

SUPREME COURT  
OF BRITISH COLUMBIA  
VANCOUVER REGISTRY



NO. S010421  
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF BRITISH COLUMBIA

PLAINTIFF

AND:

IMPERIAL TOBACCO CANADA LIMITED,  
ROTHMANS, BENSON & HEDGES INC.,  
ROTHMANS INC.,  
JTI-MACDONALD CORP.,  
CANADIAN TOBACCO MANUFACTURERS' COUNCIL,  
B.A.T INDUSTRIES p.l.c.,  
BRITISH AMERICAN TOBACCO (INVESTMENTS) LIMITED,  
CARRERAS ROTHMANS LIMITED,  
PHILIP MORRIS INCORPORATED,  
PHILIP MORRIS INTERNATIONAL, INC.,  
R.J. REYNOLDS TOBACCO COMPANY,  
R.J. REYNOLDS TOBACCO INTERNATIONAL, INC.,  
ROTHMANS INTERNATIONAL RESEARCH DIVISION and  
RYESEKKS p.l.c.

DEFENDANTS

ORDER

BEFORE THE HONOURABLE

MR. JUSTICE HOLMES

)  
)  
)

MONDAY, THE 22<sup>ND</sup> DAY

OF NOVEMBER, 2004

THE APPLICATIONS of the Defendants Imperial Tobacco Canada Limited, Rothmans, Benson & Hedges Inc., JTI-Macdonald Corp. and Canadian Tobacco Manufacturers' Council, coming on for hearing at Vancouver on the 15<sup>th</sup> day of November, 2004, and on hearing, William S. Berardino, Q.C., and Sean George, counsel for the Defendant, Imperial

Tobacco Limited, James A. Macaulay, Q.C. and Kenneth N. Affleck, Q.C., counsel for the Defendant, Rothmans, Benson & Hedges Inc., Jack Giles, Q.C., Jeffrey J. Kay, and Dylana Bloor, counsel for the Defendant, JTI-Macdonald Corp., Loryl D. Russell, counsel for the Defendant, Canadian Tobacco Manufacturers' Council, and Elliott M. Myers, Q.C. and James Duvall, counsel for the Plaintiff, Her Majesty The Queen in Right of British Columbia (the Applicants and the Plaintiff are referred to herein individually as "that party" or collectively as "the parties");

AND JUDGMENT being reserved to this date:

THIS COURT ORDERS that all lists of documents or supplementary lists of documents (hereafter "the lists") of the parties delivered pursuant to Rule 26 shall be subject to the following conditions:

1. The lists shall be kept in confidence by the parties and used solely for the purposes of this action;
2. In furtherance of the parties' obligation of confidentiality, the parties, and all persons who have access to the lists or any portion of them, shall keep in confidence the fact that any document either is or is not listed by any of the parties;
3. All persons who are not members of the Bar of British Columbia nor articled students or legal assistants under the supervision of members of the Bar of British Columbia who have access to the lists or any portion of them, or copies of any portion of them, shall prior to such access be given a copy of this Order;
4. Any person who is not a member of the Bar of British Columbia or an articled student or legal assistant under the supervision of members of the Bar of British Columbia and who any of the parties proposes is to have access to the lists or any portion of them, or copies of any portion of them, shall prior to

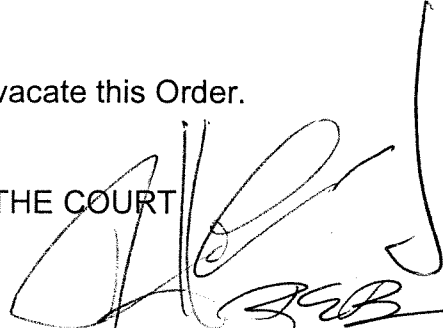
such access, execute the Undertaking in the form attached to this Order as Schedule "A" which executed Undertaking shall be retained in the possession of the solicitor for that party giving such access to the lists. Any of the parties shall have liberty to apply for a copy of any such Undertaking;

5. If any of the parties stores the lists electronically that party will maintain computer security to prevent anyone who is not a member of the Bar of British Columbia or an articulated student or legal assistant under the supervision of members of the Bar of British Columbia and who has not given the undertaking in Schedule "A" from gaining access to the lists;
  
6. In the event any of the parties intends to place the lists or any portion of the lists into evidence before this or any court or any tribunal, the solicitor for that party, not later than four clear days before the filing of an affidavit exhibiting the lists or any portion of them or before making any other use of the lists or any portion of them on an application or proceeding before this or any court or any tribunal, shall advise the other parties in writing of that party's intention to file the lists or otherwise to refer to the lists in the records of or before this court or any other tribunal, and shall provide to that party or the parties in respect of which the application is made a copy of the lists of that party whose lists or any portion thereof are to be placed in evidence on any such application or proceeding. On receipt of such advice any of the parties shall have liberty to apply for an Order further protecting the confidentiality of the lists and the said affidavit exhibiting the lists or portions of them shall not be filed with this or any court or any tribunal or the lists used on any such application or proceeding until an application, if any, for a further Order protecting the confidentiality of the list is heard and decided by this court or by the court or tribunal in which the lists are to be placed in evidence or otherwise referred to in the records of that court or tribunal or, alternatively, that party or those parties whose lists are to be placed in evidence waive, in writing, the right to apply for an Order further protecting the confidentiality of the lists;

7. The Plaintiff shall not permit access by any Defendant to the lists of any other Defendant;
8. Subject to the further order of this Honourable Court, this Order shall govern the conduct of the parties and all persons who have access to the lists until the commencement of the trial in this action. The parties shall have liberty to apply for an Order protecting the confidentiality of the lists at trial;
9. In the event this action is dismissed, discontinued or otherwise finally determined, including the final determination of all appeals, or the expiration of time to appeal or to seek leave to appeal all parties shall, within 14 days of the dismissal of the action, or the filing of a Notice of Discontinuance, or other such final determination of the action, return the lists, together with any copies, to that party delivering the lists. All lists in electronic form shall be destroyed or returned as appropriate to insure confidentiality. All parties shall make all reasonable efforts to gather all copies of the lists in any form electronic or otherwise and shall not retain copies in electronic form or otherwise of any of the lists or notes of their contents;
10. The discontinuance of this action or its dismissal or other final determination as described in paragraph 9 herein shall not relieve the parties and anyone else who has obtained the lists or any portion of the lists as contemplated by this Order from its terms;
11. The parties have liberty to apply to vary or vacate this Order.

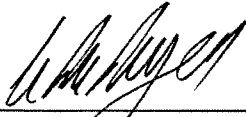
**ENTERED**  
JAN - 4 2005  
VANCOUVER REGISTRY  
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BY THE COURT

  
DISTRICT REGISTRAR

endorsement attached <sup>BS</sup>

APPROVED AS TO FORM:

  
\_\_\_\_\_

Solicitor for the Plaintiff

W. S. Buardino per KAT

Solicitor for the Defendant  
Imperial Tobacco Canada Limited

James A Macaulay per KAT

Solicitor for the Defendant  
Rothmans, Benson & Hedges Inc.

Jack Giles per KAT

Solicitor for the Defendant  
JTI-Macdonald Corp.

Loyal Russell per KAT

Solicitor for the Defendant  
Canadian Tobacco Manufacturers' Council

SCHEDULE "A"  
to the Order of the Honourable Mr. Justice Holmes  
dated the 22nd day of November, 2004.

NO. S010421  
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AND:

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R.J. REYNOLDS TOBACCO INTERNATIONAL, INC.,  
ROTHMANS INTERNATIONAL RESEARCH DIVISION and  
RYESEKKS p.l.c.

DEFENDANTS

**UNDERTAKING**

I, \_\_\_\_\_, acknowledge that I am to have access to the lists of documents or supplementary lists of documents (hereafter "the lists") disclosed herein by \_\_\_\_\_ ("this Defendant") in accordance with the terms of the Order of the Honourable Mr. Justice Holmes, dated the 22<sup>nd</sup> day of November, 2004 ("the Order"), a copy of which is attached to this Undertaking.

I further acknowledge that I have read the Order and understand the obligations imposed on me.

For greater certainty, but without limiting the terms of the Order, I hereby undertake to the Supreme Court of British Columbia and to counsel for this Defendant that:

- (a) I will keep all the lists whether in electronic form or otherwise disclosed by this Defendant in this action to which I have access, in confidence;
- (b) I will use the lists only for the purposes of this action as provided by the Order;
- (c) I will not disclose the lists or any portion of the lists or any notes of the lists to any person except in accordance with the Order;
- (d) This Undertaking will continue to be binding on me at all times, subject to any further Order of the Supreme Court of British Columbia, both during and after my involvement in this action;
- (e) I submit to the jurisdiction of the Supreme Court of British Columbia for the purpose of the enforcement of this Undertaking.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (Printed)

\_\_\_\_\_  
Address  
\_\_\_\_\_

\_\_\_\_\_  
Telephone Number

Witness:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (Printed)

\_\_\_\_\_  
Address  
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\_\_\_\_\_  
Telephone Number

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