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April 25, 2023

Jonathan Reed
CEO & Chief Commercial Officer
RJ Reynolds Tobacco Company
401 North Main Street
Winston-Salem, NC 27101

RE: California Flavor Ban, Health & Safety Code § 104559.5
Notice of Determination 23-04-A3

Dear Mr. Reed:

Since December 21, 2022, California has restricted retailer possession, distribution, and sale of flavored tobacco products. *See* Cal. Health & Saf. § 104559.5. This California “flavor ban” law establishes a rebuttable presumption that a tobacco product is flavored where its manufacturer “has made a statement or claim directed to consumers or to the public that the tobacco product has or produces a characterizing flavor, including, but not limited to, text, color, images, or all, on the product’s labeling or packaging that are used to explicitly or implicitly communicate that the tobacco product has a characterizing flavor.” *Id.* at § 104559.5(b)(2).

This letter is to advise you that the Tobacco Unit of the California Department of Justice has reviewed referred packaging and promotional materials for Newport EXP Non-Menthol Mix and Newport EXP Non-Menthol Max (collectively, the “Reviewed Products”) and determined that they are presumptively FLAVORED under the California flavor ban law. *Id.*

Determination Number	Reviewed Product(s)	UPC(s)	Determination
23-04-A3-1	Newport EXP Non-Menthol Mix	026100220087 026100660159 026100660180 026100660241 026100660272 026100220179	FLAVORED
23-04-A3-2	Newport EXP Non-Menthol Max	026100219906 026100219937 026100219999 026100220025	FLAVORED

We specifically conclude:

- (1) Labeling and packaging for the Reviewed Products uses brand names, text, and colors traditionally associated with menthol-flavored tobacco products. *See* TAB A.

- (2) Promotional materials for the Reviewed Products use common selling message(s) with menthol-flavored tobacco products. *See* TAB B.
- (3) Promotional materials for the Reviewed Products suggest sensory taste(s) or aroma(s) apart from taste(s) or aroma(s) of a solely tobacco flavored product. *See* TAB B.
- (4) Promotional materials for the Reviewed Products purposefully target users of menthol-flavored tobacco products and promote the Reviewed Products as substitutes or replacements for such menthol-flavored tobacco products. *See* TAB B.

The California flavor ban law restricts the retail distribution and sale of flavored tobacco products to California consumers. Under the California flavor ban law, retailers and their agents are subject to fines for the possession and sale of such flavored tobacco products. *See* Cal. Health & Saf. § 104559.5(f). Other state statutes and local ordinances may impose additional penalties on retailers or other vendors as well. *Id.* at § 104559.5(g); *see also* Cal. Bus. & Prof. § 17200. To encourage uniform application of the California flavor ban law, this Notice of Determination will be posted on the California Department of Justice's public website.

You are encouraged to provide a copy to your California distributor and retailer customers as well.

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If you believe these determinations or conclusions are in error, or if you believe any Reviewed Product(s) is properly classified as UNFLAVORED, we encourage you to submit a response with any supporting materials to the mailing or email address below on or before June 23, 2023, identifying the Notice of Determination number in your response. The Tobacco Unit will review any such submission and may, in its discretion, update, modify, or rescind this determination in response. In such case, an updated Notice of Determination will be issued.

Flavor Determination [Determination Number(s)]

**Office of the Attorney General
California Department of Justice
1300 "I" Street, PO Box 944255
Sacramento, California 94244-2550
Tobacco@doj.ca.gov**

<https://oag.ca.gov/tobacco/contact>



Sincerely,

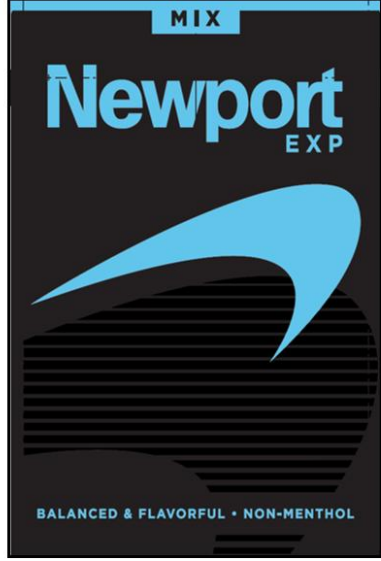



**BYRON M. MILLER
Deputy Attorney General**

For **ROB BONTA
Attorney General**

TAB A – PACKAGING IMAGES

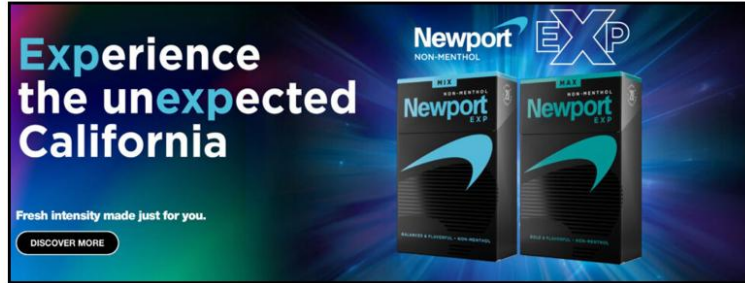
REVIEWED PRODUCT(S)	COMPARISON PRODUCT(S)
 <p>CALIFORNIA AG PACKAGE REPOSITORY, R.J. REYNOLDS, "NEWPORT EXP NON-MENTHOL MAX", 2022 RENEWAL SUBMISSION.</p>	 <p>CALIFORNIA AG PACKAGE REPOSITORY, R.J. REYNOLDS, "NEWPORT BOOST MENTHOL KING BOX", 2022 RENEWAL SUBMISSION. CALIFORNIA AG PACKAGE REPOSITORY, R.J. REYNOLDS, "NEWPORT EXP MENTHE BOX", 2022 RENEWAL SUBMISSION.</p>

REVIEWED PRODUCT(S)	COMPARISON PRODUCT(S)
 <p>CALIFORNIA AG PACKAGE REPOSITORY, R.J. REYNOLDS, "NEWPORT EXP NON-MENTHOL MIX", 2022 RENEWAL SUBMISSION.</p>	 <p>CALIFORNIA AG PACKAGE REPOSITORY, R.J. REYNOLDS, "NEWPORT MENTHOL PLATINUM BLUE KING BOX", 2022 RENEWAL SUBMISSION. CALIFORNIA AG PACKAGE REPOSITORY, R.J. REYNOLDS, "NEWPORT EXP MENTHE BOX", 2022 RENEWAL SUBMISSION.</p>

TAB B – PROMOTIONAL MATERIALS

REVIEWED PRODUCT(S)

Stanford Research into the Impact of Tobacco Advertising Ad Collection, accessed at <https://tobacco.stanford.edu/cigarettes/menthol-medicates/nonmenthol/#collection-2>

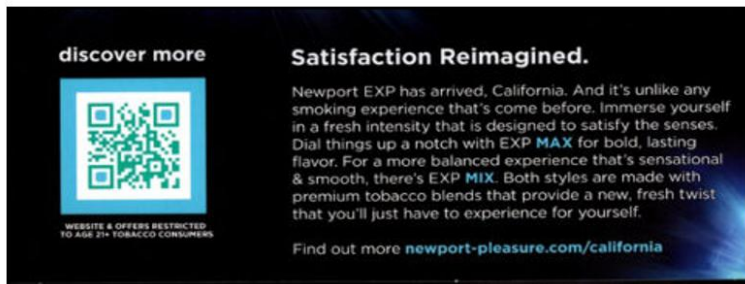


Stanford Research into the Impact of Tobacco Advertising Ad Collection, accessed at <https://tobacco.stanford.edu/cigarettes/menthol-medicates/nonmenthol/#collection-6>



REVIEWED PRODUCT(S)

Stanford Research into the Impact of Tobacco Advertising Ad Collection, accessed at <https://tobacco.stanford.edu/cigarettes/menthol-medicates/nonmenthol/#collection-7>



Stanford Research into the Impact of Tobacco Advertising Ad Collection, accessed at <https://tobacco.stanford.edu/cigarettes/menthol-medicates/nonmenthol/#collection-7>

