

STATE OF INDIANA

BEFORE THE ALCOHOL AND TOBACCO COMMISSION

IN THE MATTER OF )  
THE PERMIT OF )  
MAIN TOBACCO & CIGAR INC. ) PERMIT NO. TC # 15482001  
1196 N MAIN STREET ) EX # 22001314  
CROWN POINT, IN 46307 ) EX # 22004337  
Permittee. )

PROPOSED FINDINGS OF FACTS AND CONCLUSIONS OF LAW

Main Tobacco and Cigar Inc. (Permittee) is the holder of a tobacco permit issued by the Indiana Tobacco Commission (ATC) under permit number TC 15482001 doing business at 1196 N. Main St., Crown Point, IN. After several investigations on February 9, 2022 and May 11, 2022 Notices of Violations were filed and served by the Indiana State Excise Police. As a result of those actions, the ATC Prosecutor sent a notice of those violations through a Notice of Violation and Settlement Offer letter mailed to the Permittee on March 16, 2022 and June 14, 2022 establishing settlement conferences. The Permittee failed to appear for the conferences and on August 5, 2022 the Prosecutor sent an Order to Show Cause setting the matter for hearing on September 8, 2022 at 11 A.M.

1. FINDINGS OF FACT

1. The ATC Prosecutor sent Notice of Violation and Settlement Offer Letters to the Permittee at its address on March 16, 2022 and June 14, 2022 setting a dates for a virtual settlement conference.
2. The violations are listed as Exhibit's 1 and 2, both admitted into evidence, consisting of the Indiana State Excise Police reports under EX 22001314 and EX 22004337 prepared by Ofc. Brett Thomas Painter.
3. Permittee failed to appear at the scheduled prehearing conference.

4. **ATC Prosecutor Andrew Wignall prepared and the Hearing Judge ordered that an Order to Show Cause Notification be sent to the address of Main Tobacco and Cigar Inc., the Permittee, setting the matter for hearing on September 8, 2022 at the ATC offices at 302 W. Washington St., Indianapolis, IN.**
5. **On September 8, 2022 and 10 AM at the ATC offices at 302 W. Washington St., Room E114, Indianapolis, Indiana the Permittee failed to appear for the Order to Show Cause hearing.**
6. **The Order to Show Cause notification sent to Main Tobacco and Cigar Inc. specifically notified the Permittee that if it failed to appear for the Order to Show Cause hearing a default judgment shall be issued against the Permittee regarding the violations and sanctions imposed which could include revocation of the permit or certificate.**
7. **The ATC waited seven days to give Permittee additional time to appear or communicate with the ATC – they did neither.**
8. **As to Incident Report form EX-22-001314 offered and received into evidence as Exhibit 1 the evidence showed that a complaint was received against the Permittee for selling tobacco products, specifically a vape product and on February 9, 2022 11 AM Indiana state Excise Police Officer Painter observed a minor female in possession of a Mr. Fog Max Pro Ambush vape while she was under the age of 21 after being in the store and obtaining the equipment and that she indicated the male clerk did not ask for identification.**
9. **As to Incident Report Form EX-22-004337 offered and received into evidence as Exhibit 2 the evidence showed that a complaint was received against the Permittee for selling tobacco products, specifically a vape product, to under age individuals and that therefore on May 11, 2022 Indiana State Excise Police Officer Painter observed a male the age of 18 enter the Permittee premises and leave in possession of a Mr. Fog Max Pro Raspberry**

Peach Strawberry vape E-liquid while he had no identification on his possession and that the individual indicated that he and his friends come to this location because they do not ask for identification. The individual stated that he had gone behind the counter and grabbed a vape and placed the money on the counter and walked out.

10. Based upon the investigation and the information provided in Exhibits 1 and 2, on 2 separate occasions, Main Tobacco and Cigar Inc. sold a tobacco product on two separate occasions, specifically vape equipment, to individuals under the age of 21, in both cases not asking for identification at 1196 N. Main St., Crown Point, Indiana.
11. Based upon the Investigation of the Indiana State Excise Police on two separate occasions in February and May 2022 violations of IC 35-46-1-10 (B)(1) and IC 35-46-1-11.7 (B) are found true.
12. Any Finding of Fact may be considered a Conclusion of Law if the context so warrants.

## II CONCLUSIONS OF LAW

1. The ATC has jurisdiction over this matter pursuant to I.C. 7.1-1.2.2 and I.C. 5.1-2-3-4.
2. The notice of violations was proper. 905 IAC 1-37-1 and 905 IAC 1-37-2.
3. A prehearing conference was held under 905 IAC1-37-6 and the Permittee had an opportunity to participate In the Prehearing Conference but failed to appear.
4. The Hearing Judge Issued an Order to Show Cause to Permittee which ordered the Permittee to appear. 905 1-37-9.
5. The two separate violations filed in this matter violate the laws of the State of Indiana and the Indiana Administrative Code and indicate an unwillingness to follow those laws and rules which were a condition of the issuance of the tobacco permit to the Permittee.
6. A default judgment is proper to complete the disposition of the violations. 905 IAC 1-37-9

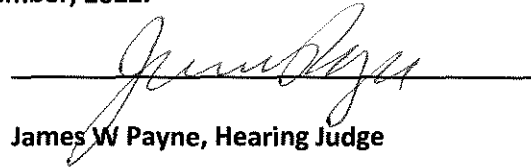
7. Revocation of the Permittee's tobacco license is an appropriate measure for the violations and the failures to appear in these matters.
8. Any Conclusion of Law may be considered a Finding of Fact if the context so warrants.

### III. DEFAULT JUDGMENT ORDER

The Permittee, Main Tobacco and Cigar Inc., after receiving the Order to Show Cause sent on August 5, 2022 failed to appear for the prehearing conferences and the Order to Show Cause for hearings in these matters.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the Permittee, Main Tobacco and Cigar Inc. is found in default the permit of Main Tobacco and Cigar Inc., permit number TC15482001 is hereby revoked and they are hereby ordered and instructed to cease and desist from selling any tobacco products under this permit in the state of Indiana.

All of which is ordered this 20 day of September, 2022.

  
James W Payne, Hearing Judge

Indiana Alcohol and Tobacco Commission

cc.

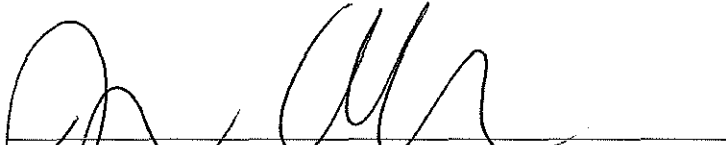
Andrew Wignall, ATC Prosecutor

Main Tobacco and Cigar Inc

1196 North Main Street

Crown Point, Indiana 46307

Approved this 18<sup>th</sup> day of October, 2022.

  
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JESSICA ALLEN, CHAIR

  
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JAMES PAYNE, VICE CHAIRMAN

  
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DALE GRUBB, COMMISSIONER

  
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MARJORIE MAGINN, COMMISSIONER