

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Center for Tobacco Products,
(FDA No. FDA-2014-H-1958)

Complainant

v.

The Village Market Management Co., LLC
d/b/a The Village Market,

Respondent.

Docket No. C-15-427

Decision No. CR3608

Date: January 30, 2015

INITIAL DECISION AND DEFAULT JUDGMENT

The Center for Tobacco Products (CTP) began this matter by serving an administrative complaint on Respondent, The Village Market Management Co., LLC d/b/a The Village Market, at 35 Brookhaven CT, Sunrise Beach, Missouri 65079, and by filing a copy of the complaint with the Food and Drug Administration's (FDA) Division of Dockets Management. The complaint alleges that The Village Market impermissibly sold cigarettes to minors 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 The Village Market.

As provided for in 21 C.F.R. §§ 17.5 and 17.7, on December 4, 2014, CTP served the complaint on Respondent The Village 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 The Village 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 1:09 p.m. on June 17, 2013, at Respondent's business establishment, 2599 State Road MM, Sunrise Beach, Missouri 65079, an FDA-commissioned inspector observed Respondent's staff selling a package of L&M 100's 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;¹
- In a warning letter dated July 11, 2013, CTP informed Respondent of the inspector's June 17, 2013 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 3:37 p.m. on May 28, 2014, at Respondent's business establishment, 2599 State Road MM, Sunrise Beach, Missouri 65079, FDA-commissioned inspectors documented Respondent's staff selling a package of Pall Mall Red cigarettes to a person younger than 18 years of age.

These facts establish Respondent The Village Market'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 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

¹ CTP served the Complaint on Respondent at 35 Brookhaven CT, Sunrise Beach, Missouri 65079, and not at its retail address. Nonetheless, an individual bearing the name "Galloway" signed for the complaint. In addition, my office sent an Initial Order Establishing Procedures to the 35 Brookhaven CT address, and that order was not returned undelivered. Therefore, in the absence of any evidence to the contrary, I will infer that Respondent had proper notice in this matter.

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 The Village Market Management Co., LLC d/b/a The Village 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