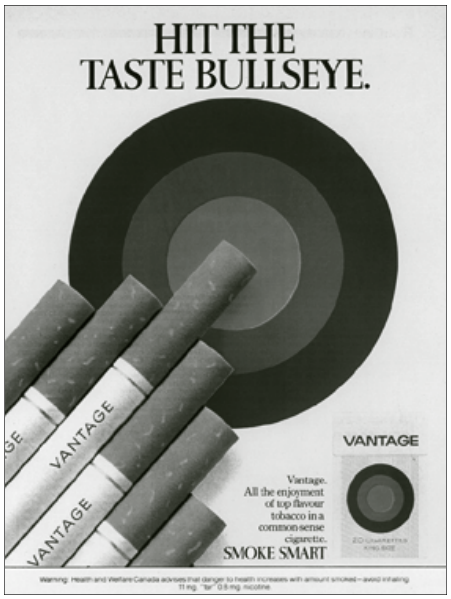
As we will see, tobacco advertising uses three tactics:

1. Copy tactics – the use of the language 'light' and 'mild', with the emphasis given by the 'extra', 'ultra', 'special', 'select', 'deluxe'; or other language that has health implications, e.g. 'soft'.
2. Image tactics – portraying 'light' products with pictures of health (initially with outdoor scenes, but moving into more active and aerobic sports); showing a carefree repose (for more concerned smokers); efforts to redeem the status of smokers; and portraying intelligent smokers.
3. Packaging tactics.

Copy Tactics

The initial launch of 'light' products are exemplified by this Export 'A' Light; Export 'A' being one of the dominant brands in Canada.

Here the 'light' version talks about "gentle tobacco" and in the fine print they make the distinction between flavour (or taste) and lightness, thus treating them as separate concepts. They also talk about it being the "just right" cigarette.



This Vantage ad (Vantage is also a brand that is sold in the United States), gives an example of the old warnings in Canadian advertising. Among other things, the warning says, "Avoid inhaling," which is, as corporate documents indicate, a ludicrous bit of advice that consumers tended to scoff at. The thrust of this campaign, as was discussed in the trial of the *Tobacco Products Control Act*, was "smoke smart". The intended message here was that there is no need to quit if you smoke Vantage; Vantage is an alternative to quitting.

This type of strategy is reflected in corporate documents. The industry considers 'lights' as offering consumers a third alternative to quitting and cutting down, a branded hybrid of smokers unsuccessful attempts to modify their habit on their own.

You have smokers who are concerned about their smoking; who would like to quit, who would like to cut down, who are motivated to do something. This provides an outlet for them. It is easy to smoke this brand and feel that you are doing something meaningful.

Shortly thereafter, Vantage ran this ad, which proved to be problematic. The language says, "Vantage cuts down substantially on what you may not want." When smokers read that it made them think about cancer (what they didn't want). This language was too close to the bone, it raised counter-argumentation and it raised to consciousness the health concerns that otherwise may be latent. This type of advertising is rare because it was discovered that a verbal approach that makes reference to health concerns, even in a veiled way, works to keep the health problem salient.

The typical sort of advertising was more oblique; using a copy strategy which essentially shows the package and says relatively little about the product. For example, Rothmans ran an ad that contained only the words "extra special, extra mild."

Canadian advertising, unlike US advertising, doesn't tend to make these types of bold claims: "Our brand is the best" Or "Carlton is the lowest." This is one of the more deceptive advertisements, to my knowledge, in the American experience. The reason this advertising is deceptive is because if you go to the store and buy Carltons you'll get them in the soft pack, which will deliver 200 times as much tar and nicotine as this advertised product. In this case, you have one variation of the product designed for advertising purposes and you sell a different variant of the product. The consumer does not likely recognize that the difference in package means a big difference in the product.

Image Tactics

Canadian advertising tended to use pictures of health and images of natural settings.

This example of the Player's Light campaign, in its early versions, shows a couple hiking in the wilderness. Notice the dramatic scenery, with mountains in the background. As the Player's campaign matured, increasingly active and risk taking sports were shown. A few examples include windsurfers, white-water rafting, hang-gliding, sailing, etc. A very important aspect of this campaign was the slogan, "A taste you can call your own". The spin on this is towards independence, uniqueness, and identity formation, all of which appeal to a juvenile audience.

Matinée has a whole product line and one of the products in this line is the "Special Mild" which is targeted towards a more health anxious, health-concerned smoker. These ads use a 'gentle repose' type of imagery.

I mentioned earlier that one of the other strategies is that of status redemption. Here is du Maurier Extra Light on the hood of an Alfa Romeo. Of course the stripes and coloration of the Alfa Romeo are echoed in the packaging of the du Maurier and the keys are there just to help you take notice of the fact that a car is involved.

Sometimes status redemption strategies can be achieved with nothing more than the package design. Here is an example from Benson and Hedges: "Rich enough to be called Deluxe." It portrays the Deluxe Ultra Lights with

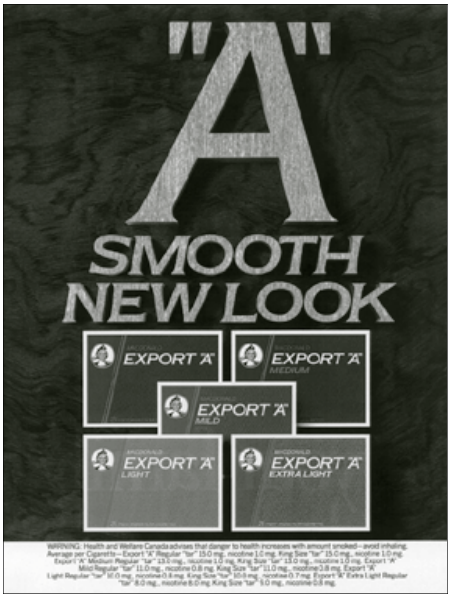
the gold trim, starkly light package with the gold logo and so on.

Symbols of intelligence show up in the advertising, although a little less frequently than the pictures of health. The notion here is that intelligent smokers are making the choice to smoke, to smoke 'light' cigarettes, and to smoke this particular brand of 'lights'. There are three levels of meaning to an ad like this. In this case the intelligence is being conveyed by the chess pieces. Sometimes the professional equipment, such as a camera, conveys the intelligence. The Vantage campaign in the United States followed a similar strategy showing professionals such as architects.

Package Tactics

Here, for those who aren't familiar with it, is how the packaging varies for one brand family. Here the Player's Regular has the most blue, the Player's Light has only the chevron and the Player's Extra Light has even more white with only a portion of the chevron in blue.

The Export family has a slightly different strategy, but still using coloration as the cue. Part of this is simply for facilitating shopper behaviour. When you go to a store and ask for Export you can ask for Export Red or Export Blue. It's easier for both the retail clerk and the customer to specify which of the many product variations is the one you actually want.



Let me close with another quote from the 1984 Imperial document I began with. Throughout this presentation you may have noticed that many different brands were pursuing very similar strategies. This causes a competitive problem because the brands don't distinguish themselves. This concern is expressed by the corporations themselves: "Manufacturers have attempted to return to more of the relevant emotional imagery that cigarettes depend on, they have found themselves confined by the relatively narrow range of imagery lighter products will presently tolerate – outdoors, active, healthy, natural, boats, planes, water, neat young people doing neat young things." "…personality in brand choice is such an important part of the positives of smoking…"[2] When people purchase a brand, use a brand, display a brand to others, they are acquiring the identity and personality of that brand. The imagery is what is important.

Another way to think about this is to ask what have you

learned about cigarettes from advertising? To what extent is advertising a source of information? I think you would have to conclude that it's not informative. Even if you work hard at reading the fine print in the advertising you would have trouble piecing together any comprehensible bit of information. There is no effort on the part of the advertisers to convey information about the additives, the risks, the construction characteristics, or the consequences of smoking. There is a whole list of things that are not being talked about that maybe should be talked about. Instead, what is happening is the conveying of certain imagery, particularly the imagery of healthfulness in association with the 'light' and 'mild' products.

Discussion

Circumventing bans

Neil Collishaw:
If all words like 'light' and 'mild' are banned, what is the potential of imagery alone to shape the concept of 'light' and 'mild'?
Rick Pollay:

The imagery could still convey or have the implication of healthfulness. Even products that aren't 'light' and 'mild' sometimes have this sort of advertising. For example the whole Player's family has that imagery.

I would also underscore what Luk mentioned earlier that it is a mistake to focus on just these two words. There is a whole glossary of words that might be used which would have similar health implications. If they started to emphasize 'smoothness', along with this imagery, that would very soon have the connotations that concern us.

Similarly words like 'gentle' and 'kind', as I've seen used in American advertising, would seem to suggest that the product is relatively benign compared to alternative product formulations. Maybe the recommendations need to be written in ways that are more generic and not just focused on these two specific words, but on a whole class of words like these.

Luk Joossens:
We are already sure that if there is a ban on 'mild' and 'light' the industry will try to circumvent it. How will they do this?

1. Replace 'light' and 'mild' by other words.
2. Mention the yields (i.e. make the numbers of the yields as big as possible – Philip Morris has already approached the European Union on this point).
3. With colours – in Sweden you have a black blend of prints and a white one.

Louis Gauvin:
I heard an interview on the radio with a professor of marketing from Montreal saying that 'light', 'mild' and 'ultra-light' were more than descriptors, in fact they were brand names. The tobacco industry throughout the years spent millions of dollars to sell brand names (for example Export 'A' Medium). One of the things they will do is fight to protect their brand names.

The other point is that they will find other descriptors or brand names such as du Maurier Air and they'll spend millions of dollars to sell another brand name. Do you think that what we are doing right now is embarrassing the tobacco industry? Because the millions of dollars they've been spending will be of no use when these descriptors are banned.

Rick Pollay:
I think that maybe Mr. Rock's initiative [to ban 'light' and 'mild'] is taking place in the context that the laws restricting advertising activities will be upheld so that the ability to convey du Maurier Air becomes limited and it becomes difficult for firms to successfully market substitute terminology.

Lynn Kozlowski:
It's occurred to me that if you have two brands like Player's Full Flavour and Player's, the term 'full flavour' would still differentiate it from the 'lighter' brand.

Deception

David Burns:
We're not talking about distinguishing between brands, we're talking about deceiving people about whether or not a choice between brands is accompanied by a reduction in risk.

A big part of why tobacco has been able to do this is that we have been their collaborators. For the better part of the last two decades we've been telling people that if they can't quit then they should smoke lower-tar cigarettes. They have created a quantitative linkage that enabled them to say 'light' and 'mild' means harm reduction. There are two aspects to this:

1. We cannot let tobacco companies go on to deceive about things that are important for health. In other words there should be some statement that says you can't use 'light' and 'mild' but you also can't substitute terms that are effective at communicating a reduction in risk.
2. This needs to be accompanied by an educational campaign.

Marvin Goldberg:
I wanted to support what David was saying, I think that any effort that does not include education may be heroic. If you consider the level of confusion abetted by us, about what these words mean, what the consequences of these words are, what the process of smoking involves, there is a very high level of ignorance and confusion. So to promulgate these changes from on high without communicating in a very serious systematic way is asking for problems.

Lightness vs. taste

Francis Thompson:
I noticed several of the advertisements distinguish between lightness and taste. Is that how they appear all the way through or are there other ads that make the two synonymous? The tobacco industry has always claimed that the term 'light' and the term 'mild' are in reference to taste.

Secondly, when did they stop advertising 'light' separately from the whole brand family and what does that indicate about consumer perception of 'light'?

Rick Pollay:
My recollection is that they are usually treated as separate concepts. You can get lightness without sacrificing taste; they are treated as two dimensions of product performance.

I think that the 'light' products were advertised separately when they were introduced, just to herald that there was something new in the marketplace, give prominence to the packaging and call attention to it. Separate advertisements for 'light' and 'mild' products existed only for a few years, during that introductory period.

Endnotes

1 Bexon, B. Project Proposals: 1. Slim Cigarettes; 2. The 'Ameliorated' cigarette. BATCo document for Province of British Columbia, p.14;1984 (Bates Number 400993243).

2 Bexon, B. Project Proposals: 1. Slim Cigarettes; 2. The 'Ameliorated' cigarette. BATCo document for Province of British Columbia, p.15-16;1984 (Bates Number 400993243).

Mr. David Sweanor

Senior Legal Counsel,
Non-Smokers' Rights Association

Background

During the 1980s, as we were working on tobacco control legislation in Canada, we had a two-pronged approach:

1. How do we get laws where they don't already exist?
2. How do we bring tobacco within laws that already do exist?

In the area of consumer protection, I, as a somewhat younger lawyer at the time, thought that there was a good deal of potential. We filed complaints under the Canadian equivalent to United States Federal Trade Commission (FTC) rules. Canada has similar provisions that say it is an offence, among other things, to fail to state material facts about a product.

The complaints we filed under provincial legislation didn't change the specific legislation, but it was very important in putting pressure on the federal government to come forward with health warnings on packs (which is what we were really trying to achieve).

About 1989, when the *Tobacco Products Control Act (TPCA)* was coming into force, tobacco companies began indicating the levels of tar, nicotine and carbon monoxide on packages.

In late 1990, when that information became available, we were rather surprised to see that for Export 'A' roll-your-own tobacco (roll-your-own accounted for 12-15% of the Canadian market at the time) the tar level varied from a high of 17 mg on Export 'A' Plain, all the way to 17 mg on Export 'A' Medium, which then took a huge dip to 16 mg on Export 'A' Mild, 16 mg on Export 'A' Light, an amazingly consistent 16 mg on Export 'A' Extra Light and to top it off, on Export 'A' Ultra Light was 16 mg. Export 'A' cigarettes, on the other hand, which were tested with the ISO method, had a tar level range from 18 mg to 6 mg.

We believed this to be a combination of deceptions. We thought it would be reasonable for somebody to think that as you go down the scale according to the labels, you would be getting less tar. It would also be reasonable to assume that the tar level in the roll-your-own tobacco was in some way correlated to the tar level in similarly named and similarly coloured packages of cigarettes, by the same brand name. Neither of these things was true.

In December of 1990, we filed a complaint under the *Consumer Packaging and Labelling Act*. Though the tobacco industry had been very successful in Canada, as in other countries, in excluding tobacco from areas of consumer protection legislation, they had never managed to have it excluded from section 7 of the *Consumer Packaging and Labelling Act*, which says that you can't have a label that contains false or misleading representations. The law defined false and misleading representation as including any word or figure that implies, or may reasonably be regarded as implying, that a product does not contain matter in fact contained in it. It also precludes any description or illustration of performance or function of a product that may reasonably be regarded as likely to deceive a consumer with respect to the matter so described or illustrated.

That looked very clear to us. We believed it would be reasonable for somebody to believe that Export Ultra Light roll-your-own tobacco had less tar in it than the various other members of that brand family. It would also seem reasonable to assume that it was in some way related to the Export Ultra Light cigarette.

The difference between roll-your-own and manufactured cigarettes had a simple explanation: because roll-your-own tobacco didn't have filter ventilation, it couldn't cheat the machines. People could use this tobacco in any way they saw fit, with whatever types of filters and tubes they wanted to use. The testing that was done by the federal government used the standard tube, which indeed was how consumers were using roll-your-own tobacco. Without filter ventilation to cheat the numbers, you come up with undifferentiated findings.

The Complaint

Much of what I am going to describe was only discovered after the fact using the *Access to Information Act* in Canada (our equivalent to the Freedom of Information legislation). When we first filed our complaint, the Department of

Consumer and Corporate Affairs (these were the people who already enforced laws on what you can call 'light' in a beer or a food) thought this was clear-cut. The correspondence makes it obvious that they made their views clear to the industry and asked the industry to stop.

Then there was a change in the leadership of the investigation. After this, it became an insider game. Suddenly the Department decided that they didn't need to talk to people in Health Canada and they certainly didn't need to talk to anybody in the health community or scientists. The only people they needed to talk to were the tobacco industry.

The tobacco industry, evidently, gave them all sorts of explanations as to what was meant by 'light' and 'mild'. About a year and a quarter later we received a letter that simply rejected the complaint, saying that they had decided not to go any further with this, that they didn't find a violation.

Tobacco Industry Arguments

As we go through the arguments as to what caused this to happen, I think there are some lessons and things that we can avoid as we look at the type of legislative interventions that are currently available in different countries. The arguments the tobacco industry used were weak (I'm not sure that their arguments are any stronger now) but they worked.

One of the industry's arguments was that the words 'light' and 'mild' meant taste and taste is totally subjective. They argued that people were not reading anything into the descriptor, whose sole effect was to identify a subjective difference.

They also argued that indeed the varieties of roll-your-own tobacco would give lower levels of tar, nicotine and carbon monoxide – as long as you use them with the right filter. If you buy an Export 'A' Ultra Light tobacco product you have to use it with an Export 'A' Ultra Light tube. Which to me seemed a lot like somebody advertising gasoline, saying it gives you fuel consumption of 5 L/100 km. Then when somebody gets lower mileage and accuses the advertiser of making a deceptive claim, the advertiser counters that they can't be blamed if consumers choose to put the gas in the wrong sort of car. It seemed unreal that the tobacco companies would get away with that type of reasoning, especially when in many cases the appropriate filters were not available.

In addition, at that time you could buy roll-your-own tobacco that was sold together with a set of filters. This is intriguing because the Export 'A' Regular and the Export 'A' Ultra Light that the tobacco industry argued were being used with the wrong filters were both being sold with unbranded, standard filters. Not only that, but this particular sample was purchased at a Woolco store. Very interestingly at that time the Woolco Smoke Shops were run by a company called United Cigar Stores. United Cigar Stores was owned by a company called Imasco and Imasco owned Imperial Tobacco and was itself controlled by British American Tobacco.

Lessons Learned

It was evident that the bureaucrats who were making decisions on this issue trusted the tobacco companies. The tobacco companies were saying things like, "We would like to give more information to consumers, but we're rather constrained and we're trying very hard." Apparently the bureaucrats just collectively nodded and said OK. They gave them the benefit of the doubt without seeking additional information, without looking at what they were doing, or without requiring any specific sets of undertakings.

As a result of that, we were left in a situation of having what appeared to be straightforward consumer deception in violation of a piece of legislation that applies to all consumer products in the country. Yet, a straightforward complaint was delayed for a year and a quarter and then rejected without explanation.

I think this gives an indication of some of the problems of interpretation. Tobacco industry lawyers have done a very good job of confusing the issue and unduly complicating the issue, raising concerns of unending litigation for anyone who wants to attack them.

We also need to change the attitude towards tobacco companies. So that when they deny any wrongdoing, people would do more than just write down notes, which is essentially what happened in this case.

Discussion

Provincial and private legal actions

Rick Pollay:
I wonder whether similar action could have been filed under a provincial jurisdiction given the hesitancy of the federal government to carry it forward?

David Sweanor:
Yes, I think such an action could be filed under provincial trade practices law. Both provincial and federal governments do have laws on the books protecting consumers from being deceived.

Judy Wilkenfield:
Is there a private cause of action?

David Sweanor:
There would be a very good cause of action, but we weren't in a position to do that at that time because of funding constraints. I think it has tremendous possibility now. One of the benefits of what we did 10 years ago is that it also helps to build the case.

Filter ventilation

Lynn Kozlowski:
Filter ventilation is a key factor in influencing the taste of the cigarette and thus I would be sceptical of the taste claim for roll-your-own tobacco.

David Sweanor:
Again, part of the benefit of giving people more information about how the industry behaves (denormalization) is that it changes attitudes, including among regulators. I draw a parallel with the tobacco industry's deception on fire safe cigarettes in the United States. We need to question the word of the tobacco industry.

Public polling concepts

Marvin Goldberg:
Surely the word 'mild' must be linked with health-related concepts in a lot of public polling data?

David Sweanor:
I'd agree with that, however you do not necessarily need to have a strong correlation. The basis for intervention by governments or courts is that the deception is doing harm. When you are dealing with an issue that is literally a matter of life and death (a product that kills half of its long-term users) you don't have to deceive very many people to have a significant issue.

Marvin Goldberg:
We've seen a number of surveys on the word 'light' but very few using the term 'mild'.

David Sweanor:
In my view, there is enough information now to move on various descriptors and it is possible to get the research data to move on a lot of others. Not just on words, but on the imagery. If you can't find a way to communicate that doesn't deceive, you have to find a way to remove the deception. We're trying to end deception, not certain words.

Plain packaging

Marvin Goldberg:
We may want to go back to plain packaging. It would be important to see what the reaction to the same brand would be with a plain and blue package.

David Sweanor:
You could have other colours and words, as long as they don't deceive consumers. There would also have to be post-market surveillance to ensure that they don't start deceiving consumers.

Preventing deception

Neil Collishaw:
We should change the onus and put the responsibility on the tobacco companies to prove the truthfulness of any claims. This is what is done for other consumer products.

David Burns:
We have an obligation to fix a problem that has been created with the terms 'light' and 'mild' and the use of tar as a measure of risk communication. We also want to move forward and say that if you are going to do things, you need to prove what you are saying. Secondly, if there are other things that you do that are shown as being deceptive, we'll prohibit that as well.

Ms. Judith P. Wilkenfeld

Director of International Framework Convention on Tobacco Control,
Campaign for Tobacco-Free Kids

I want to start with a little story. When I was in the United States government I used to have to begin my talks with a disclaimer that the opinions I was about to express were my own and they didn't reflect the government or the views of my agency. I'm afraid that I still must give that disclaimer.

After the last negotiating session in Geneva for the Framework Convention on Tobacco Control (INB2, May 2001), my organization, the Campaign for Tobacco-Free Kids, sent a letter to Secretary Tommy Thompson of the Health and Human Services Department, that said: "We are shocked and saddened by the behaviour of the US delegation and its apparent disregard for effective tobacco control or the health of the world citizenry."[1] One of our concerns was the position that the United States took on the issue of 'light' and 'low-tar'. I just want to read you the response that I got.

"We agree the misleading terms should not be used on tobacco packaging and advertising and clearly support prohibitions against false, misleading or deceptive claims. However, we do oppose any prohibition of terms like 'low-tar', 'light' and 'mild'. To the extent such a prohibition is intended to stop misleading claims, the prohibition against false misleading or deceptive claims addresses the point and thus any specific prohibition is unnecessary and redundant. To the extent that the prohibition goes beyond false, misleading and deceptive speech, it will raise constitutional free-speech concerns for us."

To the extent that this response makes any sense, it doesn't reflect either the scientific understanding about low-yield products nor the law of deception. So with the caveat that the United States government does not represent my opinions, I'll tell you about the United States law of deception.

Canadian Provisions

The following quotes are from the applicable Canadian provisions.

Canadian Tobacco Act
"No person shall promote a tobacco product by any means… 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 products or its emissions."[2]

Consumer Packaging and Labelling Act
Prohibits any false or misleading representation that relates to or may reasonably be regarded as relating to that product, including expressions, words, figures, depictions, or symbols, either express or implied.[3]

Competition Act
It is not necessary to prove that any person was deceived or misled. The general impression conveyed by a representation as well as its literal meaning shall be taken into account in determining whether or not the representation is false or misleading in a material respect.

The matter will be reviewable if "a person makes a representation… in the form of a statement of …guarantee of the performance… that is not based on adequate and proper test thereof, the proof of which lies on the person making the representation…"[4]

There are many concepts laid out in these provisions. They cover the legal standard (false, misleading or erroneous impression); they define some of the key terms (general impression, reasonable person, level of proof of actual deception); they talk about the method of proof (overall impression, express claims, implied claims); and in some cases they talk about whether the burden lies with the government or with the advertisers.

United States Provisions

The concepts and requirements spelled out in the various Canadian provisions are similar to requirements applied by the United States Federal Trade Commission (FTC) and at the Food and Drug Administration (FDA). However, there are major differences in interpretation of the law between the two US agencies. Thus, it is extremely relevant where the Canadian statute places responsibility and which interpretation is most relevant.

The Federal Trade Commission's mandate is to protect the orderly functioning of the marketplace. Its function

is to ensure that there is a free and competitive market; that the free enterprise system works unassisted, and that little government intervention is needed. Thus, the FTC will not seek to routinely educate or instruct citizens, but will act primarily to remedy imperfections and deficiencies in the system that rise to a level of a violation of the law.

The FTC, at the moment, is responsible for the oversight of the ISO or FTC method and it bases its responsibility for that test not on what is best for public health but on ensuring complete and truthful communication of information.

The FTC's oversight of the testing method came about through negotiations with the industry and therefore before any modification can be made to that system, the FTC's practice has been to negotiate with and obtain the industry's approval. This makes it very difficult for any meaningful modification to occur, because obtaining the industry's approval is difficult and obtaining approval from everybody in the industry is even more difficult.

Thus, the precedential value of the FTC's actions regarding the testing methodology must be viewed with caution because the subject of low-tar cigarettes is a health issue and not just an issue of information deficits or of reaching accommodations with the industry.

The Food and Drug Administration is charged with protecting the health and safety of the public. It will apply its laws to ensure that information is truthful and complete and will ensure the proper and healthy use of products under its jurisdiction.

False, Misleading, and Erroneous Impressions

What forms the basis for an FTC determination that an advertisement violates consumer protection laws? The law on that subject comes from Section 5 of the FTC Act. Section 5 states, in relevant parts, that "…any unfair or deceptive acts or practices in or affecting commerce, are hereby declared unlawful."[5] In applying this provision, the Federal Trade Commission looks at many factors.

First, there must be a representation, an omission or a practice that is likely to mislead a consumer.

Second, the representation must be viewed from the perspective of a consumer acting reasonably under the circumstances. However, it is important to identify the group that is being targeted by the ad. Not all potential consumers will react identically to an ad. If you have a group that deserves special consideration or that would be considered vulnerable (such as children, the sick or the elderly), you can take their circumstances into account. In the case of smokers, particularly smokers who are concerned about their health, they will interpret an ad differently than a non-smoker.

Third, the representation has to be a material one (i.e., the representation has to be relevant to the decision whether to purchase the product). Not all decisions are likely to affect a consumer's choice or conduct. In this regard, the FTC has always held that claims that affect health and safety are presumptively material.

If there is a representation or an omission that is likely to mislead a consumer, the Commission will look at the words, the pictures, the entire ad or the entire package. The issue is not whether the ad actually caused deception but rather whether the ad is likely to cause deception or to mislead.

What types of claims will be actionable? There are literally false claims, implied claims, literally true implied claims, and claims that are deceptive by omitting important information. Here are some examples.

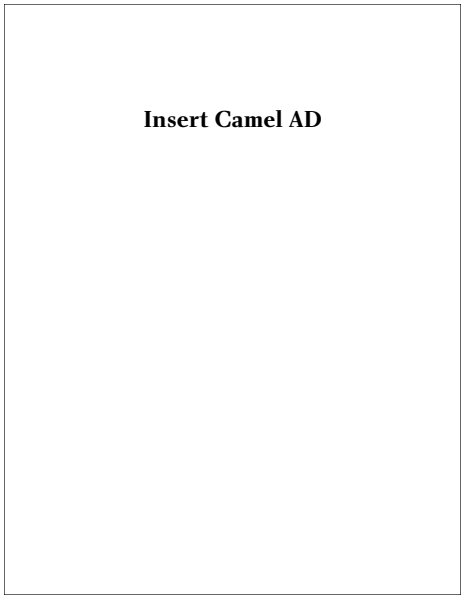
Literally (Express) False Claims

It's very rare that you find a literally false claim, and I didn't find one so I made one up: "A glass of wine a day prevents all forms of cancer." That is a false claim. In the case of a literally false claim the burden is on the government to prove falsity, which, at least in my 15 years experience at the FTC, is such a heavy burden that we never brought such a case. It means that you need to rule out everything and that is a very tough burden of proof.

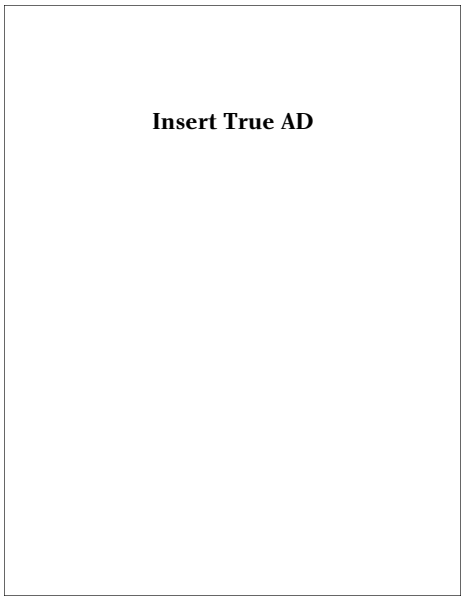
Implied Claims

The second type of claim is implied claims. Again, one must look at the entire ad or the label, the juxtaposition of various phrases, the nature of the claim and sometimes extrinsic evidence. Extrinsic evidence usually consists of querying consumers: "What does the ad say or suggest to you?" In the case of implied claims, the Federal Trade Commission has found that a claim is actionable if 15% of people are misled. If it is a very dangerous claim (that is one that could affect the health or safety of the consumer) the level of deception may be lower than if the claim is experiential or doesn't implicate either health or safety.

This ad, in the bottom left-hand corner, states: "More doctors smoke Camels." The first question is the truthfulness of the claim. Do more doctors smoke Camels?



Let's say they do, but why do they smoke Camels? The implied claim is that if doctors are smoking Camels it must be because they are healthier or better for you. That is the implied claim, which, if false, would be actionable.



This ad says, "I thought about all I'd read and said to myself, either quit or smoke True." This implies that a low-tar cigarette is a good alternative to quitting or that there is less risk than with higher-yield brands. Whether you would need to have a panel of consumers to tell you that or you could just look at the ad and decide what is implied depends on how you interpret your regulations.

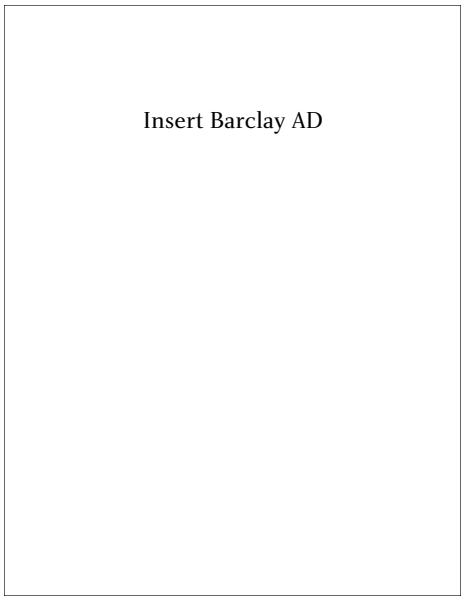
Let me give you another example. For 20 years Listerine (a foul-tasting mouthwash) claimed, "Kills germs by millions on contact" and "For general oral health, bad breath, colds and resultant sore throats." When you put the two claims together and you mix them up in your head you come out with "Listerine kills germs that cause colds and thus can prevent colds." What was interesting about this claim is that because it had gone on for 20 years, the claim could have stopped the next day and everybody was still going to believe and buy Listerine because it cured colds.

What the Federal Trade Commission did in that case was to require an affirmative disclosure. They required Listerine to not only stop making this claim, but also required that every time Listerine ran an ad in the future to say that Listerine doesn't cure colds.

Requiring an affirmative disclosure, however, may not be the best way to cure a lingering deception. Let me give you another example of an affirmative disclosure intended to cure deception - that didn't. Aspercream was a topical analgesic advertised as a cure for sore muscles, aches and pains. The company was trying to imply that this product had the topical analgesic effect

of Aspirin when in fact there was no Aspirin in it. When the company was told that they could no longer make that claim, their ad became "Aspercream contains absolutely no Aspirin", so if you are allergic to Aspirin you can use this product safely. The company had turned the affirmative disclosure (intended to cure deception) into a positive health claim. This provides a good example of why a company should not be permitted to cure its own deception.

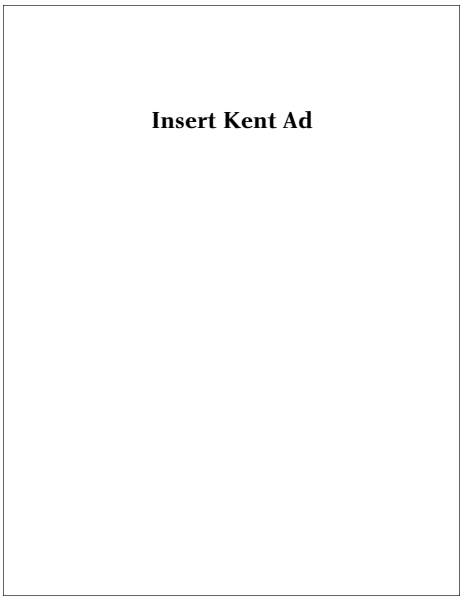
Literally True Implied Claims



Everything in this ad is literally true. Barclay does test as 1 mg tar pursuant to the FTC method and it is 99% tar free. However, Barclay cigarettes were engineered so that when a consumer smoked the cigarette, they either had to block the holes or collapse the filter, making it impossible to smoke them the way the machine did. This cigarette was qualitatively different from all of the other 1 mg tar cigarettes on the market. Yet, the Barclay ad suggested that this 1 mg tar cigarette was comparable to all other 1 mg tar cigarettes. This was simply not true. The FTC secured a permanent injunction against the advertising of Barclay cigarettes as a 1 mg tar cigarette and they are now rated a 5 mg cigarette. [At that time we still thought that there was some benefit to low-tar cigarettes if you could smoke them the way the machine did.]

Deception by Omission

Omitting information from an ad can be deceptive under several circumstances. For example, it would be deceptive to omit important qualifying information that would be necessary to prevent a claim, a practice, a representation or a belief from being misleading. In those circumstances the omission triggers the necessity for the qualifying information. People used to give away free sets of encyclopaedias by going door-to-door. To get the set, you had to buy the bookstand and subscribe to the monthly service. In fact the price came out to more than the price of the encyclopaedias. This is an example of material information (the set is not free but will cost you $x) that needed to be disclosed.



This Kent ad says, "Which filter-tip cigarette is the most effective" and then goes on and on about what a good filter it is. The undisclosed fact is that the filter is made with asbestos and therefore it had an additional health burden compared to regular filters. That information would be critical to an informed analysis of the safety of the product.

Deception by Pure Omission

An omission can be a pure omission, that is an omission that is so critical to the consumer's full understanding that its disclosure will be required regardless of whether any claim is made. In the 1960s, the FTC wanted to require warning labels on cigarette advertising. The Commission's initiative to require the warnings was based upon a deception by omission theory: if advertising shows people engaging in sports or activities, relaxing or in any way enjoying life, the implication is that smoking is consistent with these activities and with

overall good health. The nature and appearance or intended use of the product created the impression that it was perfectly safe and normal. The seller, therefore, had to warn the consumer that in fact it wasn't safe and normal, it was hazardous to health and caused significant and fatal diseases.

The Reasonable Consumer

The reasonable consumer is the other part of our definition. A company is not liable for every possible misinterpretation that a consumer might infer from an ad. For example, Danish pastry probably doesn't come from Denmark. However, were a consumer to believe that the pastry had Danish origins, he would not necessarily be injured. Thus this 'deception' would not be actionable.

As noted, it is necessary to look at the interpretation of the ad from the perspective of the intended audience and its special needs and vulnerabilities. A classic example is advertising for toys and sugared cereal. When deciding if a claim in an ad is deceptive, the analysis must be performed through the eyes of the child - and

his credulity. With smokers, we have to perform a similar analysis. The smoker often behaves in a manner that suggests that his interpretation of an ad is filtered through his cognitive dissonance: "I want to smoke, I'll sacrifice taste, I need to be reassured that I am doing something for my health." You have to look at advertising for low-tar products from the perspective of this intended audience - a smoker who is concerned about his health but wants reassurance that he can do something short of quitting. This level of credulity may not seem reasonable to a non-smoker, but it is to a smoker.

Now what can be done once a claim is determined to be deceptive? The FTC can either prohibit the claim or can require a disclosure that would cure the deception. However, the disclosure must be effective and as noted above, should not be left to the companies to devise.

If the deceptive claim comes about because it is contained in the brand name (e.g. Mild Seven, Marlboro Lights), what can be done about it? This is a tough question and I know that the Eropean Union has been looking into this question. Certainly the Food and Drug Administration has excised trade names in the past. There are any number of standards of identity about what a food is (for example whether it is 'fresh' or 'juice') and if any of these terms are in a brand name and are not accurate, they can be excised.

Adequate Substantiation

Finally, I want to get to the point that David raised earlier, whether a company needs to possess evidence supporting a claim in an ad before the ad is disseminated. In the United States, the answer to this question is contained in the ad substantiation doctrine. I think it's very similar to the way I read the *Competition Act*. I don't know how the *Competition Act* is applied, but in essence the United States ad substantiation doctrine stipulates that a person who makes a representation that implies that he or she has support must in fact possess that support before disseminating the ad. You can't run an ad and hope to later come up with the proof.

This comes from the concept that an advertiser must possess a reasonable basis for claims, which flows from the requirement that an advertiser possess substantiation for all express and implied claims that make objective assertions about the advertised product. Some examples are "tests prove", "doctors recommend", "studies show".

You may also need to have substantiation even if you don't use specific evidentiary language. Each case needs to be looked at individually and must weigh the following factors:

- What are the benefits and costs of substantiating a claim?
- What is the type of claim?
- What is the product?
- What is the consequence of a false claim?
- What is the amount of substantiation that experts in the field believe is reasonable?

For our purposes an example would be: does low-tar mean taste or does it have health implications? If the answer is taste, the FTC would not require substantiation. Taste is an experiential and thus, if you bought one pack of cigarettes and didn't like the taste you simply wouldn't buy it again. So claims like "tastes good" or other types of experiential claims don't require substantiation. On the other hand, a health claim will require substantiation.

I was fascinated by this RJ Reynolds ad that I found in the History of Advertising Archives. The ad seems to suggest that slower-burning cigarettes produce less nicotine and in the right-hand corner it cites a study from the Journal of the American Medical Association (J.A.M.A.).

We have to ask three questions about this ad:

1. Is there a study?
2. Does the study say what the advertiser asserts that it says?
3. Does the study provide substantiation for the implied and express claims?

The burden is on the advertiser to prove the third point. This provides a burden shifting and simplifies prosecution by the FTC for deception.

Carlton contains 1 mg of tar and the other brands contain more. Is it relevant to the claim? Well it certainly is relevant to the express claim that this is how cigarettes are tested by the FTC method. However, it is not relevant to the implied claim that smokers will get one-tenth of the tar from smoking Carlton cigarettes as they will from smoking those other brands; nor to the implied claim that the product is healthier.

We did a copy test which was never made public, on this ad, and a sizeable percentage of people thought that Carlton had one-tenth the tar. There are two things wrong with this assumption. First of all, it doesn't relate to what the smoker is actually getting. Second, and potentially more harmful, the ad basically says that you can smoke ten packs of Carltons and get the same amount of tar as from one pack of the others. This latter

claim would suggest to a smoker that they could increase the number of low-tar cigarettes they smoke without increasing their risk, an untruthful and dangerous claim.

Insert RJ Reynolds Ad

Insert Carlton AD

This Carleton ad is one of my favourite advertisements. As in Canada, we also have not had great luck in suing the tobacco industry for low-tar claims. This was one of our successful lawsuits.

This ad claims, "10 packs of Carlton Menthol have less tar than 1 pack of these brands." The company's substantiation was the FTC method that showed that

Food and Drug Administration

The other entity that has jurisdiction over advertising and labelling claims is the Food and Drug Administration. The FDA defines certain absolute and comparative terms like 'low', 'high' and 'lean' as indicating the amount of nutrient in one serving of food. No manufacturer can use these terms unless the advertised food or other product meets the strict definition provided in the FDA regulations. More importantly, with very few exceptions, only these specified terms and certain approved synonyms may be used. This also applies to comparative terms such as 'lower' or 'less'.

The purpose behind prohibiting synonyms is the desire to educate consumers about healthy eating and to advance public health. By preventing the use of synonyms, the FDA ensures that company creativity will not produce deceptive claims using different terminology (like 'mild' or 'airy' for light). Moreover, the agency reasons that if it were only to ban specific terms that had been misused in the past, its rules would not protect against future deceptions. The FDA would always be in the process of playing catch up. The idea behind the FDA's food guidance is to allow consumers to make informed dietary choices. The difference between the FDA's and the FTC's method of operations is the difference between education and curing deception, between health policy and market policy.

The FDA also has rules on scientific consensus. The FDA requires a very high level of scientific consensus before a health claim can be made. The FTC will permit claims based upon less than scientific consensus with an adequate disclaimer.

Remedies

One way of determining the level of advertising deception and appropriate remedial action is to ask what level of deception has occurred, what was implicated (for example, safety or health), and what was the duration of the claim (what is the tenacity or persistence of the deception?). It is important to look at all of these factors before fashioning a remedy. To merely remedy a past action, may not provide sufficient protection for the future.

Disclosures

Finally, the FTC believes you should never ban claims if it is possible to cure the deception with an appropriate disclosure. In the late 1980's the FTC and the FDA had a public disagreement about the type of health claims that should be allowed for foods. The FDA feared health claims for foods would not be understood by consumers and would lead to a belief that certain foods were "magic bullets"; the FTC feared that depriving consumers of information about food choices would be detrimental to their health. In response, the FTC commissioned a study of how consumers would respond to health claims and disclaimers which qualified those health claims.

What the FTC found was that a positive claim (i.e. "high in fibre", "low in tar", "no nitrosamines") casts a halo over the entire product and leads a substantial number of consumers to assume that the product does not present any health risks. The halo effect existed even if the product was high in a harmful nutrient, such as salt or fat. To counter this the FTC tried increasingly more stringent disclosures about the dangers of problematic nutrients in food products. The disclosures did not have the desired effect. While a sizeable minority of respondents correctly understood a disclosure about the problematic ingredient, a large number interpreted the disclosure as meaning the problem nutrient wasn't there.

The disclosure that gave relative information about high-risk ingredients actually made things worse. Half of the consumers receiving the message thought that the product contained a favourable amount of the high-risk ingredient. Even disclosures that explicitly warned of an existing danger failed to work. For example, the disclosure that explicitly warned of the high level of saturated fat in cheese succeeded in conveying the danger to 85% of consumers, but similar explicit information about high salt content in soup only worked for two-thirds of consumers, the other 1/3 didn't perceive the risk at all and 1/4 thought that the risk was actually low.

This is important: if people are looking for something to reassure them about health and they feel they've been told that a product is healthier, it's going to take a lot of effort to get the information to them that the product is not safer.

It's interesting to look at this in relationship to harm-reduction products. For example, what kind of benefit could we expect from a claim that a new cigarette contained fewer or no nitrosmaines? How could this benefit be conveyed if significant harm still exists? Could a disclosure cure this deception? The answer may be that the information, if it is important, should come from the learned intermediary or the government, not from the company. If the information would benefit consumers, then it should be conveyed by an entity that does not have a profit motive in misusing or exaggerating the information.

Finally the FTC looked at the importance of scientific certainty. Could you convey that something wasn't 100% certain or that a consensus about the information did not exist? The FTC found that, if you worded it carefully enough, consumers could understand the level of scientific support for a claim. But again, as we look at low-tar claims we have to remember that these are not new claims that we are trying to cure, but old claims with embedded meaning and persistent deception. Therefore, how do we cure the years of deception and how do we go about fencing in the companies to ensure that it doesn't happen again?

Discussion

Disclaimers

Marvin Goldberg:
One of the clearest examples of not allowing companies to provide negative information lies with pharmaceuticals. As much as half of a 30-second message is taken up with listing potential side-effects, which are read as soothingly as possible and sandwiched between positive images and information. The fact that they can do that effectively endorses the view that it's not the route to go.

Judy Wilkenfeld:
In the case of pharmaceuticals you at least have a product that can provide benefit if used as prescribed. If you are required to have a written disclaimer, advertising techniques can lead the eye away from the written words. One of the things they do in television advertisements is to have wonderful scenes in the background as the disclosures are being read; something that would use your eyes rather than your ears. However, the notion is, especially important where you have free speech and you can't ban words unless you have no other options.

Legislation

Neil Collishaw:
The use of existing statutes pertaining to false and misleading advertising is not a recommended route. In fact the standard of proof that needs to be met in all of these laws is the criminal standard of proof. Which means that you have to prove your case beyond a shadow of a doubt. For every lawyer that you put up the tobacco industry will put up 20, until there is a shadow of a doubt.

Marvin Goldberg:
How did the Carlton case go through on compensatory smoking?

Judy Wilkenfeld:
They signed a consent form. Once they saw results from the copy test, which showed that consumers thought they were getting 1/10 of the tar, they decided not to contest it.

The reasonable consumer

Francis Thompson:
How does the law deal with reasonableness in terms of addicted smokers who are not always reasonable?

Judy Wilkenfeld:
The cases that I am familiar with in the United States, all dealt with cancer patients who were being offered 'miracle cures'. The courts have always held that you need to look at the group and their level of desperation and their level of concern. I would think that smokers are desperate. Their doctors, their spouses, and their children, are hounding them; they would like to find an answer and you have to look at their state of mind.

'Light' cigarettes and youth

Marvin Goldberg:
To the extent that these are people that are desperate to stop, this is a vulnerable group. Would you also include starters, or children, as vulnerable?

Judy Wilkenfeld:
Do we know what percentage of kids start with 'lights'?

Francis Thompson:
It's quite substantial in Canada.

Judy Wilkenfeld:
To what extent do they start with what is perceived as a healthy cigarette?

Rick Pollay:
Player's Light is significant share of the starters' market. What we don't know is what the motivations of those starters are for choosing that particular product.

Judy Wilkenfeld:
It seems to me that kids don't start smoking because it's safe; they start smoking because it isn't.

Lynn Kozlowski:
Kids tend to smoke the most popular brands, and recently 'light' cigarettes have become the most popular brands. In the United States we have a substantial number of kids who start smoking Marlboro Lights, not because of health concerns, but because that is the brand that everybody is smoking.

Marvin Goldberg:
The fact that they taste milder makes it easier to start with them.

Rick Pollay:
Smoothness and the sensory experience is very important for starters, because their negative reaction to their early smoking attempts can be considerable.

'Light' cigarettes and women

Luk Joossens:
'Light' cigarettes are important for young women. It makes the cigarettes seem less 'macho' and industry documents demonstrate that they were targeting women with their 'light' brands.

Lynn Kozlowski:
If you look at the research in the United States, health-conscious, better-educated women are the almost exclusive smokers of 1 mg brands. These women are particularly misled.

Endnotes

1 Statement on the floor by a member of the US delegation during INB 2, May 2001.

2 Tobacco Act (1997, c.13), s. 20.

3 Consumer Packaging and Labelling Act (R.S. 1985, c. C-38), 1970-71-72, c. 41, s. 7.

4 Competition Act (R.S. 1985, c. C-34).

5 Federal Trade Commission act (15 USC 1331, et seq.), s. 5.

Mr. Doug MacQuarrie

Director of Health Promotion,
Heart and Stroke Foundation of Canada

Most of my discussion will be focused on the Canadian food labelling environment. I heard some earlier references to the fact that food product regulations are more precise, and certainly they're easier to control and define. Moreover, many of the consumption issues are not as vague, the physiological imperatives are not as strong in terms of addiction, and so on. The food industry is quite different from the tobacco industry – the food industry is prepared to work hand-in-hand with governments and health organizations, to the extent that companies do that. Obviously there is a marketing and business imperative, but there is far more of a collegial approach to solving these issues around a pattern of healthy eating for a nation.

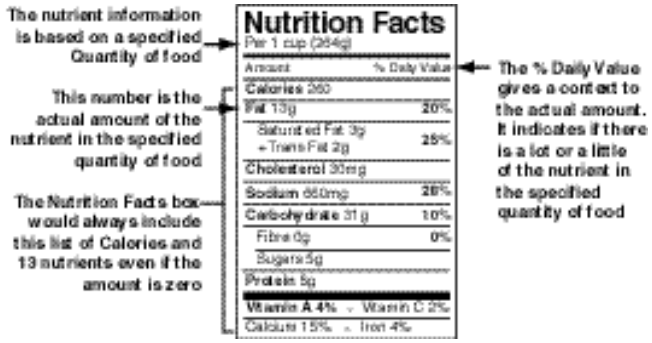
Insert Rainbow of Food Choices

Industry, health, government, charities, education, and health professionals, all acknowledge and have agreed that this is the pattern of healthy eating that we are trying to reinforce in Canada. There is broad agreement around those things and fairly specific agreement around the science. In addition, there is a set of directional statements. Not only do we talk about consuming more grain products in your diet than meat and alternatives, we say, "Choose higher fibre grain products more often." So there is a direction and an encouragement for people to reach certain targets in their diet.

From a regulatory perspective in Canada, Health Canada establishes and controls the *Food and Drug Act* from which flows numerous regulations. The legislation deals with a variety of areas, for example, mandatory nutrition labelling which is soon to be in effect in Canada (currently it's voluntary). The regulatory side is also controlled by Health Canada, in terms of establishing the criteria under which these acts are enforced.

The Canadian Food Inspection Agency is a third-party enforcement agency (as opposed to its former standing as Agri-Food Canada, under the Ministry of Agriculture Canada and part of Consumer and Corporate Affairs Canada). They use a group of regional officers to monitor and enforce the *Guide to Food Labelling and Advertising in Canada*. For example, with respect to the subject of our discussions today, there is an entire section of this guide (12 pages or so) that talks specifically about the word 'light' and how 'light' can be used in food labelling in Canada.

Nutrition Labelling



This Nutrition Facts panel will soon become mandatory on food packaging in Canada. It is now only required should a manufacturer use a nutrient content claim on their product, which triggers the requirement to disclose the nutrition facts or nutrition content.

In the United States, there are 10 eligible health claims that can be made on packaged food. Health claims have been prohibited in Canada but soon we will see 5 health claims that are related to structure and function matters and deal specifically with chronic diseases (e.g. 'calcium makes your bones stronger and can reduce your risk of osteoporosis'). There is currently a very

extensive discussion going on about the standards of evidence required in order for a manufacturer to use even one of the five health claims.
Interestingly enough, under the new regulations the use of the term 'light' will only be permitted on food with respect to energy or fat content. Currently there are 7 or 8 ways a manufacturer can use the term 'light' on their products. For example, if there is a significant reduction in sodium or other meaningful nutrients, the manufacturer may use the term 'light'. In all cases, they can only use the term 'light' if there is a reduction of 25% or more from the standard food product.

The other thing I would like to note is that, as with tobacco, there is a very strong correlation between socio-economic standard and nutrition use and understanding. We know that those people who are in the

lower socio-economic brackets are less likely to use nutrition information, they are less likely to understand it and they are less likely to be interested in that information. This relates closely to some of the chronic disease patterns.

The Guide to Food Labelling and Advertising guides manufacturers and retailers; it clarifies and interprets the regulations and provides specific implementation examples. It is a rule book, which is agreed to and embraced by the food industry, health professionals, the government and health organizations.

However, as we will see in a moment or two, the strict rules don't always translate well into field use. The manufacturers are more inclined to want to operate in the 'grey zone' as opposed to the clearly 'white zone'. We also have some cases where they are operating in the 'black zone', but that is decreasing.

Some of the issues that we are wrestling with are energy balances and serving sizes. We know that if you use a claim 'lower in fat', people have an inherent understanding of what that means. We also know that consumers don't pay close attention to serving sizes, so they perhaps eat more of the product than may be indicated. The result is that people may not be closely matching their energy intake with the amount of energy they require… the excess being stored as fat and contributing to our national rising rates of obesity.

Product Examples

Let's turn our attention to some practical examples of how certain marketing practices are used by industry to further their interests.
The American version of Multi Grain Cheerios prominently states "May Reduce the Risk of Heart Disease"; it is much more difficult to read the small preface which notes: "In a Low Fat Diet, whole grain foods like Multi

Insert Cheerios Photos

Grain Cheerios…". This is a health claim that is permitted in the United States under FDA regulations. That health claim is absent in Canada as is the symbol of the heart because they aren't permitted, although that too is changing as manufacturers are playing more and more in the 'grey' zone. Instead, we see the regulated claims around the 10 essential nutrients that are in the product and 5 whole grain oats.

Here is an example of the principal display packages of Ritz (Ritz Original, Ritz 25% Less Fat and Ritz 50% Low Sodium). We know that manufacturers are not going to voluntarily disclose information that is not in their best

Insert Third Ritz Photo

interest. That's why on these nutrition information panels you won't see any mention of sodium. There is no salt measure on the first two panels, it appears only on the third where they are required to disclose sodium because they are making the claim that there is 50% less sodium than in their regular brand (which incidentally is 9 mg per cracker on the 50% reduced, so 18 mg or more on their regular brand). The other thing you'll note is that on the 25% Less Fat, the manufacturers, although they are not permitted to place emphasis on nutrients within the standard nutrition label, have highlighted the 'fat' bar on the nutrition panel with respect to there being 25% less fat (this is the 'grey' zone). So here we have the same manufacturer and ostensibly the same product with different characteristics, but the manufacturers are not going to voluntarily provide information on their package that may be detrimental in their marketing activity.

'Mild' and 'light' in taste is one of the acceptable uses of the terms; it is permissible to use 'mild' or 'light' when they are describing a characteristic or attribute of their product, as long as they disclose what it is related to. In this case we have "Extra Light" in large print and in much smaller print "Tasting", all they are saying is that it is "Extra Light Tasting". However, in my opinion, they are preying on the fact that people presume 'light' means less fat. By highlighting "Extra Light" they are downplaying the fact that "tasting" is the important word.

Insert Oil Photos

Insert Chili Photo

This is an area that I think people understand and perhaps appreciate better; the use of 'mild', 'medium' and 'hot' when it comes to talking about the spicing of food. In many cases, these descriptors are entirely subjective. There is no correlation between 'mild' for one company and 'mild' for another company. There are no rules governing this use, other than the manufacturers disclosing that, in this case, it is a 'mild' chili.

Insert Bread Photo

This bread is cut very thinly and contains 45 calories per slice. Interestingly, it is marketed as a 'light' bread – only 'light' doesn't relate to the calories in the product. In very small type (which would barely meet the federal requirements), you'll note the asterix around the word 'light', the asterix is described on the principal display face and it reads "light in colour." The manufacturer, as long as they disclose what the attribute is about, may use the term on a product.

Insert Potato chips Photo

Here we've got potato chips that are "light texture" and are "a light tasting crispy snack!" The pairing here is not hidden, but on the back panel, the manufacturer doesn't make that link; all they say is "So Light! So Crispy!", thus leaving off the link to texture or flavour.

Labatt is a well-known and prominent Canadian brewer. Their regular Labatt Blue product contains 5% alcohol. They also market a product called Blue Light that is lower in alcohol content (which is regulated). They have another product that they call Labatt Lite, which is a lower calorie beer, though it contains the same alcohol content. Labatt .5 contains the least alcohol (0.5%); there is no declaration of 'light' or 'ultra-light' because the content is below the regulated terms, therefore they don't use the terminology.

Enforcement

Enforcement issues are problematic. The Canadian Food Inspection Agency has very significant powers. They are one of the few government agencies that can force recall with respect to consumer products. Where safety is an issue, recall is immediate.

Insert Calcium Plus Ad

The text of this product says that it contains 75% more calcium than yogourt. However, this product is actually cheese, so the comparison that this company is using (comparing this cheese product with yogourt) is not permissible. Therefore this is in violation of the *Guide to Food Labelling and Advertising* however, on the enforcement side this is a low priority, so it is an area that is permitted to continue without being treated.

Literacy

A large number of Canadians have significant or meaningful literacy difficulties; they aren't able to comprehend significant concepts, lengthy sentences, or nutrition information panels, for example. Imagine yourself trying to understand and relate to this Kellogg's package below as someone with a literacy challenge in Canada.

This is a box of a Kellogg's cereal product (you would identify that from the picture). For those with literacy difficulties there is a high reliance on pictures, on branding and on simple words and phrases to guide their choice of consumer products. Therefore, this simple symbol (50%) may be a helpful guide to people, if they presume correctly that it is a healthy choice. If this read 'mild' on a pack of cigarettes, and the consumer understood what 'mild' was, they would have made a poor choice in terms of their health.

Conclusion

If there is going to be a meaningful proposal to the Minister with respect to 'light' and 'mild' and other deceptive labels on tobacco products, there will be a tie back to the concept and the take-away that consumers have of the word 'light'. The area of food labelling in Canada and elsewhere is an interesting case study but perhaps not readily transferable to the issue of tobacco labelling.

Discussion

Descriptors on food vs. descriptors on tobacco

Judy Wilkenfeld:
The caveat being that food is generally recognized as safe and tobacco isn't. At the FTC they did a study of how people moved to healthier food choices. One of the things they found was that particularly in the areas of whole-grain cereals, advertising by the manufacturer (as opposed to government education which only worked for high-income groups) was much more effective in moving people to those food choices. The lesson is that if you let the manufacturer design the message, you can get people's food choices to move towards healthier foods. However, this is because it helps these companies to sell products; this is not the case for tobacco products.

Marvin Goldberg:
I thought that there were some clearly misleading phrases – do you ever test the effect on consumers?

Doug MacQuarrie:
We have participated in testing with the National Institute of Nutrition and Health Canada. In fact, those problems have led to the recommendations around the new labelling that would make those terms permissible only in the area of reduced fat and reduced energy.

I would argue that if one were not going to be able to ban the use of the words 'light' or 'mild' in the area of tobacco, it should be much more descriptive. If the industry is arguing that 'light' means tasting or flavour, then those things should be made very clear on packaging (which is a problem for companies because they don't like giving up space on packages).

Neil Collishaw:
The use of the word 'light' is permitted on food, but it needs to meet a performance standard of fat and energy. Is there some way to have a performance standard that companies would have to meet in an analogous way to food?

David Burns:
You have to look at the history of the term 'light'. In food it began with a desirability of producing food with less fat. Some foods were able to do that and market it. Then lots of other companies who didn't want to change their product, but wanted to participate in the 'light' market chose to do so; therefore there was a need to produce a standard.

Here we have the opposite. We have a standard that has been used to create a deception. The deception was created through engineering to that standard. We've had 30 years of deception that cannot be corrected by revising the standard, because we don't have a product that actually produces a health benefit. We need to think cautiously before we set up a standard that validates something we know isn't true.

Neil Collishaw:
Whatever regulatory changes you make, either to food or tobacco, education campaigns must accompany them.

Performance standards

Judy Wilkenfeld:
The tobacco industry was given a test and they were told that they could use the test for marketing and that they should design their cigarettes to do well on the test. The performance standard of any product will not give results for 20 or 30 years. There is no way to design a performance standard because the testing measurements are not the test of what we are concerned about. We're concerned about health; we're not concerned about delivery.

Martin Jarvis:
If we want to have performance claims that are analogous to those in food, then they would have to be based on something like absolute bio-availability from the product, rather than the present elastic product. You could potentially have a cigarette with a maximum yield of nicotine. Whether there would be any point in doing this is another question. For tar it is even more complex: tar isn't uniform and it's difficult to define. It's thus incredibly difficult to conceive of any useful performance claim.

Marketing and descriptors

David Burns:
Hypothetically, one of the US tobacco companies is producing a cigarette genetically engineered to have no nicotine. If they want to put it on the market and they want to say that it has no nicotine, what is it that they should be able to say?

David Burns:
In the food parallel, there is no need to test the long-term outcomes of low-fat products, those studies have already been done. What you could do is set up some sort of standard that says if you want this to be low-yield cigarette, you have to take the population of people who smoke this cigarette and show that they actually get 25% less nicotine. In one sense you could set those kinds of standards and I would argue that you could hold out the option to the industry that they could produce less hazardous products. However, before they can state that the products are less harmful, there has to be convincing evidence that those claims are real.

Judy Wilkenfeld:
When they looked at the low-fat studies, they looked at consumers who had a high-fat diet as opposed to consumers who had a low-fat diet, and they based their conclusions on the evidence. When you look at a study of tar, do we know that the tar Americans are getting is the same as the tar Canadians are getting? It's not the same product, so it would be very difficult to figure out.

Doug MacQuarrie:
The approach in food is not totally applicable in the tobacco world. There is no safe level of tobacco or nicotine consumption. A poison with some other name is still a poison.

Rick Pollay:
I have a similar concern that relates to the concept of the *halo effect*. In Canada we have additive-free tobacco, Canadian Classics sells itself as additive-free. The issue of product descriptors that produce health implication is larger than the 'light' and 'mild' issue and maybe our comments should reflect that.

Micheal Thun:
Are you arguing that any factual description of a product is not to be allowed? The low-nicotine or low-nitrosamine cigarettes have an even stronger implied health claim.

Doug MacQuarrie:
Fat-free was a claim that was only recently permitted in Canada, however we don't use a rounding off method as they do in the United States. For example, in the United States anything with less than 0.5 g of fat can be written as 0 on the label. In Canada, with 0.5 g of fat you can declare the product fat-free, but you must indicate the actual content in the food. This addresses the issue that maybe this nicotine-free cigarette has a little bit of nicotine in it and we would need to know the significance of that.

Mr. Francis Thompson

Policy Analyst,
Non-Smokers' Rights Association

The purpose of this presentation is to fill in whatever bits of the Canadian situation we haven't yet talked about in detail. It's also a reminder that what we are doing over these two days is not an academic exercise. Whatever the findings are that come out of this meeting, we'll be feeding them quite rapidly into a decision-making process; that decision-making process is likely to occur within a matter of days. So I think we need to be fairly tightly focused.

The purpose of talking about the legal situation is to remind us of what things we need to deal with on the scientific side; what kinds of proof we need to have at the end of day.

Tobacco Legislation

Yesterday we heard from David Sweanor about an attempt to use non-tobacco specific legislation to deal with the 'light' and 'mild' issue. I think that is still an option, but I'm going to concentrate on tobacco specific legislation.

Canadian tobacco law starts essentially where the previous law left off, namely in 1995, when the Supreme Court of Canada struck down the *Tobacco Products Control Act*. In particular, the court objected to the complete ban on advertising, as well as unattributed health warnings.

However, the Supreme Court did make it clear that they would accept a prohibition on what they called 'lifestyle advertising' or advertising directed towards children. Essentially what they said was, we could imagine advertising directed at adults which actually provides information, and we don't think that should be illegal.

The other thing that is important in the decision – there were positives for tobacco control in the decision – was this particular quote:

> "To require Parliament to await definitive social science conclusions whenever it wishes to make social policy would impose an unjustifiable and unrealistic limit on legislative power."[1]

So the court recognized the urgency of the tobacco issue and recognized that on tobacco issues we don't always have perfect science and a complete body of knowledge before we act. We often have to act on the basis of common sense.

The Tobacco Act

The *Tobacco Act*, which was passed in 1997, was written after reading and re-reading the Supreme Court decision. With respect to advertising, the essential two restrictions were:

1. Advertising is prohibited except via direct mail to adults, in places where children are not allowed by law, or in publications with an adult audience.
2. Even in adult venues, promotion is banned if it constitutes "lifestyle advertising or advertising that could be construed on reasonable grounds to be appealing to young persons."[2]

The position of the tobacco industry in Canada, at the moment, is that this language is so all-encompassing that there is no advertising they can think of that would be legal. So the tobacco industry's position, at least sometimes, has been that this is a total advertising ban. Of course, this is in the context of a legal case; I think that if they lose the case they will quickly decide that the ban is not all-encompassing, and that they can advertise.

The important conclusion for 'light' and 'mild' is that in the event that descriptors are removed, there are not a huge number of vehicles, apart from the pack itself, which would allow industry to replace the term 'light' with a whole other series of terms. It's not easy at this point to establish new brands. Indeed we do not have many new brand entries that have had a significant impact, nor have we had in quite some time.

I just want to run through a couple of sections of the *Tobacco Act*.

Section 20:

> *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.*[3]

The last part of this section, "likely to create an erroneous impression…," is the most interesting. It seems almost tailored to the 'light' and 'mild' issue. On the other hand, this is not a section that gives the government authority to pass regulation. You have to charge people if you want to use Section 20, which means that you have to meet a criminal burden of proof (i.e., beyond a reasonable doubt).

There are other sections of the *Tobacco Act* that allow the government to proceed by way of regulation. For example:

Section 23:

> *No person shall package a tobacco product in a manner that is contrary to this Act or the regulations.*[4]

If you pass a regulation, you only need to meet a civil burden of proof (i.e., balance of probabilities) when the issue initially comes to court, which in this case would be when the government defends the constitutionality of the regulation against an industry challenge. Judging by past behaviour, it seems entirely likely that the tobacco industry would add a challenge to such a regulation to their constitutional challenge of the *Tobacco Act* and its regulations. That challenge is currently before the court in Montreal. You do need to meet the criminal burden of proof if and when you take enforcement action, but it's generally much easier to prove a specific regulation banning specific terms has been violated than to get into a discussion of what "misleading" means.

Of course, you do have to refer to the purposes of the Act, which include:

1. To protect the health of Canadians in light of conclusive evidence implicating tobacco use in the incidence of numerous debilitating and fatal diseases;
2. To protect young persons and others from inducements to use tobacco products and the consequent dependence on them;
3. To protect the health of young persons by restricting access to tobacco products;
4. To enhance public awareness of the health hazards of using tobacco products.[5]

I would draw your attention in particular to the first and last purposes "to protect health" and "to enhance public awareness". Purpose 1 is interesting because it, arguably, allows you to act strictly in function of population health, in addition to individual health. I don't think that we have to prove, with respect to purpose 1, that there is an individual disease risk for those who continue to smoke because of the presence of 'light' and 'mild' descriptors.

Purpose 4 suggests that if we can demonstrate that removing descriptors such as 'light' and 'mild' enhances public awareness, this may well be sufficient to fall under the Act, even if we can't demonstrate an actual health benefit.

Conclusions

To go the prosecution route, the government would need to prove beyond a reasonable doubt that the use of descriptors is "likely to create an erroneous impression about the characteristics, health effects or health hazards of the tobacco product or its emissions."[6]

We may want to consider having a statement about whether, in fact, we have overwhelming proof that the descriptors create an erroneous impression.

To go the regulation route, the government would have to prove, on balance of probabilities, that:

1. Banning descriptors "protect[s] the health of Canadians" and/or "enhance[s] public awareness of the health hazards of using tobacco products."
2. A ban passes the usual Charter of Rights tests, in particular the "minimum impairment test" of freedom of expression.

In terms of the Charter of Rights test, if there is something short of a complete ban on the descriptors that achieves the same ends, the court would probably strike down a complete ban. Therefore, one of the things that we should be looking at is whether or not we can think of measures, short of a complete ban, that do achieve the same purposes.

Discussion

Advertising 'safe' products

Judy Wilkenfeld:
If you were to have a safe product, one that removes 90% of all the bad stuff, how would the company go about advertising it, given the provisions of the *Tobacco Act*?

Marvin Goldberg:
They do allow the channels of direct mail and adult venues.

Judy Wilkenfeld:
That's not very effective. It's a search characteristic, people would have to know that they are searching for it.

Francis Thompson:
In the Act it is defined as 85% adult readership, which is not really that high.

Judy Wilkenfeld:
Readership or subscription?

Neil Collishaw:
Readership.

Lynn Kozlowski:
Were the lifestyle ads shown yesterday historical?

Neil Collishaw:
Yes. However, ads are still used in adult readership magazines by way of showing cultural and musical events.

Neil Collishaw:
There are several ways that folks can advertise under the Act, as it exists. It's interesting to note that under the *Tobacco Products Control Act* (the one that was struck down), there was a specific section that exempted people if they could demonstrate safety, but that does not appear in the new Act.

Protecting youth

David Burns:
I think that yesterday Francis noted that in terms of start-up there is a high percentage of Canadians that use 'light' and 'mild' brands, while historically in the United States this has not been the case. If that is valid, then purpose 2, "to protect young persons and others from inducements to use tobacco products and the consequent dependence on them,"[7] should not be ignored as another area to explore.

Francis Thompson:
We could make a very strong argument with respect to taste characteristics; that the attractiveness of 'light' cigarettes to young people is not directly related to a perception of reduced harm, but is related to ease of smoking.

Adult and lifestyle advertising

Marvin Goldberg:
Are there regulations associated with these restrictions? For example, are adult magazines less than 15 or 20% youth readership?

Ads are also used to promote contests for smokers only. This is rather sly, since by entering the contest you declare that you are a smoker and you are then entered into a database. This database is later used for direct mailings (which are permitted under the legislation).

Francis Thompson:
The ban on lifestyle advertising applies even to adult venues. So in theory, and in practice, advertising that appeals to young people is not permitted, even in a bar.

Neil Collishaw:
We are also in a phase-out period. Sponsorships are still permitted, in certain limited circumstances, until 2003, and then all sponsorship is banned. There will, however, continue to be various forms of advertising that are permitted. You can continue to sell things that aren't lifestyle-related, that aren't related to glamour, risk or daring. One (fictitious) example would be "Player's Taxi Service".

Marvin Goldberg:
What is the spillover effect from US magazines and media?

Francis Thompson:
There is some spillover, but you have to keep in mind that the brands in Canada are generally not the brands sold in the United States. However, there probably is a substantial effect for descriptors like 'lights'. Historically, most of the 'information' that Canadians received about 'light' brands came from US magazines. There is obviously very high penetration of American magazines in Canada.

Marvin Goldberg:
As a generic concept, words like 'light' in American magazines would enhance the words 'light' on a package here in Canada.

Endnotes

1 RJR-Macdonald Inc. v. canada (Attorney General) (1995).

2 Tobacco Act (1997, c.13), s. 22.

3 Tobacco Act (1997, c.13), s. 20.

4 Tobacco Act (1997, c.13), s. 23.

5 Tobacco Act (1997, c.13), s. 4.

6 Tobacco Act (1997, c.13), s. 20.

7 Tobacco Act (1997, c.13), s. 4(b).

Mr. Luk Joossens

Consultant,
International Union Against Cancer, Belgium

History of Tobacco Control in Europe

The history of tobacco control in the European Union dates back to 1985, to the bi-annual meeting of the Heads of State and of Government in Milan, where President Mitterand of France and Prime Minister Craxi of Italy felt strongly that Europe should do more about health and where the European political leaders agreed to launch an action plan to combat cancer.

An expert committee on cancer was established and made 75 proposals to combat cancer. Of these 75 proposals, 14 proposed actions were against tobacco use.[1]

Between 1990 and 1992, three directives on labelling and tar content were adopted. It is important to stress that, legally speaking, these directives were not based on public health articles, but on articles whose aim is to create free movement of goods and services in the internal market. The original 1957 Treaty of Rome, which established the European Community, did not contain a specific article which gave the community competence in public health. In 1987 the Committee of Cancer Experts adopted the European Code Against Cancer. The first recommendation of the code was related to tobacco:

> *Do not smoke. If you are absolutely unable to stop, smoke cigarettes with a low tar content, and do not smoke in the presence of others.*

This recommendation was changed in the following years and the recommendation to smoke low-tar cigarettes was dropped. The consensus of the cancer experts, at the time, was that if you cannot stop smoking it was better to smoke low-tar cigarettes.

The Labelling and Tar Directive

The Labelling Directives of 1989[2] and 1992[3] stipulated that tar and nicotine yields must be indicated on cigarette packages. The Tar Directive of 1990[4] introduced a progressive reduction in tar content to a maximum of 15 mg per cigarette from December 1992 and 12 mg from December 1997.

What was interesting at that time was that the industry claimed that the implementation of the Tar Directive would cause 300,000 job losses.[5] In addition, the French tobacco industry predicted that it was impossible to reduce the tar to 12 mg in the French cigarette brand Gauloises because Gauloises cigarettes did not have filters. According to the industry, the result of the Directive would be that the brand Gauloises would no longer be produced and a symbol of France would be lost. Ten years later, no job losses have been observed as result of the Directive and the brand Gauloises is still on the market.

In 1996, the first Smokefree Europe Conference on Tobacco or Health was held in Helsinki. At the same time, a meeting of high-level cancer experts was also held in Helsinki. One of the recommendations of this committee was to further reduce tar and nicotine levels to 5 mg of tar and to 0.5 mg of nicotine. The committee also suggested implementing bigger health warnings and mandatory generic packaging.[6]

Based on the report of the cancer experts, the Commission produced a communication to the Council and to the European Parliament. Regarding tar and nicotine the communication recommended the following:

- Consider the case for a further progressive reduction in the maximum tar content and the introduction of a maximum level of nicotine.
- Consider a definition of the descriptors 'light' or 'low' tar tobacco products, as such descriptions are presently undefined and may mislead consumers by understating the dangers to health of such products.[7]

This was the first time that we saw something on the issue of 'light' and 'mild'.

According to the Commission's report, the tar and nicotine contents of cigarettes sold in the European Union in 1997 were as follows:

- Tar yields of 'light' cigarettes ranged from 5 to 13 mg.
- Tar yields of 'mild' cigarettes ranged from 7 to 12 mg.
- Tar yields of 'super-light' cigarettes were not always lower than levels for 'ultra-light' cigarettes.[8]

Some Like it 'Light'

Based on a survey from 1995[9], 48% of all female and 31% of all male smokers smoked 'light' cigarettes in the European Union. Women tended to smoke 'light' cigarettes more than men.

In addition, 60% of female smokers aged 45-64 smoked 'light' cigarettes. This is an indication that people were choosing to smoke 'light' cigarettes rather than quit. The conclusions that were brought were that 'light' cigarettes were misleading consumers, preventing smokers from quitting, and posing a serious threat to public health.

Common Proposal

In 1999, the Commission made a new Directive proposal to recast the three previous Directives on tar and labelling. Regarding the terms 'light' and 'mild' the following proposal was made:

> *The use of the terms 'low tar', 'light', 'ultra light', 'mild' or any other similar terms which have the aim or the direct or indirect effect of conveying the impression that a particular tobacco product is less harmful than others shall be prohibited, unless such terms have been expressly authorized by the Member States…* [10]

The proposal was a rather confusing text as the text proposed a ban, but maintained the possibility for the Member States not to introduce the ban.

The Directive

The Health Council, which is composed of the 15 Ministers of Health of the 15 European Union countries, agreed to a common position on the proposed Directive in June 2000. Their position was to ban the terms 'light' and 'mild', 'low-tar' and 'ultra light'. However, the final text of the Directive states the following:

> *With effect from 30 September 2003, and without prejudice to Article 5(1), texts, names, trademarks 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.* [11]

[**Speaker's note:** Article 5 (1) deals with tar yields]

This is the text as it appears in the Directive; it no longer mentions 'light' and 'low-tar', but rather leaves it open and says only that if there is wording, use of names, trademarks, images, or other signs, figurative or otherwise that suggest that a product is less harmful, then it can be prohibited.

How did they come up with this solution? It was based on a previous Directive, the Cosmetics Directive. In the Cosmetics Directive, it was stated:

> *Member States shall take all measures necessary to ensure that in the labelling, presentation for sale and advertising of cosmetic products, the wording, use of names, trademarks, images, or other signs, figurative or otherwise, suggesting a characteristic which the products in question do not possess, shall be prohibited.* [12]

You can see that the Tobacco Directive is inspired by this text. It has the advantage that it is based on an existing Directive, which could help in the case of a legal challenge.

In reference to ISO, the Directive states:

> *For measuring the tar, nicotine and carbon monoxide yields of cigarettes, reference should be made to ISO standards which are the only internationally recognised standards, it being understood that subsequent research and technological progress to be promoted should make it possible to develop and use more precise and reliable measurement methods for cigarette yields (…)* [13]

At the beginning of the Directive, in the considerations, the reference to the terms 'mild' and 'light' are specified in the following way:

> *The use on tobacco product packaging of certain texts, such as 'low-tar', 'light', 'ultra-light', 'mild', names, pictures and figurative or other signs, may mislead the consumer into the belief that such products are less harmful and give rise to changes in consumption. Smoking behaviour and addiction, and not only the content of certain substances contained in the product before consumption, also determine the level of inhaled substances. This fact is not reflected in the use of such terms and so may undermine the labelling requirements set in this Directive. In order to ensure the proper functioning of the internal market, and*

given the development of proposed international rules, the prohibition of such use should be provided for at the Community level, giving sufficient time for the introduction of the rule.[14]

Legal Challenges

Since the industry has been very successful in challenging previous Directives, we can assume that the industry will challenge this Directive as well. I was present at a meeting on the legal aspects of tobacco control in May 2001 and there were more lawyers from British American Tobacco than there were NGOs at the meeting.

According to news articles published in August 2001[15], both Imperial Tobacco (UK) and BAT will challenge the Directive on three provisions:

1. The export provision. The export provision says that cigarettes manufactured in the European Union must have less than 10 mg of tar, 1 mg of nicotine and 10 mg of carbon monoxide. Basically, the same standards for produced and exported cigarettes must apply. According to the industry, the export provision will cause 10 000 jobs losses.
2. Labelling. The industry says, "Customers are perfectly well aware of the health warnings on cigarettes. We don't believe making them bigger will make any difference."
3. Ban on 'light' and 'mild'. According to the industry, a ban on 'light' and 'mild' would create confusion.

Currently, Imperial Tobacco and BAT are challenging the Directive and we expect that Japan Tobacco will also challenge the Directive for the banning of the descriptor 'mild'. In addition, Germany may again challenge the Directive. One week before the adoption of the Directive Germany made the following public statement:

Germany supports the health policy aims of the Directive without reservation. It reserves the right however, on legal grounds, to ask the European Court of Justice to scrutinise the Directive.

Final Comments

The Directive stipulates the any wording, which suggests that a tobacco product is less harmful than another can be forbidden. This can be done by consumer surveys. In fact, you have to examine consumer surveys from your own country or from other countries to analyse the misleading character of the descriptors.

There has been an on-going discussion about trademarks. In principle, you can prohibit trademarks, but then you have to prove that the trademark, for instance Mild Seven, is also misleading to consumers.

There might be a difference between 'mild' on the one-side and 'light', 'ultra-light', 'low-tar' on the other. So far I haven't seen any evidence in Europe that indicates that 'mild' in itself is misleading. It could be, but we would have to see the surveys to prove it.

Finally, given the wording of the Directive which bans all texts suggesting that a particular tobacco product is less harmful than others, even proven health reduction claims are forbidden in the future.

Discussion

Misleading advertising

Joanne Cohen:
I think from the wording of the Directive it says that misleading text on the packages is not allowed, what about misleading information in other forms such as advertising, sponsorship, etc.?

Luk Joossens:
The Directive says "text, names, trademarks, figurative and other signs", so we have to see what fits under "other signs". In addition, it is important to underline that there is already a tobacco-advertising ban in 9 European Union countries.

Banning the use of numbers

Cristiane Vianna:
If the industry wants to use the banned colours or numbers of tar and nicotine after 2003, how does the Directive deal with that? Because companies have the right to tell consumers what is in the cigarette.

Luk Joossens:
The Directive stipulates that the tar and nicotine yields have to be published on the packages, which means that we cannot ban the publication of the numbers. In Belgium the industry has already asked to have a larger panel size indicating the yields. Regarding colours, we expect that the industry will make use of colours. If in a later stage it is proven that these colours suggest that the product is less harmful, then we can ban it.

Cristiane Vianna:
What I'm concerned about in Brazil is not the content on the side of the packages, but rather the use of numbers. For example, in Brazil you can call a cigarette #1 if it has 1 mg of tar. It is the same with colour, where we have not been able to ban the indirect association of using colours to show a brand is less harmful.

Neil Collishaw:
Canada doesn't have a ban on 'light' and 'mild'. However, there is a cigarette called Vantage 9 that has an ISO tar yield of 9.

Cristiane Vianna:
I think that we need to think about the numbers.

Judy Wilkenfeld:
We do need to think about the numbers, but we also need to have education. No matter what we say they can't do, they [the industry] have another way of doing it. Education has to be a component, that way no matter how they choose to perpetuate the myth, there is at least an educational component to counter it.

Luk Joossens
'Light' and 'Mild' in the European Union

Marvin Goldberg:
After all is said and done, is it always going to be a survey that will assess whether the association is there or not?

Luk Joossens:
If surveys determine that 'mild' is not misleading, then you cannot ban it. It is possible that certain terms will be banned in one country and not in others.

Lynn Kozlowski:
If there was a brand like Marlboro, could you change the brand name to Marlboro 10, Marlboro 5, Marlboro 1, corresponding to ISO tar yields?

Cristiane Vianna:
This is what they are doing in Brazil and in our legislation it will be difficult to ban this type of thing.

Lynn Kozlowski:
Can that be done in the European Union, that they don't use the word tar, but the number happens to correspond with the tar level?

Luk Joossens:
The industry will do everything they can to circumvent this provision. Whether that will be banned based on the article is up to the lawyers.

Cristiane Vianna:
We are learning from new tobacco strategies. I think, for example in Brazil, we can ban it if we can prove that they are using these tactics to continue misleading consumers.

Neil Collishaw:
The Vantage numbers have been on the packages since 1997, which corresponds to when this issue of 'light' and 'mild' was being discussed in Europe, so they were already anticipating the issue.

Proving deception

Marvin Goldberg:
I get a sense that this legislation will require a survey a week to assess public reaction and I wonder how the regulatory body will deal with this?

Judy Wilkenfeld:
That is the problem with the way the FTC pursues deception. When it happens they run a survey, they prosecute and action cannot be taken until much later. The legalities are straightforward, but nothing can be done until after the fact.

Neil Collishaw:
Not withstanding the difficulties that we see with European Union Directive, the fact is that it is quite a sweeping ban, which is a significant event.

Endnotes

1 Official Journal of the European Communities, C 50, volume 30, 26 February 1987, p. 1-58.

2 Directive 89/622/EEC of 13 November 1989.

3 Directive 92/41/EEC of 15 May 1992.

4 Directive 90/239/EEC of 1990.

5 PIEDA, The costs of the Directive, A report commissioned by the European tobacco manufacturers' associations, Edinburgh, 1988.

6 High Level Cancer Experts Committee, Recommendations on tobacco, 2 October 1996, Helsinki.

7 Commission of the European Communities, Communication from the Commission to the Council and the European Parliament on the present and proposed Community role in combating tobacco consumption, COM (96) 609 final, Brussels, 18 December 1996.

8 Commission of the European Communities, Tar and nicotine contents of the cigarettes sold on the European Market, Luxembourg, 29 July 1997.

9 Commission des communautés européennes, Les européens et la santé publique, Eurobaromètre 43.0, Bruxelles, 1995.

10 COM (1999) 594 final.

11 Directive 2001/37/EC of the European Parliament and of the Council of 5 June 2001 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco products.

12 Directive 76/68/EEC of 27 July 1976

13 Directive 2001/37/EC of the European Parliament and of the Council of 5 June 2001 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco products.

14 Directive 2001/37/EC of the European Parliament and of the Council of 5 June 2001 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco products.

15 Clark A, Big tobacco challenges Brussels, The Guardian, 26 August 2001.

Dr. Cristiane Vianna,

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First Action

The process of banning descriptors on tobacco products in Brazil began in 1998. The Prosecutor for Consumer Affairs considered the use of these descriptors by the tobacco industry to be misleading and abusive advertising and requested their voluntary removal.

Philip Morris changed their labelling in order to avoid legal proceedings, but Souza Cruz (a BAT company) did not agree. Consequently, a suit was filed against this company. Souza Cruz, in their statement of defence, said that these terms referred exclusively to the taste and affirmed that consumers knew this.[1]

We know that tobacco company strategies are similar in all countries. One of these strategies is to say that these terms refer only to cigarette taste. However, consumers may also believe that it refers to a lower tar content.

Third Action

The third action was public consultation and the formation of partnerships to enhance the debate about different aspects of tobacco control measures. Brazil has 27 states and each state has a group of tobacco control workers that works with the Ministry of Health. With this help it is easier to pass legislation.

The public debate about a bill to ban TV and radio ads and sponsorship of sport and cultural events increased public awareness, including media and social pressure against industry strategies. Thus, it became easier to strengthen other legislative measures.

Fourth Action

In 1999, Brazil created a National Health Surveillance Agency (ANVISA), whose scope includes the regulation, control, and surveillance of tobacco products.[2] In August 2000, a technical discussion about the ban of descriptors began between the Ministry of Health and ANVISA.

Cristiane Vianna

Brazilian Legislation on Tobacco Control: The Ban of Descriptors on Tobacco Products, Packages and Advertising

According to Brazilian law, the tobacco industry has a responsibility to correct this false impression. The industry applies these words without any consistency across brands. Consumers see the terminology of 'light' as being health-related; consumers, by analogy, expect that 'light' cigarettes mean reduced content of harmful substances. In this case, 'light' cigarettes does not mean less harmful. There is no safe level of tobacco consumption.

Second Action

The Ministry of Health prepared the first draft of a Regulation establishing maximum tar, nicotine and carbon monoxide yields and banning every descriptor that could give consumers a false sense of security.

The action by the Ministry of Health was taken in accordance with one of the points in the Framework Convention on Tobacco Control that would ban the use of these descriptors by all countries.

Fifth Action

A new Act[3] was passed December 27th, 2000 which restricted the advertising of tobacco products to posters, panels and placards inside the place of sale. It also prohibited, as of 2003, the sponsorship of international sports and cultural events by the tobacco industry. However, we know that the tobacco industry is trying other types of sponsorship in Brazil. For example, they are sponsoring fashion events. One tactic is to use a famous model who wears beautiful clothing with the Marlboro label.

With respect to product regulation, a technical consensus was reached about the first measure that should be included in a new ANVISA Regulation, and on January 13th, 2001 a public hearing was held giving every citizen the opportunity to express his or her opinion about the preliminary text within 30 days.

This draft foresaw changing levels of tar, nicotine and carbon monoxide yields from tobacco industry products in two steps. First, we proposed six months to change the maximum levels to 12 mg of tar, 1 mg of nicotine

and 10 mg of carbon monoxide and then another year to change it to 10 mg of tar, 1 mg of nicotine and 8 mg of carbon monoxide.

This draft also included:

1. An additional health message, "There is no safe level for consumption of these substances."
2. The ban of the use, on packages and in advertising material, of any words such as 'low-level', 'light', 'soft', 'mild' and others that could lead consumers to an erroneous conclusion regarding the levels of tar, nicotine and carbon monoxide.

Sixth Action

The tobacco industry requested a meeting with Ministry of Health staff. The aim of this meeting was to present their complaints and suggestions. Finally, it was agreed that they should send a document with their arguments.

The tobacco industry's complaints were:

1. They requested different maximum levels (12 mg of tar, 1 mg of nicotine, 12 mg of carbon monoxide), in line with legislation in the European Union. In the second phase (to be implemented two years later) they requested maximum levels of 10 mg of tar, 1 mg of nicotine and 10 mg of carbon monoxide.
2. They said that the short time to make these product modifications was a problem for the companies.
3. They also asked that the additional health message ("There is no safe level for consumption of these substances") be included as one of the set of existing rotating health warnings, rather than printed on every pack in addition to the rotating warning.
4. They objected to the ban on descriptors. They again argued that these descriptors related only to taste and did not mean 'safe' or 'less harmful'.

Seventh Action

Some of the industry's proposed changes were accepted, and the final regulation was published on March 28th, 2001.[4]

1. The proposed maximum levels were accepted, but not the revised schedule.
2. The industry was given two deadlines to implement the changes: 9 months for Step I (Dec. 12th, 2001) and 18 months for Step II (Sept. 29th, 2002).
3. We didn't agreed to the additional message being included as one of the rotating health warnings.
4. the ban of descriptors was to be effective as of Dec. 29th, 2001.

Eighth Action

Among activities for May 31st (World No Tobacco Day), ANVISA published two other Regulations:

104 – Mandates warning images on packages and on tobacco product advertising.
105 – Creates a registry of national manufacturing companies, importers or exporters of tobacco products and an annual registry of their products.

These are examples of the new warnings, which still need to be approved and finalized; the images may still change.

Each brand needs to be registered and needs to pay an annual tax. In Brazilian markets we have 22 brands that qualify as 'light' and 'ultra-light'. You can find a 'light' cigarette in one brand family that has a higher tar level than the 'regular' cigarette from another brand family. This proves that the tobacco industry does not use these descriptors consistently.

Ninth Action

After political pressure, ANVISA and INCA received the tobacco industry in a meeting. In this meeting, the tobacco industry submitted their complaints and difficulties in meeting the requirements of the new Resolutions. Recently, Regulation 104 was modified. We gave the tobacco industry more time to print the images. The industry claimed that they didn't have a company able

to print the colour warnings. However, we had already proven that the packages could be printed in Brazil.

Considering the fact that both regulations require the tobacco industry to change its labelling, we decided to establish just one deadline for their implementation, January 30, 2002 – for the images; to change the maximum levels of tar, nicotine and carbon monoxide; to ban the descriptors; and to print the additional health message ("There is no safe level for consumption of these substances").

We are optimistic, we are trying our best to protect public health, but we know that it is not easy. Exchanging experience in this area is essential; we know that the industry will find other ways to deceive consumers. In our opinion, we feel they are already doing this with colours. In the future we think that they will use numbers.

The problem in Brazil is that the industry has always used colours; they use different colours for 'light' cigarettes.

Another tactic is to use numbers. For example, one brand shows the number 1; this cigarette has 1 mg of tar. We know that with our legislation, we cannot ban the use of these numbers. Thus, we have to prove that these numbers are also misleading. The problem is that the industry always argues that because the commercialization of their product is legal, they have a right to inform the public about their products. This means that according to the industry, they can legitimately include, for example, the number 1 if the cigarette contains 1 mg of nicotine.

Government action in favour of society's welfare as a whole is considered valid, even though it may counter certain private interests, when such actions respond to a collective need. The State's right to protect the health of its population gave us the opportunity to ban the use of these descriptors in Brazil.

Discussion

Brazilian Legislation

Neil Collishaw:
I'm very impressed by the efforts of Brazil. In particular, the picture warnings on the whole side of a package are very interesting. The parallels between Canada and Brazil are interesting. It just so happens that the tobacco industry also said that it was impossible to print picture warnings here in Canada.

Judy Wilkenfeld:
In 1985, when the United States went to rotational health warnings, the industry came in and said they absolutely could not find the printers to print them.

Cristiane Vianna:
Also, the industry uses the argument that any measures will result in job losses. After the Directive was published we received letters from the families of tobacco workers stating that they would lose their jobs. It is believed that these letters were written and orchestrated by the industry.

Luk Joossens:
What's happening in Brazil is great. Brazil is the first country that will ban these descriptors. Is the date January 30, 2002?

Cristiane Vianna:
Yes, and as I said earlier, we chose just one date to make all of the changes to the packaging: health warnings, labels and descriptors.

Copies of the pictures of packages and health warnings are on the Internet.

Marvin Goldberg:
Is there a ban on advertising? Is there any counter-advertising?

Cristianne Vianna:
Last year we passed a law that banned TV, newspapers, magazines and radio advertisement and permitted the advertising of tobacco products only on posters, panels and placards inside the place of sale. The same law bans sports and cultural sponsorship. In addition, every year, we try to get celebrities, especially sports celebrities, to help us with campaigns throughout Brazil surrounding three important dates like, World No Tobacco Day – May 31st, National Day Against Smoking, August 29th and National Day Against Cancer, November 27th .

Endnotes

1 Nùmero do processo: 98.001.080402-9
7ª Vara de Falências e Concordatas da Comerca do Rio de Janeiro.

2 Federal Act n° 9.782, dated January 26th, 1999.

3 Federal Act n° 10.167, dated December 27th, 2000.

4 ANVISA Resolution n° 46.