

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Center for Tobacco Products,  
(FDA No. FDA-2014-H-2219)

Complainant

v.

Sam's Mini Mart 3, Inc. / Ali Mosed  
d/b/a Gulf,

Respondent.

Docket No. C-15-696

Decision No. CR3673

Date: March 2, 2015

**INITIAL DECISION AND DEFAULT JUDGMENT**

The Center for Tobacco Products (CTP) began this matter by serving an administrative complaint on Respondent, Sam's Mini Mart 3, Inc. / Ali Mosed d/b/a Gulf, at 14127 Linwood Street, Detroit, Michigan 48238, and by filing a copy of the complaint with the Food and Drug Administration's (FDA) Division of Dockets Management. The complaint alleges that Gulf impermissibly sold cigarettes to a minor, failed to verify, by means of photo identification containing a date of birth, that a cigarette purchaser was 18 years of age or older, and offered sale of individual cigarettes, thereby violating the Federal Food, Drug, and Cosmetic Act (Act), 21 U.S.C. § 301 *et seq.*, and its implementing regulations, 21 C.F.R. pt. 1140. CTP seeks to impose a \$250 civil money penalty against Respondent Gulf.

As provided for in 21 C.F.R. §§ 17.5 and 17.7, on January 12, 2015, CTP served the complaint on Respondent Gulf 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 Gulf 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 10:42 a.m. on December 21, 2013, at Respondent's business establishment, 14127 Linwood Street, Detroit, Michigan 48238, an FDA-commissioned inspector observed Respondent's staff selling a package of Newport Box 100s cigarettes to a person younger than 18 years of age. The inspector also observed 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;
- In a warning letter dated March 20, 2014, CTP informed Respondent of the inspector's December 21, 2013 observations, and that such actions violate federal law, 21 C.F.R. § 1140.14(a) and (b)(1). The letter further warned that Respondent's failure to correct its violations could result in a civil money penalty or other regulatory action;
- On October 21, 2014, at Respondent's business establishment, 14127 Linwood Street, Detroit, Michigan 48238, FDA-commissioned inspectors documented an open package of Newport cigarettes and a box of individual cigarettes in a Swisher Streets box next to the cash register, and the Respondent's staff confirmed that those cigarettes were available for individual purchase.

These facts establish Respondent Gulf'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). Under 21 C.F.R. § 1140.14(a), no retailer may sell cigarettes to any person younger than 18 years of age. 21 C.F.R. § 1140.14(b)(1) stipulates that retailers must verify,

