

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Center for Tobacco Products,
(FDA No. FDA-2014-H-1521)

Complainant,

v.

Westminster Liquor, Inc.
d/b/a Westminster Liquors,

Respondent.

Docket No. C-15-28

Decision No. CR3509

Date: December 10, 2014

INITIAL DECISION AND DEFAULT JUDGMENT

The Center for Tobacco Products (CTP) began this matter by serving an administrative complaint on Respondent, Westminster Liquor, Inc. d/b/a Westminster Liquors at 6030 West 92nd Avenue, Westminster, Colorado 80031, and by filing a copy of the complaint with the Food and Drug Administration's (FDA) Division of Dockets Management. The complaint alleges that Westminster Liquor unlawfully utilized a self-service display of cigarette 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, 21 C.F.R. pt. 1140. CTP seeks to impose a \$500 civil money penalty against Respondent Westminster Liquor.

As provided for in 21 C.F.R. §§ 17.5 and 17.7, on October 15, 2014, CTP served the complaint on Respondent Westminster Liquor 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 Westminster Liquor 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 Respondent's business establishment, 6030 West 92nd Avenue, Westminster, Colorado 80031, on April 18, 2012, at an unspecified time, an FDA-commissioned inspector observed the presence of a self-service display of cigarette tobacco. The inspector also observed that the establishment allows minors to enter during regular business hours;
- In a warning letter issued on July 19, 2012, CTP informed Respondent of the inspector's observations from April 18, 2012, and that such an action violates federal law, 21 C.F.R. § 1140.16(c). The letter further warned that if Respondent failed to correct its violation, the FDA could impose a civil money penalty or take other regulatory action;
- At Respondent's business establishment, 6030 West 92nd Avenue, Westminster, Colorado 80031, on February 23, 2014, at approximately 12:08 p.m., FDA-commissioned inspectors documented Respondent's staff selling a package of Marlboro cigarettes to a person younger than 18 years of age. The inspectors also documented that Respondent's staff failed to verify, by means of photo identification containing the bearer's date of birth, that the purchaser of a tobacco product was 18 years of age or older.

These facts establish Respondent Westminster Liquor'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 § 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 § 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.

