

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Center for Tobacco Products,
(FDA No. FDA-2014-H-0841)

Complainant

v.

Jimmy's Gas and Go, LLC / Alan Harajii
d/b/a Sunoco,

Respondent.

Docket No. C-14-1348

Decision No. CR3342

Date: August 21, 2014

INITIAL DECISION AND DEFAULT JUDGMENT

The Center for Tobacco Products (CTP) began this matter by serving an administrative complaint on Respondent, Jimmy's Gas and Go, LLC / Alan Harajii d/b/a Sunoco, at 10000 Plymouth Road, Detroit, Michigan 48204, and by filing a copy of the complaint with the Food and Drug Administration's (FDA) Division of Dockets Management. The complaint alleges that Sunoco impermissibly sold cigarettes to minors and failed to verify, by means of photo identification containing a date of birth, that the 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. pt. 1140. CTP seeks to impose a \$500 civil money penalty against Respondent Sunoco.

As provided for in 21 C.F.R. §§ 17.5 and 17.7, on June 26, 2014, CTP served the complaint on Respondent Sunoco 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 Sunoco 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 11:24 a.m. on July 5, 2013, at Respondent's business establishment, 10000 Plymouth Road, Detroit, Michigan 48204, an FDA-commissioned inspector observed Respondent's staff selling a package of Newport Box 100s cigarettes to a person younger than 18 years of age. The inspector also observed that staff failed to verify, by means of photographic identification containing a date of birth, that the purchaser was 18 years of age or older;
- In a warning letter dated August 8, 2013, CTP informed Respondent¹ of the inspector's July 5, 2013 observations, and that such actions violate federal law, 21 C.F.R. § 1140.14(a) and (b)(1). The letter further warned that Respondent's failure to correct its violations could result in a civil money penalty or other regulatory action;
- At approximately 2:10 p.m. on November 23, 2013, at Respondent's business establishment, 10000 Plymouth Road, Detroit, Michigan 48204, FDA-commissioned inspectors documented Respondent's staff selling a package of Newport Box 100s cigarettes to a person younger than 18 years of age. The inspectors also documented that staff failed to verify, by means of photographic identification containing a date of birth, that the purchaser was 18 years of age or older.

These facts establish Respondent Sunoco'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. §

¹ In the complaint, CTP alleges that it issued a warning letter to "Speedy/Sunoco" on August 8, 2013. Complaint ¶ 10. Elsewhere, CTP describes the establishment as doing business under the name "Sunoco." Complaint ¶ 3. Because Respondent has not challenged CTP's assertion, I will infer that "Speedy/Sunoco" is the same establishment as "Sunoco" and that CTP has properly issued a warning letter to the Respondent in this matter.

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. Under 21 C.F.R. § 1140.14(b)(1), retailers must verify, by means of photographic identification containing a purchaser's date of birth, that no cigarette purchasers are 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 Jimmy's Gas and Go, LLC / Alan Harajii d/b/a Sunoco. 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