

A Hearing Under Section 6 of the *Tobacco Control Act* R.S.B.C. 1996, c. 451
as amended

Regarding an alleged Contravention of Section 2(2) of the
Tobacco Control Act R.S.B.C. 1996, c.451

- by –

0973703 B.C. Ltd. doing business as Ed’s Confectionary,
(the “Respondent”)

Administrator’s Delegate under Section 5 of the <i>Tobacco Control Act</i> :	C. L. Roberts
Date of Hearing:	September 18, 2015
Place of Hearing:	Richmond, B.C.
Date of Decision:	September 22, 2015
Appearing:	
For 0973703 B.C. Ltd.:	Joseph K. Huang
For the Fraser Health Authority:	Hans Mulder Tobacco Enforcement Officer

Decision

Background

1. The Fraser Health Authority alleged that on April 25, 2015, 0973703 B.C. Ltd., sometimes doing business as Ed’s Confectionary, (“Ed’s”) contravened Section 2(2) of the *Act* by selling tobacco products to a minor.

2. Section 2(2) prohibits a person from selling, offering for sale, providing or distributing tobacco to a person under the age of 19 years of age (section 2(2) of the *Regulation*). I find Ed's in contravention of Section 2(2).
3. Ed's did not contest the allegation and after hearing the evidence of the two Minor Test Shoppers ("MTS"), R.G. and J. A., I am satisfied that, on April 25, 2015, Mr. Huang sold a tobacco product to a person under the age of 19 years of age.
4. Remaining at issue was the appropriate penalty.

Submissions

5. The parties made a joint submission that the following penalty is appropriate:
 - a) A monetary penalty in the amount of \$750; and
 - b) A 25 day license suspension.
6. Section 6.1 of the *Act* provides that, if the administrator is satisfied that a person has contravened the *Act*, the administrator may a) make an order imposing a monetary penalty on the person, in accordance with the prescribed schedule of penalties and b) prohibit the person, in accordance with the prescribed schedule of prohibition periods, from selling tobacco or offering to sell tobacco.
7. I am satisfied that the jointly agreed upon penalty is both in compliance with the *Act* and *Regulations*, and is appropriate in the circumstances.
8. I have considered the fact that on October 27, 2013, the Health Authority issued Ed's a warning for selling tobacco products to minors. I have also considered the fact that two violation tickets were issued to Ed's for a contravention of the same section of the *Act* on March 22, 2014 and February 21, 2015. There was no evidence before me that a contravention has been judicially determined. Consequently, I conclude that this is Ed's first contravention.
9. The *Act* provides for a monetary penalty in an amount between \$0 and \$1,000 for a first contravention. In light of the fact that Mr. Huang asked for no identification or took any steps to ascertain the age of the MTS as well as the fact that he was well aware of his obligations under the *Act*, I find a monetary penalty in the amount of \$750 to be appropriate.
10. I also conclude that a suspension of 25 days is appropriate in light of the fact that Ed's has been selling off its inventory and has not ordered cigarettes since May 2015.

ORDER

11. Pursuant to Section 6.1(2) of the *Act*, I **ORDER** that Ed's pay a monetary penalty in the amount of **\$750**, which is due and payable upon service of this Decision and Order. I **FURTHER ORDER** that Ed's be prohibited from selling tobacco or offering to sell tobacco at 706 12th Street, New Westminster, B.C. for the period November 13, 2015 until December 8, 2015, inclusive.

A handwritten signature in black ink, appearing to read "Carol Roberts". The signature is written in a cursive style with a large initial 'C' and 'R'.

Carol Roberts, Administrator's Delegate