

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

OFFICE OF CANNABIS MANAGEMENT,

Petitioner,

-against-

DECISION

Inspection No. 134202408150047

VAPE MORE INC.

Respondent.

Respondent requested an emergency hearing on August 16, 2024 which was made within seven (7) calendar days of the date of the inspection which occurred on August 15, 2024.

The emergency hearing was conducted on August 15, 2024 which is within three (3) business days of the Respondent's request.

Sunny Chawla, the owner of Vape More Inc testified on behalf of the Respondent .

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

Investigative Specialist Jillian Agnew 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 204 Canada Street, Lake George, 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 of the evidence.

Should either party file a request for an additional hearing to adjudicate the sufficiency of the Notice of Violation and the Order to Cease Unlicensed Activity, that hearing will be scheduled for a later date.

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)(2) requires any sealing order be served to the owner of the business or other person of suitable age or discretion in actual or apparent control of the premises at the time of the inspection. The sealing order must also be posted at the building or premises that was sealed, secured, or closed. Additionally, “a copy of the sealing order shall also be mailed to any address for the owner of the business *at any address provided by the person to whom such order was delivered...*” (emphasis added).

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-1). Investigator Agnew testified that Respondent was not in possession of an Adult Use Cannabis Retail License issued by OCM. The Respondent testified that he had previously possessed a Cannabinoid Hemp Retail License issued by OCM which expired December 31, 2023 and that he applied for a renewal of that license on August 16, 2024. According to the credible testimony of Investigator Agnew, during the inspection she observed a wide variety of illicit cannabis products including cannabis flower, cannabis concentrate, and cannabis edibles, and cannabis pre-rolls, as well as Delta 8, Delta 9, and THCA products (Exh B 2-5, 10-23, Exh C 1-17). Many of the cannabis products were on display in view of any person entering the

location and some were located in the back as well. Investigator Agnew testified that at least two display cases in public view contained cannabis products. Testimony and photographic evidence were admitted into evidence which showed an ATM, and a point-of-sale system, all of which are indicative of sales of unlicensed cannabis at the site (Exh B 6-9). While Respondent testified that there were no menus or prices on the cannabis products therefore no evidence that they were offered for sale, I note that there were no visible prices on many of the other non-cannabis items which were on display. Furthermore, all the other products in the display case were offered for sale, therefore I reject as incredible Respondent's contention that the cannabis products also located in the display cases were not offered for sale.

2. Investigator Agnew credibly testified that 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." I note that no evidence or testimony was offered to refute this.

3. The unlicensed activity which warrants an order to seal constitutes more than a "de minimis" part of the business activity. 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. One such factor is the presence of signs and symbols inside or outside the subject premises indicating that cannabis is being sold. I note the presence of the sticker located by the cash register in public view on which was printed "SMOKE MORE www.smokemore420.com" (Exh B 2). Investigator Agnew testified that "420" is synonymous with cannabis. I further note the baseball hat located in the box next to cannabis products with a depiction of a multi-color cannabis leaf on it (Exh B 4). Investigator Agnew testified and provided photographic evidence of a large variety and volume of cannabis and illegal Delta products offered for sale (Exh B 2-5, 10-23, Exh C 1-17). She further testified that while the shop sold products other than cannabis products, the primary types of products for sale were cannabis products and that these products constituted more than a de minimus amount. While Respondent tried to discredit the witnesses and her team's ability to properly identify cannabis products based upon the inadvertent seizure of the non-cannabis item Kratom, Investigator Agnew credibly testified that someone on the team had improperly seized one container and once brought to her attention, the product was removed from the bag and removed from the list of seized products. Respondent's argument is rejected as without basis given the admission of Investigator Agnew as to the improper seizure and the steps immediately taken to correct the situation once she became aware of it.

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 the testimony of Investigator Agnew, a large number of the cannabis products were labeled with the California logo or a logo with a cannabis leaf next to an explanation mark, both of which are not permissible to sell in New York (Exh B 4, 10, 12, 14-16, 18, 20, Exh C 2-3, 11). As such, I find that the cannabis products at the location were not labeled lawfully in accordance with Cannabis Law Article 6.

5. The Notice of Violation and Order to Seal were properly served upon the Respondent on August 15, 2024. Investigator Agnew's credible and undisputed testimony established that the Notice of Violation/Order to Cease Unlicensed Activity/Order to Seal was personally served upon the employee who identified himself as the owner of Vape More Inc. and was present at the time of

the inspection. Furthermore, the Notice of Violation/Order to Cease Unlicensed Activity/Order to Seal was also conspicuously posted on the front door of the premises, as required by Cannabis Law Article 6 §138(b)(2) (Exh A 3). In addition, an Affirmation of Service was entered into evidence in which the affiant attested to mailing a copy of the Notice of Violation/Order to Cease Unlicensed Activity/ Order to Seal to the Respondent at the address provided on his NYS Driver's License (Exh A 4, Exh D). Therefore, I find that service was properly effectuated in accordance with Cannabis Law Article 6 §138(b)(2).

WHEREFORE, PURSUANT TO CANNABIS LAW ARTICLE 6 §138-b (9), THE ORDER TO SEAL, ISSUED ON AUGUST 15, 2024 IS HEREBY EXTENDED FOR ONE YEAR FROM THE DATE OF THIS DECISION.

Dated: August 22, 2024

Karen Lavery
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 22, 2024 to the following:

Nickolas Perry
Sheila Wagner
Michael Waller, Esq.
Sunny Chawla