

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Center for Tobacco Products,  
(FDA No. FDA-2014-H-0382)

Complainant

v.

Pedro A. Torres d/b/a 19th Food Market,

Respondent.

Docket No. C-14-874

Decision No. CR3244

Date: May 28, 2014

**INITIAL DECISION AND DEFAULT JUDGMENT**

The Center for Tobacco Products (CTP) began this matter by serving an administrative complaint on Respondent, Pedro A. Torres d/b/a 19th Food Market, at 1600 South 19th Street, Philadelphia, Pennsylvania 19145, and by filing a copy of the complaint with the Food and Drug Administration's (FDA) Division of Dockets Management. The complaint alleges that 19th Food Market 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, 21 C.F.R. Part 1140. CTP seeks to impose a \$250 civil money penalty against Respondent 19th Food Market.

As provided for in 21 C.F.R. §§ 17.5 and 17.7, on April 7, 2014, CTP served the complaint on Respondent 19th Food Market 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 19th Food Market 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, 1600 South 19th Street, Philadelphia, Pennsylvania 19145, on May 30, 2013, at approximately 5:48 PM, an FDA-commissioned inspector observed Respondent's staff sell a package of Newport Menthol Gold Box cigarettes to a person younger than 18 years of age;
- In a warning letter issued on June 13, 2013, CTP informed Respondent of the inspector's May 30, 2013 observation, and that such actions violate federal law, 21 C.F.R. § 1140.14(a). The letter further warned that if Respondent failed to correct its violation, the FDA could impose a civil money penalty or take other regulatory action;
- At Respondent's business establishment, 1600 South 19th Street, Philadelphia, Pennsylvania 19145, on October 30, 2013, at approximately 6:06 PM, FDA-commissioned inspectors documented Respondent's staff selling a package of Newport Menthol Gold Box cigarettes to a person younger than 18 years of age.

These facts establish Respondent'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.

A \$250 civil money penalty is permissible under 21 C.F.R. § 17.2.

