

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Center for Tobacco Products,  
(FDA No. FDA-2014-H-0065)

Complainant

v.

J&P Flash, Inc.  
d/b/a Flash Market #112/Citgo,

Respondent.

Docket No. C-14-536

Decision No. CR3164

Date: March 19, 2014

**INITIAL DECISION AND DEFAULT JUDGMENT**

The Center for Tobacco Products (CTP) began this matter by serving an administrative complaint on Respondent, J&P Flash, Inc. d/b/a Flash Market #112/Citgo, at 2443 Thomasville Road, Pocahtonas, Arizona 72455, and by filing a copy of the complaint with the Food and Drug Administration's (FDA) Division of Dockets Management. The complaint alleges that Flash Market #112/Citgo impermissibly sold cigarettes to minors and failed to verify the purchasers' ages by means of photo identification containing a date of birth, violating the Federal Food, Drug, and Cosmetic Act (Act), 21 U.S.C. § 301 *et seq.*, and its implementing regulations, 21 C.F.R. Part 1140. CTP seeks to impose a \$250 civil money penalty against Respondent Flash Market #112/Citgo.

As provided for in 21 C.F.R. §§ 17.5 and 17.7, on February 4, 2014, CTP served the complaint on Respondent Flash Market #112/Citgo by United Parcel Service. In the complaint and accompanying cover letter, CTP explained that, within 30 days, Respondent should pay the penalty, file an answer, or request an extension

of time in which to file an answer. CTP warned Respondent that, if it failed to take one of these actions within 30 days, the Administrative Law Judge could, pursuant to 21 C.F.R. § 17.11, issue an initial decision ordering it to pay the full amount of the proposed penalty.

Respondent Flash Market #112/Citgo has neither filed an answer within the time prescribed, nor requested an extension of time within which to file an answer. Pursuant to 21 C.F.R. § 17.11, I assume that the facts alleged in the complaint (but not its conclusory statements) are true. Specifically:

- At approximately 4:25 PM CT on March 20, 2013, at Respondent's business establishment, 2443 Thomasville Road, Pocahontas, Arizona 72455, an FDA-commissioned inspector observed Respondent's staff sell a package of Pall Mall Red cigarettes to a person younger than 18 years of age. Respondent's staff also failed to verify the purchaser's age by means of photo identification containing a date of birth;
- In a warning letter dated April 25, 2013, CTP informed Respondent of the inspector's March 20, 2013 observations, and that such actions violate federal law, 21 C.F.R. § 1140.14(a) and (b)(1). The letter further warned that if Respondent failed to correct its violations, a civil money penalty or other regulatory action could occur;
- At approximately 11:02 AM on August 5, 2013, at Respondent's business establishment, 2443 Thomasville Road, Pocahontas, Arizona 72455, an FDA-commissioned inspector documented Respondent's staff selling a package of Marlboro Gold Pack cigarettes to a person younger than 18 years of age.

These facts establish Respondent Flash Market #112/Citgo's liability under the Act. The Act prohibits misbranding of a tobacco product. 21 U.S.C. § 331(k). A tobacco product is misbranded if sold or distributed in violation of regulations issued under section 906(d) of the Act. 21 U.S.C. § 387f(d); *see* 21 U.S.C. § 387c(a)(7)(B); 21 C.F.R. § 1140.1(b). The Secretary issued the regulations at 21 C.F.R. Part 1140 under section 906(d) of the Act. 21 U.S.C. § 387(a); *see* 21 U.S.C. § 387f(d)(1); 75 Fed. Reg. 13,229 (Mar. 10, 2010). Under 21 C.F.R. § 1140.14(a), no retailer may sell cigarettes to any person younger than 18 years of age. Under 21 C.F.R. § 1140.14(b)(1), a retailer must verify, by means of photo identification containing the bearer's date of birth, that no cigarette purchaser is younger than 18 years of age.

A \$250 civil money penalty is permissible under 21 C.F.R. § 17.2.

