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DEPARTMENT OF JUSTICE



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June 12, 2023

Rob Wilkey
Executive Vice President and General Counsel
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
Notice of Determination 23-06-A1

Dear Mr. Wilkey:

Thank you for your response to the Tobacco Unit's April 25, 2023 Notice of Determination 23-04-A4. As you know, the Notice of Determination informed ITG Brands of the Tobacco Unit's determination that the Kool Non-Menthol and Kool Blue Non-Menthol products (collectively, the "Reviewed Products") are presumptively flavored under Health and Safety Code section 104559.5, subdivision (b)(2), based on the way they are labeled, packaged, and advertised. Since the issuance of our April 25 Notice of Determination, you have shared the confidential and proprietary ingredient lists for the Reviewed Products, and we have consulted with independent researchers who have separately tested the Reviewed Products. Based on the absence of any reported or significantly detected cooling agents or additives in the Reviewed Products imparting a characterizing flavor, the Tobacco Unit has determined that the Reviewed Products are not "flavored tobacco product[s]" within the meaning of Health and Safety Code section 104559.5, subdivision (a)(4).

Determination Number	Reviewed Product(s)	UPC(s)	Determination
23-06-A1-1	Kool Non-Menthol	090500110347 090500110217	NOT FLAVORED
23-06-A1-2	Kool Blue Non-Menthol	090500110378	NOT FLAVORED

However, we remain concerned that ITG Brands' labeling, packaging, and advertising of the Reviewed Products may cause consumer confusion as to whether they are impermissibly flavored. We therefore will not be rescinding Notice of Determination 23-04-A4, and we urge your company to alter its marketing of the Reviewed Products to avoid such confusion.

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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.

The Tobacco Unit may, in its discretion, update, modify, or rescind this determination based on additional evidence. In such case, an updated Notice of Determination will be issued.

Sincerely,



BYRON M. MILLER
Deputy Attorney General

For ROB BONTA
Attorney General

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