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3 July 2020

Dear Madam

### **Japan Tobacco International (JTI) - Breach of Menthol Ban**

We write further to our letter dated 24 June 2020.

As you will be aware, we are continuing to investigate the products JTI has launched to appeal to previous consumers of menthol cigarettes post the Menthol Ban.

In addition to the New Dual Products, JTI has launched a range of products to directly replace its Green range. These include: Sterling New Superkings Green, B&H New Superkings Green, Berkeley New Superkings Green and Mayfair New Green (**New Green Range**). The New Green Range is marketed as having the same “distinctive blend” as the New Dual Range (see Schedule 1).

We have carried out sensory and chemical analysis of two products from the New Green Range: Mayfair New Green and Sterling Superkings New Green (**New Green Products**). The results of this analysis are attached in the third Sensory Panel Report (**Third Sensory Report**).

Throughout the Third Sensory Report, the New Green Products are described as the post-EUTPD products. The pre-EUTPD versions (sold under the variant name “Green”) were no longer available in the UK market, therefore the panel analysed the New Green Products against Sterling Dual Superkings Capsule which was in market prior 20 May 2020 and a sample of which was available for testing.

### **Third Sensory Panel Results**

The results of the analysis of the New Green Products are set out at page 2 of the Third Sensory Report. In particular, the results record that:

- 1) Each of the New Green Products is described as having a menthol taste impression and evoking a cooling effect. Both the menthol taste and cooling effect are “clearly noticeable”.
- 2) Laboratory data (details of which are set out at page 3) supports the sensory analysis and identified the presence of menthol in the cigarette filter, cigarette rod and the smoke.

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With regards the laboratory data:

- Chemical analysis on the New Dual Range in the First and Second Sensory Reports analysed the level of menthol in the cigarette and the smoke. Advancements in the laboratory's chemical testing method meant that, when testing the New Green Products, they were able to split out the levels of menthol in the cigarette, resulting in the detection of a level of menthol in both the rod and the filter.
- If you combine the filter and rod menthol values you get the total menthol level for the cigarette. For example, for Sterling New Superkings Green the menthol level in the filter was 0.44mg and in the rod it was 1.09mg. This gives a total cigarette menthol level of 1.53mg. Some of the menthol migrates into the smoke during smoking, providing the smoke value. In the case of Sterling New Superkings Green, for example, this is 0.129mg.
- We cannot comment on whether menthol has been added separately to the filters of the New Green products. This is a question that needs to be put to JTI.
- Sterling Superkings New Green shows a higher level of menthol (1.53mg) than Mayfair New Green (1.32mg), however this is due to the larger stick size rather than higher level of menthol additive.
- Our Sensory Team have concluded that the tobacco blend, and crucially the menthol additive level, for the New Green Products and New Dual Range are substantially the same. Small differences in menthol levels between the specific products are most likely due to production variations.

### **Background to testing methodology**

The testing methodology is set out in part II of the Annex. As was the case with the First and Second Sensory Reports, it is important to note that:

- The analysis was carried out by a panel of sensory experts in Hamburg, Germany. All panellists are pre-screened to ensure that their sense of taste and smell is sufficiently sensitive to detect flavours in tobacco. Aside from their expertise in sensory analysis, the panel members are regular consumers. They are not employed by, or part of, Imperial Brands plc or any of its subsidiaries.
- The testing was carried out fully blinded i.e. the panellists had no knowledge of the brands they were smoking, the market origin of those brands, or background to the testing.
- The aim of this third piece of analysis was to ascertain whether JTI products in the New Green range had a smell or taste distinct from tobacco, in particular menthol. It also aimed to identify any sensorial differences between the pre-EUPTD JTI product (in this case Sterling Dual Superkings Capsule) and the post-EUTPD products (New Green Products).

### **Conclusion and Next Steps**

We have now conducted extensive sensory and chemical analysis of six JTI products and obtained three separate Sensory Panel Reports.

Each report concludes that JTI products that have been placed on the UK market after the Menthol Ban both contain menthol and have a clearly noticeable menthol taste.

In these circumstances, it seems highly likely that the two other products in the New Green Range (Berkeley New Superkings Green and B&H New Superkings Green), which are clearly marketed by JTI as belonging to the same family of post Menthol Ban products as the New Dual Range and New Green Products, have the same "distinctive blend" and therefore contain, and taste of, menthol. This is in clear breach of both the spirit and letter of the law.



We are aware that Public Health England is writing to all UK tobacco manufacturers regarding products placed on the UK market after 20 May 2020. We look forward to receiving the letter and will fully cooperate with any enquiries.

We further note that on 1 July, in response to a parliamentary question on the sale of menthol cigarettes, the Public Health Minister, Jo Churchill MP, stated that removing menthol cigarettes is an important milestone to help people quit smoking and improve their health and support the Government's drive towards a smoke-free society by 2030.

However, the serious concern is that in the meantime JTI is continuing to sell and generate significant profit from a range of menthol cigarette products which are unlawful. We are therefore strongly of the view that enforcement action should be taken and an Interim Enforcement Order should be sought without further delay.

Yours sincerely,

**Imperial Tobacco Limited**

Enc.

pp Martin Dockrell, Tobacco Control Lead, Public Health England