

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Center for Tobacco Products,  
(FDA No. FDA-2014-H-1404)

Complainant,

v.

IT, Inc.  
d/b/a Mobil Mart,

Respondent.

Docket No. C-14-1915

Decision No. CR3471

Date: November 20, 2014

**INITIAL DECISION AND DEFAULT JUDGMENT**

The Center for Tobacco Products (CTP) began this matter by serving an administrative complaint on Respondent, IT, Inc. d/b/a Mobil Mart at 1598 West Ogden Avenue, Naperville, Illinois 60540 and by filing a copy of the complaint with the Food and Drug Administration's (FDA) Division of Dockets Management. The complaint alleges that Mobil Mart unlawfully utilized a self-service display of smokeless tobacco in a non-exempt facility, sold cigarettes to a minor, and failed to verify, by means of photo identification containing a date of birth, that a cigarette 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 Mobil Mart.

As provided for in 21 C.F.R. §§ 17.5 and 17.7, on September 24, 2014, CTP served the complaint on Respondent Mobil Mart 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 Mobil Mart 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, 1598 West Ogden Avenue, Naperville, Illinois 60540, on April 26, 2013, at approximately 2:37 PM, FDA-commissioned inspectors observed Respondent's staff selling a package of Newport Box 100s cigarettes to a person younger than 18 years of age. The inspectors also observed 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;
- In a warning letter issued on May 9, 2013, CTP informed Respondent of the inspector's observations from April 26, 2013, and that such actions violate federal law, 21 C.F.R. § 1140.14(a) and (b)(1). The letter further warned that if Respondent failed to correct its violations, the FDA could impose a civil money penalty or take other regulatory action;
- At Respondent's business establishment, 1598 West Ogden Avenue, Naperville, Illinois 60540, on March 13, 2014, at an undisclosed time, FDA-commissioned inspectors documented the presence of a self-service display of smokeless tobacco. The inspectors also documented that the establishment was open to the general public during business hours.

These facts establish Respondent'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 or smokeless tobacco to any person younger than 18 years of age. Under 21 C.F.R. § 1140.14(b)(1), retailers must verify, by means of photo identification containing the bearer's date of birth, that no cigarette or smokeless tobacco purchaser is younger than 18 years of age. The regulations also require a retailer to sell cigarettes and smokeless tobacco only in a direct, face-to-face exchange without the assistance of any electronic or mechanical device (such as a vending machine). 21 C.F.R. § 1140.16(c).

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, IT, Inc. d/b/a Mobil Mart. 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