

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Center for Tobacco Products,
(FDA No. FDA-2014-H-1918)

Complainant,

v.

SAB Convenience and Gas, Inc. /
Kumar John Beries
d/b/a SAB Convenience and Gas / Citgo,

Respondent.

Docket No. C-15-387

Decision No. CR3591

Date: January 20, 2015

INITIAL DECISION AND DEFAULT JUDGMENT

The Center for Tobacco Products (CTP) began this matter by serving an administrative complaint on Respondent, SAB Convenience and Gas, Inc. / Kumar John Beries, d/b/a SAB Convenience and Gas / Citgo at 6400 Highway 41, Jasper, Tennessee 37347, and by filing a copy of the complaint with the Food and Drug Administration's (FDA) Division of Dockets Management. The complaint alleges that SAB Convenience and Gas / Citgo unlawfully sold tobacco products to minors and failed to verify that a purchaser of tobacco products 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, Cigarettes and Smokeless Tobacco, 21 C.F.R. pt. 1140. CTP seeks to impose a \$250 civil money penalty against Respondent SAB Convenience and Gas / Citgo.

As provided for in 21 C.F.R. §§ 17.5 and 17.7, on November 19, 2014, CTP served the complaint on Respondent SAB Convenience and Gas / Citgo 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 SAB Convenience and Gas / Citgo 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 10:15 a.m. on December 30, 2013, at Respondent's business establishment, 6400 Highway 41, Jasper, Tennessee 37347, an FDA-commissioned inspector observed that a person younger than 18 years of age was able to purchase a package of Grizzly Long Cut Premium Wintergreen smokeless tobacco. The inspector 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;
- In a warning letter dated March 27, 2014, CTP informed Respondent of the inspector's December 30, 2013 observations, and that such actions violate federal law, 21 C.F.R. § 1140.14(a) and (b)(1). The letter further warned that Respondent's failure to correct its violations could result in a civil money penalty or other regulatory action;
- At approximately 5:09 p.m. on May 19, 2014, at Respondent's business establishment, 6400 Highway 41, Jasper, Tennessee 37347, FDA-commissioned inspectors observed that a person younger than 18 years of age was able to purchase a package of L and M Blue Pack cigarettes.

These facts establish Respondent SAB Convenience and Gas / Citgo'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 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). The regulations prohibit the sale of tobacco products to any person younger than 18 years of age. 21 C.F.R. § 1140.14(a).

