

ROB BONTA
Attorney General

State of California
DEPARTMENT OF JUSTICE



1515 CLAY STREET, 20TH FLOOR
P.O. BOX 70550
OAKLAND, CA 94612-0550

Public: (510) 879-1300
Telephone: (510) 879-3310
Facsimile: (510) 622-2170
E-Mail: TaylorAnn.Whittemore@doj.ca.gov

October 6, 2023

Susan Jesmer
Chief Executive Officer
Native Trading Associates, LLC
442 Frogtown Rd.
Hogansburg, NY 13655-3135

RE: California Flavor Ban, Health & Safety Code § 104559.5
Notice of Determination 23-10-A6

Dear Ms. Jesmer:

Since June 30, 2004, the Attorney General's Office has maintained and published a list of all cigarette manufacturers and their brands found in compliance with California Revenue and Taxation Code section 30165.1 ("Tobacco Directory"). See <https://oag.ca.gov/tobacco/directory>. However, not all products listed on the Tobacco Directory are lawful for sale in California.

California has restricted retailer possession, distribution, and sale of flavored tobacco products since December 21, 2022. 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).

You submitted the products listed below (collectively, the "Reviewed Products") for submission on the Tobacco Directory. This letter is to advise you that the Tobacco Unit of the California Department of Justice has determined that the Reviewed Products are presumptively FLAVORED under the California flavor ban law. *Id.*

Determination Number	Reviewed Product(s)	UPC(s)	Determination
23-10-A6-1	Native Menthol King Box	738749002534 738749002244	FLAVORED
23-10-A6-2	Native Menthol King Soft	738749002435 738749002145	FLAVORED
23-10-A6-3	Native Menthol 100 Box	738749004644 738749004224	FLAVORED
23-10-A6-4	Native Menthol 100 Soft	738749004545 738749004125	FLAVORED

We specifically conclude:

- (1) Labeling for the Reviewed Products states that products are menthol-flavored tobacco products.

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 on or after November 6, 2023.

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 November 6, 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**

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

Sincerely,

Taylor Ann Whittemore

TAYLOR ANN WHITTEMORE
Deputy Attorney General

For ROB BONTA
Attorney General