

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

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**OFFICE OF CANNABIS MANAGEMENT,**

Petitioner,

-against-

**DECISION**

**Complaint No. 204 2024 0716 0023**

**BRECKEN GOLD ATHLETICS NYC LLC  
D/B/A BRECKENRIDGE HEMP COMPANY**

Respondent.

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**ISSUE AND PROCEDURAL HISTORY**

The allegations set forth in the Notice of Violation and Order to Cease Unlicensed Activity and Notice of Hearing (hereinafter “NOV”) indicate that the Respondent was offering cannabis products, as defined by Cannabis Law § 3, for sale without an appropriate, registration, license, or permit issued by the Office of Cannabis Management. This allegation was based upon observations made during a regulatory inspection which was conducted at 59 W 31st Street, New York, NY, on July 16, 2024.

A virtual hearing was held on October 7, 2024 from the Albany Office of Cannabis Management before Administrative Law Judge Karen Lavery. Ruben Espinosa, Esq. appeared on behalf of the New York State Office of Cannabis Management (hereinafter “OCM”) and Joshua Bauchner, Esq. appeared on behalf of the Respondent. OCM Investigative Specialists Jessica Jenkins (hereinafter “Inspector Jenkins”) testified on behalf of OCM. Tyler Lehmann, the owner of BRECKEN GOLD ATHLETICS NYC LLC D/B/A BRECKENRIDGE HEMP COMPANY testified on behalf of the Respondent.

**FINDINGS OF FACT**

On July 16, 2024, OCM Investigator Jessica Jenkins was part of a regulatory inspection at Brecken Gold Athletics NYC LLC d/b/a Breckenridge Hemp Company located at 59 W 31<sup>st</sup>

Street, New York, NY. Tyler Lehmann, owner of the subject business, was in possession of a valid Cannabinoid Hemp Retail License (hereinafter “Hemp Retail License”) as well as a valid Cannabinoid Hemp Distributor Permit (hereinafter “Hemp Distributor Permit”), both of which were issued by OCM (Exhs 1-2). The Hemp Retail License allowed Respondent to sell cannabinoid hemp products with a tetrahydrocannabinol (hereinafter “THC”) concentration less than or equivalent to 0.3 percent, within New York State. Respondent’s Hemp Distributor Permit allowed him to sell products with a THC concentration greater than 0.3 percent THC to states outside of New York State. Investigator Jenkins testimony that Respondent was not in possession of an Adult Use Cannabis License was also confirmed by Mr. Lehmann.

Respondent owned a retail hemp shop pursuant to his Hemp Retail License. During the course of the July 26, 2024 inspection of that location, Investigator Jenkins observed a package of edibles which was labeled “Muffins NEW YORK CANNABIS” (Exh B 2). At the top of the package was a yellow triangle which contained a cannabis leaf and the letters “THC” as well as a label that said 21+ (Exh B 2). The package was labeled solely as cannabis and not as cannabinoid hemp (Exh B 2). Investigator Jenkins found this product in a lockable cabinet with a glass front through which the products could be viewed, located on the sales floor where the public had access (Exh B 3-4). The product was located in a wire basket which contained a substantial amount of other packages of that same product (Exh B 3-4). By the Respondent’s own admission, this product contained over the 0.3 percent THC concentration which rendered it illegal to sell within New York State under the terms of his Hemp Retail License. I find this product to be illicit cannabis given the Respondent’s testimony of the product’s THC percentage as well as the label on the package which clearly identified it as such (Exh B 2). While Respondent’s Hemp Distributor Permit would permit him to sell this product outside of New York State, I note that its presence on the sales floor, along with multiple packages of the same product, indicates that it was being offered for sale. While the Respondent contends that the sign located on the cabinet above the product is evidence that this product was only offered for sale outside of New York State, I disagree. The sign read as follows “ATTENTION!! For consumers and vendors outside of New York State You can buy all our products surpassing NYS THC regulations on [www.thebreckenridgehemp.com](http://www.thebreckenridgehemp.com)” (Exh B 3-4) The sign does not explicitly state that the cannabis greater than 0.3 % THC product was not available to New York State residents nor that it was a product prohibited in New York State. The absence of such language as well as the location and visibility of the product in addition to the volume of packages on display indicate that it was being offered for sale. The sign simply addressed “consumers and vendors outside of New York State” however was silent as to any consumers or vendors within New York State who might wish to purchase the product. The Respondent testified that these products were previously legally permissible for him to sell in compliance with the terms of his Hemp Retail License however the sale of this product was now prohibited since the laws changed in December of 2023. He contends that they were just being stored in the cabinet until such time as they were shipped out of New York State. Testimony was given and photographs entered into evidence depicting that the storage, packaging, and processing of other products which the Respondent testified that he was also legally prohibited from selling in New York State, were in the basement and out of sight from patrons in his shop. Therefore, in the event that the products were not legally permissible to sell as they were cannabis greater than 0.3% THC, the prohibited products should have been stored out of public view until such time as they were shipped out of state (Exh B 6, 8). The Respondent testified as to another particular product

which contained greater than 0.3 % THC which he was legally permitted to sell in New York State prior to December of 2023 however he moved that product downstairs after the change in laws made it legally impermissible to sell under his Hemp Retail License (Exh B 6).

Furthermore, pursuant to OCM's "*Cannabinoid Hemp Regulations Guidance for Licensees*," cannabinoid hemp products that are now prohibited in New York but allowed to be sold out of state require that any such products in possession of a New York State Cannabinoid Hemp Licensee must be clearly labeled that they are not for sale in New York's Cannabinoid Hemp Program and must not be in a location at the licensed premises where they are offered or accessible to consumers. Furthermore, they must be separate and distinct and not available for sale in New York State. I note that the cannabis products were neither clearly labeled that they were not for sale, were in a location where they were potentially offered to or accessible to consumers, and were not separated from other products in the cabinet which the Respondent testified that he could legally sell pursuant to his Hemp Retail License. I note the photograph depicting solid, opaque, locked cabinets on the floor of the location in which Respondent could have easily stored this product had it merely been placed in the glass front cabinet for storage purposes (Exh B 5).

Investigator Jenkins testified that when completing the Notice of Violation, she erroneously failed to list the cannabis edible product which was labeled "Muffins." While the basis of her photographs and testimony were focused on this particular product, I find that omitting this product on the NOV was merely an oversight on her part.

Furthermore, Respondent's attorney correctly contends that both hemp and cannabis are derived from the cannabis plant. While that is true, it is only logical that a clear distinction be made on the package so that a customer and ultimate consumer of that product can be aware of exactly which product they are purchasing and ingesting as the effects on a person using greater than 0.3% THC cannabis and no more than 0.3 % THC cannabinoid hemp can be quite different. A product which is labeled as "cannabis" would lead a reasonable consumer to believe that they are purchasing cannabis greater than 0.3% THC rather than cannabinoid hemp which has no more than 0.3% THC. Furthermore, the difference between the two products is exactly why OCM requires a different license for the sale of each. The labeling on the product is controlling as to what is contained inside the package. In the present case, the labeling on the package clearly indicated cannabis.

Lastly, I note the testimony of Investigator Jenkins that OCM's Enforcement Unit was present to conduct a regulatory inspection of the Respondent's hemp shop based upon a tip that cannabis was being sold from that location. The purpose of the investigation was to determine if cannabis was being sold as Respondent was not in possession of an Adult Use Cannabis License. Therefore, any such violation is governed by Article 4 of the Cannabis Law as the Respondent was offering for sale a cannabis product for which he was not in possession of a license to sell.

### **APPLICABLE LAW**

Cannabis Law Article 6 §125(1) provides that: "No person shall cultivate, process, distribute for sale or sell at wholesale or retail or deliver to consumers any cannabis, cannabis product, medical

cannabis or cannabinoid hemp or hemp extract product within the state without obtaining the appropriate registration, license, or permit therefore required by this chapter unless otherwise authorized by 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.”

Cannabis Law Article 6 §132(1)(a) provides that any person who sells cannabis, or cannabis products, or any product marketed or labeled as such, without having an appropriate registration, license or permit therefor, may be subject to a civil penalty of not more than ten thousand dollars for each day during which such violation continues.

Cannabis Law Article 6 §132(1)(a) provides that “where such person has been ordered to cease such conduct pursuant to subdivision one of section one hundred thirty-eight-a of this chapter, such person may be assessed a civil penalty of no more than twenty thousand dollars per day for each day during which such violation continues after receiving such order in addition to the additional civil penalties set forth above...”

Cannabis Law Article 1 §3 (3) defines "Cannabinoid hemp" as any hemp and any product processed or derived from hemp, that is used for human consumption provided that when such product is packaged or offered for retail sale to a consumer, it shall not have a concentration of more than three tenths of a percent delta-9 tetrahydrocannabinol.

Cannabis Law Article 1 §3 (17) defines "Concentrated cannabis" means: (a) the separated resin, whether crude or purified, obtained from cannabis; or (b) a material, preparation, mixture, compound or other substance which contains more than three percent by weight or by volume of total THC, as defined in this section.

Cannabis Law Article 1 §3 (27) defines "Hemp" as the plant *Cannabis sativa* L. and any part of such plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration (THC) of not more than three-tenths of a percent on a dry weight basis. It shall not include "medical cannabis" as defined in this section.

**WHEREFORE, RESPONDENT IS HEREBY ORDERED:**

To pay a **\$7,500** fine for the sale of illicit cannabis and cannabis products without a license on July 26, 2024.

*Karen Lavery*  
Administrative Law Judge

DATED: October 21, 2024

This decision was sent via email on October 21, 2023 to the following:

Nickolas Perry  
Sheila Wagner  
Celena Ditcher, Esq.  
Ruben Espinosa, Esq.  
Joshua Bauchner, Esq.

