

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Center for Tobacco Products,  
(FDA No. FDA-2015-H-0037)

Complainant

v.

V. J.'s Country Pantry, Inc. / Joseph Biger  
d/b/a VJ's Country Pantry,

Respondent.

Docket No. C-15-838

Decision No. CR3676

Date: March 4, 2015

**INITIAL DECISION AND DEFAULT JUDGMENT**

The Center for Tobacco Products (CTP) began this matter by serving an administrative complaint on Respondent, V. J.'s Country Pantry, Inc. / Joseph Biger d/b/a VJ's Country Pantry, at 36888 Huron River Drive, New Boston, Michigan 48164, and by filing a copy of the complaint with the Food and Drug Administration's (FDA) Division of Dockets Management. The complaint alleges that VJ's Country Pantry impermissibly sold cigarettes to minors, 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 \$250 civil money penalty against Respondent VJ's Country Pantry.

As provided for in 21 C.F.R. §§ 17.5 and 17.7, on January 9, 2015, CTP served the complaint on Respondent VJ's Country Pantry 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 VJ's Country Pantry 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 1:00 p.m. on March 29, 2014, at Respondent's business establishment, 36888 Huron River Drive, New Boston, Michigan 48164, an FDA-commissioned inspector observed Respondent's staff selling a package of Newport Kings cigarettes to a person younger than 18 years of age;
- In a warning letter dated May 29, 2014, CTP informed Respondent of the inspector's March 29, 2014 observation, and that such an 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 9:35 a.m. on August 1, 2014, at Respondent's business establishment, 36888 Huron River Drive, New Boston, Michigan 48164, FDA-commissioned inspectors documented Respondent's staff selling a package of Newport Box cigarettes to a person younger than 18 years of age.

These facts establish Respondent VJ's Country Pantry'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). Under 21 C.F.R. § 1140.14(a), no retailer may sell cigarettes to any person younger than 18 years of age.

A \$250 civil money penalty is permissible under 21 C.F.R. § 17.2.

### **Order**

For these reasons, I enter default judgment in the amount of \$250 against Respondent V. J.'s Country Pantry, Inc. / Joseph Biger d/b/a VJ's Country Pantry. 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.

\_\_\_\_\_/s/\_\_\_\_\_  
Catherine Ravinski  
Administrative Law Judge