

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Center for Tobacco Products,  
(FDA No. FDA-2015-H-0078)

Complainant

v.

132 Third, LLC / Gitaben Patel  
d/b/a Third Ave Grocery / 132 Third Avenue,

Respondent.

Docket No. C-15-879

Decision No. CR3691

Date: March 6, 2015

**INITIAL DECISION AND DEFAULT JUDGMENT**

The Center for Tobacco Products (CTP) began this matter by serving an administrative complaint on Respondent, 132 Third, LLC / Gitaben Patel d/b/a Third Ave Grocery / 132 Third Avenue, at 132 Third Avenue, Halethorpe, Maryland 21227, and by filing a copy of the complaint with the Food and Drug Administration's (FDA) Division of Dockets Management. The complaint alleges that Third Ave Grocery / 132 Third Avenue impermissibly sold cigarettes to minors and failed to verify, by means of photo identification containing a date of birth, that a cigarette purchaser was 18 years of age or older, 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. pt. 1140. CTP seeks to impose a \$500 civil money penalty against Respondent Third Ave Grocery / 132 Third Avenue.

As provided for in 21 C.F.R. §§ 17.5 and 17.7, on January 14, 2015, CTP served the complaint on Respondent Third Ave Grocery / 132 Third Avenue 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 Third Ave Grocery / 132 Third Avenue 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 2:54 p.m. on February 7, 2014, at Respondent's business establishment, 132 Third Avenue, Halethorpe, Maryland 21227, an FDA-commissioned inspector observed Respondent's staff selling a package of Newport Box cigarettes to a person younger than 18 years of age;
- In a warning letter dated April 24, 2014, CTP informed Respondent of the inspector's February 7, 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 its violation could result in a civil money penalty or other regulatory action;
- At approximately 3:55 p.m. on July 29, 2014, at Respondent's business establishment, 132 Third Avenue, Halethorpe, Maryland 21227, FDA-commissioned inspectors documented Respondent's staff selling a package of Newport Box cigarettes to a person younger than 18 years of age. The inspectors also documented that staff failed to verify, by means of photographic identification containing a date of birth, that the purchaser was 18 years of age or older.

These facts establish the liability of Respondent Third Ave Grocery / 132 Third Avenue 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). 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. § 1140.14(b)(1), retailers must verify, by means of photographic identification containing a purchaser's date of birth, that no cigarette purchasers are younger than 18 years of age.

A \$500 civil money penalty is permissible under 21 C.F.R. § 17.2.

### **Order**

For these reasons, I enter default judgment in the amount of \$500 against Respondent 132 Third, LLC / Gitaben Patel d/b/a Third Ave Grocery / 132 Third Avenue. 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.

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/s/  
Catherine Ravinski  
Administrative Law Judge