

TOBACCO PROMOTIONS AFTER OCTOBER 1, 2003.

INSIDE:

<i>Selected Provisions</i>	2
<i>Publications</i>	4
<i>Adult Venues</i>	6
<i>Information/ Brand Preference</i>	7
<i>Lifestyle</i>	8
<i>Contests</i>	9
<i>Other products and services</i>	10
<i>Foreign Publications</i>	11

On October 1, 2003, laws governing tobacco advertising and promotion will change in Canada. On that date, the exemptions for sponsorship advertising contained in s. 24 and 25 of *Tobacco Act, 1997* will come to an end. After this date, promotions are only permitted under the following provisions of the Act:

- S. 22 Advertising
- S. 26 Accessories
- S. 28 Exceptions tobacco-product and non-tobacco product
- S. 30 Display at retail

These sections of the law may provide considerable scope for tobacco advertising to continue. The type and amount of tobacco advertising that will continue after October 1, 2003 will depend on how these remaining sections are interpreted and enforced, and whether regulations are developed to help minimize their damaging effects.

On at least two major occasions, public health experienced unexpected setbacks when tobacco laws were interpreted very differently than legislators had understood at the time of their passing. These occasions were:

- The ability of tobacco companies to establish and exploit a sponsorship loop-hole in the early 1990s. The Tobacco Products Control Act disallowed sponsorship promotion unless it was under a corporate name. This was intended to mean "Imasco" or "RJR-Macdonald" - but the companies were able to incorporate branded sponsorships, like "Players Racing Inc" and "Du Maurier Arts Ltd."
- The ability of tobacco companies to expand the grandfathering provisions of the 1997 Tobacco Act to all brands. The Act was said to grandfather the promotion of sponsored events in existence in April, 1997. Despite this, the companies developed new events (Benson & Hedges Film, Export A. Extreme Sports, Red Seat, Gold Club Series, etc).

This unfortunate history suggests that public health would be served if Health Canada would issue clear guidelines of how the Act is to be interpreted and implemented, rather than allowing tobacco companies to create de-facto interpretations through their marketing practices.

This document was prepared by:

Physicians for a Smoke-Free Canada
1226A Wellington Street
Ottawa, Ontario
K1Y 3A1

Phone: 613-233-4878
Fax: 613-233-7797
www.smoke-free.ca

Selected Provisions of the Tobacco Act, 1997

2. Definitions

"brand element" includes a brand name, trade-mark, trade-name, distinguishing guise, logo, graphic, arrangement, design or slogan that is reasonably associated with, or that evokes, a product, a service or a brand of product or service, but does not include a colour.

19. Prohibition

No person shall promote a tobacco product or a tobacco product-related brand element except as authorized by this Act or the regulations.

20. False promotion

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.

21. Testimonials or endorsements

(1) No person shall promote a tobacco product by means of a testimonial or an endorsement, however displayed or communicated.

(2) For the purposes of subsection (1), the depiction of a person, character or animal, whether real or fictional, is considered to be a testimonial for, or an endorsement of, the product.

(3) This section does not apply to a trade-mark that appeared on a tobacco product for sale in Canada on December 2, 1996.

22 Advertising

(1) Subject to this section, no person shall promote a tobacco product by means of an advertisement that depicts, in whole or in part, a tobacco product, its package or a brand element of one or that evokes a tobacco product or a brand element.

(2) Subject to the regulations, a person may advertise a tobacco product by means of information advertising or brand-preference advertising that is in

(a) a publication that is provided by mail and addressed to an adult who is identified by name;

(b) a publication that has an adult readership of not less than eighty-five per cent; or

(c) signs in a place where young persons are not permitted by law.

(3) Subsection (2) does not apply to lifestyle advertising or advertising that could be construed on reasonable grounds to be appealing to young persons.

26. Accessories and Promotion

(1) Subject to the regulations, a manufacturer or retailer may sell an accessory that displays a tobacco product-related brand element.

(2) No person shall promote an accessory that displays a tobacco

product-related brand element except in the prescribed manner and form and in a publication or place described in paragraphs 22(2)(a) to (c).

27. Non-tobacco product displaying tobacco brand element

No person shall furnish or promote a tobacco product if any of its brand elements is displayed on a non-tobacco product, other than an accessory, or is used with a service, if the non-tobacco product or service

(a) is associated with young persons or could be construed on reasonable grounds to be appealing to young persons; or

(b) is associated with a way of life such as one that includes glamour, recreation, excitement, vitality, risk or daring.

28. Exception – tobacco product and non-tobacco product.

(1) Subject to the regulations, a person may sell a tobacco product, or advertise a tobacco product in accordance with section 22, if any of its brand elements is displayed on a non-tobacco product, other than an accessory, or used with a service, if the non-tobacco product or service does not fall within the criteria described in paragraphs 27(a) and (b).

(2) Subject to the regulations, a person may promote a non-tobacco product, other than an accessory, that displays a tobacco product-related brand element, or a service that uses a tobacco product-related brand element, to which section 27 does not apply.

30. Retail Display of tobacco products

(1) Subject to the regulations, any person may display, at retail, a tobacco product or an accessory that displays a tobacco product-related brand element.

(2) A retailer of tobacco products may post, in accordance with the regulations, signs at retail that indicate the availability of tobacco products and their price.

31. Communication Media

(1) No person shall, on behalf of another person, with or without consideration, publish, broadcast or otherwise disseminate any promotion that is prohibited by this Part.

(2) Subsection (1) does not apply to the distribution for sale of an imported publication or the retransmission of radio or television broadcasts that originate outside Canada.

(3) No person in Canada shall, by means of a publication that is published outside Canada, a broadcast that originates outside Canada or any communication other than a publication or broadcast that originates outside Canada, promote any product the promotion of which is regulated under this Part, or disseminate promotional material that contains a tobacco product-related brand element in a way that is contrary to this Part.

Interpretive Questions

S. 22 (1): Advertising

22. (1) Subject to this section, no person shall promote a tobacco product by means of an advertisement that depicts, in whole or in part, a tobacco product, its package or a brand element of one or that evokes a tobacco product or a brand element.

Interpretive Questions

1. What test is used to determine whether an advertisement 'evokes' a brand element?
2. Is the general prohibition in 22(1) against the use of packaging, tobacco products, or brand elements over-ridden by the specific permission in 22(2) to use informational advertisement?



Without criteria for 'evoke' tobacco companies have continued to use brand elements in retail displays, even though these were thought to have been prohibited as of October 1, 2000.



In 1997, the Minister of Health told a Senate committee that this advertisement—which displays both a cigarette and its packaging—would be considered legal under the Tobacco Act. .

22 (2) Advertising Exception

22. (2) Subject to the regulations, a person may advertise a tobacco product by means of information advertising or brand-preference advertising that is in

(a) a publication that is provided by mail and addressed to an adult who is identified by name;

(b) a publication that has an adult readership of not less than eighty-five per cent; or

(c) signs in a place where young persons are not permitted by law.

Interpretive Questions: Publications

3. Do web-sites qualify as 'publications' ?
4. Will web-sites with brand names and brand elements be permitted after October 1, 2003?

Examples:

- www.Players-Racing.Com
- www.extremesportseries.com
- www.redseat.ca and www.clubrouge.ca
- www.goldclubseries.ca

5. If no, what measures are being taken to ensure these sites are removed?
6. If yes, what conditions will be placed on the sites, and how are those conditions being communicated to site-managers?
7. How is compliance with readership "of not less than 85 per cent" determined?

Websites

Sponsorship promotion is allowed in publications with adult readership until October 1, 2003. Tobacco companies have interpreted this to include web-sites.

Red Seat



Gold Club



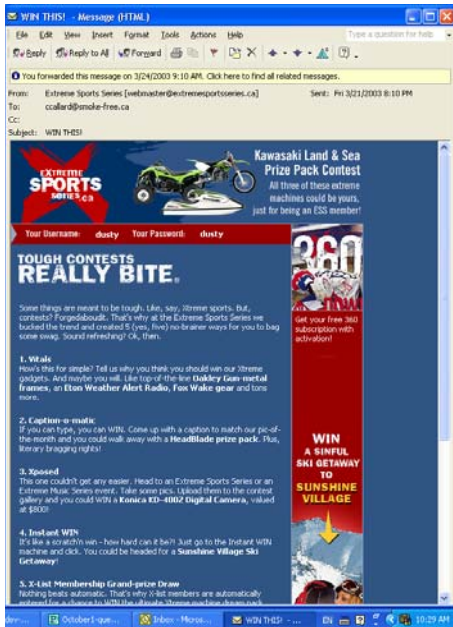
Player's Racing



ExtremeSportsSeries



8. Do e-mails qualify as a “publication that is provided by mail and addressed to an adult who is identified by name?”
9. When the exterior of the publications sent by mail contains promotional material then the audience is broader than the ‘adult identified by name.’ Are promotional wrappings allowed?
10. When tobacco companies own, publish and distribute their own publications (like Rev, Pursuit, Real Edge), they include lifestyle articles which accompany tobacco promotions. Is the entirety of the publication subject to provisions of the Tobacco Act, including prohibitions on lifestyle advertising?



E-mail

Sponsorship promotion is allowed in publications sent to adults identified by name until October 1, 2003.

Tobacco companies have interpreted this to include e-mails.



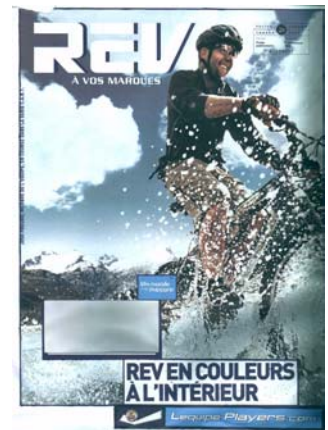
Lifestyle Magazines

allow tobacco companies to meld so-called editorial content with promotions.

Wrappings on Direct Mailing

Sponsorship promotion is allowed in publications sent to adults identified by name until October 1, 2003.

Tobacco companies have interpreted this to allow promotions on the exterior of the promotion.



Interpretive Questions: Promotions in Adult Venues

11. Has Health Canada compiled a list of places, or categories of places, where young persons are not allowed by law?
12. What is a 'sign' that may be a place where young persons are not permitted by law?
13. May tobacco companies use décor to brand night-clubs? Could the overall look of a venue be considered to 'evoke' a cigarette brand?
14. Are cigarette girls an allowable promotion? If so, under what provision of the Tobacco Act do they fall?

Kool Ice Box



Red Seat—Lotus Nite Club



Cigarette girls



Gold Club



Tobacco companies have been able to use colour and brand elements to generate a brand look for night club events.

**Interpretive Questions:
Informational and Brand-Preference
Advertising**

15. Has Health Canada developed any guidelines to help interpret 'information' and 'brand preference' advertising?
16. Can tobacco products and their packaging be included in tobacco advertisements, as the Minister of Health told the Senate committee in 1997?
17. Would the following proto-type advertisements be permitted in publications with adult readership of at least 85%? (See illustrations A-E)
 - A. Picture of package livery with information about package types.
 - B. Brand element with information about availability.
 - C. Text only with brand colours and informational statement which may have health connotations.
 - D. Trade-marked brand element with information about market share.
 - E. No trade mark, no brand name. Colour and text only.

A Packaging in advertisements



Player's cigarettes are now available in flip-top packs.

B Brand Elements in advertisements



C Informational advertisement - content



D Trade mark and information—market share



E No brand element, quasi-health claim.



22(3). Advertising – Lifestyle

22. (3) Subsection (2) does not apply to lifestyle advertising or advertising that could be construed on reasonable grounds to be appealing to young persons.

**Interpretive Questions:
Lifestyle Advertising**

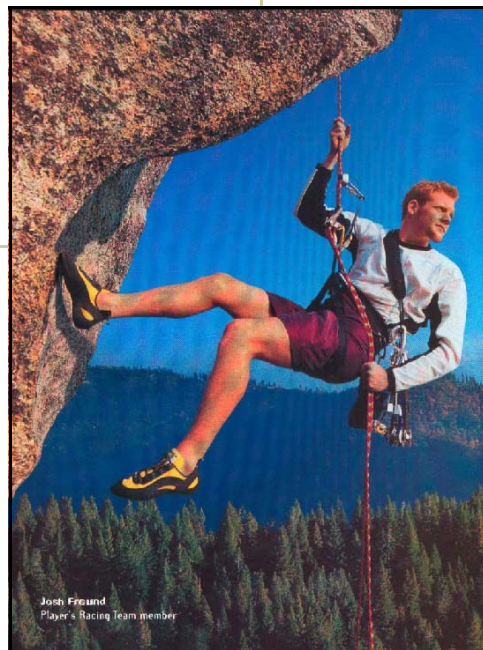
- 18. Has Health Canada developed interpretation guidelines to guide enforcement on the prohibition of 'lifestyle advertising'?
- 19. Has Health Canada developed interpretation guidelines to guide enforcement on the prohibition of 'could be construed on reasonable grounds to be appealing to young persons.'
- 20. How will conflicts, should they occur, be resolved between s. 22 (3) prohibition on lifestyle advertising and explicit provisions contained in:

- S. 2 (colour)
- S. 26 (accessories)
- S. 27, 28 (non-tobacco products)
- S. 30 (retail)



Is this an envelope for a legal sponsorship promotion or an illegal lifestyle promotion for cigarettes?

What is being promoted? Players? Team Players? Indy racing? A contest?



**Josh Freund.
Spirit of Adventure**

By Ima Scofriend.

This glowing article gives lots of opportunity for Player Racing team poster boy Josh Freund to talk about his life, his goals, his girls.

The article is an infomercial. It is written by Imperial Tobacco, paid for by Imperial Tobacco, and distributed by Imperial Tobacco.

It appears in Imperial Tobacco's Rev Magazine and is sent to the saps who have entered Players contests or signed on to the website — or maybe to

people who appear on lists that Imperial Tobacco has purchased from magazines with similar demographics to Player's target market.

There is no traditional advertising copy on the article — but the accompanying pages use colour to ensure the reader associates the article with Players.

- Is this an advertisement?
- Is it permitted by the Tobacco Act?
- Is it a portrayal of a lifestyle?

Tobacco companies now publish lifestyle magazines, into which they drop advertisements for their sponsored events, as well as advertisements for other products and services. Can the companies use the editorial content of these magazines to continue to associate their products with evocative lifestyles?

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**Interpretive Questions:
Tobacco Product and non-tobacco product**

23. Can non-tobacco products which use tobacco brand elements be displayed at retail? If so, under what conditions?

24. Could the following products be sold at retail?

- Du Maurier Mayonnaise
- Benson and Hedges Coffee
- Dunhill Caviar
- Dunhill Perfume

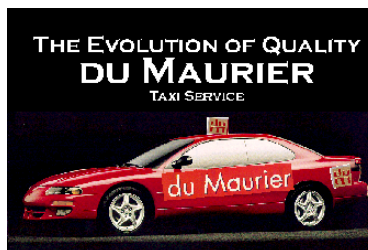
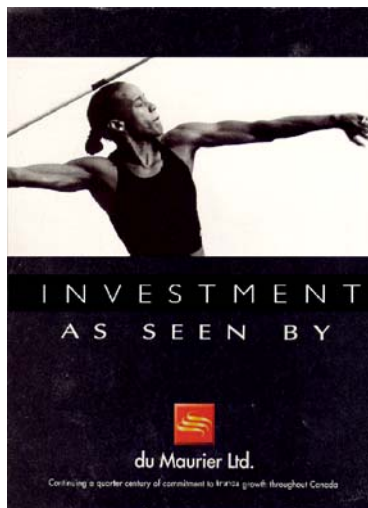
25. Can non-tobacco products or services which use tobacco brand elements be advertised? If so, under what conditions?

26. Could the following non-tobacco services be advertised?

- Du Maurier Taxi Service
- Export A Courier Service
- Extreme Sports Courier Service (with the distinguishing red X)
- Investment Services



In other countries, Benson & Hedges has used food goods as brand extensions



Non-tobacco products or services which may be considered compliant with the Tobacco Act could include food-stuffs and other commodities or financial, transportation or other services.

27. Can non-tobacco products which use tobacco-controlled non-tobacco brand elements (like Red Seat, or Gold-Club, or Extreme Sports Series) be displayed or advertised?

28. Has Health Canada established interpretive guidelines for “way of life such as one that includes glamour, recreation, excitement, vitality, risk or daring?”

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Interpretive Questions: Communication Media

- 27. Under what conditions can brand elements for tobacco products sold in Canada be displayed in imported magazines?
- 28. Can brand elements for tobacco products sold in Canada be displayed in Canadian editions of magazines that are:
 - Split-run editions, designed entirely for sale in Canada, containing a mixture of Canadian and American ads, but little or no Canadian editorial content (“Maxim” and “Stuff” are examples).
 - Split-run editions, designed entirely for sale in Canada, including Canadian editorial content (i.e. Time Canada)
 - “Foreign” magazines that are printed in Canada
 - “Foreign” magazines that are mailed from Canadian post-offices



Promotions for Team Players and Gold Club Series have appeared in recent editions of both “Maxim” and “Stuff.”