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Tobacco companies' exploitation of loopholes in the EU ban on menthol cigarettes: a case study from Denmark

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BACKGROUND

Since May 2020, cigarettes and roll-your-own (RYO) tobacco with a characterising flavour of menthol have been banned in the European Union (EU) owing to the European Tobacco Products Directive (EU TPD). Other characterising flavours were banned in 2016. Cigars, cigarillos, pipe tobacco, heated tobacco and tobacco accessories are exempt from the ban.¹

Despite the ban, a substantial proportion of adolescents and young adults in Denmark still smoke menthol cigarettes (29% pre-ban vs 20% post-ban).^{2,3} This may be due to tobacco industry tactics to circumvent the ban. This paper provides insights into the response of the tobacco industry to the implementation of the menthol ban in Denmark. In this case study, we identify loopholes in the characterising flavour ban and discuss how to make bans on menthol-flavoured tobacco most effective. The analysis is based on screening tobacco products using online tobacco stores, and samples of cigarette packages, tobacco flavour accessories, and menthol-flavoured cigarette-like products purchased between December 2019 and January 2022.

CIRCUMVENTION OF THE MENTHOL BAN Flavoured tobacco accessories

Various types of tobacco flavour accessories to insert into cigarette packs, cigarette filters and RYO tobacco have been introduced to the Danish market. These products enable users to customise their cigarettes with menthol and sweet flavours. In some cases, the products are produced by tobacco companies (figure 1). After the ban, 3.4% of smokers aged 25–29 years used flavour accessories.⁴ Moreover, there was an increase in the use of RYO tobacco among adult smokers (13% pre-ban vs 17% post-ban).^{2,3}

Recessed cigarette filters

Recessed filters are a type of specially shaped cigarette filters with a hollow section at the mouth end of the cigarette. This allows for inserting smaller menthol filter tips. Our analysis indicates that in Denmark, cigarettes with recessed filters are found only in menthol replacement packages (packages described by retailers as former menthol packs) or in new cigarette brand variants insinuating menthol-like qualities (packages with no previous counterparts). All the identified variants with recessed

filters were produced by British American Tobacco (BAT) (figure 2).

Pack designs and brand descriptors insinuating menthol-like qualities

Cigarette pack designs serve as a marketing tool for tobacco companies to influence consumers' perceptions of taste. Despite a characterising flavour ban, pack design may manipulate smokers' experience of menthol/non-menthol flavour. After the ban, one pack from Japan Tobacco International (JTI) retained insinuating menthol-like qualities. It retained the brand descriptor 'Activate' and an illustration on the package, indicating that the cigarette still had a click-function (figure 3A). Moreover, the traditional yellow filter was replaced with a white filter with blue circles, which also insinuate a click-function, although the variant did not have a capsule inside (figure 3B). The same variant was launched in an edition with menthol aroma added to the lid (figure 3C). This special edition presented a clear violation of the EU TPD and was on sale for only a brief period. The TPD prohibits flavourings in the package, but it also bans labelling that contains elements or features that refer to taste, smell, flavourings, or create an erroneous impression about the product's characteristics. Thus, the brand descriptor 'Activate' and the illustrations on the Camel package may also contravene the EU TPD.

About 15 months after the ban, BAT launched three different cigarette variants with 'Ultramarine' as a brand descriptor. At one online store, the three packages were accompanied by the same description insinuating menthol-like qualities: 'New product with modern design and a new blend which gives a cooling effect and a fresh feeling to the well-known tobacco taste'.⁵ These descriptions are violations of the Danish ban on tobacco marketing but provide useful insights into the tactics of the tobacco companies. Moreover, the package design of the variant, King's Ultramarine, was identical to a former menthol cigarette pack named King's Double Crush.

Menthol as an ingredient

The EU TPD does not ban menthol as an ingredient; it only bans menthol as a characterising flavour. This enables tobacco companies to continue the use of menthol for its anaesthetic and cooling effects. In August 2020, JTI was accused of violating the menthol ban in Denmark by continuing to add



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Figure 1 Examples of tobacco flavour accessories marketed in Denmark. (A) Menthol filter sprays (Egogreen and Ottaman). (B) Menthol drops (Instahit). (C) Capsules with menthol, candy and soft drinks flavours (Aroma King and Hoffmann). (D) Menthol flavour stone (Flavor By Stone). (E) Loose mint filter tips for cigarettes with recessed filters (FlavorMe, King's Tobacco International). (F) Menthol and fruit flavour infusion cards (Frizz, Hipzz and Aroma King). (G) RYO cigarette tubes with fruit flavour (Fresh Bomb); RYO cigarette tubes with menthol flavour (Pegasus, Continental Tobacco Corporation). (H) RYO filter tips with menthol and fruit flavours (Fresh Bomb and Frutta). RYO, roll-your-own.

menthol flavour to certain cigarette brand variants. In response, JTI stated that the continued use of menthol in their products was in full compliance with the law and that the products did not have a clearly prominent smell or taste of menthol.⁶

Menthol-flavoured cigarette-like products

Prior to the menthol ban, two variants of cigarillos with menthol flavour were registered in Denmark.⁷ Both variants resemble cigarettes in size and thickness, and one variant has a click-filter. From 2019 to 2020, the sale of cigarillos and cigars increased by 7%,⁸ which may be associated with the introduction of these menthol variants. Tobacco companies and retailers also marketed menthol pipe tobacco and electronic cigarettes with menthol flavour as alternatives to menthol cigarettes,^{9 10} and Phillip Morris International (PMI) promoted mentholated



Figure 2 Cigarettes with recessed filters and their menthol characteristics. (A) Pall Mall Ultramarine and King's Ultramarine (online store description: '... gives a cooling effect and a fresh feeling ...'), Prince Grey Plus, Pall Mall Balance, Pall Mall Experience, King's Purple Plus and Prince Black Plus (replacement packages for the former menthol cigarettes: Prince Green Boost, Pall Mall Green, Pall Mall Double Capsule, King's Double Crush and Prince Double Click). (B) The design of the cigarette sticks with recessed filters.

heated tobacco products via displays in supermarkets and cigarette pack inserts (figure 4).

DISCUSSION

The products identified and analysed in this study reveal that tobacco companies use a variety of strategies to undermine the menthol ban. Some of these tactics are also observable in other countries. In the UK, gaps in the EU menthol ban were



Figure 3 Examples of post-ban design insinuating menthol characteristics. (A) Camel packaging with the brand descriptor 'Activate' and an illustration containing a mint-like leaf. (B) Camel Activate cigarette stick with blue circles on the filter insinuating click-function. (C) Camel Activate package with an illustration guiding the consumer to rub on the lid to release a menthol aroma.

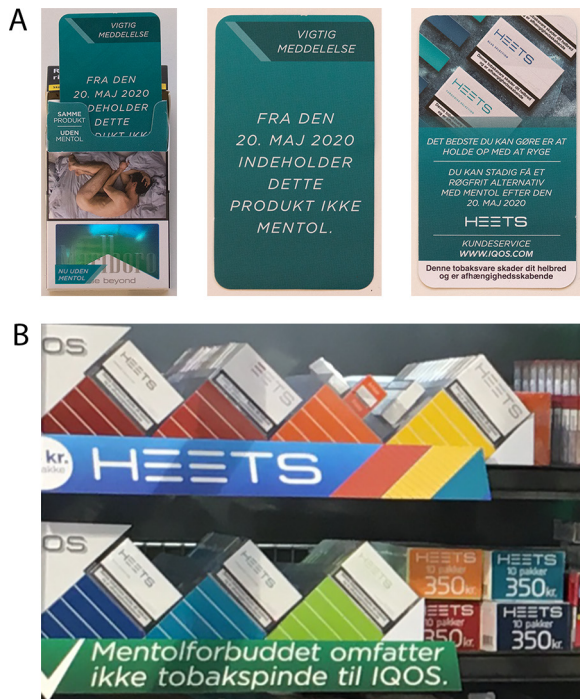


Figure 4 Phillip Morris International promotes IQOS HEETS as exempt from the menthol ban. (A) Marlboro Fuse Beyond package with a pack insert with the text: 'Important. From 20 May 2020, this product does not contain menthol' (front) and 'The best thing you can do is to stop smoking. You can still have a smoke-free alternative with menthol after 20 May 2020, HEETS' (back). (B) IQOS HEETS promotion display in a supermarket prior to the menthol ban: 'The menthol ban does not include IQOS heat sticks'.

exploited by tobacco companies to promote tobacco products that are exempt from the ban.¹¹ After province-wide menthol bans in Canada, tobacco companies attempted to retain menthol cigarette smokers by directing them to non-menthol alternatives whose packaging in colour and descriptors communicated menthol-like qualities.^{12–13} In Ireland, PMI introduced a new cigarette brand variant that it described to retailers as a 'menthol blend without methylation'.¹⁴

Some countries have adopted regulations that counter the tactics used by tobacco companies to undermine bans on flavoured cigarettes. Brazil is the first country to prohibit all additives that may change the taste of tobacco products, even those additives that do not directly impart a characteristic flavour.¹⁵ Canada has prohibited the use of menthol and other flavouring additives in the manufacture of cigarettes and most cigars,¹⁶ and Germany has prohibited menthol as an additive in cigarettes and smoking tobacco.¹⁷

In Denmark, a ban on the sale of tobacco equipment, that may change the flavour of tobacco products, has been adopted. Consequently, all flavoured tobacco accessories are banned by April 2022.¹⁸ To our knowledge, Denmark is one of the first countries to introduce such a ban, although similar bans have been proposed in Finland and Bulgaria.^{19–20} Moreover, the Danish Safety Technology Authority has concluded that the use of menthol as an additive in cigarettes is a violation of Danish legislation, which prohibits combustible tobacco products that contain ingredients that facilitate the inhalation of tobacco smoke and nicotine uptake.²¹

Conclusion and recommendations

To be efficient, bans on flavoured tobacco products should prohibit menthol and other ingredients with flavour properties, as ingredients. Consequently, authorities are not placed in a position to prove whether a flavour is characterising. Banning menthol as an ingredient will also end tobacco companies' use of menthol for its pharmacological effects. Internal tobacco industry documents reveal that even subliminal levels of menthol may decrease the harshness of tobacco smoking by making the smoke more 'smooth'²² and that these properties appeal to novice smokers.²³ Other ingredients that have the potential to mask the irritating effect of tobacco smoke, such as ingredients that produce a cooling effect, should also be banned. Moreover, legislation should encompass all tobacco products to avoid the substitution of one product with another. To be comprehensive, the legislation should also prohibit flavoured tobacco accessories and filter modifications which may enable tobacco companies to circumvent the flavour ban. These recommendations should be considered in the revision of the EU TPD. The revised TPD should at least make it clear that member states may go beyond the directive provisions to protect public health.

Efficient legislation should also prohibit distinctive features, colours, and brand descriptors on tobacco packets and the tobacco products itself that connote cooling effects or flavours other than the flavour of tobacco. Accordingly, the implementation of plain packaging of tobacco products can support a menthol ban. A comprehensive ban on tobacco marketing is also essential to avoid the marketing of tobacco products exempt from the ban. Finally, it is recommended that a menthol ban is supported by the prohibition of descriptions of tobacco product sensation in both online and physical stores.

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