

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Center for Tobacco Products,
(FDA No. FDA-2014-H-2130)

Complainant,

v.

Stop N Go II, Inc. / Kashmir Gill
d/b/a Stop N Go II / Mobil Mart,

Respondent.

Docket No. C-15-603

Decision No. CR3634

Date: February 9, 2015

INITIAL DECISION AND DEFAULT JUDGMENT

The Center for Tobacco Products (CTP) began this matter by serving an administrative complaint on Respondent, Stop N Go II, Inc. / Kashmir Gill d/b/a Stop N Go II / Mobil Mart, at 2512 Steffens Court, Green Bay, Wisconsin 54311, and by filing a copy of the complaint with the Food and Drug Administration's (FDA) Division of Dockets Management. The complaint alleges that Stop N Go II / Mobil Mart unlawfully utilized a self-service display of smokeless tobacco in a non-exempt facility, and impermissibly sold cigarettes to a minor, thereby violating the Federal Food, Drug, and Cosmetic Act (Act), 21 U.S.C. § 301 et seq., and its implementing regulations, Cigarettes and Smokeless Tobacco, 21 C.F.R. pt. 1140 (2013). CTP seeks to impose a \$250 civil money penalty against Stop N Go II / Mobil Mart.

As provided for in 21 C.F.R. §§ 17.5 and 17.7, on December 10, 2014, CTP served the complaint on Respondent Stop N Go II / Mobil Mart 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 Stop N Go II / Mobil Mart 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:

- On April 30, 2013, at an unspecified time, at Respondent's business establishment, 2512 Steffens Court, Green Bay, Wisconsin 54311, a FDA-commissioned inspector observed "customer-accessible shelves containing a variety of cigarette and smokeless tobacco in the establishment." The inspector also observed that the establishment is open to the general public during normal business hours;
- In a warning letter dated May 23, 2013, CTP informed Respondent of the inspector's April 30, 2013 observations, and that such actions violate federal law, 21 C.F.R. § 1140.16(c). The letter further warned that Respondent's failure to correct the violation could result in a civil money penalty or other regulatory action;
- At approximately 1:11 p.m. on April 15, 2014, at Respondent's business establishment, 2512 Steffens Court, Green Bay, Wisconsin 54311, FDA-commissioned inspectors observed that a person younger than 18 years of age was able to purchase a package of Camel Crush Regular Fresh cigarettes.

These facts establish Respondent Stop N Go II / Mobil Mart'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). The regulations require a retailer to sell tobacco products only in a direct, face-to-face exchange. 21 C.F.R. § 1140.16(c). The regulations also prohibit the sale of cigarettes to any person younger than 18 years of age. 21 C.F.R. § 1140.14(a).

A \$250 civil money penalty is permissible under 21 C.F.R. § 17.2.

