

STATE OF NEW YORK
OFFICE OF CANNABIS MANAGEMENT
OFFICE OF ADMINISTRATIVE HEARINGS

OFFICE OF CANNABIS MANAGEMENT,

Petitioner,

-against-

Arthur Smoke Shop Corp.

Respondent.

DECISION

Inspection No.: 102202407230029

Respondent requested an emergency hearing on July 29, 2024, which was made within seven (7) calendar days of the date of the inspection which occurred on July 23, 2024.

The emergency hearing was conducted on August 2, 2024 which is within three (3) business days of the Respondent's request.

The Respondent was represented James Kirshner, Esq..

The Office of Cannabis Management (hereinafter "OCM") was represented by Trent Justice Biscone under the observation and supervision of Michael Waller, Esq.

Investigative Specialist Bladimir Nunez testified on behalf of OCM.

ISSUE

The allegations set forth in the Notice of Violation indicate that the Respondent was offering cannabis products, as defined by Cannabis Law Article 3, for sale without an appropriate registration, license, or permit. This allegation was based upon observations made during a regulatory inspection which was conducted at 1968 Arthur Ave. Bronx, New York 10457.

The scope of the emergency hearing was limited solely to the issue as to whether or not the padlocking provisions Cannabis Law Article 6 § 138-b of have been met by a preponderance of the evidence.

APPLICABLE LAW

Cannabis Law Article 6 §138(a) provides that “The board or the Office of Cannabis Management shall, in accordance with the authority otherwise conferred in this chapter, have the authority to: 1. order any person who is unlawfully cultivating, processing, distributing or selling cannabis, cannabis product, cannabinoid hemp or hemp extract product, or any product marketed or labeled as such in this state without obtaining the appropriate registration, license, or permit therefor, or engaging in an indirect retail sale to cease such prohibited conduct. 2. seize any cannabis, cannabis product, cannabinoid hemp or hemp extract product, or any product marketed or labeled as such, found in the possession of a person engaged in the conduct described in subdivision one of this section.”

Cannabis Law Article 6 § 138-b(1) provides that orders to seal: In addition to any other authority conferred in this chapter, pursuant to the provisions of this section, the board or the office shall have the authority to issue an order to seal the building or premises of any business engaged in unlicensed activity, when such activity is conducted, maintained, or permitted in such building or premises, occupied as a place of business as described in subdivision eight of section ten of this chapter, in violation of subdivision one or one-a of section one hundred twenty-five or subdivision one or eight or section one hundred thirty-two of this article.

Cannabis Law Article 6 §138-b(6) provides that an order to seal may be issued by the office or the board pursuant to subdivision three of this section only if:

- (a) no part of the premises to be sealed is used in part as a residence and pursuant to local law or ordinance is zoned and lawfully occupied as a residence; and
- (b) the unlicensed activity as described in this section is more than a de minimis part of the business activity on the premises or in the building to be sealed pursuant to this subdivision, the office shall issue a notice of violation and order to cease the unlicensed conduct, which shall constitute notice that such activity must cease immediately. (See Regulations at 9 NYCRR 133.25(f)(2-3)).

Cannabis Law Article 6 §138-b(7) provides that in assessing whether unlicensed activity within a building is more than de minimis, the office or board, as relevant, shall consider factors such as any one or more of the following:

- (a) the presence of signs or symbols, indoors or out, advertising the sale of cannabis or otherwise indicating that cannabis is sold on the premises;
- (b) information shared in any advertisements or other marketing content in connection with the unlicensed business activity and any direct or indirect sales of cannabis or other conduct in violation of this chapter;
- (c) the volume of illicit cannabis products on site; and
- (d) the variety of illicit cannabis products on site. (See Regulations at 9 NYCRR 133.25

(f)(3)(i-iv)).

Cannabis Law Article 6 §138-b (3) provides that the office may issue an order to seal with an immediate effective date if such order is based upon a finding by the office of an imminent threat to the public health, safety and welfare. (See Regulations at 9 NYCRR 133.25(f)(1)).

Cannabis Law Article 6 §138-b(4) sets forth the factors that determine an imminent threat to public health, safety, and welfare shall be limited to:

- (a) documented sales to minors;
- (b) unlicensed processing of cannabis products at the building or premises;
- (c) orders issued following an inspection wherein the person engaged in the unlicensed activity engaged in violent, tumultuous, or other behaviors indicating expressed intent to not comply with the office's order to cease the unlicensed activity;
- (d) documented presence of unlawful firearms at the building or premises;
- (e) proximity of the building or premises to schools, houses of worship, or public youth facilities;
- (f) presence of products deemed unsafe based on reports of illness or hospitalization; or
- (g) sales of, or offers to sell, cannabis products not tested or labeled lawfully in accordance with this chapter. (See Regulations at 9 NYCRR 133.25(f)(1)(i-vii).

FINDINGS OF FACT

1. Respondent was offering cannabis products for sale without a license issued by OCM. Investigator Nunez testified that he has experience and training in identifying cannabis and Hemp. When identifying THC cannabis he looks for characteristics such as the form to determine if it is cannabis or hemp, and the label on any packaging. Investigator Nunez explained that during his inspection of Arthur Smoke Shop Corp., he observed a multitude of illicit cannabis products such as: flower, concentrate, pre-rolls, edibles, Δ 8 edibles. (Exhibit A, B, C, D1, D2, and E)

2. Investigator Nunez testified that no part of the premises to be sealed was used in part as a residence and pursuant to local law or ordinance no part was zoned and lawfully occupied as a "residence."

3. The unlicensed activity which warrants an order to seal constitutes more than a "de minimis" part the business activity. The Cannabis Law Article 6 §138-b (7) and OCM Regulations part 133.25(f)(3) enumerate the factors to consider when determining if unlicensed activity occurring within a business is more than de minimis. One of the relevant factors is

whether a large volume and variety of illicit cannabis products was found on the premises. Investigator Nunez testified that there was indeed a large variety and volume of illicit products observed on the premises of Arthur Smoke Shop. There were numerous brands on display, including: Stiizy, Flav, Eighth, Punch Bar, Big Chief, MAD Labs, Gorilla Family Farm, Truemoda, SIC!, California Honey, DAB, High Lyfe, Kutos, GBT!!, Esketit Edibles. (See Exhibits C, D1, D2, E). An extensive variety of product types were also observed including, but not limited to: loose flower offered in 19 strains, vape pods, sour gummy belts edible with live resin, vape oil, toffee milk chocolate bar edible, mango distillate cartridge, very berry cube edibles, peach punch fun cube extreme edibles, kiwi strawberry fun cube extreme edibles, passion fruit gummy edibles, vape pens, four varieties of Δ 8 Dab jars, fun cube edibles, THC-P and Δ 11 cartridge, THC A + Δ 6 + THC P vape cartridge in multiple flavors, blueberry sour gummy belt edibles with live resin, Δ 8 THC oil, cheesecake infused edibles, pistachio cube edibles, disposable THC O vape, HHC vape cartridge, knock off Doritos, Cannaburst gummies, Xtreme bite gummies, knock off Trix edibles, knock off Rice Krispies edibles, Trips Ahoy edibles, knock off Fruity Pebbles edibles, knock off Apple Jacks edibles, and knock off Cocoa Puffs edibles. (See Exhibits B, C, D1, D2, and E).

4. The unlicensed activity constituted an imminent threat to public health, safety, and welfare in that: there were sales of, or offers to sell, cannabis products that were not tested or labeled lawfully in accordance with Cannabis Law Article 6. Δ 9 THC products, as well as other THC isomers or derivatives were being offered for sale at the premises at the time of the inspection. The OCM Regulations, §114.8 (a)(11) state that cannabinoid hemp products are not to contain, “synthetic cannabinoids, artificially derived cannabinoids, or cannabinoids created through isomerization, including, but not limited to, Δ 8 tetrahydrocannabinol and Δ 10-tetrahydrocannabinol.” Additional synthesized cannabinoids include HHC, which “can be synthesized from CBD by chemical transformation and is hence called semi-synthetic.” (Exhibit F, pg 126) Arthur Smoke Shop had products containing THC derivatives and isomers, which were not tested or labeled lawfully in accordance with the cannabis law. (See Exhibit D2 pg 10-13, 15, 17-21, See Exhibit F). Arthur’s Smoke Shop also had numerous products that were attractive to minors in that they resembled common snacks and cereals or were brightly colored in nature. This is directly in violation of OCM Regulation §114.9 (b). In fact, Investigator Nunez testified that he was worried that the packaging was very attractive to minors. Whether or not products such as the Sic! Passion Fruit Canna Gummies are in fact less than .3%THC, they are in contradiction to the OCM Regulations in that they are marketed towards minors and could cause a consumer to believe that it contains cannabis in violation of §114.9 (h)(7). (Exhibit D2 pg, 6). Many of the products observed in Exhibit B were completely unlabeled in violation of the Cannabis Law. Additionally, products seen in Exhibits D1, D2 and E contained California warning labels, no warning labels, or labels that were not in accordance with New York State law.

WHEREFORE, PURSUANT TO CANNABIS LAW ARTICLE 6 §138-b (9), THE ORDER TO SEAL, ISSUED ON JULY 23, 2024, HEREBY EXTENDED FOR ONE YEAR FROM THE DATE OF THIS DECISION.

Dated: August 8, 2024

Laurie Cartwright
Administrative Law Judge

PLEASE BE ADVISED: Either party may appeal this decision within 30 calendar days of receipt, according to the specific manner described in Regulations at 9 NYCRR 133.25(k).

This decision was sent via email on August 8, 2024, to the following:

Nickolas Perry
Sheila Wagner
Trent Justice Biscone
Michael Waller, Esq.
James Kirshner, Esq.