

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

OFFICE OF CANNABIS MANAGEMENT,

Petitioner,

-against-

TK and L3 Inc.

Respondent.

DECISION
Inspection No. 211202407170017

Respondent requested an emergency hearing on July 18, 2024, which was made within seven (7) calendar days of the date of the inspection which occurred on July 17, 2024.

The emergency hearing was conducted on July 23, 2024, which is within three (3) business days of the Respondent's request.

The Respondent, Zhenghao Ge, represented himself.

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

Senior Investigative Specialist William McKay 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 836 Broadway Brooklyn, New York 11206.

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. During the course of the hearing, Senior Investigator William McKay testified about the regulatory inspection he performed at TK and L3 Inc. on July 17, 2024. He stated that he has training and experience in identifying cannabis and illicit cannabis products. He explained that he identifies illicit products, in part, based on the training he has in identifying and distinguishing the New York State cannabis warning label in contrast with the warning labels of other states. Senior Investigator McKay testified that during his regulatory inspection he observed TK and L3 Inc. offering many cannabis products for sale including, but not limited to: many strains of flower, in addition to concentrate, pre-rolls, moon rocks, wax, disposable product, and gummies. Photographs were also entered into evidence that showed price lists and the price labels on certain cannabis products, which indicates that they were being offered for sale. (See Exhibit B 10, B 15, B 18, C 1, C 2.)

2. During the hearing Senior Investigator William McKay testified that no part of the premises that were sealed were used in part as a residence or pursuant to local law or ordinance,

was zoned and lawfully occupied as a “residence.” He explained that there was no kitchen, shower, or dresser on the property and that the location appeared to be commercial property.

3. The unlicensed activity which warrants an order to seal constitutes more than a “de minimis” part the business activity, in that there was a wide variety and volume of illicit cannabis products on site. Exhibit B and C depict a large volume and variety of the products observed at TK and L3 Inc., during the inspection. Exhibit B 6 through B 9 are records clearly showing the large variety of cannabis flower stocked June 11, 12, 13, 16, and 17 of 2024. Senior Investigator McKay’s testimony indicated that Exhibits B 10 and B 12 depict empty air sealed plastic jars that are commonly used for storing cannabis. The jars in these two exhibits are also labeled with the names of cannabis flower strains, including White-Runtz, which Exhibit B 3 indicates contains over 25% total THC. Exhibits C 1 through C 4 also depict the same or similar air sealed plastic jars containing cannabis flower. Additionally, Exhibits B 16 and C 5 depict cases with empty pre roll wrappers, concentrate jars and vape cartridges.

4. The unlicensed activity occurring at TK and L3 Inc., 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. Senior Investigator McKay testified that the products observed in the location and offered for sale were not tested nor were they labeled lawfully according to New York State Law. As observed in Exhibits B and C, the majority of the product observed at the location was loose flower found in unlabeled jars. B 16 also depicts pre-rolls that were unlabeled. There was also evidence that unlicensed processing of cannabis products was occurring at the building or premises. Exhibit B 14 depicts packs of empty mylar bags that Senior Investigator McKay stated were not labeled according to New York State Law. Exhibit B 13 is a scale with an empty container. Senior Investigator McKay also testified that B 14 shows a cart which is immediately to the right of B 13 and allowed an employee to weigh product and put it in the mylar bags observed at the location. Given that TK and L3 Inc. were selling and processing cannabis products not lawfully labeled or tested in accordance with New York State Law, it’s activity posed an imminent threat to public health, safety, and welfare.

WHEREFORE, PURSUANT TO CANNABIS LAW ARTICLE 6 §138-b (9), THE ORDER TO SEAL, ISSUED ON JULY 17, 2024, IS HEREBY EXTENDED FOR ONE YEAR FROM THE DATE OF THIS DECISION.

Dated: July 29, 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 July 29, 2024, to the following:

Nickolas Perry
Sheila Wagner
Raymond Caithathara
Michael Waller, Esq.
Zhenghao Ge