

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Center for Tobacco Products,
(FDA No. FDA-2015-H-0050)

Complainant

v.

S & S Petroleum Enterprises Inc.
d/b/a Sunoco,

Respondent.

Docket No. C-15-852

Decision No. CR3681

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, S & S Petroleum Enterprises Inc. d/b/a Sunoco, at 2739 Annapolis Road, Hanover, Maryland 21076, and by filing a copy of the complaint with the Food and Drug Administration's (FDA) Division of Dockets Management. The complaint alleges that Sunoco 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 Sunoco.

As provided for in 21 C.F.R. §§ 17.5 and 17.7, on January 12, 2015, CTP served the complaint on Respondent Sunoco 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 Sunoco 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 10:48 a.m. on September 14, 2013, at Respondent's business establishment, 2739 Annapolis Road, Hanover, Maryland 21076, an FDA-commissioned inspector observed Respondent's staff selling a package of Newport Box cigarettes to a person younger than 18 years of age;
- In a warning letter dated November 14, 2013, CTP informed Respondent of the inspector's September 14, 2013 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 10:34 a.m. on July 9, 2014, at Respondent's business establishment, 2739 Annapolis Road, Hanover, Maryland 21076, 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 Sunoco'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.

