

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Center for Tobacco Products,
(FDA No. FDA-2014-H-2253)

Complainant

v.

Quick N Easy Market, LLC
d/b/a Carolina A Market /
Quick N Easy Market,

Respondent.

Docket No. C-15-728

Decision No. CR3662

Date: February 23, 2015

INITIAL DECISION AND DEFAULT JUDGMENT

The Center for Tobacco Products (CTP) began this matter by serving an administrative complaint on Respondent, Quick N Easy Market, LLC d/b/a Carolina A Market / Quick N Easy Market, at 2739 Spruill Avenue, Charleston, South Carolina 29405, and by filing a copy of the complaint with the Food and Drug Administration's (FDA) Division of Dockets Management. The complaint alleges that Carolina A Market / Quick N Easy Market impermissibly sold cigarettes to minors 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 \$250 civil money penalty against Respondent Carolina A Market / Quick N Easy Market.

As provided for in 21 C.F.R. §§ 17.5 and 17.7, on December 30, 2014, CTP served the complaint on Respondent Carolina A Market / Quick N Easy Market 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 Carolina A Market / Quick N Easy Market 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 6:14 p.m. on March 25, 2014, at Respondent's business establishment, 2739 Spruill Avenue, Charleston, South Carolina 29405, an FDA-commissioned inspector observed Respondent's staff selling a package of Marlboro 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 May 22, 2014, CTP informed Respondent of the inspector's March 25, 2014 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;
- At approximately 10:24 a.m. on August 13, 2014, at Respondent's business establishment, 2739 Spruill Avenue, Charleston, South Carolina 29405, FDA-commissioned inspectors documented Respondent's staff selling a package of Newport Box 100s cigarettes to a person younger than 18 years of age.

These facts establish the liability of Respondent Carolina A Market / Quick N Easy Market 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 \$250 civil money penalty is permissible under 21 C.F.R. § 17.2.

Order

For these reasons, I enter default judgment in the amount of \$250 against Respondent Quick N Easy Market, LLC d/b/a Carolina A Market / Quick N Easy Market. 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