

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Center for Tobacco Products,
(FDA No. FDA-2013-H-1409)

Complainant

v.

Food Lion, LLC
d/b/a Food Lion #1316,

Respondent.

Docket No. C-14-224

Decision No. CR3086

Date: January 16, 2014

INITIAL DECISION AND DEFAULT JUDGMENT

The Center for Tobacco Products (CTP) began this matter by serving an administrative complaint on Respondent, Food Lion, LLC d/b/a Food Lion #1316, at 2110 Executive Drive, Salisbury, North Carolina 28147, and by filing a copy of the complaint with the Food and Drug Administration's (FDA) Division of Dockets Management. The complaint alleges that Food Lion #1316 impermissibly sold cigarettes to minors and failed to verify a cigarette purchaser's age 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 \$250 civil money penalty against Respondent Food Lion #1316.

As provided for in 21 C.F.R. §§ 17.5 and 17.7, on November 21, 2013, CTP served the complaint on Food Lion, LLC 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 Food Lion #1316 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, 2960 Marshall Hall Road, Bryans Road, Maryland 20616, on June 13, 2012, at approximately 2:54 PM ET, an FDA-commissioned inspector observed Respondent's staff sell a package of Newport Box cigarettes 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 cigarette purchaser was 18 years of age or older;
- In a warning letter dated August 9, 2012, CTP informed Respondent of the inspector's June 13, 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, a civil money penalty action or other regulatory action could occur;
- At Respondent's business establishment, 2960 Marshall Hall Road, Bryans Road, Maryland 20616, on March 22, 2013, at approximately 1:20 PM ET, FDA-commissioned inspectors documented Respondent's staff sell a package of Maverick Box cigarettes to a person younger than 18 years of age.

These facts establish Respondent Food Lion #1316'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 \$250 civil money penalty is permissible under 21 C.F.R. § 17.2.

