

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Center for Tobacco Products,  
(FDA No. FDA-2014-H-2114)

Complainant,

v.

Rite Aid of Maryland, Inc.  
d/b/a Rite Aid 4983,

Respondent.

Docket No. C-15-587

Decision No. CR3636

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, Rite Aid of Maryland, Inc. d/b/a Rite Aid 4983, at 6130 Baltimore Avenue, Riverdale, Maryland 20737, and by filing a copy of the complaint with the Food and Drug Administration's (FDA) Division of Dockets Management. The complaint alleges that Rite Aid 4983 impermissibly sold cigarettes to minors, 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 Rite Aid 4983.

As provided for in 21 C.F.R. §§ 17.5 and 17.7, on December 9, 2014, CTP served the complaint on Respondent Rite Aid 4983 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 Rite Aid 4983 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 January 17, 2014, at 10:39 a.m., at Respondent's business establishment, 6130 Baltimore Avenue, Riverdale, Maryland 20737, an FDA-commissioned inspector observed that a person younger than 18 years of age was able to purchase a package of Newport Menthol Gold Box cigarettes;
- In a warning letter dated April 10, 2014, CTP informed Respondent of the inspector's January 17, 2014 observation, and that such action violates federal law, 21 C.F.R. § 1140.14(a). 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 1:15 p.m. on June 17, 2014, at Respondent's business establishment, 6130 Baltimore Avenue, Riverdale, Maryland 20737, FDA-commissioned inspectors observed that a person younger than 18 years of age was able to purchase a package of Newport Box cigarettes.

These facts establish Respondent Rite Aid 4983'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 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.

**Order**

For these reasons, I enter default judgment in the amount of \$250 against Respondent Rite Aid of Maryland, Inc. d/b/a Rite Aid 4983. 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