

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Center for Tobacco Products,  
(FDA No. FDA-2013-H-0454)

Complainant

v.

Buchanan Energy (N) LLC  
d/b/a Bucky's Express #420/Mobil,

Respondent.

Docket No. C-13-660

Decision No. CR2811

Date: June 4, 2013

**INITIAL DECISION AND DEFAULT JUDGMENT**

The Center for Tobacco Products (CTP) began this matter by serving an administrative complaint on Respondent, Buchanan Energy (N) LLC d/b/a Bucky's Express #420/Mobil, at 1490 North Quentin Road, Palatine, Illinois, 60067, and by filing a copy of the complaint with the Food and Drug Administration's (FDA) Division of Dockets Management. The complaint alleges that Bucky's Express #420 impermissibly sold cigarettes or smokeless tobacco to 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 Bucky's Express #420.

As provided for in 21 C.F.R. §§ 17.5 and 17.7, on April 22, 2013, CTP served the complaint on Respondent Bucky's Express #420 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 Bucky's Express #420 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, 1490 North Quentin Road, Palatine, Illinois, 60067, on August 4, 2011, an FDA-commissioned inspector observed staff sell tobacco products to a person younger than 18 years of age;
- At Respondent's business establishment, 1490 North Quentin Road, Palatine, Illinois, 60067, on August 4, 2011, an FDA-commissioned inspector observed that staff failed to verify, by means of photo identification containing the bearer's date of birth, that a purchaser of tobacco products was 18 years of age or older;
- In a warning letter dated October 27, 2011, CTP informed Respondent of the inspector's August 4, 2011 observations, and that such actions violate federal law, 21 C.F.R. §§ 1140.14(a) and 1140.14(b)(1). The letter further warned Respondent that the FDA may initiate a civil money penalty action or take other regulatory action against Respondent if Respondent failed to correct the violations;
- At approximately 4:56 p.m. on December 4, 2012, at Respondent's business establishment, 1490 North Quentin Road, Palatine, Illinois, 60067, an FDA-commissioned inspector observed staff sell a package of Parliament 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 Bucky's Express #420'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),

