

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Center for Tobacco Products,
(FDA No. FDA-2014-H-2285)

Complainant

v.

Gritz Liquors LLC
d/b/a Gritz Liquors,

Respondent.

Docket No. C-15-767

Decision No. CR3757

Date: April 2, 2015

INITIAL DECISION AND DEFAULT JUDGMENT

The Center for Tobacco Products (CTP) began this matter by serving an administrative complaint on Respondent, Gritz Liquors LLC d/b/a Gritz Liquors, at 34 West Street, Annapolis, Maryland 21401, and by filing a copy of the complaint with the Food and Drug Administration's (FDA) Division of Dockets Management. The complaint alleges that Gritz Liquors impermissibly sold cigarettes to minors and failed to verify, by means of photo identification containing a date of birth, that the purchasers were 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, 21 C.F.R. pt. 1140. CTP seeks to impose a \$500 civil money penalty against Respondent Gritz Liquors.

As provided for in 21 C.F.R. §§ 17.5 and 17.7, on January 5, 2015, CTP served the complaint on Respondent Gritz Liquors 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 Gritz Liquors filed a request for extension of time to file its Answer on January 31, 2015. I granted Respondent's motion and provided an extension to March 6, 2015. Respondent failed to file an Answer by that date. 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 11:54 A.M. on February 7, 2014, at Respondent's business establishment, 34 West Street, Annapolis, Maryland 21401, an FDA-commissioned inspector observed Respondent's staff selling a package of Newport Box 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 April 24, 2014, CTP informed Respondent of the inspector's observations from February 7, 2014, 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;
- At approximately 10:59 A.M. on July 31, 2014, at Respondent's business establishment, 34 West Street, Annapolis, Maryland 21401, FDA-commissioned inspectors documented Respondent's staff selling a package of Newport Box cigarettes to a person younger than 18 years of age. 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 Gritz Liquors' 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. Under 21 C.F.R. § 1140.14(b)(1), retailers must verify, by means of photographic identification containing a purchaser's date of birth, that no cigarette purchasers are younger than 18 years of age.

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 Gritz Liquors LLC d/b/a Gritz Liquors. 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