

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

OFFICE OF CANNABIS MANAGEMENT,

Petitioner,

-against-

DECISION
Inspection No. 134202406180018

JAY EXOTICS NYC CORP.

Respondent.

Respondent requested a hearing to vacate an order to seal without an emergency hearing.

The hearing was conducted via WebEx on July 24, 2024, at 10 a.m. The inspection was conducted on June 18, 2024 and an Order to Seal was issued the same day. OPP Ex. A.

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

Investigator Jillian Agnew testified on behalf of OCM.

The Respondent was represented by Ted Anastasiou, Esq., Arctus Group, 247 West 30th Street, Suite 4R, New York, New York 10001.

Oswaldo Garcia, an employee of the Respondent, testified on behalf of the Respondent.

The owner of the Respondent, Mahliah Ali Ahmed Azan, did not attend the hearing.

ISSUE

The allegations set forth in the Notice of Violation (OPP Ex. A) assert 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 on June 18, 2024 at Jay Exotics NYC, 4403 5th Avenue, Brooklyn, New York 11220.

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

CONCLUSIONS OF LAW

Cannabis Law §138-a provides, in relevant part, 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 § 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 §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 §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 §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 §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. As conceded by Respondent at the hearing , the Respondent was offering cannabis products for sale without a license issued by OCM.
2. 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.” This was also conceded by the Respondent at the hearing.
3. The unlicensed activity which warrants an order to seal constitutes more than a “de minimis” part the business activity.

- a. The outdoor sign on the store displays the name “Jay Exotics NYC.” OCM Ex. B1. The use of the word “Exotics” denotes the availability of cannabis products. Inside the store, a large sign depicted a person smoking cannabis. OCM, Ex. 2.
 - b. Respondent has conceded that it has sold cannabis.
 - c. A large volume of cannabis products in a wide variety of forms, strains, and flavors was found on site during the inspection. *See e.g.* OCM Ex. B3 (three types of cannabis edibles), B4 (cannabis flower), B5 (cannabis concentrate), B6 (two strains of cannabis flower), B7 (three strains of cannabis flower), C1 (bag of cannabis flower being used to make pre-rolls), C2 (cannabis flower), C3 (4 bags of cannabis edibles, 1 punch bar), C4 (multiple strains of cannabis flower, and pre-rolls), C5 (tub of 50 pre-rolls), C6 (approximately 35 vials of cannabis pre-rolls), C7 (approximately 29 cannabis concentrates in 3 different strains), C8 (approximately 60 boxes of cannabis concentrates), C9 (cannabis flower, cannabis concentrates), C10 (tubs and bags of cannabis flower).
4. Unlicensed processing of cannabis was occurring in the premises. Cannabis flower was being processed and formed into pre-rolls.
5. There were sales of, or offers to sell, cannabis products that were not properly labelled or tested. Many products in the premises had California—and not New York—labels. *See e.g.* B3, B4, B5, C4, C6, C7, C8, C9 (California labels). Investigator Agnew testified that many of the packages containing cannabis products were in packaging that did not comply with New York State law, for example, by using bright colors that would have a tendency to appeal to potential purchasers under the age of 21. Her testimony was not challenged.¹

WHEREFORE, PURSUANT TO CANNABIS LAW §138-b (9), THE ORDER TO SEAL, ISSUED ON JUNE 18, 2024 IS HEREBY EXTENDED FOR ONE YEAR FROM THE DATE OF THIS DECISION.

Dated: July 24, 2024

Paul Perlman

Paul Perlman
Administrative Law Judge

¹ Respondent’s counsel did not cross-examine Investigator Agnew. Respondent’s witness did not contradict her testimony on any subject.

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 26, 2024, to the following:

Ruben Espinosa, Esq. (Ruben.Espinosa@ocm.ny.gov)

Ted Anastasiou, Esq. (ted@arctusgroup.com)

OCM Hearings Bureau (administration.hearings@ocm.ny.gov)

Nickolas Perry

Sheila Wagner