

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Center for Tobacco Products,

Complainant

v.

Joshua Ranjit Inc.
d/b/a 7-Eleven 10326,

Respondent.

Docket No. T-17-2926
FDA Docket No. FDA-2017-H-1628

Decision No. TB2575

Date: March 30, 2018

INITIAL DECISION

I sustain the determination of the Center for Tobacco Products (“CTP”) of the United States Food and Drug Administration (“FDA”) to impose a civil money penalty of \$5,501 against Respondent, Joshua Ranjit Inc. d/b/a 7-Eleven 10326.

I. Background

Respondent requested a hearing in order to challenge CTP’s determination to impose a civil money penalty. CTP filed an opening brief plus eleven exhibits identified as CTP Ex. 1-CTP Ex. 11. Respondent filed neither a brief nor exhibits. The parties waived an in-person hearing. I afforded the parties the opportunity to file closing briefs. Neither party did so.

II. Issues, Findings of Fact and Conclusions of Law

A. Issues

The issues are whether:

1. Respondent sold tobacco products to minor purchasers and failed to check those purchasers' photographic identifications, in violation of federal regulations governing the sale of tobacco products; and
2. A civil money penalty of \$5,501 is a reasonable remedy.

B. Findings of Fact and Conclusions of Law

CTP determined to impose a civil money penalty against Respondent pursuant to the authority conferred by the Federal Food, Drug, and Cosmetic Act (Act) and implementing regulations at Part 21 of the Code of Federal Regulations (C.F.R.). The Act prohibits the misbranding of tobacco products while they are held for sale after shipment in interstate commerce. 21 U.S.C. § 331(k). The sale of tobacco products to an individual who is under the age of 18 and the failure to verify the photographic identification of an individual who is not over the age of 26 are violations of implementing regulations. 21 C.F.R. §§ 1140.14(a)(1) and (a)(2)(i).

CTP premises its case on an inspection conducted of Respondent's facility on October 11, 2016. On that date, an FDA-commissioned inspector, Tonja Johnson, went to Respondent's facility in the company of a minor who had been hired for the express purpose of attempting to purchase tobacco products from facilities under inspection. CTP Ex. 4 at 2. The minor entered the facility after Inspector Johnson verified that the minor did not have any tobacco products in his or her possession. *Id.* Ms. Johnson watched the minor enter the facility and walk directly to Respondent's sales counter. *Id.* Ms. Johnson then entered the facility and from a vantage point where she had a clear and unobstructed view of the sales counter, she observed the minor purchase a package of Newport Box cigarettes. *Id.* at 3. Ms. Johnson also observed that the minor did not present identification to the facility's clerk. *Id.*

CTP offered corroborating evidence consisting of photographs of the package of cigarettes that the minor purchased on October 11, 2016. CTP Ex. 8; CTP Ex. 9.

Respondent offered no evidence to rebut that which CTP presented. In its answer to the administrative complaint, Respondent denied the complaint's allegations. However, absent any affirmative proof, I find this denial to be naked and without substance. I find Ms. Johnson's testimony and CTP's corroborating evidence to be credible proof that

Respondent unlawfully sold cigarettes to a minor purchaser on October 11, 2016 and unlawfully failed to check the minor's identification on that date.

This case is the second administrative proceeding against Respondent for unlawful sales of tobacco products to minor purchasers and failures to check minors' identification. A previous administrative complaint, filed on November 23, 2015, charged Respondent with unlawful sales and failures to check identification on January 5, 2015 and August 9, 2015. That case was resolved by the entry of a default judgment against Respondent and the Departmental Appeals Board affirmed the judgment.

The evidence proves that Respondent repeatedly violated regulations governing the sale of tobacco products to minors, committing a total of five violations during a period of less than two years.¹ That is egregious conduct. Regulations authorize a penalty of up to \$5,501 for the violations committed by Respondent. 45 C.F.R. § 102.3.

The egregiousness of Respondent's conduct amply justifies the penalty amount. On multiple occasions Respondent sold tobacco products to minor purchasers in violation of law. It did so despite being warned by CTP after the January 5, 2015 violations that penalties would be imposed against Respondent for future unlawful sales.

I take notice that tobacco products are highly addictive and dangerous to the health of those who consume them. They may have lethal long-term effects on consumers. Younger purchasers are highly susceptible to becoming addicted. A penalty of \$5,501 is plainly reasonable given the dangers of tobacco products and Respondent's repeated unlawful sales of these products to minor purchasers.

/s/

Steven T. Kessel
Administrative Law Judge

¹ As a matter of administrative discretion CTP opted to count the sale of cigarettes to a minor purchaser on January 5, 2015 and the failure to check the purchaser's identification on that date as a single violation of the regulations governing tobacco sales. CTP issued a warning letter to Respondent based on the January 5, 2015 inspection results.