

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

---

**OFFICE OF CANNABIS MANAGEMENT,**

Petitioner,

-against-

**DECISION**

**Inspection No. 105202405300001**

CROSS BAY SNACKS INC.

Respondent.

---

Respondent requested an emergency hearing on June 5, 2024 which was made within seven (7) calendar days of the date of the inspection which occurred on May 30, 2024.

The emergency hearing was conducted on June 10, 2024 due to the need for further information necessary a for a completed application.

The Respondent was represented by James Kirschner, Esq.

No witnesses testified on behalf of the Respondent.

The Office of Cannabis Management (hereinafter “OCM”) was represented by Mary Preston, Esq.

Senior Investigator Jessica Jenkins 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 105-12 Cross Bay Blvd, Queens, NY 11417.

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 off the evidence.

## CONCLUSIONS OF 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 Jenkins credibly testified and provided photographic evidence that at the time of the inspection, she observed a wide variety of illicit cannabis products including cannabis flower cannabis concentrate, and cannabis edibles (Exh B, b-5 - b-12, b-18 - b-19, Exh C, c-6 - c7, c10 - c-12). In addition, photograph evidence was admitted into evidence showing a cash register and a card reader, both indicative of sales of unlicensed cannabis at the site (Exhs B, b-3 -b-4).
2. According to the credible testimony of Investigator Jenkins, 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.”
3. The unlicensed activity which warrants an order to seal constitutes more than a “de minimis” part the business activity. The Notice of Violation/Order to Seal (Exh A) in conjunction with the testimony of Investigator Jenkins as well as the photographic evidence


established that the volume and variety of illicit cannabis products observed at the site exceeded a “de minimis” part of the business activity.

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 not tested or labeled lawfully in accordance with Cannabis Law Article 6. The products were labeled with the California brand and not labeled in accordance with the NYS OCM adult use label. It is also significant that many of the products were packaged with labeling which depicted cartoonish figures which could be appealing to people under 21 years of age (Exh B, b-17-19, Exh C, c-11) which is also indicative of products prohibited for sale in New York as such labeling/packaging is in violation of New York laws and regulations.

Respondent’s attorney argued that no evidence was presented to establish that the shop was the correct one as it contained no name or number on the door. This argument is rejected based upon the credible testimony of Investigator Jenkins who stated that the address was located using the numbers of the buildings on the opposite sides of the one at issue. Furthermore, Respondent’s attorney argued that service was not properly effectuated in compliance with the regulations and questioned as to whether the person upon which the Notice of Violation, Order to Cease Unlicensed Activity and/or Order to Seal was served was in fact appropriate. The Notice of Violation is signed by someone who Investigator Jenkins testified identified himself as an employee of the store and his name is visible on the computer screen of the cash register depicted in Exh B, b-3 therefore, such personal service upon this individual as an employee of the store was appropriate. In addition, an Affirmation of Service by Mailing was produced (Exh E, e-3) which established that on June 4, 2024, the Notice of Violation, Order to Cease Unlicensed Activity and/or Order to Seal was served upon the address of the business. As evidenced by Respondent’s attorney’s appearance at the hearing in a representative capacity of the named business, I reject his argument that the business at issue was not Cross Bay Snacks Inc. For the same reason, I reject his assertion of improper service. While there has been no evidence of improper service, his appearance at the hearing as a representative of his client negates the argument that his client was in any way prejudiced by any service issue.

**WHEREFORE, PURSUANT TO CANNABIS LAW ARTICLE 6 §138-b (9), THE ORDER TO SEAL, ISSUED ON JUNE 11, 2024 IS HEREBY EXTENDED FOR ONE YEAR FROM THE DATE OF THIS DECISION.**

Dated: June 11, 2024

  
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 (date emailed), to the following:

Nickolas Perry  
Sheila Wagner  
Mary Preston, Esq.  
James Kirschner, Esq.