

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Center for Tobacco Products,
(FDA No. FDA-2014-H-1022)

Complainant

v.

Corner Convenience LLC,

Respondent.

Docket No. C-14-1509

Decision No. CR3394

Date: September 29, 2014

INITIAL DECISION AND DEFAULT JUDGMENT

The Center for Tobacco Products (CTP) began this matter by serving an administrative complaint on Respondent, Corner Convenience LLC, at 160 West Main Street, Meriden, Connecticut 06451, and by filing a copy of the complaint with the Food and Drug Administration's (FDA) Division of Dockets Management. The complaint alleges that Corner Convenience LLC impermissibly sold cigarettes to a minor and failed to verify, by means of photo identification containing date of birth, that a tobacco purchaser was 18 years of age, 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. The complaint likewise alleges that Respondent Corner Convenience LLC previously admitted to two violations of regulations found at 21 C.F.R. pt. 1140 and, therefore, CTP seeks to impose a \$2,000 civil money penalty against Respondent Corner Convenience LLC.

As provided for in 21 C.F.R. §§ 17.5 and 17.7, on July 29, 2014, CTP served the complaint on Respondent Corner Convenience LLC 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 Corner Convenience LLC 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:

- CTP previously issued a warning letter to Respondent Corner Convenience LLC on February 28, 2013, citing violations¹ of 21 C.F.R. pt. 1140 on February 6, 2013, at Respondent's business establishment, 160 West Main Street, Meriden, Connecticut 06451;
- On October 22, 2013, CTP initiated a previous civil money penalty action, CRD Docket Number C-14-29, FDA Docket Number FDA-2013-H-1238, against Respondent for two violations of 21 C.F.R. pt. 1140 within a twelve-month period. CTP alleged those violations to have occurred on February 6, 2013, and May 14, 2013;
- The previous action concluded when Ali Aziz, Respondent's authorized representative, settled the claims on Respondent's behalf. On December 17, 2013, Mr. Aziz signed an Acknowledgment Form in which he "admitt[ed] that the violations . . . occurred, waiv[ed] his ability to contest the violations in the future, and stat[ed] that he understood that that violations may be counted in determining the total number of violations for purposes of future enforcement actions." The Administrative Law Judge closed the case on January 7, 2014;
- At approximately 9:24 AM on January 24, 2014, at Respondent's business establishment, 160 West Main Street, Meriden, Connecticut 06451, FDA-commissioned inspectors documented Respondent's staff selling a package of Maverick Box 100s cigarettes to a person younger than 18 years of age. The

¹ In the complaint, CTP describes the actions that took place at Respondent Corner Convenience LLC's business establishment on February 6, 2013, as both "a violation" and as "violations." Complaint ¶ 10. In a previous administrative complaint initiated on October 22, 2013, and attached to the present complaint, CTP described two discrete violations at Respondent Corner Convenience LLC's business establishment on February 6, 2013: a violation of 21 C.F.R. § 1140.14(a) and a violation of 21 C.F.R. § 1140.14(b)(1). Therefore, I infer that CTP's description in the present complaint of "a violation" occurring on February 6, 2013, was a typographical error.

inspectors also documented that Respondent's staff failed to verify, by means of photo identification containing the bearer's date of birth, that the cigarette purchaser was 18 years of age or older.

These facts establish Respondent Corner Convenience LLC'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. Retailers are required to verify, by means of photo identification containing the purchaser's date of birth, that no purchaser of cigarettes or smokeless tobacco is younger than 18 years of age. 21 C.F.R. § 1140.14(b)(1).

Under 21 C.F.R. § 17.2, a \$2,000 civil money penalty is permissible for four violations of the regulations found at 21 C.F.R. pt. 1140.

Order

For these reasons, I enter default judgment in the amount of \$2,000 against Respondent Corner Convenience LLC. 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