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Dear Sir

Japan Tobacco International (JTI) - Breach of Menthol Ban

We refer to our previous correspondence in this matter.

As you will be aware, over the last 8 weeks we have been investigating the New Dual and New Green product ranges manufactured by JTI (**the JTI Products**). We have shared the results of these investigations with both Public Health England and Buckinghamshire and Surrey Trading Standards as we have received them.

We have now had the opportunity to draw the results together in one single Investigation Report (**the Report**) which we attach for your information.

The Report focuses on the core statutory test which goes to the heart of this matter, namely the definition of "characterising flavour" under reg. 2(1) of the Tobacco and Related Products Regulations 2016. This is a factual test and one that can be assessed on the basis of factual evidence. The evidence gathered as part of our investigation (which includes expert sensory testing and UK consumer research) unequivocally shows that the JTI Products contain menthol and have a clearly noticeable menthol taste.

In light of the findings of the Report, the continued presence of the JTI Products on the UK market is clearly no longer tenable.

We are aware that PHE are actively investigating tobacco products that have been placed on the market by all tobacco manufacturers since 20 May 2020. We are cooperating fully with these investigations. However, we are becoming increasingly concerned that, despite the overwhelming body of evidence that the New Dual and New Green products are unlawful, JTI has been permitted to sell (and make a significant profit from) these products for several months.

In addition to the results of our investigations, we have also provided you with the Opinion of David Travers Q.C (attached for ease of reference). The Opinion is clear that the somewhat novel issue in this case should not be a bar to Trading Standards taking urgent enforcement action to ban the sale of the JTI Products. See Paragraph A3 of the Opinion, which states as follows:

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“I deal briefly with the general point that weighing the evidence, whether the flavour is a smell or taste other than one of tobacco which is clearly noticeable before or during consumption, is perhaps a slightly unusual question for a court to have to determine. That is not a problem. Courts have to make decisions daily which are novel or otherwise outside the normal experience of the decision maker. This is not a bar to taking action and is resolved in the adversarial process. In this case there is evidence from experts in tobacco products sensory issues. The experts have used an established methodology and come to a clear conclusion. The methodology used reflects the conclusions of the HETOC report... That report concluded that the use of a sensory expert panel was a good approach to assessing characterising flavours.”

As we have highlighted in our previous letter, David Travers QC's Opinion is that commencing proceedings under Part 8 of the Enterprise Act 2002 (seeking an order preventing the continued supply of the JTI Products) would be more appropriate than a criminal prosecution.

In light of the overwhelming factual evidence that the JTI Products are unlawful, and the clear view of David Travers Q.C. on the way forward, we look forward to receiving your confirmation that action will be taken to remove these products from the market without delay.

Yours sincerely,

Imperial Tobacco Limited

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