

UNITED STATES OF AMERICA  
BEFORE THE DEPARTMENTAL APPEALS BOARD  
CIVIL REMEDIES DIVISION  
DEPARTMENT OF HEALTH AND HUMAN SERVICES

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In the Case of: )  
 )  
Center for Tobacco Products, )  
 )  
Complainant, )  
 )  
v. )  
 )  
Al Zama LLC )  
d/b/a Smoker’s Discount World, )  
 )  
Respondent. )  
\_\_\_\_\_

**ADMINISTRATIVE COMPLAINT  
FOR NO-TOBACCO-SALE ORDER**

FDA Docket No. FDA-2016-R-1897  
CRD Docket No. T-16-1181

**INTRODUCTION**

1. The Center for Tobacco Products (“CTP”), Food and Drug Administration (“FDA”), United States Department of Health and Human Services, seeks to have the Secretary impose a no-tobacco-sale order (“NTSO”) for a period of 30 calendar days on Al Zama LLC d/b/a Smoker’s Discount World (Respondent) for repeatedly violating FDA’s tobacco regulations promulgated under Section 906(d) of the Federal Food, Drug, and Cosmetic Act (“Act”) (21 U.S.C. § 387f(d)). As described in more detail below, FDA-commissioned inspectors observed five repeated violations of FDA’s tobacco regulations over a 36-month period, as shown in the following table:<sup>1</sup>

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<sup>1</sup> The table identifies only Respondent’s violations of regulations promulgated under Section 906(d) of the Act, 21 U.S.C. § 387f(d), and excludes any repeated violations that occurred outside of the 36-month period and any violations of other Act sections that are not at issue in this case.

<b>Charged Violation</b> <sup>2</sup>	<b>Dates of Inspection</b>				<b>Number of Repeated Violations</b>
	06/25/2013	11/19/2013 & 11/21/2013	09/03/2014 & 09/10/2014	08/19/2015 & 09/04/2015	
Selling cigarettes / cigarette tobacco / smokeless tobacco to a minor, 21 C.F.R. § 1140.14(a)		<b>OV</b>	<b>X</b>	<b>X</b>	<b>2</b>
Having a self-service display in a facility not restricted to 18+, 21 C.F.R. § 1140.16(c)	<b>OV</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>3</b>
<b><u>FDA Action</u></b>	Warning Letter Sent 08/15/2013	First CMP Initiated 05/12/2014	Second CMP Initiated 03/02/2015	Current Complaint	<b>Total: 5 Repeated Violations</b>

### **LEGAL AUTHORITY**

2. FDA has the authority to impose an NTSO prohibiting the sale of tobacco products at a retail outlet on any person who commits repeated violations of requirements promulgated under Section 906(d) of the Act (21 U.S.C. § 387f(d)). 21 U.S.C. § 333(f)(8). “Repeated violations” is defined as at least five violations of particular requirements over a 36-month period at a particular retail outlet. See Family Smoking Prevention & Tobacco Control Act, Pub. L. No. 111-31, § 103(q)(1)(A), 123 Stat. 1776, 1838 (2009).
3. The Act prohibits the misbranding of a tobacco product while such product is held for sale after shipment of the product or its components in interstate commerce. 21 U.S.C. § 331(k).

<sup>2</sup> “OV” indicates an original violation. “X” indicates a repeated violation.

4. A tobacco product is deemed to be misbranded if it is sold or distributed in violation of regulations issued under Section 906(d) of the Act (21 U.S.C. § 387f(d)). 21 U.S.C. § 387c(a)(7)(B); 21 C.F.R. § 1140.1(b).
5. The regulations at 21 C.F.R. Part 1140 were issued under Section 906(d) of the Act (21 U.S.C. § 387f(d)). Therefore, selling or distributing a tobacco product in violation of these regulations causes that tobacco product to be misbranded.
6. Retailers who have committed five or more repeated violations of particular requirements promulgated under Section 906(d) of the Act (21 U.S.C. § 387f(d)) within a 36-month period are subject to an NTSO for a period provided in the following table:

<b>Number of NTSOs received by Retailer</b>	<b>Maximum Period of Time for NTSO</b>
First NTSO	30 Calendar Days
Second NTSO	6 Months
Third (and subsequent) NTSO	Permanent NTSO

See CTP, U.S. FDA., U.S. Dep't of Health & Human Servs., Determination of the Period Covered by a No-Tobacco-Sale Order and Compliance with an Order (August 2015), *available at*

<http://www.fda.gov/downloads/TobaccoProducts/Labeling/RulesRegulationsGuidance/UCM460155.pdf>.

7. FDA has documented multiple repeated violations of 21 C.F.R. Part 1140 at Respondent's establishment, as detailed below.

### **CURRENT ALLEGATIONS**

8. Respondent owns an establishment that does business under the name Smoker's Discount World, located at 351 Boston Post Road, Suite 9, North

Windham, CT 06256.

9. Respondent's establishment receives tobacco products, including Rave cigarette tobacco, Samson Original Blend cigarette tobacco, and Top Regular Premium cigarette tobacco, in interstate commerce and holds them for sale after shipment in interstate commerce.
10. On August 19, 2015, an FDA-commissioned inspector conducted an inspection of Smoker's Discount World and documented that the Respondent committed the following violations:
  - a. Selling cigarettes, cigarette tobacco, or smokeless tobacco to a minor, in violation of 21 C.F.R. § 1140.14(a). Specifically, a person younger than 18 years of age was able to purchase a package of Rave cigarette tobacco on August 19, 2015, at approximately 10:29 AM; and
  - b. Using a self-service display in a non-exempt facility, in violation of 21 C.F.R. § 1140.16(c). Specifically, a person younger than 18 years of age was able to enter the establishment and purchase Rave cigarette tobacco contained in the self-service display. Therefore, this facility does not qualify as one where minors are not permitted to enter at any time.

#### **PREVIOUS CASE HISTORY**

11. The Respondent has been the subject of two prior CTP Civil Money Penalty ("CMP") actions based on its violations of the Act.
12. On March 2, 2015, CTP initiated its most recent CMP action against Respondent, alleging that FDA-commissioned inspectors documented the following violations at Respondent's establishment:

- a. Sale to a minor (21 C.F.R. § 1140.14(a)) on September 3, 2014 and November 19, 2013; and
- b. Use of a self-service display in a non-exempt facility (21 C.F.R. § 1140.16(c)) on September 3, 2014, November 19, 2013, and June 25, 2013.

See Compl., FDA Docket Number FDA-2015-H-0588, CRD Docket Number C-15-1425. The CMP Action concluded with Al Zama LLC d/b/a Smoker's Discount World admitting all of the allegations in the Complaint and paying the agreed upon penalty, and the Court closing the case. In acknowledging that the alleged violations occurred, Respondent expressly waived its right to contest such violations in subsequent actions. See Attachment to Notice of Settlement Agreement FDA Docket Number FDA-2015-H-0588, CRD Docket Number C-15-1425.

13. On May 12, 2014, CTP initiated its first CMP action against Respondent, alleging that FDA-commissioned inspectors documented the following violations at Respondent's establishment:

- a. Sale to a minor (21 C.F.R. § 1140.14(a)) on November 19, 2013; and
- b. Use of a self-service display in a non-exempt facility (21 C.F.R. § 1140.16(c)) on November 19, 2013 and June 25, 2013.

See Compl., FDA Docket Number FDA-2014-H-0580, CRD Docket Number C-14-1055. The CMP Action concluded with a final default judgment against Al Zama LLC d/b/a Smoker's Discount World, finding that all of the violations alleged in the Complaint occurred. See Initial Decision and Default Judgment

FDA Docket FDA-2014-H-0580, CRD Docket Number C-14-1055 (CRD Decision CR3290).

14. As described in the paragraphs above, Respondent has committed:
  - a. Two repeated violations and one original violation of 21 C.F.R. § 1140.14(a), and
  - b. Three repeated violations and one original violation of 21 C.F.R. § 1140.16(c).

Accordingly, Respondent has committed a total of five repeated violations of particular requirements in 21 C.F.R. Part 1140 within a 36-month period.

#### **OPTIONS FOR RESPONDING TO COMPLAINT**

15. Respondent must respond to this Complaint. The cover letter provides information on options for responding. Respondent has the right to request a hearing by filing an Answer within 30 days after service of the Complaint. 21 C.F.R. § 17.9. The Answer will be deemed to be a request for a hearing, unless the Answer states otherwise. Failure to file an Answer within 30 days after service of the Complaint may result in a default order imposing the proposed civil money penalty. 21 C.F.R. § 17.11. The Answer must be filed with the Departmental Appeals Board, Civil Remedies Division, 330 Independence Ave., S.W., Cohen Building, Room G-644 (MS 6132), ATTN: FDA NTSO, Washington, D.C. 20201. The Answer must include both the FDA Docket Number and CRD Docket Number which are found at the top of this document.
16. Respondent has the right, but is not required to retain counsel for representation.

**REQUEST FOR RELIEF**

17. CTP respectfully requests that this Court impose a no-tobacco-sale order for a period of 30 calendar days on Respondent.

DATED: July 5, 2016

Respectfully submitted,

/s/

**Paige H. Taylor**

Attorney for Complainant

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