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B.C. Supreme Court certifies class action suit against Imperial Tobacco

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VANCOUVER (CP) - The B.C. Supreme Court certified a class action suit against Imperial Tobacco on Tuesday over its marketing of cigarettes labelled "mild" or "light."

The decision was described as a legal breakthrough in Canada by an anti-smoking activist. The plaintiff, Kenneth Knight, alleges the marketing of these cigarettes was deceptive because it suggested they are less harmful than regular ones. Another court date sometime in the future will determine who can join Knight in the class action.

"This is the first class action suit ever in Canada to be certified," said Cynthia Callard, the executive-director of Ottawa-based Physicians for Smoke-Free Canada.

Knight alleged in his statement of claim that light or mild cigarettes are not less harmful than regular cigarettes and they do not significantly reduce toxic emissions.

The class action seeks general and punitive damages and an injunction against marketing such cigarettes.

Imperial Tobacco, based in Montreal, said it will appeal the class action certification, arguing in part the federal government encouraged tobacco companies to develop and promote low-tar cigarettes.

Imperial spokeswoman Christina Dona called the lawsuit a copycat suit - an opportunistic attempt to cash in on American-style litigation that doesn't reflect the Canadian reality.

In her judgment, Justice Deborah Satanove said Knight's claim "is not the usual type of claim against cigarette manufacturers, nor is it the type of products liability claim this court is usually asked to certify as a class action."

"Although the claim arises from health concerns, it does not seek compensation for personal injury. It is a claim for pure economic loss."

She noted that the plaintiff was not seeking damages for each class member, but "rather an aggregate damage award that may be distributed in whole or in part to charitable institutions involved in researching and treating illnesses related to smoking."

The judge said the plaintiff alleges that Imperial Tobacco developed light or mild cigarettes as a result of studies that showed cigarette smoking was harmful to health.

"The basis of liability alleged by the plaintiff is that the defendant engaged in numerous deceptive acts or practices in the solicitation, offer, advertisement and promotion of cigarettes, contrary to provision of the Trade Practice Act."

In its statement, Imperial Tobacco said the decision is only a certification and not a judgment of liability.

The company also named the federal government as a third party in the suit, arguing that it instigated and authorized the development of lower-tar tobacco products.

The federal government encouraged Canadian tobacco manufacturers to develop, manufacture, sell and promote low-tar cigarettes in Canada, the tobacco company said.

The federal government also opposed the certification of the class action, said Callard.

"Health Canada does not want to be found liable," she said.

"The company said the federal government made us make them so the federal government should pay if there are any damages."

The defendant tobacco company, said the judge, opposed the certification because "the plaintiff has no cause of action without proof of causation and reliance with respect to each individual member of the class."

The company and the federal government both took the position opposing certification because the proposed class "is overly broad and unmanageable," said the judge.

But the judge disagreed, saying that their submissions failed to understand the nature of the plaintiff's claim, "which is to obtain the disgorgement of revenues and profits earned by the defendant through the alleged deceptive marketing of the product."

Callard also noted the uniqueness of the allegations and remedy sought.

"It's not about money (for health damage)," she said. "He (Knight) wants the company to pay and to stop doing this deceptive marketing."

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