

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Center for Tobacco Products,  
(FDA No. FDA-2014-H-2067)

Complainant,

v.

Baida Ann LLC / Ahmed Mubarak  
d/b/a A and A Superstop,

Respondent.

Docket No. C-15-549

Decision No. CR3621

Date: February 4, 2015

**INITIAL DECISION AND DEFAULT JUDGMENT**

The Center for Tobacco Products (CTP) began this matter by serving an administrative complaint on Respondent, Baida Ann LLC / Ahmed Mubarak d/b/a A and A Superstop, at 1201 North Hervey Street, Hope, Arizona 71801, and by filing a copy of the complaint with the Food and Drug Administration's (FDA) Division of Dockets Management. The complaint alleges that A and A Superstop unlawfully utilized a self-service display of smokeless tobacco in a non-exempt facility, impermissibly sold cigarettes to a minor, and failed to verify, by means of photo identification containing a date of birth, that a tobacco purchaser was 18 years of age or older, thereby violating the Federal Food, Drug, and Cosmetic Act (Act), 21 U.S.C. § 301 et seq., and its implementing regulations, Cigarettes and Smokeless Tobacco, 21 C.F.R. pt. 1140 (2013). CTP seeks to impose a \$500 civil money penalty against A and A Superstop.

As provided for in 21 C.F.R. §§ 17.5 and 17.7, on December 5, 2014, CTP served the complaint on Respondent A and A Superstop 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 A and A Superstop 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:

- On August 7, 2013, at an unspecified time, at Respondent's business establishment, 1201 North Hervey Street, Hope, Arizona 71801, an FDA-commissioned inspector observed "smokeless tobacco for sale from a customer-accessible countertop, near other self-service items." The inspector also observed that the establishment is open to the general public during business hours;
- In a warning letter dated October 10, 2013, CTP informed Respondent of the inspector's August 7, 2013 observations, and that such actions violate federal law, 21 C.F.R. § 1140.16(c). The letter further warned that Respondent's failure to correct the violation could result in a civil money penalty or other regulatory action;
- At approximately 3:52 p.m. on June 4, 2014, at Respondent's business establishment, 1201 North Hervey Street, Hope, Arizona 71801, FDA-commissioned inspectors observed that a person younger than 18 years of age was able to purchase a package of Marlboro Gold Pack cigarettes. The inspectors also documented that staff failed to verify, by means of photographic identification containing a date of birth, that the purchaser was 18 years of age or older.

These facts establish Respondent A and A Superstop'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 of the U.S. Department of Health and Human Services issued the regulations at 21 C.F.R. pt. 1140 under section 906(d) of the Act. 21 U.S.C. § 387a-1; *see* 21 U.S.C. § 387f(d)(1); 75 Fed. Reg. 13,225, 13,229 (Mar. 19, 2010). The regulations require a retailer to sell tobacco products only in a direct, face-to-face exchange. 21 C.F.R. § 1140.16(c).

The regulations also prohibit the sale of cigarettes to any person younger than 18 years of age. 21 C.F.R. § 1140.14(a). Additionally, the regulations require retailers to verify, by means of photo identification containing a purchaser's date of birth, that no cigarette purchasers are younger than 18 years of age. 21 C.F.R. § 1140.14(b)(1).

A \$500 civil money penalty is permissible under 21 C.F.R. § 17.2.

### **Order**

For these reasons, I enter default judgment in the amount of \$500 against Respondent Baida Ann LLC / Ahmed Mubarak d/b/a A and A Superstop. Pursuant to 21 C.F.R. § 17.11(b), this order becomes final and binding upon both parties after 30 days of the date of its issuance.

\_\_\_\_\_  
/s/  
Catherine Ravinski  
Administrative Law Judge