

A COMPLAINT

PURSUANT TO THE BUSINESS PRACTICES ACT R.S.O. 1980, C. 55

AGAINST



ROTHMANS OF PALL MALL CANADA LIMITED

FILED JOINTLY AND INDIVIDUALLY

BY THE FOLLOWING RESIDENTS OF ONTARIO

Garfield Mahood
Executive Director
Non-Smokers' Rights Association
Suite 201, 455 Spadina Avenue (at College),
Toronto, Ontario
M5S 2G8

David T. Sweanor, B.A., LL.B.
Suite 1607, 35 Walmer Road
Toronto, Ontario

J. David Stewart, B.Sc., M.D., D.E.C.H., C.C.F.P.
Head
Department of Occupational Health and Safety
Sunnybrook Medical Centre
University of Toronto

Harding LeRiche, M.D., F.R.C.P.(C), F.A.C.P., M.P.H.
Professor, Department of Preventive Medicine
University of Toronto

107337235

Seymour Berlin, M.D., C.C.F.P.
734 Briar Hill Avenue
Toronto, Ontario
M6B 1L3

Graham S. Bickle, M.D., F.R.C.P.(C) Psych.
150 Delhi Street
Guelph, Ontario
N1E 6K9

Beryl Chernick, M.D., Ph.D.
Suite 205, 648 Huron Street
London, Ontario
N5Y 4J8

A.B. Chernick, M.D., F.R.C.S.(C)
Suite 205, 648 Huron Street
London, Ontario
N5Y 4J8

Rolando Del Pozo, M.D.
Suite 206, 2333 Dundas Street West
Toronto, Ontario
M6R 3A6

Cynthia Gertsman, M.D., F.R.C.P.(C)
3305 - 1100 Sheppard Avenue East
Willowdale, Ontario
M2K 2W1

Michael Gordon, M.D., F.R.C.P.
62 Appian Drive
Willowdale, Ontario
M2J 2P9

Henry Hall, M.D., L.M.M.C.
3 Frederick Street
Brampton, Ontario
L6Y 1G3

Gerald D. Hart, M.D., F.R.C.P.(C), F.A.C.P.
Toronto East General Hospital
825 Coxwell Avenue
Toronto, Ontario
M4C 3E7

Linda L. Huehn, M.D.
Suite 1607, 35 Walmer Road
Toronto, Ontario
M5R 2X3

107337236

Bonny MacFarlane, M.D.
3631 Flamewood Drive
Mississauga, Ontario
L4Y 3P2

Joseph B. MacInnes, C.M., M.D., LL.D., F.R.C.P.
178 Balmoral Avenue
Toronto, Ontario
M4V 1J6

Mohamed D. Mohamed, M.D., M.C.F.P.
60 Edenvale Crescent
Islington, Ontario
M9A 4A6

Harry C. Palter, M.D., F.R.C.P.(C)
1333 Sheppard Avenue East
Willowdale, Ontario
M2J 1V1

Andrew Pipe, M.D.
Suite 3, 47 First Avenue
Ottawa, Ontario
K1S 2G1

Robert L. Ruderman, M.D., F.R.C.S.(C), F.A.C.S.
531 St. Clements Avenue
Toronto, Ontario
M5N 1M3

Jeffrey A. Sherkey, M.D., C.C.F.P.
168 Annette Street
Toronto, Ontario
M6P 1P4

Marja Soots, M.D., F.R.C.P.(C), F.A.C.P.
Toronto East General Hospital
825 Coxwell Avenue
Toronto, Ontario
M4C 3E7

Colin L. Soskolne, Ph.D.
Suite 1818, 45 Carlton Street
Toronto, Ontario
M5B 2H9

Manuel M. Spivak, M.D., F.R.C.S.(C)
215 Vesta Drive
Toronto, Ontario
M5P 3A2

10/551/251

Walter P. Unger, M.D., F.R.C.P.(C), F.A.C.P.
2156 Yonge Street
Toronto, Ontario
M4S 2A8

107337238

NATURE OF THE COMPLAINT

Rothmans of Pall Mall Canada Limited is a corporation engaging in the production, sale and advertising of cigarettes with head office located at 1500 Don Mills Road, Don Mills, Ontario. Among the brands of cigarettes which this company manufactures and advertises are Dunhill, Rothmans and Craven "A".

Section 2(a) of the Business Practices Act states that a false, misleading or deceptive consumer representation includes:

- (xiii) a representation using exaggeration, innuendo or ambiguity as to a material fact or failing to state a material fact if such use or failure deceives or tends to deceive.

It is the contention of the complainant that Rothmans, by failing to prominently state on their advertising that tobacco is highly addictive, engages in an unfair practice as defined in S.2(a) of the Act. This belief is based on three facts:

1. there is no statement of the addictive nature of tobacco on Rothmans' tobacco advertising within the province of Ontario.
2. the addictive property of tobacco is a material fact in regard to the cigarettes which are advertised by Rothmans.
3. the failure to state this fact either deceives or tends to deceive potential purchasers of this product.

BASIS OF THE COMPLAINT

Failure to State that Cigarette Smoking is Addictive

The fact that there is, at present, no warning of the addictive nature of tobacco is self-evident. It is clear that the current health warning does not convey the fact of addiction. In fact, once a consumer becomes addicted, this health warning becomes almost irrelevant.

107337239

Addictive Properties of Cigarette Smoking

It is submitted that the scientific case establishing the highly addictive nature of cigarette smoking is conclusive. To substantiate this fact there is, included in Appendix "A", the expert opinion of Dr. Lynn Kozlowski, widely regarded as one of the top experts on tobacco addiction in the world.

The expert opinion of Dr. Kozlowski, as shown in his letter, reflects the accepted view of scientists who have studied this issue. Other expert opinions can be supplied upon request.

The Failure to State this Material Fact Deceives or Tends to Deceive

In determining whether the failure to state this material fact causes deception, it is the contention of the complainants that such an omission causes deception in a situation in which there is a disparity between the actual consequences which may result from the use of the advertised product and the expectation of a substantial segment of the public about the consequences of using the product. It is the opinion of the complainants that there is no real difference between the action of Rothmans, in failing to state that the cigarette it markets are addictive, and the action of an automotive manufacturer that fails to state in its advertising that a certain model has a fuel tank that leaks. In either case there will be a significant portion of the population where the expectations of the product may vary significantly enough from the actual facts that omitting to inform consumers of this fact causes deception.

There is overwhelming evidence that a substantial segment of the public have incorrect expectations as to the addictive properties of tobacco. Information from studies carried out in both the United States and Canada illustrate this point. In 1978, a Roper Organization Inc. poll was conducted in the United States for the Tobacco Institute (the lobbying organization of that country's tobacco manufacturers). An outline of that study and its findings are in Appendix "B". This study, submitted to the United

107337240

States Federal Trade Commission in response to a subpoena, indicated that the majority of people did not think smoking is addictive. Half of the population thought smoking was merely a habit, and not an addiction.

A similar situation exists in Canada. A survey, Young People in Canada, done for Health and Welfare in February 1984 by the Gallup organization (see Appendix "C") found that when asked to name some of the effects of smoking cigarettes, less than five per cent recalled that it could create an addiction or habituation.

When specifically asked if cigarette smoking was habit forming (a far less onerous attribute than addiction) almost 15 per cent of young Canadians said that it was not. Although this total lack of awareness of 15 per cent of potential consumers as to tobacco even being "habit forming" when this issue is specifically brought to their attention should be sufficient to require a warning, we feel the current situation is worse than it might at first appear. The Roper poll showed that half of the population felt smoking was merely a habit and not an addiction. In the absence of any evidence to the contrary, it is safe to assume that a large percentage of young Canadians would also hold this misconception. In effect, a very large number, probably a majority, of our young people are unaware of the addictive nature of tobacco.

On the basis of these studies the complainants contend that a sufficiently substantial portion of consumers hold false expectations with respect to the nondisclosed material fact of the addictiveness of cigarette smoking. As such the failure of Rothmans to disclose this fact constitutes deception by omission.

The failure to state this material fact is especially deceiving to young people since the smoking habit is acquired at an early age. In fact, a report entitled Smoking Habits of Canadian School Children carried out by the Health Promotion Directorate of Health and Welfare Canada in conjunction with the Canadian Home and School Association and the Parent-Teacher

107337241

Federation states that 15 per cent of boys and 20 per cent of girls are regular smokers by the age of 14. Adolescents and children need to be plainly warned that they cannot try smoking and then easily give it up. It is particularly noteworthy that the Health and Welfare study shows an extremely low level of recall of the habituation to, or addictiveness of, tobacco but a higher rate of recognition of at least habituation when this question is specifically called to one's attention. This tends to indicate that a clear warning concerning tobacco addiction on the advertisements for cigarettes manufactured by Rothmans would aid in eliminating the current level of deception.

ACTION SOUGHT FROM THE DIRECTOR OF THE BUSINESS PRACTICES ACT

By engaging in an unfair practice, Rothmans is in violation of s.3 of the Act. The complainants therefore ask that the Director utilize his power under s.6 or s.7 of the Act to issue an order to cease this unfair practice either by discontinuing its advertising or by adding a clear statement of the addictive properties of cigarettes to its advertising within Ontario. This statement would have to be large and prominent enough to be clearly visible to all potential purchasers.

The complainants recommend that a warning, such as the sample warnings contained in Appendix "D" be included in any further advertising Rothmans places within the boundaries of Ontario. The complainants also recommend that this warning be at least 10 per cent of the area of the entire advertisement and that it be prominently visible from the angles and distances from which each advertisement is designed to be viewed.

The complainants request that this order apply to all advertising by the company within the boundaries of the Province of Ontario. The complainants further request that the order specifically deal with all points of sale advertising, all advertising posters, all outdoor advertising, all newspaper ads printed in Ontario and designed specifically for the Ontario market, and all magazine ads printed in Ontario and designed specifically for the Ontario market. The complainants also request that the Director apply this ruling to such other advertising and packaging as is deemed advisable.

107337242