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HEALTH

With Menthol Banned, Tobacco Makers Offer Products With 'a New Fresh Twist'

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R.J. Reynolds has wasted no time since California's ban on flavored tobacco went into effect in late December. "California, We've Got You Covered," the company declared in bold letters on a flier mailed to its cigarette customers.

The law prohibits flavors, odors or "tastes" in tobacco products, including menthol cigarettes. But antismoking experts argue that R.J. Reynolds, the maker of Camel and Newport brands, is trying to circumvent the ban by luring smokers with what it says are new non-menthol versions offering "a taste that satisfies the senses" and "a new fresh twist."

The campaign is viewed by critics as a provocation of California authorities who are supposed to enforce the ban, which includes a provision outlawing packaging or claims that suggest a product has a flavor. The Food and Drug Administration also is moving forward with a national plan to take menthol cigarettes off the market.

To public health authorities, the potential reduction in smoking rates from a menthol ban could extend the length and quality of millions of lives. To R.J. Reynolds and other tobacco companies, the loss of sales from menthol cigarettes could be financially damaging.

Luis Pinto, the vice president for communications at R.J. Reynolds, said in an email that the "products introduced in California meet and comply with all applicable regulatory requirements." He added that the new cigarettes "are not subject to the recently enacted ban because they do not have a distinguishable taste or aroma other than tobacco."

But while not all tobacco-control experts are certain that the new products violate the California law, they do agree that the Reynolds marketing campaign reflects decades-long efforts by tobacco companies to protest and flout

government regulations.

Dr. Robert Jackler, a professor at Stanford Medicine who provided the ads to The New York Times, called the new marketing "outrageous."

"The thing that surprises me is there's no camouflage," said Dr. Jackler, who received the mailers along with staff members of Stanford's program on tobacco advertising. "They're saying, 'This is our menthol replacement. And by the way — wink, wink — it is not really menthol.'"

The tobacco flavor ban in California initially took shape as a law passed by the Legislature and signed by Gov. Gavin Newsom in 2020. Reynolds and others gathered signatures to let voters decide through a referendum on the issue. In November, 63 percent of voters approved the ban.

An ad campaign that critics say is an effort to get around the law.

In mid-December, the U.S. Supreme Court refused to block the law, rejecting a request by Reynolds. The company had cited "substantial financial losses" as a likely outcome of the ban, given that menthol cigarettes make up one-third of the cigarette market. The company had also noted that if the ban were to take effect, its customers "may never pledge the same brand loyalty."

The company had already sought to have the Supreme Court hear a separate appeal to the Los Angeles County flavor ban, which was passed in 2019.

Bans on flavored tobacco products have been imposed in Massachusetts and dozens of cities and counties. Several states and numerous local authorities have out-

lawed flavored e-cigarettes. The California law also applies to vaping products.

The California Department of Public Health said that it provided outreach to tobacco retailers on the law but that "enforcement is left to the local jurisdictions." The Reynolds marketing campaign was earlier reported on the L.A. Taco news site.

Menthol has been a major target for those who want to reduce smoking, since it infuses a cool, minty sensation that often appeals to young smokers and masks the harshness of tobacco. Studies have shown that the products have been marketed heavily to Black people.

Carol McGruder, the co-chairwoman of the African American Tobacco Control Leadership Council and a supporter of the state law, said the new ads did not surprise her.

"It's racist, predatory marketing," Ms. McGruder said. She added that public health officials were constantly having to react to the tobacco companies' tactics, "as they try to stay alive — using addicted, lifelong customers."

Fliers for the new products were mailed to Reynolds's customers who had sought coupons. They include ads for "new" Camel and Newport varieties with "bold, lasting flavor." The company's records of ingredients show that the Camel Crisp and the Newport EXP versions contain a synthetic cooling agent referred to as WS-3, according to Sven Jordt, a Duke University researcher who has written about the compound in e-cigarettes.

Dr. Jordt said that the chemical had a cooling effect but not a minty odor or flavor, and that the health effects of the additive were unknown. While other countries have banned flavored tobacco or menthol, he said, only Germany and Belgium have prohibited this particular additive.

Mr. Pinto, of Reynolds, said the cigarettes with the cooling agent "are not subject to the recently enacted ban because they do not have a distinguishable taste or aroma other than tobacco."

A spokesman for Altria, which sells Marlboro, said the company had stopped selling menthol cigarettes in California and was in compliance with the law.

Worldwide, tobacco companies have discovered loopholes to bans on menthol or flavored tobacco, studies show. In Canada, flavor cards and additive drops have been used to supplement unflavored products. In Denmark, smokers now have access to menthol sprays, capsules and tubes.

Drafters of the California law had the international experience in mind, by outlawing flavor accessories and any claims that promote a flavored product. To Dr. Pamela Ling, the director of the Center for Tobacco Control Research and Education at the University of California San Francisco, the message is clear.

“If you squint at the ads, you’re going to see this as a flavorful product, whether it says it or not,” Dr. Ling said. “The col-

ors, the packaging, the associations that your brain makes with the look and feel — that overrides the text that says this is not menthol.”

Advertisements and packaging that so vividly suggest a flavor put a clear onus on California officials to respond to Reynolds, said Matt Myers, the president of the Campaign for Tobacco-Free Kids.

“This is Reynolds basically challenging California to say, ‘I don’t think you’re serious,’” he said. If the state fails to take decisive action, he added, “the industry once again will escape.”

The products being marketed as “new” also appear to challenge the authority of the F.D.A., according to Micah Berman, an associate professor of public health and law at Ohio State University. Under the Tobacco Control Act, products introduced after 2007 must be cleared by the agency, in part to keep tobacco companies from innovating to heighten the ap-

peal of their products.

“I think this is something the F.D.A. should go back and take a look at,” Mr. Berman said.

Abigail Capobianco, a spokeswoman for the F.D.A., said that the agency closely monitored compliance with federal tobacco laws and regulations, and that it took corrective action when violations had occurred. But she declined to comment on the new products in California. The agency said it was finalizing its menthol rule and would “not allow entities to subvert the intent” of the product standard.

California’s approach to the products will be an important bellwether of how a national menthol ban might play out, Dr. Ling said.

Reynolds is “testing it out,” Dr. Ling said. “If they’re successful in pulling this off in California, they’ll be totally prepared to circumvent a federal ban everywhere else.”