



Our ref 101M/RC12/021729/000570

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Dear Mr Dockrell

**Our client: Imperial Tobacco Limited
Breach of Tobacco and Related Products Regulations 2016 - Japan Tobacco
International (JTI)**

We act for Imperial Tobacco Limited (**Imperial**) and refer to our client's previous correspondence with you in relation to this matter.

Evidence in relation to JTI Products

We understand that Public Health England has in its possession a significant body of evidence that has been commissioned by our client in relation to the New Green and New Dual products which contain JTI's new menthol blend (the **JTI Products**).

This evidence comprises not just chemical analysis, but four independent expert sensory reports and a UK consumer sensory testing report – all of which conclusively find that the JTI Products contain menthol additives that impart a clearly noticeable menthol taste.

As you will be aware, the relevant testing was carried out by independent agencies in accordance with the HETOC (2016) technical report endorsed by the European Commission for identifying characterising flavours in tobacco products.

No regulatory action against JTI

In light of the above, it is a matter of considerable disappointment for our client that JTI continues to produce and sell menthol cigarettes, more than three months after the ban on characterising flavour came into force.

The regulatory inaction during this period has enabled JTI to seize an illegal monopoly on a menthol market that was supposed to have been extinguished by law on 20 May 2020. Imperial's legitimate expectation was that the menthol ban would be enforced by regulators. Regrettably, this is not happening.



Our client's genuine concern is that the lack of enforcement action on this matter risks undermining the integrity of the wider tobacco products regulatory regime, potentially leading to a "race to the bottom" on standards.

In light of these concerns, we have also been in contact with Buckinghamshire & Surrey on behalf of our client to discuss the steps it has taken to discharge the enforcement duties imposed on it by reg.53(1) of the Tobacco and Related Products Regulations 2016.

However, as our understanding is that the investigation into the JTI Products (and indeed post-menthol ban products of other manufacturers) is currently being led by PHE, Imperial is understandably keen to verify that the relevant regulators and enforcement bodies are cooperating appropriately so as to discharge their public law obligations to enforce the law in relation to this serious matter.

Next steps

For the reasons outlined above, Imperial respectfully requests a written response to this letter by no later than **11 September 2020** detailing:

1. Which regulatory body PHE considers to have overall responsibility for enforcing the characterising flavour ban;
2. What PHE's role is in relation to the specific investigation into the JTI Products;
3. What the timescales are in relation to the ongoing investigation into the JTI Products; and
4. Confirmation that PHE has read and taken into account the expert and consumer sensory evidence supplied by our client.

For the avoidance of doubt, when we refer to PHE above, we also refer to the NIHP, to the extent that any regulatory functions have already been transferred.

Finally, we and our client fully appreciate that PHE are not generally obliged to provide updates on ongoing investigations to individual organisations. However, at the same time, Imperial clearly has a vested interest in this matter and it is entitled to take such steps as it considers necessary to ensure that regulators are discharging their Public Law duties to enforce the menthol ban.

We will advise our clients on next steps upon receipt of your response to this letter.

Yours faithfully

TLT LLP