

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Center for Tobacco Products,
(FDA No. FDA-2014-H-1603)

Complainant

v.

Hasan Oil Corp.
d/b/a BP,

Respondent.

Docket No. C-14-392

Decision No. CR3127

Date: February 25, 2014

INITIAL DECISION AND DEFAULT JUDGMENT

The Center for Tobacco Products (CTP) began this matter by serving an administrative complaint on Respondent, Hasan Oil Corp. d/b/a BP, at 20 Main Street, Asbury Park, NJ 07712, and by filing a copy of the complaint with the Food and Drug Administration's (FDA) Division of Dockets Management. The complaint alleges that BP impermissibly sold cigarettes to minors and failed to verify the purchasers' ages by means of photo identification containing a date of birth, 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 \$500 civil money penalty against Respondent BP.

As provided for in 21 C.F.R. §§ 17.5 and 17.7, on January 7, 2014, CTP served the complaint on Respondent BP 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 BP 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 1:27 PM ET on February 16, 2013, at Respondent's business establishment, 20 Main Street, Asbury Park, NJ 07712, an FDA-commissioned inspector observed Respondent's staff sell a package of Marlboro cigarettes to a person younger than 18 years of age. Respondent's staff also failed to verify the purchaser's age by means of photo identification containing a date of birth.
- In a warning letter dated March 7, 2013, CTP informed Respondent of the inspector's February 16, 2013 observations, and that such actions violate federal law, 21 C.F.R. § 1140.14(a) and (b)(1). The letter further warned that if Respondent failed to correct its violations, a civil money penalty or other regulatory action could occur;
- At approximately 2:33 PM on July 2, 2013, at Respondent's business establishment, 20 Main Street, Asbury Park, NJ 07712, an FDA-commissioned inspector documented Respondent's staff selling a package of Marlboro cigarettes to a person younger than 18 years of age. The inspector also documented that Respondent's staff failed to verify the purchaser's age by means of photo identification containing a date of birth.

These facts establish Respondent BP'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 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. § 387f(d)(1); 75 Fed. Reg. 13,229 (Mar. 10, 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), a retailer must verify, by means of photo identification containing the bearer's date of birth, that no cigarette purchaser is younger than 18 years of age.

A \$500 civil money penalty is permissible under 21 C.F.R. § 17.2.

