

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Center for Tobacco Products,
(FDA No. FDA-2013-H-0564)

Complainant

v.

CHRSISR LLC
d/b/a Smokers Stop Convenience Store,

Respondent.

Docket No. C-13-762

Decision No. CR2851

Date: July 11, 2013

INITIAL DECISION AND DEFAULT JUDGMENT

The Center for Tobacco Products (CTP) began this matter by serving an administrative complaint on Respondent, CHRSISR LLC d/b/a Smokers Stop Convenience Store, at 206 Dixwell Avenue, New Haven, Connecticut 06511, and by filing a copy of the complaint with the Food and Drug Administration's (FDA) Division of Dockets Management. The complaint alleges that Smokers Stop Convenience Store impermissibly sold cigarettes or smokeless tobacco to a minor or minors and failed to verify the purchaser's or 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 Smokers Stop Convenience Store.

As provided for in 21 C.F.R. §§ 17.5 and 17.7, on May 15, 2013, CTP served the complaint on Respondent Smokers Stop Convenience Store 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, an 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 Smokers Stop Convenience Store 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, 206 Dixwell Avenue #A, New Haven, Connecticut 06511, at approximately 10:41 AM on June 27, 2012, an FDA-commissioned inspector observed Respondent's staff sell cigarettes or smokeless tobacco to a person younger than 18 years of age;
- At Respondent's business establishment, 206 Dixwell Avenue #A, New Haven, Connecticut 06511, at approximately 10:41 AM on June 27, 2012, an FDA-commissioned inspector observed Respondent's staff fail to verify, by means of photo identification containing the bearer's date of birth, that a purchaser of cigarettes or smokeless tobacco was 18 years of age or older;
- In a warning letter issued September 6, 2012, CTP informed Respondent of the inspector's June 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 or other regulatory action could occur;
- At approximately 9:37 AM on December 24, 2012, at Respondent's business establishment, 206 Dixwell Avenue #A, New Haven, Connecticut 06511, an FDA commissioned inspector observed Respondent's staff sell a package of Marlboro Menthol 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 Smokers Stop Convenience Store'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

