

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. 105202406040002**

**THE SEAFOOD BOX LLC**

Respondent.

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Respondent requested an emergency hearing on June 6, 2024 which was made within seven (7) calendar days of the date of the inspection which occurred on June 4, 2024.

The emergency hearing was conducted on June 11, 2024 which is within three (3) business days of the Respondent's request.

The Respondent was not represented by an attorney.

Jacques Sylvestre testified on behalf of The Seafood Box LLC as the owner of the business.

The Office of Cannabis Management (hereinafter "OCM") was represented by Paul Tsui, Esq.

Investigative Specialist 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 2114 Nostrand Ave Brooklyn, New York.

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 (Exh A). Investigator Jenkins testified that she and the enforcement team entered The Seafood Box LLC during business hours and walked through the unlocked door which was open to the public. Once inside the shop, Investigator Jenkins testified to observing, which was corroborated by photographic evidence, a display cabinet behind plexiglass which contained cannabis edibles, THCA pre-rolls, cannabis concentrate, cannabis flower, cannabis infused chocolate, Delta products, the majority of which were branded with the California logo (Exh B, b-5, b-9, b-10, b-17, b-18, Exh C1, c-1, c-3, c-4, c-5, c-6, c-7, c-8, c-9, c-10, c-11, c-12, c-13, c-14, C2, c-1, c-2, c-3, c-4, c-5, c-6, c-7, c-8, c-9, c-10, c-11, c-12). There were also numerous bags of unpackaged

loose flower located throughout various areas in the shop (Ex B, b-5, b-6, b-11, b-14, b-15, b-17, b-19, b-20) as well as a pre-roll machine which contained flower (Exh B, b-13). In addition, evidence and testimony was entered which depicted a wheel which a person could spin and had various products depicted on it such as “free pre-roll, free edible, free dime” all of which are terms consistent with cannabis products (Exh B, b-7). Investigator Jenkins also testified and provided photographic evidence of two scales observed at the site (Exhs B, b-5, b-12) as well as an ATM machine (Exh B, b-4), a card reader (Exh B, b-3, C1, c-13), an illicit product labeled with a price tag (Exh C2, c-6), and a “pick-up window,” (Exh B, b-22) the totality of which is evidence that the cannabis product at the site was being offered for sale. Respondent testified that he was in possession of a Hemp License issued by the Office of Cannabis Management which has neither been confirmed nor denied. It is his position that the loose flower was hemp flower and it is notable that Investigator Jenkins testified that a visual distinction cannot be made between loose cannabis flower and loose hemp flower. Irrespective of whether Respondent is in possession of a Hemp License, such license does not authorize Respondent to sell cannabis in any form. Furthermore, even in the absence of considering the loose flower, Respondent was in possession of illicit cannabis which was labeled as cannabis and as such, was not ambiguous.

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.” The Respondent testified that he occupied an apartment over the shop but did not testify that his access to the residence was restricted by the sealing of the shop which included the basement where additional products were located. He did however testify that the sealing of the business precluded his ability to access the basement in which the boiler and possibly other heating/cooling systems were located. Respondent testified that he rented the building therefore the maintenance of those systems would be the responsibility of the landlord who should contact a representative from the Office of Cannabis Management in the event that the landlord requires access to the basement. As the sealing of the business did not affect the Respondent’s ability to access the apartment that he rents, his contention that the order to seal be lifted because he was denied access to the basement is rejected.

3. The unlicensed activity which warrants an order to seal constitutes more than a “de minimis” part the business activity. The credible testimony of Investigator Jenkins in conjunction with the photographic evidence established that a significant volume and variety of illicit cannabis products was located at the site and was more than de minimis. In addition, both the exterior of the storefront as well as the interior of the door accessing the shop were covered with posters depicting cannabis leaves as well as posters with such words as “THC,” “Super High,” and depicting pictures of what could be mistaken for commonly known candy and cereal however in reality were products containing cannabis (Exh B, b-1, C2, c-4).

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 which were not tested or labeled in accordance with Cannabis Law Article 6. (Exh B, b-5, b-9, b-10, b-17, b-18, Exh C1, c-1, c-5, c-6, c-7, c-8, c-9, c-10, c-11, c-12, c-13, c-14, C2, c-1, c-2, c-3, c-4, c-5, c-6, c-7, c-8, c-9, c-10, c-11, c-12). The products labeled were not labeled lawfully in accordance with Cannabis Law Article 6 and the majority were labeled improperly with the California warning label which is further inconsistent with New York law. It should also be noted that many of the

products were packaged with labeling which depicted cartoonish figures as well as the signage on the outside of the storefront and inside the front door, all of which could be appealing to people under 21 years of age 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.

**WHEREFORE, PURSUANT TO CANNABIS LAW ARTICLE 6 §138-b (9), THE ORDER TO SEAL, ISSUED ON JUNE 12, 2024 IS HEREBY EXTENDED FOR ONE YEAR FROM THE DATE OF THIS DECISION.**

Dated: June 12, 2024

*Karen Lavery*  
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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 June 12, 2024, to the following:

Nickolas Perry  
Sheila Wagner  
Paul Tsui  
Jacques Sylvestre