

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL**



In the Matter of:

Swedish Match North America LLC

**ASSURANCE OF VOLUNTARY
COMPLIANCE**

ASSURANCE OF VOLUNTARY COMPLIANCE

This Assurance of Voluntary Compliance (“Assurance”) is entered into by the Attorney General for the District of Columbia (“Attorney General” or “OAG” or “District”) and Swedish Match North America LLC (“SMNA” or “Respondent”) (collectively with the Attorney General, the “Parties”). This Assurance pertains specifically to the operations and activities of Respondent described herein. The Parties agree as follows:

I. THE PARTIES

1. OAG is authorized to bring legal actions seeking injunctive relief, consumer restitution, civil penalties, costs, and attorneys’ fees for violations of the District of Columbia’s consumer protection laws, including the Consumer Protection Procedures Act (“CPPA”), D.C. Code §§ 28-3901, *et seq.* OAG is also authorized to investigate and/or prosecute suspected violations of D.C. Code § 7-1721.08(a), pursuant to D.C. Code § 7-1721.08(d).

2. SMNA, a Delaware limited liability company headquartered in Richmond, Virginia, is a subsidiary of Swedish Match USA, Inc., a wholly owned indirect subsidiary of Philip Morris International, Inc. SMNA sells ZYN oral nicotine pouches and other Swedish Match Tobacco Products to Direct Distributors in the United States.

II. DEFINITIONS

3. “Consumer” shall include the definition contained in D.C. Code § 28-3901(a)(2).
4. A “Tobacco Product” is defined as any product that is made or derived from tobacco and is intended for human consumption. D.C. Code § 7-1721.01(2A).
5. A “Flavored Tobacco Product” means any “tobacco product or synthetic nicotine product that imparts a characterizing flavor.” D.C. Code § 7-1721.01(1B).
6. “Characterizing Flavor” means “a distinguishable taste or aroma other than tobacco.” D.C. Code § 7-1721.01(1).
7. “Flavor Ban” shall refer to the Prohibition on Flavored Tobacco Products and Electronic Smoking Devices, D.C. Code § 7-1721.08(a).
8. “Retailer” means an entity with a brick-and-mortar location in the District of Columbia that has a license to sell cigarettes or other Tobacco Products to Consumers pursuant to D.C. Code § 47-2404(b)(2).
9. “Direct Distributor” means any third-party entity that purchases Tobacco Products from SMNA and then sells those Tobacco Products to Retailers, smaller regional or local distributors, or to Consumers through e-commerce stores.
10. “Effective Date” shall mean the last date on which any Party executes this Assurance.

III. THE DISTRICT'S ALLEGATIONS

11. As of October 1, 2022, District law provides that it is prohibited to “sell, offer for sale, receive for sale, distribute, purchase, or facilitate the sale of... [a] flavored tobacco product[.]” D.C. Code § 7-1721.08(a).

12. OAG alleges that starting October 1, 2022, and continuing through June 30, 2024, SMNA facilitated the sale of Flavored Tobacco Products, including flavored ZYN products, to District Consumers through Retailers and online through the website shop.zyn.com, in violation of the District's Flavor Ban, D.C. Code § 7-1721.08(a), and the District's CPPA, D.C. Code § 28-3901, *et seq.*

13. These alleged violations also constitute violations of the CPPA, which prohibits any person from engaging in unfair, deceptive, or unlawful trade practices. D.C. Code § 28-3904. Violations of the Flavor Ban are *per se* violations of the CPPA. *See* D.C. Code § 7-1721.08(d).

14. After OAG issued SMNA a subpoena as part of OAG's investigation of this conduct, and prior to entering this Assurance, SMNA took certain actions designed to prevent the sale of Flavored Tobacco Products in the District, including by stopping all sales of ZYN products on shop.zyn.com.

15. Respondent denies all of the District's allegations and claims, including but not limited to that Respondent facilitated the sale of Flavored Tobacco Products, and/or that Respondent violated any consumer protection laws, including the CPPA or D.C. Code § 7-1721.08(a). Nothing contained in this Assurance is or may be construed to be an admission by Respondent of any violation of law or regulation, of any other matter of fact or law, or of any liability or wrongdoing.

IV. APPLICATION

16. The Parties have agreed to the terms of this Assurance in order to fully resolve the District's allegations described herein against Respondent.

17. The duties, responsibilities, burdens, and obligations undertaken in connection with this Assurance shall apply to the Respondent, its subsidiaries, affiliates, parents, successors and assigns, and its officers and employees.

18. By entering into this Assurance, the Parties are neither extinguishing any rights otherwise available to Consumers, nor creating any rights not otherwise available under the laws of the District of Columbia, except to the extent that they are resolving all issues or claims that OAG could have brought under the CPPA related to the matters described herein.

V. INJUNCTIVE PROVISIONS

19. SMNA will not engage in any unfair, deceptive, or unlawful trade practices that violate the CPPA, D.C. Code §§ 28-3901, *et seq.*

20. SMNA will refrain from facilitating the sale of Flavored Tobacco Products to Consumers in the District and comply in all respects with the Flavor Ban, D.C. Code § 7-1721.08(a).

21. SMNA will send, in the first quarter of each calendar year, communications to its Direct Distributors that appear, based on data made available to SMNA, to have made sales of Respondent's Tobacco Products to Retailers or Consumers in the District within the preceding calendar year advising them of the District's Flavor Ban and reminding them of their obligation to

comply with the Flavor Ban and all other applicable federal, state, and local laws, with a copy provided to OAG.

22. SMNA will send, in the first quarter of each calendar year, communications to Retailers in the District with which it has Other Tobacco Products Agreements (“OTPA”) advising them of the District’s Flavor Ban and reminding them of their obligation to comply with the Flavor Ban and all other applicable federal, state, and local laws, with a copy provided to OAG.

23. SMNA will monitor data available to SMNA reflecting sales by Direct Distributors on a quarterly basis, and if based on the data available to SMNA, SMNA identifies sales of Respondent’s Flavored Tobacco Products to Retailers and/or Consumers in the District in violation of the District’s Flavor Ban, SMNA will take affirmative, escalating steps to stop those sales, including by:

- a. For the first violation by any Direct Distributor in a calendar year, sending a warning letter to the Direct Distributor;
- b. For the second violation by any Direct Distributor in a calendar year, sending a second warning letter to the Direct Distributor advising the Direct Distributor that any further violation could result in termination of SMNA’s relationship with the Direct Distributor, with a copy provided to OAG;
- c. For the third violation by any Direct Distributor in a calendar year, or five violations in the aggregate, taking reasonable steps to ensure that the Direct Distributor complies with the District’s Flavor Ban, up to and including

exercising its rights to terminate its relationship with the distributor, with a copy to OAG.

24. In the event SMNA and/or any of its affiliates resume online sales through an e-commerce shop associated with zyn.com, SMNA will prohibit the online sale of Flavored Tobacco Products to Consumers in the District and ensure compliance with the District's age verification requirements with respect to online sales, pursuant to D.C. Code § 7-1721.02.

VI. COSTS AND PAYMENT TO THE DISTRICT

25. SMNA shall pay a total of \$1,200,000.00 to the District to resolve the alleged violations of District law resulting from the sales of flavored ZYN products on shop.zyn.com to District Consumers.

26. SMNA shall make the payment specified in the preceding paragraph within fourteen (14) days of the Effective Date of this Assurance.

27. Payment under this Assurance shall be made either by wire transfer or ACH transfer or certified check made out to the D.C. Treasurer and delivered to OAG consistent with instructions from OAG. The District may use any portion of the funds that it receives for any lawful purposes, including, but not limited to, restitution, attorneys' fees, and other costs of investigation and litigation; placement of this payment in the District's restitution fund or litigation support fund; or for other uses permitted by District law, at the sole discretion of the OAG. SMNA agrees to cooperate with reasonable requests from the District as necessary to obtain any modification to the language of this paragraph needed to facilitate the administration of the District's payment under this paragraph.

28. A default in SMNA's payment obligations under this Assurance that is not cured within three (3) business days of when the payment is due will constitute a material violation of this Assurance.

29. Upon execution of this Assurance, SMNA shall provide the District with its Taxpayer Identification Number ("TIN").

VII. RELEASE

30. By execution of this Assurance, and following payment of the \$1,200,000.00 required under paragraph 28, the Attorney General terminates its investigation into SMNA's conduct arising out of, resulting from, and/or relating to the factual allegations set forth in Part III, *supra*, and shall release and discharge, to the fullest extent permitted by law, SMNA from any and all civil causes of action, claims, damages, costs, attorneys' fees, or penalties the Attorney General has asserted or could have asserted under the CPPA relating to the factual allegations set forth in Part III as of the Effective Date of this Assurance.

VIII. ADDITIONAL TERMS

31. Any breach of the injunctive terms contained in this Assurance shall be considered an unlawful trade practice that violates the CPPA, pursuant to D.C. Code § 28-3904(jj).

32. Respondent shall not cause or encourage any third-parties, or knowingly permit third-parties acting on its behalf, to engage in any prohibited practices as set forth in this Assurance.

33. Respondent shall not participate, directly or indirectly, in any activity, or form any corporate entity or corporation for the purpose of circumventing any part of this Assurance or the spirit or purpose of this Assurance.

34. The failure of the District to insist upon strict adherence to any term of this Assurance on any occasion shall not be considered a waiver thereof or deprive the District of the right thereafter to insist upon strict adherence to that term or any other term of this Assurance.

35. Nothing contained herein shall be construed as relieving Respondent of the obligation to comply with all District laws, regulations, or rules, nor shall any of the provisions herein be deemed to be permission to engage in any acts or practices prohibited by such laws, regulations, or rules.

36. The Parties understand and agree that this Assurance will not be construed as an approval or sanction by the Attorney General of Respondent's business practices, nor will Respondent represent that this Assurance constitutes an approval or sanction of its business practices.

37. This Assurance may be executed in counterparts, and copies of signature pages transmitted electronically shall have the same effect as originals of those signature pages.

38. Any notice to a Party to be provided pursuant to this Assurance shall be sent by U.S. Mail and email to the following:

For the District:

Meryl D. Grenadier
Assistant Attorney General
Office of Consumer Protection
Public Advocacy Division
Office of the Attorney General for the
District of Columbia
400 6th Street, NW, 10th Floor
Washington, D.C. 20001
meryl.grenadier@dc.gov

For the Respondent:

Jonathan Kravis
Munger, Tolles & Olson LLP
601 Massachusetts Ave NW Suite 500E
Washington, DC 20001-5369
jonathan.kravis@mto.com

**DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL**

**BRIAN L. SCHWALB
ATTORNEY GENERAL**

By:  _____

Date: 12/12/24

Meryl D. Grenadier
Assistant Attorney General
Office of Consumer Protection

CONSENTED AND AGREED TO BY:

Swedish Match North America LLC

By: _____

Date: _____

Tom Hayes
President and Chief Executive Officer, Swedish Match North America LLC

**DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL**

**BRIAN L. SCHWALB
ATTORNEY GENERAL**

By: _____ Date: _____

Meryl D. Grenadier
Assistant Attorney General
Office of Consumer Protection

CONSENTED AND AGREED TO BY:

Swedish Match North America LLC

By:  _____ Date: December 6, 2024

Tom Hayes
President and Chief Executive Officer, Swedish Match North America LLC