

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Center for Tobacco Products,

Complainant,

v.

Thais Mini Market Inc. d/b/a I & S Grocery Inc.,

Respondent.

Docket No. C-13-588  
FDA Docket No. FDA-2013-H-0367

Decision No. CR2791

Date: May 20, 2013

**INITIAL DECISION AND DEFAULT JUDGMENT**

The Center for Tobacco Products (CTP) initiated the above-captioned matter when it filed an Administrative Complaint for Civil Money Penalties (Complaint) with the Departmental Appeals Board, Civil Remedies Division (CRD) and the Food and Drug Administration's (FDA) Division of Dockets Management. CTP seeks to impose civil money penalties under the Federal Food, Drug, and Cosmetic Act (Act) and the Act's implementing regulations.

The Complaint alleges the following facts. Respondent owns an establishment located at 490 Avon Avenue, Newark, NJ 07108, that sells tobacco products. Complaint ¶ 3. CTP conducted two inspections of the establishment. Complaint ¶ 9. During a June 9, 2012 inspection, an FDA-commissioned inspector observed that Respondent:

[Sold] tobacco products to a minor, in violation of 21 C.F.R. § 1140.14(a); and . . . [f]ail[ed] to verify the age of a person purchasing tobacco products

by means of photographic identification containing the bearer's date of birth, as required by 21 C.F.R. § 1140.14(b)(1).

Complaint ¶ 10.

On August 9, 2012, CTP issued a warning letter to Respondent specifying the violations that the inspector observed. The letter warned Respondent if it failed to correct the violations, CTP could seek to impose civil money penalties and that Respondent was responsible for complying with the law. Complaint ¶ 10.

Manuel Rosario responded to the Warning Letter on Respondent's behalf and "stated that employees are told to check IDs before selling tobacco products and the establishment is placing more emphasis on checking IDs" and that "[m]anagement [was] also reviewing CTP's website to obtain more information on tobacco sales to pass along to employees." Complaint ¶ 11.

During a subsequent inspection, an FDA-commissioned inspector documented that "a person younger than 18 years of age was able to purchase Newport Box 100s cigarettes on January 17, 2013, at approximately 3:37 PM ET." Complaint ¶ 1. The inspector also documented that "the minor's identification was not verified before the sale . . . on January 17, 2013, at approximately 3:37 PM ET[.]" Complaint ¶ 1. Finally, the inspector documented a violation for "[s]elling unpackaged cigarettes, in violation of 21 C.F.R. § 1140.14(d)." Complaint ¶ 1.

In compliance with 21 C.F.R. §§ 17.5 and 17.7, CTP served Respondent with the Complaint on April 2, 2013, via United Parcel Service. CTP charged Respondent with violating 21 C.F.R. § 1140.14(a) (sale of tobacco products to a minor), 21 C.F.R. § 1140.14(b)(1) (failure to verify the age of a purchaser of tobacco products by means of photographic identification containing the bearer's date of birth) and 21 C.F.R. § 1140.14(d) (breaking open a package of cigarettes in order to sell individual cigarettes). Complaint ¶¶ 1, 10. CTP asked the CRD to impose a \$2,000 civil money penalty based on four alleged violations of the regulations in a 24-month period. Complaint ¶ 13.

The Complaint provided detailed instructions related to filing an answer and requesting an extension of time to file an answer. Complaint ¶¶ 14-18, 20-22. The Complaint stated that failure to file an answer could result in the imposition of a civil money penalty against Respondent. Complaint ¶ 19. Respondent neither filed an answer nor requested an extension of time within the 30-day time period prescribed in 21 C.F.R. § 17.9.

If a respondent does not file an answer within 30 days of a properly served complaint, the regulations provide that:

the presiding officer shall assume the facts alleged in the complaint to be true, and, if such facts establish liability under the relevant statute, the presiding officer shall issue an initial decision within 30 days of the time the answer was due, imposing: (1) The maximum amount of penalties provided for by law for the violations alleged; or (2) The amount asked for in the complaint, whichever amount is smaller.

21 C.F.R. § 17.11(a). Further, a failure to file a timely answer means that “respondent waives any right to a hearing and to contest the amount of penalties and assessments” imposed in the initial decision. 21 C.F.R. § 17.11(b).

Accepting the facts alleged in the Complaint as true, I find that those facts establish Respondent’s liability under the Act. *See* 21 U.S.C. §§ 333(f)(9), 387c(a)(7)(B), 387f(d); 21 C.F.R. §§ 1140.1(b), 1140.14. I also find that CTP’s request to impose a \$2,000 civil money penalty is permissible. *See* 21 C.F.R. § 17.2.

Therefore, Respondent is directed to pay a civil money penalty in the amount of \$2,000.00. This initial decision becomes final and binding upon both parties within 30 days of the date of its issuance. 21 C.F.R. § 17.11(b).

It is so ordered.

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/s/  
Scott Anderson  
Administrative Law Judge