

Strictly Confidential

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Dear Sir / Madam

Possible Breaches of The Tobacco & Related Products Regulations 2016 (“TRPR”)

British American Tobacco UK Limited (“**BAT**”) is a distributor of tobacco and potentially reduced risk nicotine products in the United Kingdom. **BAT** is a subsidiary of British American Tobacco plc and our purpose is to build A Better Tomorrow by reducing the health impact of our business through offering a greater choice of potentially reduced risk products for our consumers.

On 20 May 2020 the complete ban on cigarettes and hand rolling tobacco with any characterising flavour including menthol took effect. Characterising flavours other than menthol have already been banned since 20 May 2016. We at **BAT** have removed all menthol from our cigarette products and have not sought to add any ingredient into our cigarettes and hand rolling tobacco in such quantities which may be considered as a characterising flavour. In addition, **BAT** has not launched any products which would be designed to be used with tobacco product packaging in order to recreate a menthol effect. We believe that both the letter and the spirit of the law are clear, and as such we have adjusted our cigarette and hand rolling tobacco product portfolio accordingly.

We are writing to you as the local Trading Standards Office of Imperial Tobacco Limited (“**ITL**”), based in Bristol. **ITL** have launched new menthol flavour infusion cards under its Rizla cigarette paper brand. The flavour cards are heavily mentholated and intended to be placed inside a cigarette pack or tobacco pouch to infuse the cigarettes or tobacco with a menthol flavour before consumption.

Clearly **ITL**’s flavour cards are intended to be used together with cigarettes or roll your own tobacco to circumvent **TRPR** and reduce the number of current menthol cigarette smokers quitting tobacco or using an alternative nicotine product. In an article appearing in Better Retailing on 16 December 2019 (a retail industry website) Chris Street, UK Market Manager at **ITL** is quoted as saying “When the menthol ban arrives in May 2020, many adult smokers will be left without their flavour of choice. This new product [Rizla flavour cards] will allow these shoppers to discover a new way to flavour their tobacco products. By stocking...Rizla Flavour Infusions...retailers can provide shoppers with options to help them stick with their flavour preference post ban”. A copy of this article is attached.

These new products have attracted media criticism with an article appearing in The Daily Mail on the 18 May 2020. A copy of the article is attached as an annex to this letter. Deborah Arnott of the NGO Action on Smoking & Health (“**ASH**”) is quoted as saying “It’s disgraceful that Imperial Tobacco is trying to undermine the ban [on menthol cigarettes] by selling cards which infuse menthol into cigarettes.”

We are aware that ITL's sister company, Reemtsma Cigarettenfabriken GmbH, has launched a similar flavour card product in Germany. On 28 May 2020 Germany's Federal Drugs Commissioner, Ms Daniela Ludwig, announced that the German Ministry of Food and Agriculture is investigating these products as a possible violation of the EU-wide ban on the sale of menthol cigarettes. She further commented that "we should not be offered such a shameless circumvention of the ban on menthol cigarettes".

Section 15(1) of TRPR prohibits the production or supply of cigarettes or hand rolling tobacco with a characterising flavour. A characterising flavour is defined in TRPR as "a smell or taste other than one of tobacco which is clearly noticeable before or during consumption of the product and results from an additive or combination of additives including, but not limited to, fruit, spice, herbs, alcohol, candy, menthol or vanilla".

Section 15(2)(c) of TRPR further prohibits the production or supply of cigarettes or hand rolling tobacco with a "technical feature allowing the consumer to modify the smell, taste, or smoke intensity of the product."

Section 16(1)(d) of TRPR also prohibits the production or supply of a tobacco product which includes an additive or additives that facilitate inhalation or nicotine uptake. The European Commission has stated that ingredients that have cooling effects, including menthol, facilitate inhalation (and likely result in increased nicotine uptake).¹

One of the clear purposes of Sections 15(1), 15(2)(c) and 16(1)(d) of TRPR is to remove menthol flavouring from cigarettes and roll your own tobacco.

By releasing these new products ITL is deliberately circumventing and breaching Sections 15(1) and 16(1)(d) of TRPR by facilitating the creation of a characterising flavour using an additive which, in the view of the European Commission facilitates inhalation and nicotine uptake (which is one of the key reasons why menthol was banned) in the Tobacco Products Directive and thus in the TRPR. Furthermore, ITL is also breaching Section 15(2)(c) of TRPR by providing consumers with a "technical feature" which allows the consumer to modify the smell and taste of a cigarette or roll your own tobacco.

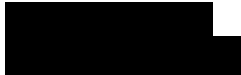
Whilst ITL may argue that the relevant sections of TRPR do not apply to accessories such as its flavour cards, we consider that the relevant sections and purposive effect of TRPR must be interpreted as applying to products that, even if sold separately, are designed with the clear intention of facilitating the modification of a cigarette or tobacco product to a state where such cigarette or tobacco product would be clearly prohibited under TRPR had it originally been produced in this modified state.

¹ See:

- [2010 SCENIHR report](#) on Addictiveness and Attractiveness of Tobacco Additives:
 - pp. 4 and 9 (noting that menthol is an additive that facilitates deeper inhalation);
 - p. 37: "*Certain ingredients have local anaesthetic effects. As a result coughing due to inhalation of irritating smoke is dampened and the smoker can inhale the smoke deeper (and more frequently). Examples are etheric oils, such as menthol and thymol.*"
- [2016 SCENIHR Opinion \(1\)](#) on Additives used in tobacco products. The report makes clear at several locations that additives with anaesthetic properties can facilitate inhalation (if used in sufficient quantities). See, e.g., pg. 33, noting "*Benzyl alcohol is a local anaesthetic that can facilitate tobacco smoke inhalation*". P. 50 also notes, for example: "*In addition, several additives and formulations are used to simulate menthol effects. Menthol induces anaesthetic and sensory effects, facilitates deeper inhalation and adds to the impact of nicotine*" (underlining added).
- [2016 SCHEER Opinion \(2\)](#) on Additives used in tobacco products. For example:
 - p. 37 states: "*Inhalation can be facilitated by certain additives leading to deeper and more frequent inhalation by the cigarette smoker resulting in an increase in lung exposure and nicotine uptake. Additives (e.g. menthol, theobromine and eucalyptol) can achieve this by enhancing sensory properties such as cooling effects or by having local anaesthetic and bronchodilating properties (Usmani et al., 2005).*"
 - p. 47 notes: "*Certain ingredients have local anaesthetic effects. As a result, coughing due to inhalation of irritating smoke is dampened and the smoker can inhale the smoke deeper (and more frequently). Examples are components of etheric oils, such as menthol and thymol (SCENIHR 2010).*"
 - p. 65 states: "*Based on the available data, menthol is concluded to impart a characterising flavour if added in sufficient amounts, facilitate inhalation and addictiveness of tobacco products and increase inhalation and nicotine uptake (concern categories A and C). Uncertainty is low. Further testing to show whether menthol is or is not addictive or does or does not increase attractiveness is not recommended in view of the strength of the data.*"

We believe it to be in the public interest to draw your attention to these new product launches by ITL in the UK and the related news articles and we would strongly support that they warrant immediate investigation. We would request clarity from you on whether you believe these new products comply with the relevant sections of TRPR.

Yours faithfully

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BAT UK & Ireland

<https://www.betterretailing.com/products/tobacco/imperial-tobacco-launches-rizla-flavour-infusions/>

betterretailing.com

19 December 2019

In response to the [upcoming menthol ban](#), Imperial Tobacco has launched Rizla Flavour Infusions – ‘cards’ that can be used to add a menthol flavour to traditional tobacco products.

The Rizla Flavour Infusions come in two varieties, including Menthol Chill, which provides a stronger, more intense flavour, and Fresh Mint, which is slightly smoother and mellower.

They are packed and wrapped separately, allowing retailers to sell them individually at an RRP of 25p each.

Consumers have to insert a ‘flavour card’ into a packet of cigarettes, or roll your own tobacco, and wait 60 minutes for the product to gain a menthol flavour, or leave it in longer for a stronger, more intense flavour.



Chris Street, market manager for the UK at Imperial Tobacco, said: “When the menthol ban arrives in May 2020, many adult smokers will be left without their flavour of choice. This new product will allow these shoppers to discover a new way to flavour their tobacco products.

“Menthol and crushball sales are collectively worth 26% of the total UK tobacco

As a tobacco accessory, the new Rizla Flavour Infusions don’t need to be hidden from the sight of shoppers, and the supplier recommends retailers stock them at the till point or on an open gantry.

As well as drawing the attention of shoppers to the new range, this will help encourage conversations with them about the forthcoming menthol ban to raise awareness of the changes to come and help retailers prepare their range.

<https://www.dailymail.co.uk/sciencetech/article-8330845/Tobacco-companies-developing-accessories-circumvent-menthol-ban.html>

The Daily Mail Online – 18 May 2020

Tobacco companies have been working on new accessories that bypass the UK's ban on menthol cigarettes, which comes into force this week, according to a new study.

UK researchers say tobacco companies have used a four-year period to prepare for the ban by developing new products such as menthol filters and 'flavour cards' that make regular cigarettes taste minty.

A loophole in the ban means these accessories can be promoted to customers near the cash till in shops in England and Wales after the ban, which takes effect on Wednesday, May 20.

Tobacco companies have created new websites and sponsorships in ways that undermine the intended public health benefit of the ban, the researchers add.

The companies realise the menthol ban will trigger smokers to quit and are therefore attempting to 'move the smokers onto new tobacco products', they claim.

'The way tobacco companies are using the ban on menthol cigarettes to promote new menthol tobacco products which are heated rather than burned undermines the very purpose of this ban,' said Professor Anna Gilmore, Director of the Tobacco Control Research Group (TCRG) at the University of Bath.

'It also flies in the face of tobacco company claims that they wish to reduce the harm from smoking.

'They realise the menthol ban will trigger smokers to quit – instead they seek to move the smokers onto new tobacco products which independent evidence indicates are as dangerous as smoking and from which they make even more profit.'

A menthol cigarette ban for the UK was first agreed in 2014 and was originally due to come into force in 2016 – however, intense lobbying put it back four years until this week.

The prohibition, in effect in just two days' time, will also see flavoured rolling tobacco and 'skinny' cigarettes outlawed.

The ban comes from the EU's new Tobacco Product Directive laws, which prohibit all menthol cigarettes.

The rules will still apply to Britain during the **Brexit** transition period, as the instruction was implemented in UK law in 2016.

For the new study, TCRG researchers analysed industry analyst data to track menthol market cigarette share from the original legislation agreement in 2016 through to 2018.

They also analysed documentary evidence – industry documents, websites and retail publications – to understand tobacco industry activities.

UK market share of menthol cigarettes grew from 14 per cent of cigarette sales in 2014 to 21 per cent in 2018, they found.

In the four-year phasing in period, tobacco firms have not only continued to sell and promote menthol products, but worked on new ways to push smokers towards menthol products that circumvent the ban, TCRG claims.

These include menthol filters and flavour cards that smokers can add to cigarette packs, as well as 'roll-your-own' tobacco pouches, to make them minty.

A menthol flavour can be added to cigarettes during the manufacturing process or smokers can add it themselves by crushing a menthol capsule.

In particular, Imperial Brands launched menthol and capsule roll-your-own filter tips in mid-2017 and January 2019, respectively.

Independent roll-your-own and make-your-own accessories specialist, The Republic Group, based in the US, also introduced a new menthol filter through its Swan brand.

A recent innovation for adding mint flavour is the addition of a capsule, or 'crushball' – a small plastic capsule in the filter activated by crushing.

These crushballs first appeared on the market in Japan in 2007 and are popular among young people 'due to the flavour and interactivity', the researchers say in their study in [BMJ's Tobacco Control](#).

But big tobacco companies have also created dedicated websites for retailers and smokers that effectively undermine the intended public health benefit of Wednesday's ban.

These website push consumers to switch to other products instead of quitting and promote new heated products such as IQOS, which heats menthol-flavoured tobacco rather than burning it.

Two tobacco companies have also introduced cigarette-like 'cigarillos' – small, narrow cigars – with a flavour capsule.

Although cigarillos currently have a small market share of UK tobacco sales, this share will grow partly because they are subject to lower taxes than cigarettes and are mostly exempt from plain packaging legislation.

'Our findings suggest the tobacco industry was driving sales of menthol cigarettes right up to the ban – a product whose serious health implications had led to the ban in the first place,' said lead author Dr Rosemary Hiscock, also at TCRG.

'We recommend loopholes in legislation be closed as soon as possible to prevent tobacco companies undermining the intended public health impacts of the legislation.

'This includes preventing the display of tobacco accessories and extending the menthol ban to all tobacco products, including cigarillos and heated tobacco products.'

One in six menthol smokers said they will quit after the menthol ban, which could reduce overall UK cigarette sales by 3 per cent, TCRG said.

The ban will help reduce deaths and illness caused by cigarette smoking, such as strokes, cancer and lung disease.

But the addition of menthol to cigarettes takes away some of the harsh sensations of smoking and can make them more appealing to young people.

Menthol can also mask early respiratory disease symptoms, meaning menthol smokers could carry on smoking after they start to become ill.

'Research shows that menthol in cigarettes makes it easier for children to try smoking and to go on to become addicted smokers,' said public health charity Action on Smoking and Health's chief executive, Deborah Arnott.

'Getting rid of menthol cigarettes will reduce the likelihood of young people taking up smoking, and make it easier for smokers to quit.

'It's disgraceful that Imperial Tobacco is trying to undermine the ban by selling cards which infuse menthol into cigarettes.'

The tobacco industry's exploitation of the menthol ban mirrors the introduction of plain and standardised packaging in 2016, TCRG said.

Tobacco companies misused the phase-in period to find ways to circumvent legalisation and shore up profits at the expense of public health, they claim.