

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Center for Tobacco Products,

Complainant

v.

Surma Petroleum LLC  
d/b/a Hanley Mobil,

Respondent.

Docket No. C-13-677  
FDA Docket No. FDA-2013-H-0468

Decision No. CR2819

Date: June 13, 2013

**INITIAL DECISION AND DEFAULT JUDGMENT**

The Center for Tobacco Products (CTP) filed an administrative complaint (Complaint) against Respondent, Surma Petroleum LLC d/b/a Hanley Mobil, that alleges facts and legal authority sufficient to justify imposing a \$250 civil money penalty. Respondent did not timely answer the Complaint, nor did Respondent request an extension of time within which to file an answer. Therefore, I enter a default judgment against Respondent and assess a civil money penalty of \$250.

CTP began this case by filing a copy of the Complaint with the Food and Drug Administration's (FDA) Division of Dockets Management and serving the Complaint on Respondent. The Complaint alleges that Respondent unlawfully sold tobacco products to minors and failed to verify that the purchaser of tobacco products was of sufficient age, thereby violating the Federal Food, Drug, and

Cosmetic Act (Act), codified at 21 U.S.C. §§ 301-399d, and its implementing regulations found at 21 C.F.R. Part 1140. CTP seeks a civil monetary penalty of \$250 for these violations.

On April 25, 2013, CTP served the Complaint on Respondent by United Parcel Service, pursuant to 21 C.F.R. §§ 17.5 and 17.7. 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 within which to file an answer. CTP warned Respondent that, if it failed to take one of these actions within 30 days, an Administrative Law Judge could issue an initial decision ordering Respondent to pay the full amount of the proposed penalty, pursuant to 21 C.F.R. § 17.11.

Respondent has not filed an answer within the time provided by regulation or timely requested an extension. Pursuant to 21 C.F.R. § 17.11(a), I am required to “assume the facts alleged in the complaint to be true, and, if such facts establish liability under [the Act],” issue a default judgment and impose a civil monetary penalty. Accordingly, I must determine whether the allegations in the Complaint establish violations of the Act.

Specifically, CTP alleges that:

- Respondent owns Hanley Mobil, an establishment that sells tobacco products and is located at 6800 North Hanley Road, Berkeley, Missouri 63134. Complaint ¶ 3.
- On June 5, 2012, an FDA-commissioned inspector observed a violation of 21 C.F.R. § 1140.14(a) for “[s]elling tobacco products to a minor” and a violation of 21 C.F.R. § 1140.14(b)(1) for “[f]ailing to verify the age of a person purchasing tobacco products by means of photographic identification containing the bearer’s date of birth[.]” Complaint ¶ 10.
- “[O]n August 2, 2012, CTP issued a Warning Letter to Mobil.” Complaint ¶ 10. The letter noted the violations the FDA-commissioned inspector had observed on June 5, 2012, and explained that Respondent could face a civil money penalty or other regulatory action if it failed to correct the violations. Complaint ¶ 10. Moreover, CTP explained that the Warning Letter was not intended to provide an exhaustive list of violations and that Mobil was responsible for complying with the law. Complaint ¶ 10.
- The manager of Hanley Mobil responded to CTP by telephone on behalf of Respondent on August 3, 2012. Complaint ¶ 11. The manager informed CTP that “he would have a meeting to ensure that all employees check

identification carefully.” Complaint ¶ 11. He further explained that “he would try to ensure that employees are not selling to minors.” Complaint ¶ 11.

- On November 6, 2012, CTP acknowledged in writing that it had received Respondent’s response and reminded Mobil that it had a continuing duty to comply with the law. Complaint ¶ 11.
- During a subsequent inspection, FDA-commissioned inspectors documented an additional violation. Complaint ¶ 1. “Specifically, a person younger than 18 years of age was able to purchase a package of Newport Box cigarettes on November 21, 2012, at approximately 4:32 PM CT.” Complaint ¶ 1.
- CTP informed Respondent on November 30, 2012, of the November 21, 2012, inspection and documented violation through a Notice of Compliance Check Inspection. Complaint ¶ 2. The Notice warned “that other potential violations of federal tobacco law may have been observed,” and, if violations had occurred, FDA could notify Respondent further. Complaint ¶ 2.

Taking these facts as true, I must find, pursuant to 21 C.F.R. § 17.11(a), that Respondent is liable 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, codified at 21 U.S.C. § 387f(d). 21 U.S.C. § 387c(a)(7)(B); 21 C.F.R. § 1140.1(b). Those regulations prohibit the sale of “cigarettes or smokeless tobacco to any person younger than 18 years of age[.]” 21 C.F.R. § 1140.14(a). Those regulations also require a retailer to “verify by means of photographic identification containing the bearer’s date of birth that no person purchasing the [tobacco] product is younger than 18 years of age[.]” 21 C.F.R. § 1140.14(b)(1).

Here, Respondent violated both 21 C.F.R. § 1140.14(a) and (b)(1). First, on June 5, 2012, Respondent unlawfully sold cigarettes to a minor and failed to verify that the purchaser was of sufficient age. Then, most recently, on November 21, 2012, Respondent again unlawfully sold cigarettes to a minor. Although the Complaint alleges that the June 5, 2012, violation occurred at “Mobil,” not at “Hanley Mobil,” I infer that the two names refer to the same retail outlet. Therefore, Respondent’s actions and omissions on two separate occasions at the same retail outlet constitute violations of law for which a civil money penalty is merited.

