

**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 and S Grocery Inc.,

Respondent.

Docket No. C-15-175  
FDA Docket No. FDA-2014-H-1691

Decision No. CR3524

Date: December 22, 2014

**INITIAL DECISION AND DEFAULT JUDGMENT**

The Center for Tobacco Products (CTP) filed an Administrative Complaint (Complaint) against Respondent, Thais Mini Market Inc. d/b/a I and S Grocery Inc., alleging facts and legal authority sufficient to justify imposing a civil money penalty of \$10,000. Respondent did not timely answer the Complaint, nor did Respondent request an extension of time within which to file an Answer. Therefore, I enter a default judgment against Respondent and order that Respondent pay a civil money penalty in the amount of \$10,000.

CTP began this case by serving a Complaint on Respondent and filing a copy of the Complaint with the Food and Drug Administration's (FDA) Division of Dockets Management. The Complaint alleges that Respondent's staff unlawfully sold individual cigarettes to a minor, and failed to verify, by means of photo identification containing a date of birth, that a tobacco purchaser was 18 years of age or older, thereby violating the

Federal Food, Drug, and Cosmetic Act (Act) and its implementing regulations, found at 21 C.F.R. pt. 1140. CTP seeks a civil money penalty of \$10,000.

On October 29, 2014, CTP served the Complaint on Respondent by United Parcel Service, pursuant to 21 C.F.R. §§ 17.5 and 17.7. 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 within which to file an answer. CTP warned Respondent that if it failed to take one of these actions within 30 days an Administrative Law Judge (ALJ) could issue an initial decision by default ordering Respondent to pay the full amount of the proposed penalty. 21 C.F.R. § 17.11.

Respondent has not filed an answer or any other pleading within the time prescribed. Therefore, pursuant to 21 C.F.R. § 17.11(a), I am required to issue an initial decision by default if the Complaint is sufficient to justify a penalty. Accordingly, I must determine whether the allegations in the Complaint establish violations of the Act.

For purposes of this decision, I assume the facts alleged in the Complaint are true. 21 C.F.R. § 17.11(a). Specifically, CTP alleges the following facts in its Complaint:

- Respondent owns I and S Grocery Inc., an establishment that sells tobacco products and is located at 490 Avon Avenue, Newark, New Jersey 07108. Complaint ¶ 3.
- CTP previously initiated a civil money penalty action, CRD Docket Number C-13-588, FDA Docket Number FDA-2013-H-0367, against Respondent for four violations of 21 C.F.R. pt. 1140 within a 24-month period. Specifically, those violations included violations<sup>1</sup> on June 9, 2012, and three violations on January 17, 2013, when Respondent sold individual cigarettes to a minor and failed to verify, by means of photographic identification, that the tobacco purchaser was 18 years of age or older. Complaint ¶ 10.
- The previous civil money penalty action concluded on May 21, 2013, when the ALJ issued an Initial Decision and Default Judgment finding the Respondent liable for the violations. The decision became final and binding on June 20, 2013. Complaint ¶ 11.

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<sup>1</sup> In the complaint, CTP describes the actions that took place at Respondent's business establishment on June 9, 2012, as both "a violation" and as "violations." Complaint ¶ 10. In a previous administrative complaint initiated on April 1, 2013, and attached to the present complaint, CTP described two discrete violations at Respondent's business establishment on June 9, 2012: a violation of 21 C.F.R. § 1140.14(a), and a violation of 21 C.F.R. § 1140.14(b)(1). Therefore, I will infer that CTP's description in the present complaint of "a violation" occurring on June 9, 2012, was a typographical error.

