

STATE OF INDIANA

BEFORE THE INDIANA ALCOHOL AND TOBACCO COMMISSION

IN RE THE MATTER OF THE PERMIT OF:)
) PERMIT NO. TC13447001
MUNDEN LLC, d/b/a MAYSVILLE MARATHON)
 9501 MAYSVILLE ROAD) VIOLATION NO. EX23-021028
 FORT WAYNE, INDIANA)
 46815,)
 Permittee.)

**COMMISSION’S ADOPTED
FINDINGS OF FACTS, CONCLUSIONS OF LAW AND ORDER ON HEARING**

This matter came before Mark A. Jones, Commissioner and Hearing Judge of the Indiana Alcohol and Tobacco Commission (“IATC” or “Commission”), on the allegation by the Indiana State Excise Police (“ISEP”) that the above-captioned permittee has violated the Indiana statutes and regulations of the State of Indiana and the Indiana Alcohol and Tobacco Commission as they pertain to a permittee who holds a certificate authorizing the permittee to sell or otherwise distribute, in exchange for consideration, a tobacco product or electronic cigarette at retail. The certificate-holder or permittee in this case is Munden LLC, and the sole members of that LLC are Parveen Munden and Lakhvinder Munden (jointly “Munden” or “Permittee”). The certificate was issued to Munden on or about January 30, 2018.

We, the Commissioners for the IATC, have reviewed the hearing judge’s Proposed findings and hereby adopt them as our own:

PROCEDURAL HISTORY

This matter was filed by Mr. Andrew Wignall, Prosecutor for the IATC, on October 27, 2023, and a Notice of Violation and Settlement Offer Letter was sent to Permittee on November 29, 2023. On December 7 and 8, 2023, Permittee called Mr. Wignall and stated that she couldn’t

accept the offer, and the two could not reach an agreement; Mr. Wignall informed Permittee that he would ask that the matter be set for a hearing.

On January 8, 2024, a settlement conference was held at which Permittee appeared virtually: Permittee again stated that it could not accept the offer of settlement. A pre-hearing conference was later scheduled for 2/13/24, and Mr. Wignall mailed discovery to Permittee on 2/06/2024. Permittee failed to appear at the pre-hearing conference; consequently, Mr. Wignall mailed additional discovery to Permittee on or about that same date, February 13, 2024. On the same date as the failed pre-hearing conference, the hearing judge both set the matter for a contested hearing on 3/14/2024 at 11:00 A.M., and sent notice of the same to the Permittee.

Those present for the hearing on 03/14/2024 included, for the IATC: Mr. Andrew Wignall, Prosecutor, and ISEP Officer Daniel Vredenburg. Present for the above-captioned Permittee were its sole members: Parveen Munden and Lakhvinder Munden, both of whom were self-represented..

As provided for in the Indiana statutes and Indiana Administrative Rules, and as requested by Mr. Wignall, the undersigned Hearing Judge took judicial notice of the IATC's files in this matter, including those under this case number, TC13447001, as well as those under companion case number EV07363. The following witnesses were sworn and their testimony was heard:

Master Officer Vredenburg:
Maria Solis: and,
Parveen Munden.

The following exhibits were introduced into evidence by the IATC, without objection:

Exhibit #1: Signed Notice of Violation and Settlement Offer Letter regarding Camron Murphy;
Exhibit #2: Photograph of "Grizzly Long Cut [sic] Wintergreen" smokeless tobacco; and,

Exhibit #3: Photograph of Maria Solis.

FINDINGS OF FACT

1. The certificate-holder or permittee in this case is Munden, LLC, and the sole members of that LLC are Parveen Munden and Lakhvinder Munden (jointly “Munden” or “Permittee”). The certificate was issued to Munden on or about January 30, 2018.
2. ISEP Master Officer Daniel Vredenburg has been with ISEP for approximately 18 years. His duties include presiding over several local alcohol boards, enforcement details, tobacco compliance checks, enforcement checks, and inspections of licensed facilities.
3. The tobacco compliance checks (“TCC”) involves working with Indiana University to hire youth to accompany officers to outlets throughout the state to check to see whether those outlets are selling tobacco or alcohol to underage youth. SEE, *e.g.* I.C. 7.1-6-2-4.
4. The officers follow standard protocols, which include: youth who appear to be their actual age; the youth cannot dress to appear older; the youth’s photograph is taken during each operation; the youth don’t carry identification; and they are not allowed to lie, so they must answer questions from permittees honestly. If asked their age or their date of birth by a permittee, the youth must state their actual age or date of birth.
5. The youth used for TCCs are 16 to 20 years old. When they are 3 months from 21, they are no longer eligible to participate in the checks.
6. There are two officers with each TCC: one goes in with the youth while the other waits in the vehicle. If the youth is allowed to purchase the product, the youth

completes the transaction then goes out to the vehicle in which the other officer is waiting.

7. The ideal goal of the TCC is that no outlet sells age-restricted items to minors.
8. On October 10, 2023, he and Lt. Keith Rinehart performed a TCC with “Tobacco Youth” Maria at the Maysville Marathon, 9501 Maysville Road, Fort Wayne, Allen County, Indiana. The certificate holder at that location is Munden, LLC.
9. Maria Solis, the so-called “Tobacco Maria” was born on April 13, 2013, thus was 20 years old at the time of the TCC on October 10, 2023.
10. Master Officer Vredenburg (“Vredenburg”) and Ms. Solis went into the Maysville Marathon at the same time, and Vredenburg stood right next to Ms. Solis at the counter. Ms. Solis asked to purchase a can of Grizzly Long Cut [sic] Wintergreen smokeless tobacco.
11. The on-duty clerk, an employee of Munden, LLC, d/b/a Maysville Marathon, asked Ms. Solis if she had any identification on her, and she said that she did not. The clerk then said that he would let it go this time, and he rang up the product. He told Ms. Solis how much it was, she paid for it, and then she left with the Grizzly Long Cut [sic] Wintergreen smokeless tobacco product. SEE IATC Exhibit #2. Both Vredenburg and Ms. Solis went outside to the vehicle in which Lt. Rinehart was waiting.
12. Vredenburg could hear the entire conversation, and at no time did the clerk ask Ms. Solis her age or her date of birth.
13. Vredenburg returned to the store, identified himself to the clerk, showed him the photograph of Ms. Solis, IATC’s Exhibit #3, and told him that Ms. Solis was only 20

years old.

14. The clerk identified himself as Camron Murphy (“Murphy”). He further stated that he had initially questioned her age (in his thoughts) because of her braces, but went ahead and sold the Grizzly to her anyway.
15. Vredenburg filled out a notice of violation (“NOV”) for the clerk and one for the business, then gave them both to the clerk and asked him if he had any questions – he did not.
16. Vredenburg, the Lieutenant and Ms. Solis then left the premises and proceeded to the next place to check.
17. Munden, LLC, d/b/a Maysville Marathon, has had two prior violations, one in 2020 and one in 2021:
 - a. On October 19, 2020, a clerk at Maysville Marathon, not Mr. Murphy, sold tobacco (cigarillos) to the same Maria Solis, who was then 17 years old;
 - b. On April 6, 2021, a different clerk at Maysville Marathon sold Grizzly Wintergreen smokeless tobacco to the same Ms. Solis, who was still just 17 years old.
18. After this last sale, Munden has had the cash register set in a way that IDs have to be scanned, and if not scannable, then the clerk is required to look at the ID and enter it into the register.
19. Permittee has trained clerks in the past, and continues to, and repeatedly tells them not to sell to underage people.
20. Any finding of fact that should be considered a conclusion of law shall be deemed so if appropriate.

CONCLUSIONS OF LAW

1. Any Conclusion of Law that should be considered a finding of fact shall be deemed to be so if appropriate.
2. The Commission has jurisdiction over these matters pursuant to Indiana statutes and regulations, including: Indiana Code 7.1-1-2-2; 7.1-2-1-0.3, *et seq.*; 7.1-2-2-1, *et seq.*; 7.1-2-3-1 *et seq.*; 7.1-3-18.5-1, *et seq.*; and the Indiana Administrative Code, 905 IAC 1-1-1, and 905 IAC 1-37-1, *et seq.*.
3. All parties were provided an opportunity to appear, present evidence, respond, cross-examine witnesses, present rebuttal evidence, and make arguments to the hearing judge. 905 IAC 1-37-10.
4. All testimony was presented under oath or affirmation. 905 IAC 1-37-11.
5. The undersigned's taking judicial notice of the Commission's file is appropriate. 905 IAC 1-37-11
6. Vredenburg's service of the NOV's upon Munden and Murphy was proper, and they received said notice. 905 IAC 1-37-1.
7. Munden was afforded its rights to a pre-hearing conference, a settlement conference, and an evidentiary hearing. 905 IAC 1-37-1, *et seq.*.
8. I.C. 35-46-1-10.2 provides, in part: "A retail establishment that sells or distributes tobacco, an e-liquid, or an electronic cigarette to a person less than twenty-one (21) years of age commits a Class C infraction. For a sale to take place under this section, the buyer must pay the retail establishment for the tobacco, e-liquid, or electronic cigarette."
9. Mr. Murphy, Munden's clerk, sold a tobacco product to Ms. Solis, without asking for

proper identification or authentication of her age, all of which is in violation of I.C. 35-46-1-10.2

10. Ms. Solis was under the age of 21 years at the time she purchased the tobacco product.

11. Munden, a retail establishment, thus sold “tobacco to a person less than twenty-one (21) years of age commit[ting] a Class C infraction.”

12. Munden has no legally-recognized defense to the offense. I.C. 35-46-1-10.

13. I.C. 7.1-2-3-33 provides: “The Commission is authorized to:

(1) investigate a violation of; and

(2) enforce a penalty for a violation of;

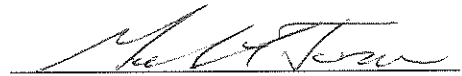
IC 35-46-1-10, IC 35-46-1-10.2, IC 35-46-1-11, IC 35-46-1-11.2, IC 35-46-1-11.4, IC 35-46-1-11.5, IC 35-46-1-11.7, or IC 35-46-1-11.8.”

14. Pursuant to I.C. 7.1-3-23-2 and 7.1-3-23-3, the Commission has the authority to fine and/or suspend Munden for its violation of I.C. 35-46-1-10.2.

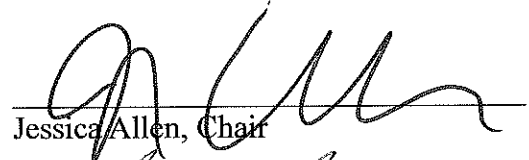
JUDGMENT AND ORDER

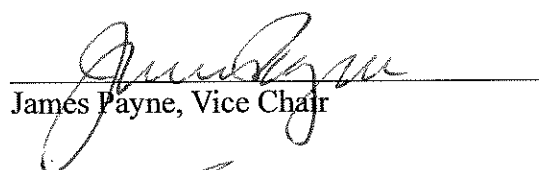
IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Munden, LLC, d/b/a Maysville Marathon, is guilty of Violation No. EX23-021028, for having sold tobacco to a person less than twenty-one (21) years of age, a Class C infraction. IT IS FURTHER ORDERED THAT: Munden, LLC, shall pay a civil penalty in the amount of one thousand dollars (\$1,000.00) within thirty (30) days of the full Commission’s adoption of this Order; said payment shall be made by money order or business check, and made payable to the Indiana Alcohol and Tobacco Commission*; Munden’s Certificate No. TC13447001 shall be suspended for a period of three (3) days, which three (3) days shall be a consecutive Tuesday, Wednesday and Thursday; and finally, the specific time period of the three-day suspension shall be arranged in advance with ISET Master Officer Vredenburgh.

SO ORDERED THIS 13th DAY OF April 2024:

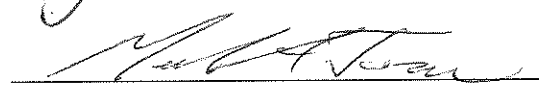

Mark A. Jones
Hearing Judge, IATC

The Proposed Findings tendered in this matter by Hearing Judge Mark A. Jones and signed by him on the above-referenced date are hereby adopted by the Indiana Alcohol and Tobacco Commission this 8th day of May, 2024.


Jessica Allen, Chair


James Payne, Vice Chair


Marjorie Maginn, Commissioner


Mark A. Jones, Commissioner

* The funds will then be deposited in the Richard D. Doyle youth tobacco education and enforcement fund.

cc: Andrew Wignall, IATC, via email
Munden LLC, via USPS addressed to:
Munden LLC, via email addressed to: