

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Center for Tobacco Products,

Complainant,

v.

Check Masters, Inc.
d/b/a Discount Tobacco Masters,

Respondent.

Docket No. C-15-353
FDA Docket No. FDA-2014-H-1886

Decision No. CR3582

Date: January 20, 2015

INITIAL DECISION AND DEFAULT JUDGMENT

The Center for Tobacco Products (CTP) filed an Administrative Complaint (Complaint) against Respondent, Check Masters, Inc. d/b/a Discount Tobacco Masters that alleges facts and legal authority sufficient to justify the imposition of a civil money penalty of \$500. Respondent did not 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 assess a civil money penalty of \$500.

CTP began this case by serving the 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 unlawfully utilized a self-service display of cigarette and smokeless tobacco in a non-exempt facility, impermissibly sold 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), 21 U.S.C. § 301 *et seq.*, and its

implementing regulations, Cigarettes and Smokeless Tobacco, 21 C.F.R. pt. 1140 (2013). CTP seeks a civil money penalty of \$500.

On November 18, 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 proposed 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 could, pursuant to 21 C.F.R. § 17.11, issue an initial decision ordering Respondent to pay the full amount of the proposed penalty.

Respondent has not filed an answer within the time provided by regulation, nor has it requested an extension. Pursuant to 21 C.F.R. § 17.11(a), I am required to “assume the facts alleged in the [C]omplaint to be true” and, if those facts establish liability under the Act, issue a default judgment and impose a civil money penalty. Accordingly, I must determine whether the allegations in the Complaint establish violations of the Act.

Specifically, CTP alleges the following facts in its Complaint:

- Respondent owns Discount Tobacco Masters, an establishment that sells tobacco products and is located at 12 East Broadway Street, Shelbyville, Indiana 46176. Complaint ¶ 3.
- During an inspection of Respondent’s establishment on August 22, 2012, at an unspecified time, an FDA-commissioned inspector observed “customer-accessible shelves containing numerous brands of cigarettes, cigarette tobacco and smokeless tobacco on the main sales floor.” The inspector also observed that the establishment allows minors to enter during regular business hours. Complaint ¶ 10.
- On November 29, 2012, CTP issued a Warning Letter to Respondent regarding the inspector’s observations from August 22, 2012. The letter explained that the observations constituted a violation of regulations found at 21 C.F.R. § 1140.16(c) and that the named violation was not necessarily intended to be an exhaustive list of all violations at the establishment. The Warning Letter went on to state that if Respondent failed to correct the violation, regulatory action by the FDA or a civil money penalty action could occur and that Respondent is responsible for complying with the law. Complaint ¶ 10.
- Talmage Thompson responded to the Warning Letter via a December 10, 2012 letter. Mr. Thompson stated that “Respondent posted age restricted signage, moved all smokeless tobacco and ‘partial cigarettes product’ behind the counter, and reviewed FDA's tobacco website with all employees.” Complaint ¶ 11.

