

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Center for Tobacco Products,

Complainant,

v.

MRMJ Enterprises, Inc. / Mark Hagood  
d/b/a Maple Valley Market,

Respondent.

Docket No. C-15-722  
FDA Docket No. FDA-2014-H-2242

Decision No. CR3654

Date: February 19, 2015

**INITIAL DECISION AND DEFAULT JUDGMENT**

The Center for Tobacco Products (CTP) filed an Administrative Complaint (Complaint) against Respondent, MRMJ Enterprises, Inc. / Mark Hagood d/b/a Maple Valley Market, alleging facts and legal authority sufficient to justify imposing a civil money penalty of \$500. 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 \$500.

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 cigarettes to a minor, 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 \$500.

On December 23, 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 (ALJ) could issue an initial decision by default ordering Respondent to pay the full amount of the proposed penalty. 21 C.F.R. § 17.11.

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 Maple Valley Market, an establishment that sells tobacco products and is located at 21655 Maple Valley Highway, Maple Valley, Washington 98038. Complaint ¶ 3.
- CTP previously initiated a civil money penalty action, CRD Docket Number C-13-1378, FDA Docket Number FDA-2013-H-1187, against Respondent for three violations of 21 C.F.R. pt. 1140 within a 24-month period. Specifically, those violations included violations on May 11, 2013, when Respondent sold cigarettes 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 on November 25, 2013, when I issued an Initial Decision and Default Judgment finding the Respondent liable for the violations. The decision became final and binding on December 26, 2013. Complaint ¶ 11.
- During a subsequent inspection of Respondent's establishment conducted on June 25, 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 9:12 AM." 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).

Here, Respondent had four violations of regulations found at 21 C.F.R. pt. 1140 within a 26-month period. I imposed a civil money penalty of \$500 against Respondent on November 25, 2013, finding that Respondent previously committed three violations of the Act. Most recently, on June 25, 2014, Respondent sold cigarettes to a person younger than 18 years of age, in violation of 21 C.F.R. § 1140.14(a). Therefore, Respondent's actions constitute violations of law that merit a civil money penalty.

CTP has requested a fine of \$500, which is a permissible fine under the regulations. 21 C.F.R. § 17.2. Therefore, I find that a civil money penalty of \$500 is warranted and so order one imposed.

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/s/  
Steven T. Kessel  
Administrative Law Judge