

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

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**OFFICE OF CANNABIS MANAGEMENT,**

Petitioner,

-against-

**DECISION**

**Inspection No.** 118202405300006

**GREEN CLOUD CONVENIENCE CORP.**

Respondent.

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Respondent requested a hearing on July 10, 2024 based upon an inspection which occurred on May 30, 2024.

The hearing was conducted on August 7, 2024.

The Respondent was represented by James Kirshner, Esq.

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

Investigative Specialist Zak Roubelakis 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 8778 169th Street, Jamaica, New York.

The scope of the 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 (Exh A). Investigator Roubelakis testified that prior to the inspection, he confirmed that Respondent was not in possession of an adult use cannabis retail license issued by OCM. According to the credible testimony of Investigator Roubelakis, during the inspection he observed a wide variety of illicit cannabis products including cannabis flower cannabis concentrate, and cannabis edibles (Exh B 10-16, C 1-10). Many of the cannabis products were on display in view of any person entering the location. Testimony and photographic evidence were admitted into evidence which showed an ATM, point of sale system, and a digital scale with loose cannabis residue on it, all of which are indicative of sales of unlicensed cannabis at the site (Exh B 7-9).

2. According to Investigator Roubelakis, no part of the premises to be sealed was used in part as a residence and pursuant to local law or ordinance, is zoned and lawfully occupied as a "residence." No evidence was offered to the contrary.

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 regulations at 9 NYCRR §133.25(f)(3) enumerate the factors to consider when determining if unlicensed activity occurring within a business is more than de minimis. Investigator Roubelakis provided testimony and photographic evidence of the presence of signs or symbols, indoors or out, advertising the sale of cannabis and indicating that cannabis was sold on the premises.

Specifically, a sign on the outside of the location which stated “Let’s SMOKE CBD, THC, & Vapes” (Exh B 2). Furthermore, a mural with a depiction of a cannabis leaf was located on the ceiling inside the shop (Exh B 4). In addition, numerous empty packages of cannabis flower were affixed to the plexi-glass around the service window (Exh B 5-6). Investigator Roubelakis testified and provided evidence of a variety and volume of cannabis products. He further testified that while the shop sold products other than cannabis products, he estimated that approximately 50% of the products in the store consisted of cannabis products, which therefore exceeded the de minimis threshold.

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. According to Investigator Roubelakis, the majority of products were labeled with the California logo which is not permissible to sell in New York. Furthermore, he testified that none of the products were labeled with the NYS OCM adult use label. In addition, numerous pictures were entered into evidence depicting various products advertised and/or offered for sale contained in packages which depicted cartoonish figures and font, both of which could be considered attractive to people under the age of 21 years of age (Exh B 5-6, 10-11, 14-15, C 1-4).

5. Respondent’s attorney argued that service was not consistent with the Cannabis Law. Investigator Roubelakis testified that he personally served the person working at the shop at the time of the inspection by handing him a copy of the NOV/Order to Cease Unlicensed Activity/Order to Seal which he accepted however refused to sign. Investigator Roubelakis credibly testified that when asked, the employee did not provide any information as to the business owner. According to the credible testimony of the Investigator, he posted a copy of the NOV/Order to Cease Unlicensed Activity/Order to Seal on the glass store front. I find that based upon the personal service upon the employee, the posting of the document, and the request for and granting of a hearing, service was properly effectuated.

**WHEREFORE, PURSUANT TO CANNABIS LAW ARTICLE 6 §138-b (9), THE ORDER TO SEAL, ISSUED ON MAY 30, 2024 IS HEREBY EXTENDED FOR ONE YEAR FROM THE DATE OF THIS DECISION.**

Dated: August 8, 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 August 8, 2024, to the following:

Nickolas Perry  
Sheila Wagner  
Michael Waller, Esq.  
James Kirshner, Esq.