

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Center for Tobacco Products,  
(FDA No. FDA-2013-H-1218)

Complainant

v.

Sukhparm LLC  
d/b/a Xpress Mart,

Respondent.

Docket No. C-14-17

Decision No. CR3032

Date: December 12, 2013

**INITIAL DECISION AND DEFAULT JUDGMENT**

The Center for Tobacco Products (CTP) began this matter by serving an administrative complaint on Respondent, Sukhparm LLC d/b/a Xpress Mart, at 2070 North Arlington Avenue, Indianapolis, Indiana 46218, and by filing a copy of the complaint with the Food and Drug Administration's (FDA) Division of Dockets Management. The complaint alleges that Xpress Mart impermissibly sold cigarettes and smokeless tobacco to minors and failed to verify, by means of photo identification containing a date of birth, that the tobacco purchasers were 18 years of age or older, 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. Part 1140. CTP seeks to impose a \$500 civil money penalty against Respondent Xpress Mart.

As provided for in 21 C.F.R. §§ 17.5 and 17.7, on October 18, 2013, CTP served the complaint on Respondent Xpress 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 Xpress 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:

- At Respondent's business establishment, 2070 North Arlington Avenue, Indianapolis, Indiana 46218, on November 8, 2012, at approximately 7:24 PM, an FDA-commissioned inspector observed Respondent's staff sell a package of Grizzly Long Cut smokeless tobacco to a person younger than 18 years of age. The inspector also observed that Respondent's staff failed to verify, by means of photo identification containing the bearer's date of birth, that the tobacco purchaser was 18 years of age or older;
- In a warning letter issued on December 6, 2012, CTP informed Respondent of the inspector's November 8, 2012 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, the FDA could impose a civil money penalty or take other regulatory action;
- At Respondent's business establishment, 2070 North Arlington Avenue, Indianapolis, Indiana 46218, on April 21, 2013, at approximately 8:06 PM, FDA-commissioned inspectors documented Respondent's staff selling a package of Camel Blue cigarettes to a person younger than 18 years of age; staff also failed to verify, by means of photo identification containing the bearer's date of birth, the purchaser's age.

These facts establish Respondent Xpress 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 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 or smokeless tobacco to any person younger than 18 years of age. Under 21 C.F.R. § 1140.14(b)(1), retailers must verify, by means of photo identification containing the bearer's date of birth, that no purchaser of cigarettes or smokeless tobacco is younger than 18 years of age.

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

**Order**

For these reasons, I enter default judgment in the amount of \$500 against Respondent Sukhparm LLC d/b/a Xpress Mart. 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.

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/s/  
Carolyn Cozad Hughes  
Administrative Law Judge