

Department of Health and Human Services
DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Center for Tobacco Products,
(FDA No. FDA-2013-H-1060)

Complainant

v.

JNC Mini Market 2, Inc.

Respondent.

Docket No. C-13-1254

Decision No. CR3012

Date: November 26, 2013

INITIAL DECISION AND DEFAULT JUDGMENT

The Center for Tobacco Products (CTP) began this matter by serving an administrative complaint on Respondent, JNC Mini Market 2, Inc., at 661 South 18th Street, Newark, New Jersey, 07103, and by filing a copy of the complaint with the Food and Drug Administration's (FDA) Division of Dockets Management. The complaint alleges that JNC Mini Market 2 impermissibly sold cigarettes to a minor on two separate occasions, failed to verify a tobacco purchaser's age by means of photo identification containing a date of birth on two separate occasions, and sold individual cigarettes, violating the Federal Food, Drug, and Cosmetic Act (Act), 21 U.S.C. § 301 *et seq.*, and its implementing regulations, 21 C.F.R. Part 1140. CTP seeks to impose a \$2000 civil money penalty against Respondent JNC Mini Market 2.

As provided for in 21 C.F.R. §§ 17.5 and 17.7, on September 25, 2013, CTP served the complaint on Respondent JNC Mini Market 2 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 JNC Mini Market 2 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, 661 South 18th Street, Newark, New Jersey 07103, on December 22, 2012, at approximately 3:46 PM, an FDA-commissioned inspector observed Respondent's staff sell a package of Newport Box 100s cigarettes to a person younger than 18 years of age, and that staff failed to verify, by means of photo identification containing the bearer's date of birth, that no purchaser of cigarettes or smokeless tobacco is younger than 18 years of age;
- CTP issued a Notice of Compliance Check Inspection (Notice) to JNC Mini Market 2 on December 27, 2012, informing Respondent that an inspection had been conducted on December 22, 2012, and that during this inspection a minor was able to enter the establishment and purchase a regulated tobacco product at approximately 3:46 PM;
- In a warning letter dated January 17, 2013, CTP informed Respondent of the inspector's December 22, 2012 observations, and that such actions violate federal law, 21 C.F.R. §§ 1140.14(a) and 1140.14(b)(1). The letter further warned that a civil money penalty or other regulatory action could result if Respondent failed to correct its violations;
- At approximately 11:49 AM on May 26, 2013, at Respondent's business establishment, 661 South 18th Street, Newark, New Jersey 07103, FDA-commissioned inspectors observed Respondent's staff sell an individual cigarette to a person younger than 18 years of age, and that staff failed to verify, by means of photo identification containing the bearer's date of birth, the purchaser's age.

These facts establish that Respondent JNC Mini Market 2 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. 21 U.S.C. § 387f(d); *see* 21 U.S.C. § 387c(a)(7)(B); 21 C.F.R. § 1140.1(b). The Secretary issued the regulations at 21 C.F.R. Part 1140 under section 906(d) of the Act. 21 U.S.C. 387(a); *see* 21 U.S.C.

