

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. 1042024108130053**

**Smoke Station 2, Inc.**  
**5380 Genesee Street**  
**Bowmansville, NY 10406**

Respondent.

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The hearing was conducted on October 10, 2024.

The Respondent was represented by Phil Modrzynski, Esq.

No person testified on behalf of the Respondent.

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

Investigative Specialist Sarah Tagliaferro 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 5380 Genesee Street, Bowmansville, New York 10406.

The scope of the hearing was limited solely to the issue as to whether 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 Sarah Tagliaferro credibly testified that she was trained by OCM members while shadowing OCM investigators and has since conducted approximately sixty (60) inspections for OCM. Prior to her employment at OCM she was employed by the Erie County Medical Examiner as an investigator. Investigator Tagliaferro testified further that on 08.13.24 she, along with representatives of other law enforcement agencies conducted an inspection of the above referred to premises located at 5380 Genesee Street, Bowmansville, New York 1406. Upon her arrival at the location, she took a photo of the front of the establishment, Petitioner Exhibit B. Upon entering the establishment, she encountered a male who identified himself as the owner of the establishment, but he declined to provide any identification or his name. Petitioner's Exhibit B shows signs advertising various cannabis products for sale with California labels (which are illegal in NYS) and signs indicating products contained marijuana and should be kept out of reach of children, in a display case viewable by consumers; Exhibits C, 1-13 are photos of pre-rolled cannabis cigarettes

with State of California warnings; pre-rolls produced in the State of California with THC warnings, pre-rolls in box packaging with California labels, cannabis Gelato Brownies VAPE flavors, , THC Weed Water Product (5grams), THC Seltzer, 900 grams gummies, edible products (Space Gods), THC Smack with a California label, packages of gummies with a for sale price of \$15.00, THC Delta cannabis product for \$25.00 + tax, and 20 gram THC Lemonade. Exhibit E, 1 – 17 are photos of jars of cannabis flower strain with cartoon characters on the front, VAPE THC product labeled TORCH priced at \$25.00, cases of pre-rolled cigarettes labeled Get Lit with a warning that it is known to cause cancer and only sold to persons over 21 years of age, with a state of California label, Additionally, Sour Diesel premium cannabis, made in California, THC-A pre-rolls of various strains labeled AK-47, baked pre-rolls (7 in a jar) and boxes of THC Vape. Investigator Tagliaferro testified that she took all the photos referred to in all Petitioner Exhibits. The investigator did testify that some of the exhibits were moved from the places of discovery on the premises prior to being photographed. Counsel for the Respondent raises the point of what constitutes illegal cannabis and Hemp, and further, if only Hemp, then an Order to Seal is precluded. Counsel is correct, and Article 6 § 138(a) referenced above spells out said requirements and definitions, which the evidence and testimony of Investigator Tagliaferro serve to document that OCM is in compliance with the Article.

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.” Investigator Tagliaferro testified that based on what she observed at the location it was not being utilized as a residence. There was no shower or kitchen. Moreover, the investigator testified that she inquired of the owner if in fact the location was a residence. The response from the self-identified owner was in the negative. Investigator Tagliaferro additionally testified that she observed a cash register, a sales reader, and an ATM at the front of the establishment, as evidenced by the photos in Petitioner’s Exhibit B 1-4.

3. The unlicensed activity which warrants an order to seal constitutes more than a “de minimis” part the business activity. A large variety, and a substantial volume of illicit products were discovered during the inspection at the location. Cannabis Law Article 6 § 138-b (7) and OCM Regulations part 133.25(f)(3) enumerate the factors to consider when determining if unlicensed activity occurring within a business is more than de minimis. From the photographs entered as evidence during the hearing, and the credible testimony of Investigator Tagliaferro listing the items seized but OCM, this location had a large variety and a substantial volume of illicit cannabis being offered for sale. Please see Petitioners Exhibits A – F. Finally, the Respondent offered no evidence to rebut the testimony.

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 that were not tested or labeled lawfully in accordance with Cannabis Law Article 6. Exhibits D - E, as credibly testified to by Investigator Tagliaferro, depicted products that were

labeled with the California cannabis label. Exhibits C 5-13 & D 9-13 depicted products that were labeled with the California cannabis label also, and the products were brightly colored with cartoons on the front of the products. Some of the products were flavored. All the above are in violation of the NYS Cannabis Law Article 6 §138-b (4).

5. The Notice of Violation, Order to Cease Unlicensed Activity, and Order to Seal were properly served upon the Respondent on 08.13.24. Investigator Tagliaferro testified that the store owner accepted the Notice of Violation but declined to sign the Certificate of Service of said NOV.

**WHEREFORE, PURSUANT TO CANNABIS LAW ARTICLE 6 §138-b (9), THE ORDER TO SEAL, ISSUED ON AUGUST 13, 2024, IS HEREBY EXTENDED FOR ONE YEAR FROM THE DATE OF THIS DECISION.**

Dated: 10.29.24

*Carl B. Stall*

**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 October 29, 2024, to the following:

Nickolas Perry  
Sheila Wagner  
Celena Dichev, Esq.  
Abir Ahmed, Esq.  
Phil Modrzynski, Esq.