

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Center for Tobacco Products,

Complainant

v.

A and K Bajwa LLC
d/b/a Kwik Mart,

Respondent.

Docket No. C-14-1062
FDA Docket No. FDA-2014-H-0584

Decision No. CR3283

Date: July 2, 2014

INITIAL DECISION AND DEFAULT JUDGMENT

The Center for Tobacco Products (CTP) filed an Administrative Complaint (Complaint) against Respondent, A and K Bajwa LLC d/b/a Kwik Mart, alleging facts and legal authority sufficient to justify imposing a civil money penalty of \$500. 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 order that Respondent pay a civil money penalty in the amount of \$500.

CTP began this case by serving a Complaint on Respondent and filing a copy of the Complaint with the Food and Drug Administration's (FDA) Division of Dockets Management. The Complaint alleges that Respondent's staff unlawfully sold cigarettes to minors and failed to verify that cigarette purchasers were of sufficient age, thereby violating the Federal Food, Drug, and Cosmetic Act (Act) and its implementing regulations, found at 21 C.F.R. pt. 1140. CTP seeks a civil money penalty of \$500.

On May 13, 2014, 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, pursuant to 21 C.F.R.

§ 17.11, issue an initial decision by default ordering Respondent to pay the full amount of the proposed penalty.

Respondent has not filed an answer within the time provided by regulation, nor has it requested an extension. Therefore, pursuant to 21 C.F.R. § 17.11(a), I am required to issue an initial decision by default if the Complaint is sufficient to justify a penalty. Accordingly, I must determine whether the allegations in the Complaint establish violations of the Act.

For purposes of this decision, I assume the facts alleged in the Complaint are true. 21 C.F.R. § 17.11(a). Specifically, CTP alleges the following facts in its Complaint:

- Respondent owns Kwik Mart, an establishment that sells tobacco products and is located at 606 West Broadway Road, Tempe, Arizona 85282. Complaint ¶ 3.
- During an inspection of the establishment conducted on January 28, 2013, an FDA-commissioned inspector observed that “a person younger than 18 years of age was able to purchase a package of Maverick Menthol Box cigarettes . . . at approximately 10:40 AM MT[.]” The inspector also observed that “the minor’s identification was not verified before the sale” Complaint ¶ 10.
- On February 14, 2013, CTP issued a Warning Letter to Kwik Mart explaining that the inspector’s January 28, 2013 observations constituted violations of regulations found at 21 C.F.R. § 1140.14(a) and (b)(1). In addition to describing the violations, the letter advised Respondent that the FDA may initiate a civil money penalty action or take other regulatory action against Respondent if it failed to correct the violations. The letter also stated that it was Respondent’s responsibility to comply with the law. Complaint ¶ 10.
- The FDA did not receive a response to the Warning Letter, but delivery records show that an individual named “Caviso” received it on February 15, 2013. Complaint ¶ 11.
- On December 23, 2013, during a subsequent inspection of Respondent’s establishment, FDA-commissioned inspectors documented that “a person younger than 18 years of age was able to purchase a package of Camel Crush Regular

