

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Center for Tobacco Products,

Complainant,

v.

K Singh Gasoline LLC  
d/b/a Express Fuel,

Respondent.

Docket No. C-14-1684  
FDA Docket No. FDA-2014-H-1171

Decision No. CR3467

Date: November 18, 2014

**INITIAL DECISION AND DEFAULT JUDGMENT**

The Center for Tobacco Products (CTP) filed an Administrative Complaint (Complaint) against Respondent, K Singh Gasoline LLC d/b/a Express Fuel, alleging facts and legal authority sufficient to justify imposing a civil money penalty of \$5,000. 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 \$5,000.

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 tobacco products to a minor, and failed to verify, by means of photo identification containing a date of birth, that a tobacco purchaser was 18 years of age or older, 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 \$5,000.

On August 18, 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 issue an initial decision by default ordering Respondent to pay the full amount of the proposed penalty. 21 C.F.R. § 17.11.

On September 12, 2014, Respondent's counsel notified CTP that the Respondent was no longer in business and that it did not intend to file any responsive pleadings, including an answer. On September 30, 2014, I issued an order to the parties giving the Respondent until October 15, 2014 to file an answer or explain why it believes its correspondence with CTP relieves it of its duty to file an answer. The order also notified the Respondent that if it failed to file either an answer or brief explaining why it believes it is not required to file an answer that I would assume the facts alleged in the Administrative Complaint to be true and, if they establish violations of the regulation, issue a default judgment against Respondent.

Respondent has not filed an answer or any other pleading within the time prescribed. 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 Express Fuel, Inc., an establishment that sells tobacco products and is located at 492 Sussex Avenue, Morristown, New Jersey 07960. Complaint ¶ 3.
- CTP previously initiated a civil money penalty action, CRD Docket Number C-14-51, FDA Docket Number FDA-2013-H-1262, against Respondent for three violations of 21 C.F.R. pt. 1140 within a 24-month period. Specifically, those violations included unspecified violations<sup>1</sup> on August 14, 2012, and two violations

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<sup>1</sup> In the complaint, CTP describes the actions that took place at Respondent K Singh Gasoline LLC d/b/a Express Fuel's business establishment on August 14, 2012, as both "a violation" and as "violations." Complaint ¶ 10. In a previous administrative complaint initiated on October 29, 2013, and attached to the present complaint, CTP described two discrete violations at Respondent K Singh Gasoline LLC d/b/a Express Fuel's business establishment on August 14, 2012: a violation of 21 C.F.R. § 1140.14(a) and a violation of 21 C.F.R. § 1140.14(b)(1). Therefore, I will infer that CTP's

on April 27, 2013, when Respondent sold tobacco products to a minor and failed to verify, by means of photographic identification, that the tobacco purchaser was 18 years of age or older. Complaint ¶ 10.

- The previous civil money penalty action concluded when Ranbir Singh, Respondent's authorized representative, settled the action with CTP on Respondent's behalf. On November 4, 2013, Mr. Singh signed an Acknowledgment Form in which he "admitt[ed] that the violations . . . occurred, waiv[ed] Respondent's ability to contest the violations in the future, and stat[ed] that he understood that the violations may be counted in determining the total number of violations for purposes of future enforcement actions against Respondent." The Administrative Law Judge closed the case on December 12, 2013. Complaint ¶ 11.
- During a subsequent inspection of Respondent's establishment conducted on February 22, 2014, FDA-commissioned inspectors documented that "a person younger than 18 years of age was able to purchase a package of Marlboro cigarettes . . . at approximately 11:10 AM[.] The inspectors also noted that "the minor's identification was not verified before the sale . . . ." Complaint ¶ 1.

These facts establish that Respondent 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. § 387c(a)(7)(B); 21 C.F.R. § 1140.1(b). The regulations prohibit the sale of cigarettes to any person younger than 18 years of age. 21 C.F.R. § 1140.14(a). The regulations also require the verification, by means of photo identification containing a purchaser's date of birth, that no tobacco product purchasers are younger than 18 years of age. 21 C.F.R. § 1140.14(b)(1).

Here, Respondent had five violations of regulations found at 21 C.F.R. pt. 1140 within a 36-month period. Respondent acknowledged that three violations occurred when its representative settled the previous civil money penalty action. Most recently, on February 22, 2014, Respondent sold cigarettes to a person younger than 18 years of age, in violation of 21 C.F.R. § 1140.14(a). On that same date, Respondent violated the requirement that retailers verify, by means of photo identification containing a purchaser's date of birth, that no tobacco product purchaser is younger than 18 years of age. 21 C.F.R. § 1140.14(b)(1). Therefore, Respondent's actions constitute violations of law that merit a civil money penalty.

CTP has requested a fine of \$5,000, which is a permissible fine under the regulations.

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description in the present complaint of "a violation" occurring on August 14, 2012, was a typographical error.

