

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Center for Tobacco Products,  
(FDA No. FDA-2013-H-0828)

Complainant

v.

Evergreen Food Mart LLC  
d/b/a Evergreen Gulf,

Respondent.

Docket No. C-13-997

Decision No. CR2952

Date: October 17, 2013

**INITIAL DECISION AND DEFAULT JUDGMENT**

The Center for Tobacco Products (CTP) began this matter by serving an administrative complaint on Respondent, Evergreen Food Mart LLC d/b/a Evergreen Gulf, at 634 Wethersfield Avenue, Hartford, Connecticut 06114, and by filing a copy of the complaint with the Food and Drug Administration's (FDA) Division of Dockets Management. The complaint alleges that Evergreen Gulf impermissibly sold cigarettes minors and failed to verify purchasers' ages 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 \$500 civil money penalty against Respondent Evergreen Gulf.

As provided for in 21 C.F.R. §§ 17.5 and 17.7, on August 21, 2013, CTP served the complaint on Respondent Evergreen Gulf 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 Evergreen Gulf 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 approximately 12:59 PM EST on February 27, 2012, at Respondent's business establishment, 634 Wethersfield Avenue, Hartford, Connecticut 06114, an FDA-commissioned inspector observed the sale of a package of Parliament cigarettes to a person younger than 18 years of age;
- At approximately 12:59 PM EST on February 27, 2012, at Respondent's business establishment, 634 Wethersfield Avenue, Hartford, Connecticut 06114, an FDA-commissioned inspector observed that staff failed to verify, by means of photo identification containing the bearer's date of birth, that a cigarette purchaser was 18 years of age or older;
- In a warning letter dated March 15, 2012, CTP informed Respondent of the inspector's February 27, 2012 observations, and that such actions violate federal law, 21 C.F.R. §§ 1140.14(a) and 1140.14(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 approximately 10:57 AM on January 29, 2013, at Respondent's business establishment, 634 Wethersfield Avenue, Hartford, Connecticut 06114, an FDA-commissioned inspector documented the sale of a package of Maverick Box cigarettes to a person younger than 18 years of age; staff also failed to verify, by means of photo identification containing the bearer's date of birth, the purchaser's age.

These facts establish Respondent Evergreen Gulf'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.

