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April 25, 2023

Kim Reed  
Chief Executive Officer  
ITG Brands, LLC  
714 Green Valley Road  
Greensboro, NC 27408

RE: California Flavor Ban, Health & Safety Code § 104559.5  
Notice of Determination 23-04-A4

Dear Ms. 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 several of your company’s products—Kool Non-Menthol and Kool Blue Non-Menthol (collectively, the “Reviewed Products”)—and determined that each of these Reviewed Products is presumptively **FLAVORED** under the California flavor ban law. *Id.*

Determination Number	Reviewed Product(s)	UPC(s)	Determination
23-04-A4-1	Kool Non-Menthol	090500110347 090500110217	FLAVORED
23-04-A4-2	Kool Blue Non-Menthol	090500110378	FLAVORED

We specifically conclude:

- (1) Labeling and packaging for each of the Reviewed Products uses brand names, text, and colors traditionally associated with menthol-flavored tobacco products, including the use of the same recognizable patterns and colors between the Reviewed Products and menthol-flavored products in the Kool brand line. *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](mailto:Tobacco@doj.ca.gov)

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

Sincerely,



**BYRON M. MILLER**  
Deputy Attorney General

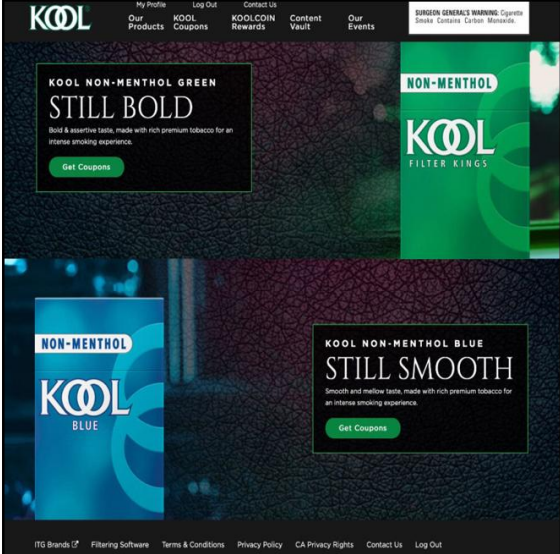
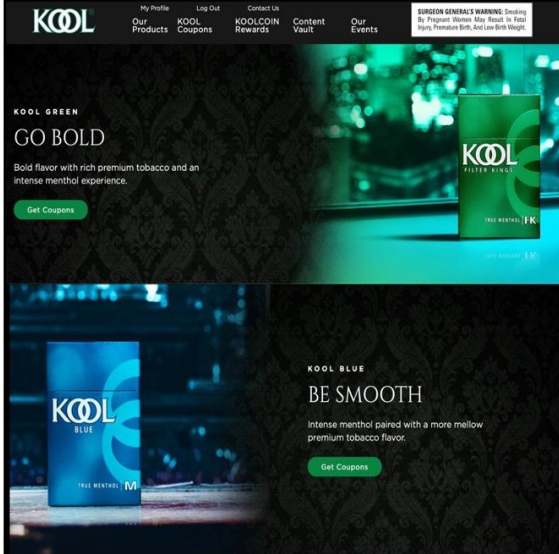
For **ROB BONTA**  
Attorney General

**TAB A – PACKAGING IMAGES**

REVIEWED PRODUCT(S)	COMPARISON PRODUCT(S)
 <p data-bbox="207 1003 716 1020">PENNSYLVANIA AG PACKAGE REPOSITORY, ITG, "KOOL BLUE NON-MENTHOL."</p>	 <p data-bbox="826 1003 1334 1020">PENNSYLVANIA AG PACKAGE REPOSITORY, ITG, "KOOL BLUE BOX MENTHOL."</p>

REVIEWED PRODUCT(S)	COMPARISON PRODUCT(S)
 <p data-bbox="207 1738 680 1755">PENNSYLVANIA AG PACKAGE REPOSITORY, ITG, "KOOL NON-MENTHOL."</p>	 <p data-bbox="826 1738 1266 1755">PENNSYLVANIA AG PACKAGE REPOSITORY, ITG, "KOOL MENTHOL."</p>

### TAB B – PROMOTIONAL MATERIALS

REVIEWED PRODUCT(S)	COMPARISON PRODUCT(S)
	
<p>Stanford Research into the Impact of Tobacco Advertising Ad Collection, accessed at <a href="https://tobacco.stanford.edu/cigarettes/menthol-medicates/nonmenthol/#collection-33">https://tobacco.stanford.edu/cigarettes/menthol-medicates/nonmenthol/#collection-33</a></p>	<p>Stanford Research into the Impact of Tobacco Advertising Ad Collection, accessed at <a href="https://tobacco.stanford.edu/cigarettes/menthol-medicates/nonmenthol/#collection-35">https://tobacco.stanford.edu/cigarettes/menthol-medicates/nonmenthol/#collection-35</a></p>

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