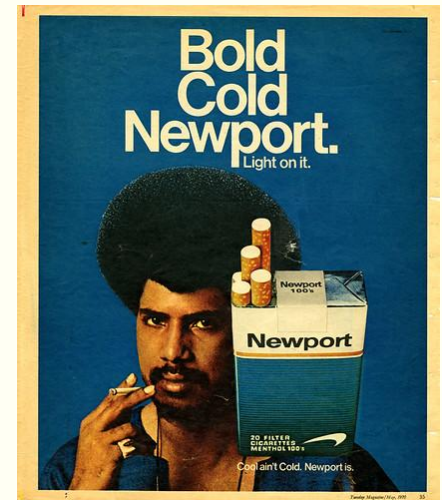


The Chelsea Board of Health Stands Up to Big Tobacco

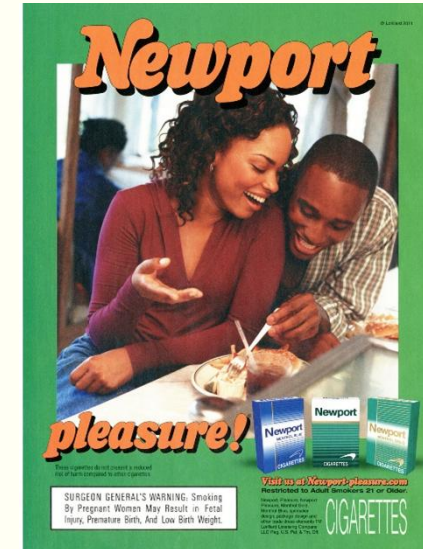
Flor Amaya, PT-DPT, MPH Chelsea Health Director
Cheryl Sbarra, Esq., Massachusetts Association of Health Boards
Chris Banthin, Esq., Public Health Advocacy Institute
Lisa Stevens Goodnight, Esq., Massachusetts Municipal Association
2024 MHOA Annual Conference



“New” product, same old story – Menthol 2.0

History of menthol and flavor ban

- Flavor
 - Flavors are a critical means of initiating new tobacco users
 - Menthol with its cooling sensation facilitates the initiation of new users
 - Reduces harshness of cigarette use and tobacco taste
- Targeted marketing
 - African Americans, LGBTQIA+, Youth



Newport Menthol Non-Menthol

- MA and CA flavor bans, explicitly including “menthol, mint, [and] wintergreen”
- Replaces Menthol with synthetic coolant in an effort to circumvent flavor laws.
 - WS-3 (menthol carboxamide): Other uses include chewing gum, breath mints, cooling face cream.

How do we define “taste”



Cumberland Farms, Inc. v. Board of Health of Yarmouth (2020)

- Board of Health fined CF for selling Jazz, a flavored tobacco product.
- The law “does not state or intimate anywhere that any specialized criteria or standard must be used to determine whether a particular tobacco product is a “[f]lavored tobacco product”
- “[C]ommon experience and common sense” can be used to determine whether a product is flavored.
- Multiple factors can be used to determine whether a product is flavored.
 - Social media
 - Marketing
 - Reviews, etc.



More about WS-3 in the industry's own words

- **It's a flavoring additive**

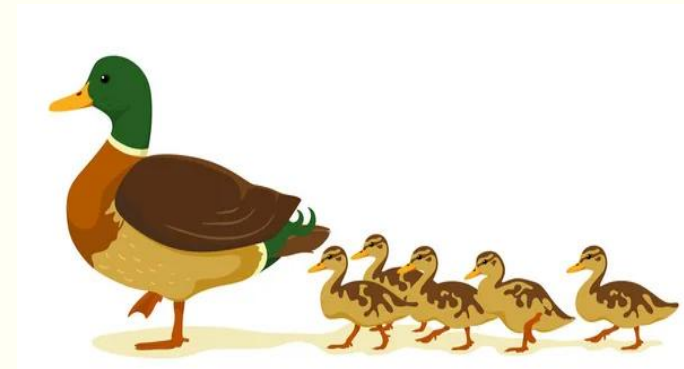
- It imparts “a very localized dot of intense cooling” and a faint mint-like taste.” (Brown and Williamson, 1972).
- A “flavor compound that does not contain menthol but provides a cooling sensation.” (RJR sensory evaluation study, 1990).”
- “The somesthetic (feeling) effect is a distinct part of the taste system and has at least three and perhaps more dimensions.” (The trigeminal effect as it relates to sensory attributes of tobacco products, 1981).

- **FDA**

- “The multisensory experience (i.e., taste, aroma, and cooling or burning sensations in the mouth and throat) of a flavor during use of a tobacco product.”

- **RJR**

- Admits it mimics menthol in that it produces a cooling sensation.
- **Isn't this the entire reason MA and CA have banned it?**
- **Common sense = the Duck Test**





CHELSEA, MA

Population: 40,000

Hispanic or Latino: 67.4%

White alone: 20%

Black or African American (Non-Hispanic): 5.59%

Owner-occupied housing rate: 27.9%

Number of Tobacco Retailers: 42

Member of the Six City Tobacco Initiative
(Cambridge, Revere, Somerville, Everett, Winthrop, Chelsea)



Chelsea Board of Health Team



Ola Bayode



Joshua Merson- PA-C



Corinna Culler, DrPH



Allen Jackson

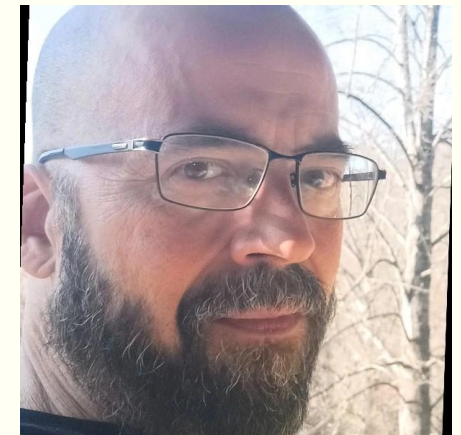


Dr. Dean Xerras, MD



Bonny Carroll
Director, Six City Tobacco Initiative

Strephon Treadway
Assistant City Solicitor, Chelsea



Boards of Health Highlights

Massachusetts City Sets Country's Toughest Trans Fat Ban

FER Edit

January 6, 2014

NEWS

How Needham blazed the trail for raising the tobacco age nationally



By **Natalie Rubino**, Boston 25 News

December 20, 2019 at 4:02 pm EST



Effective Friday, December 3, 2021 the City of Chelsea Board of Health has implemented a Mandated Mask Policy for all indoor spaces.

A partir del viernes 3 de diciembre de 2021, la Junta de Salud de la Ciudad de Chelsea implementa una Política de Mascarillas Obligatoria para todos los espacios interiores.

www.chelseama.gov/COVID

Chelsea Health Department & Board of Health Enforcement Action

- April 2023, MAHB & PHAI attended BOH meeting and informed the Board of new non-menthol product.
- May 2023 – letter sent to all tobacco retailers from Six City Tobacco Initiative informing that enforcement would begin on Newport Non-Menthol cigarettes as flavored tobacco products after June 15, 2023.
- July 5, 2023 – inspected retailers and found Newport Non-Menthols for sale at 3 different establishments. Cease & Desist Letters with fines were issued on July 7, 2023.



Chelsea Health Department & Board of Health Enforcement Action (continued)

- July 20, 2023 – letter from Patrick Haney, Esq. from **Jones Day** requesting to appeal the decision on behalf of **RJ Reynolds**.
- July 25, 2023 – Board of Health Hearing at Chelsea Middle
- September 26, 2023 – Board of Health vote on alleged tobacco product violation following July 25th hearing.





- SEARCH 🔍
- LAWYERS
- PRACTICES
- INSIGHTS
- LOCATIONS
- VALUES

- FIRM
- NEWS
- DIVERSITY
- CAREERS

- PRINT
- LANGUAGES



Upcoming earnings

LOCATIONS

UNITED STATES

EUROPE

LATIN AMERICA

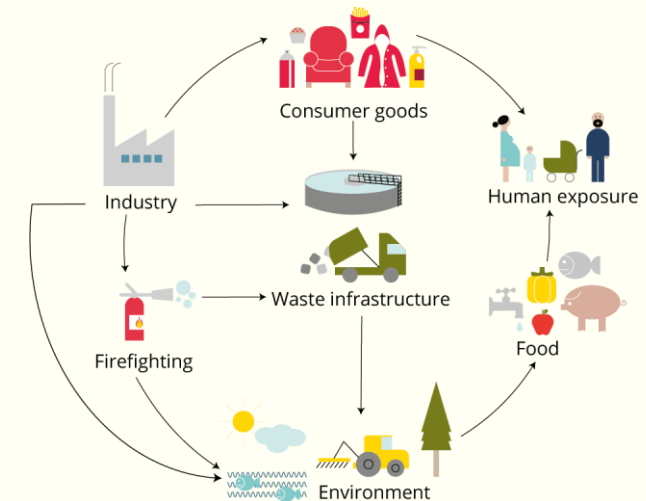
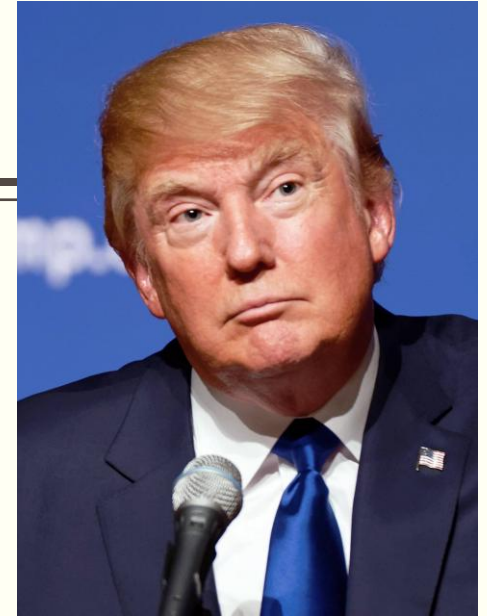
MIDDLE EAST

ASIA PACIFIC

- | | | | |
|-----------|---------|-------------|----------------|
| Atlanta | Dallas | Miami | San Francisco |
| Boston | Detroit | Minneapolis | Silicon Valley |
| Chicago | Houston | New York | Washington |
| Cleveland | Irvine | Pittsburgh | |

Notable Clients

- RJ Reynolds – since 1985
- Trump campaigns (2016) (2020)
 - Since 2020 – Trump paid \$19 million since 2020.
- Challenged CDC’s eviction moratorium during COVID
- Challenged EPA’s rule making authority
 - North American Coal Corporation
- “[A]ssist clients in developing a global PFAS strategy and to respond to challenges and claims against them.”
 - <https://www.jonesday.com/en/insights/features/pfas>



Others in attendance at hearing



- Numerous additional RJ Reynolds employees
- Driver for RJ Reynolds
- Stenographer for RJ Reynolds







RJR's Testimony

- The coolness of Newport Non-Menthol CANNOT be a flavor because RJR's new chemical additive, WS-3, does not utilize taste receptors. WS-3 instead activates thermal receptors.
- Listen to our chemist. He is much smarter than you. Use his definition. Ignore the commonsense definitions of "taste" and "flavor."
- **Let me see how condescending I can be to the board members and others providing testimony.**
 - Mrs. Sbarra
 - BOH member –professor at Harvard Medical School
- **Yes. We are powerful lawyers.**
- What was missing from their testimony? ... essentially anything to do with public health or the purpose of the menthol ban.

JONES DAY

51 LOUISIANA AVENUE, N.W. • WASHINGTON, DC 20001.2113
TELEPHONE: +1.202.879.3939 • JONESDAY.COM

DIRECT NUMBER: 202.879.9720
PHANEY@JONESDAY.COM

June 20, 2023

By E-Mail

Bonny Carroll
Director, Six City Tobacco Initiative
50 Evergreen Ave.
Somerville, MA 02145

Cheryl Sbarra
Executive Director
Massachusetts Association of Health Boards
20 Walnut Street, Suite 110
Wellesley, MA 02481

Re: Newport Non-Menthol Products

Dear Ms. Carroll and Ms. Sbarra:

We represent the R. J. Reynolds Tobacco Company ("Reynolds") in matters related to Reynolds's new non-menthol product offerings that are the subject of enforcement efforts in Massachusetts.

We are writing on behalf of Reynolds to ask for reasonable notice and an opportunity to be heard at any Massachusetts Board of Health meeting before any determination is made regarding whether Reynolds's new non-menthol product offerings violate Massachusetts's ban on flavored tobacco products. Reynolds is entitled to that.

Characterizing Flavor

- “A distinguishing **taste** or aroma, other than the **taste** or aroma of **tobacco**, imparted or detectable before or during consumption of a tobacco product.” (105 CMR 665.000)
- “Taste” not defined in state law.
- Chelsea Board of Health fined on product.
 - Jones Day testified at the hearing representing R.J. Reynolds.
 - “As a matter of science, humans cannot perceive the taste or aroma of WS-3.”



PHAI's Testimony



September 12, 2023

Dr. Corinna Culler, Chair
Mr. Ola Bayode, Member
Mr. Alan Jackson, Member
Mr. Joshua Merson, Member
Dr. Dean Xerras, Member
Chelsea Board of Health
500 Broadway
Chelsea, MA 02150

RE: Newport Nonmenthol Cigarettes

Dear Chair and Members of the Chelsea Board of Health:

The Public Health Advocacy Institute provides this written submission in response to recent claims made by RJ Reynolds Tobacco Company ("RJ Reynolds") regarding Newport nonmenthol cigarettes.

Newport regular menthol cigarettes were once widely available in Massachusetts. It was RJ Reynolds' bestselling menthol brand. Then, Massachusetts enacted a law restricting the sale of flavored tobacco products, including the flavor of menthol ("Statewide Flavor Restriction"), in large part because the cooling effect of menthol was irrefutably linked to elevated levels of

- The purpose of flavor (including menthol) restriction is to stop tobacco products from being targeted at children and groups historically targeted by the tobacco industry.
- Your own internal documents contradict your chemists. RJR's marketing department, behind closed doors, say that "coolness" is a flavor. Which is the truth?
- MA Courts tell us to use a commonsense approach to enforcing the flavor restriction, like a sniff test. Board are not required to use a specialized chemical analysis.
- Threats of litigation should not stop good public health. Also, we're happy to share your internal documents with the MA Courts.

Industry Documents

SALEM PRODUCT ACCEPTABILITY MONITORING TEST

COPIES TO:

D. M. Blyth
H. T. Parks
W. Schulz
W. Allen
R. Hutchens
D. Herko
B. J. Kirby

PUBLISHED BY THE MARKETING DEPARTMENT
R. J. REYNOLDS TOBACCO COMPANY, SAN JUAN, PUERTO RICO

52616 0626

	CPB 79MM (REDUCED G-13) PRODUCT 839	NEWPORT PRODUCT 267
BASE	292 (MEAN)	339 (MEAN)
SMOOTH TASTE	5.37	5.47
FAST BURNING RATE	4.22	4.23
EASY TO DRAW	5.93	6.04
GOOD AFTERTASTE	5.62	5.53
SOFT FILTER	5.16	5.29
NATURAL TASTE	5.08	5.20
PLEASANT AROMA	5.80	5.92
COLD TASTE	4.67	4.52
SPICY TASTE	3.84	3.81
PLEASANT TASTE	5.77	5.72
FRESH PRODUCT TASTE	5.80	5.98
SOFT CIGARETTE	4.90	4.83
REFRESHING TASTE	5.65	5.55
MILD TASTE AT END	5.07	5.11
SWEET TASTE	4.43	4.64
MUCH TOBACCO TASTE	3.92	3.80
SMOOTH RICH TASTE	5.38	---> 5.69
RELAXING	5.29	5.23
STRONG TASTE	4.85	4.85
SATISFYING	5.62	5.67
BURN EVENLY	6.15	6.28
NOT HARsher	5.93	5.96
WELL MADE	6.08	6.06
LAST CIGARETTE AS GOOD AS FIRST ONE	5.68	5.54
STRONG MENTHOL TASTE	4.26 <---	3.90

--->= SIGNIFICANT DIFFERENCE AT THE 95% CONFIDENCE LEVEL.

Board of Health Decision - meeting 9.26.23

- Board found that Newport Non-Menthol cigarettes violated the flavored tobacco product ban.
- Their WS-3 chemical constitutes constituted a flavored tobacco product because it produces a characterizing flavor.
- They have a “distinguishable taste or aroma, other than the taste or aroma of tobacco, imparted or detectable before or during consumption. . .”
- The board opted for an interpretation of “taste” rooted in the **experience of ordinary people**.
- And that the use of the term “taste” is consistent with tobacco industry documents that characterize the oral feel of tobacco products as part
- **RJ Reynolds did not appeal the decision of the Board of Health**



DPH Flavored Tobacco Advisory



The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Public Health
250 Washington Street, Boston, MA 02108-4619

MAURA T. HEALEY
Governor
KIMBERLEY DRISCOLL
Lieutenant Governor

KATHLEEN E. WALSH
Secretary
ROBERT GOLDSTEIN, MD, PhD
Commissioner
Tel: 617-624-6000
www.mass.gov/dph

To: Tobacco Retailers
From: Commissioner Robert Goldstein, Massachusetts Department of Public Health
Date: June 6, 2024
RE: Implementation of 105 CMR 665.000 and Restriction on the Sale of Flavored Tobacco Products
CC: Local Boards of Health

The Massachusetts Department of Public Health (the "Department") understands that there is confusion from both tobacco retailers and local boards of health about whether tobacco products labeled as non-menthol tobacco products but marketed to menthol consumers constitute a flavored tobacco product within the meaning of [Massachusetts General Law, Chapter 270, Section 28](#) and the Department's regulation [105 CMR 665.000](#).

To be considered a flavored tobacco product under Massachusetts Law a product must:

1. be a tobacco product; and
2. produce a characterizing flavor.

In considering whether a tobacco product is a flavored tobacco product, a person may consider multiple factors, including but not limited to,

- whether a constituent in the tobacco product produces a distinguishable taste or aroma;
- testimony or consumer reviews about the taste or aroma of a tobacco product;
- product packaging or labeling;
- public statements, claims, or indicia made by a manufacturer or an authorized agent of the manufacture
- scientific articles; and
- sworn testimony from persons familiar with tobacco industry or regulation.

The Massachusetts Department of Public Health ("Department") has determined that the following tobacco products are "flavored tobacco products" within the meaning of [Massachusetts General Law, Chapter 270, Section 28](#) and the Department's regulation [105 CMR 665.000](#):

1. Newport Non-Menthol Green;
2. Newport EXP Non-Menthol;
3. Camel Crush Non-Menthol Oasis;
4. Camel Crisp Non-Menthol Green Box; and
5. Maverick Non-Menthol.

Accordingly, any establishment that is not a licensed smoking bar as defined in [Massachusetts General Law, Chapter 270, Section 22](#) and 105 CMR 665.000 is prohibited from offering for sale or selling these products to persons in Massachusetts.

The Department bases its determination that Newport Non-Menthol Green, Newport EXP Non-Menthol, Camel Crush Non-Menthol Oasis, and Camel Crisp Non-Menthol Green Box are a flavored tobacco product on the following:

1. The above reference cigarettes contain tobacco.
2. The above referenced cigarettes contain n-Ethyl-p-Menthane-3-Carboxamide, a synthetic cooling agent commonly referred to as WS-3, or vanillin and ethyl vanillin that produce a taste that distinguishable from the taste of tobacco.
3. Consumer reviews of the above referenced cigarettes indicate that the products have a taste of menthol, mint, fruit, or vanilla when consumed. The taste of menthol, mint, fruit, or vanilla are tastes that are statutorily defined as a characterizing flavor.
4. The labeling and packaging of the above referenced cigarettes strongly resembles the labeling and packaging of menthol cigarettes.
5. Advertisements and promotional materials of the above referenced cigarettes use terms associated with flavor or taste.

The Department bases its determination that Maverick Non-Menthol is a flavored tobacco product on the following:

1. Maverick Non-Menthol contains tobacco.
2. Maverick Non-Menthol contains menthol in the tobacco filler. The taste of menthol is statutorily defined as a characterizing flavor.
3. The labeling and packaging of Maverick Non-Menthol strongly resembles the labeling and packaging of its traditional menthol cigarettes.

Based on the Department's determination that the above referenced tobacco products are flavored tobacco products within the meaning of the law, the sale of these flavored tobacco products in retail establishments that are not licensed smoking bars is in violation of Massachusetts law M.G.L. c. 270, § 28(b) and 105 CMR 665.010(D). Therefore, retail establishments that are not licensed smoking bars should remove these products from their premises no later than 30 days after this release (July 6, 2024).

"GAMES
PEOPLE
PLAY"

