

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

OFFICE OF CANNABIS MANAGEMENT,

Petitioner,

-against-

HAZY CLOUDZ INC.

Respondent.

DECISION

Inspection No. - 103202406060010

Respondent requested a hearing on October 23, 2024, for an inspection which occurred on June 6, 2024

After Respondent's request for adjournment was granted on October 29, 2024, the hearing was scheduled for and conducted on November 15, 2024, pursuant to a mutual agreement between the parties.

The Respondent was represented by Robert Abdella, Esq. who requested that substitute counsel be allowed and who did not attend the hearing. The representative during the hearing for Respondent was Joseph Sise.

The Office of Cannabis Management (hereinafter "OCM") was represented Sisi Wu, Esq.

Senior Investigator Joshua Coons (hereinafter "Coons") 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 100 East State St., Johnstown, NY 12095.

The scope of the hearing involves determination whether OCM, by a preponderance of the evidence were justified in issuing to Respondent the Notice of Violation and Order to Cease Unlicensed Activity (jointly hereinafter "NOV") and what penalty under Article 6 § 132 is

justified. OCM requested the maximum fine of \$10,000. Additionally, this hearing was to determine the issue of whether 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 §125(1) states that “[n]o person shall cultivate, process, distribute for sale or sell at wholesale or retail or deliver to consumers any cannabis, cannabis product, medical cannabis or cannabinoid hemp or hemp extract product, or any product marketed or labeled as such, within the state without obtaining the appropriate registration, license, or permit therefor required....”

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 §132(1)(a) provides that any person who sells cannabis, or cannabis products, or any product marketed or labeled as such, without having an appropriate registration, license or permit therefor, may be subject to a civil penalty of not more than ten thousand dollars for each day during which such violation continues.

Cannabis Law Article 6 §132 (1)(c) requires that any civil penalties assessed “shall take into consideration the nature of such violation and shall assess a penalty that is proportionate to the violation....”

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. On June 6, 2024, OCM conducted an inspection of Hazy Cloudz Inc. (hereinafter “Hazy Cloudz”) located at 100 East State St., Johnstown, NY (Ex. A). At that time, a Notice of Violation/Order to Cease Unlicensed Activity/Order to Seal was issued and the premises were sealed (Ex. A). In October of that same year, Respondent requested a hearing, which was held on November 15, 2024. During the hearing, Senior Investigator Joshua Coons appeared as the sole witness. Coons testified that he supervised the inspection of Hazy Cloudz and participated on-site in the inspection. He stated that the store was open when OCM entered and that he saw a number of products which were labeled as cannabis on display in various display cases, some with price tags, which led him to believe that these products were for sale (see e.g., Ex. B 5). Coons also stated that further display racks and cases contained significant amounts of gummies, vapes, pre-rolled joints, and other items either labeled as cannabis or, in his opinion, suspected to contain THC (Ex. B 13-19). He further stated that Hazy Cloudz had an ATM and a cash register/point of sale system (Ex. B 3 & 4, D 1), which led him to believe that financial transactions were occurring at the location. While Coons discussed his training and experience which allowed him to identify signs and symbols of suspected illicit cannabis sales, the items seized from Hazy Cloudz were on display, many prominently labeled as cannabis (see e.g., B 6-9, 11 & 14) with no pretense that they were anything other than illicit products. Further, a “menu” of products, some of which Coons testified corresponded with illicit items seized from Hazy Cloudz, and which had corresponding prices, was discovered on site (Ex. B. 20). While Coons could not state exactly where the menu had been located, he testified that his recollection was that it was near the cash register. Coons stated that Hazy Cloudz possessed no type of Adult Use Cannabis License at the time of the inspection and Respondent presented no evidence to the contrary.

The factors introduced into evidence and through testimony indicate by a preponderance of the evidence that Respondent was offering cannabis products for sale without the necessary license being issued by OCM. Significant product was discovered on display and readily available to customers. Prices were listed, affixed to products with stickers, displayed on tags attached to the display cases, and contained on a menu of available products (Ex. B 5-6, 11, 13-14, 16, 19-20). The products discovered were labeled as cannabis, either explicitly or with a warning label consisting of a cannabis leaf with an explanation mark,¹ and Coons testified that a customer who entered the store would be able to readily select and purchase an illicit cannabis item. I believe that this statement from Coons is supported by the evidence submitted. The volume of cannabis and suspected cannabis products indicates that it was not for personal use and more likely than not was being sold at Hazy Cloudz. Coons testified that the entirety of the display case pictured in exhibit B5, which appears to have more than 100 different items, contained illicit products. While Respondent argued that the lack of signage, both outside and in the store, counters the assertion that a reasonable person would readily understand that illicit products could be purchased from the Hazy Cloudz, this is undercut by the overwhelming evidence of illicit product on display. Further, certain items found in the store, while legal, serve as subtle indications that illicit products may be for sale due to their association with cannabis (e.g., paraphernalia) (Ex. B 2). Additionally, scales, which are frequently used in the sale or processing of cannabis, were discovered in the store, one of which appears to have cannabis

¹ Coons identified this marking as signifying the presence of THC.

residue on its surface (Ex. B 23-24). Finally, in addition to the ATM and point of sale system, a black plastic bag containing a stack of bills was discovered in the back room of Hazy Cloudz (Ex. B 21). These items, while not illegal, taken as a whole, support the assertion that financial transactions, likely including illicit transactions, were occurring at the store.

2. Coons testified that no part of the premises to be sealed was used in part as a residence. He stated that a complete search of the location was conducted and that no indications that it was being used as a residence were found (kitchen, shower, bed). Respondent made no assertion to the contrary.

3. The unlicensed activity which warranted an order to seal constituted more than a “de minimis” part the business activity. The 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. A large variety and volume of illicit products were discovered at Hazy Cloudz. A variety of brands were observed on premises, including: Runtz OG, Stiiizy, Munchies, Future, Torch, Honey Palm, Fatso, and Tyson (Ex. B 6-8, 11-15, & 19). Also, a variety of product types were observed including: pre-rolls, concentrate, cannabis flower, edibles, and vapes (Ex. B). From the photographic evidence submitted by OCM, there appears to be hundreds of individual products seized from Hazy Cloudz. Coons testified that this inspection possibly yielded the highest volume of vapes he had seen out of all the 100+ inspections he had conducted. Although no evidence was submitted as to the weight of individual products, Coons testified that he recalled the total weight of all products was approximately 150 pounds. While Respondent questioned the validity of this number, due to the lack of corroborating evidence, I found Coons recollection credible (he stated in testimony that he had sent a text containing the total weight to his supervisor) and supported by the picture of five contractor-sized garbage bags containing the product (Ex. 26). Although there appeared to be, as Respondent claims, a variety of additional legal products for sale in Hazy Cloudz (cigars, drinks, lighters, paraphernalia – Ex B 2, 4-5, 26) the amount of illicit product found within the store was substantial. Respondent argued that a comparison of legal to illegal products bolsters the assertion that any potential illicit transactions were de minimis. I do not find this argument to be persuasive or based in law. The regulations identify four relevant factors to consider when gauging whether a de minimis amount of illicit trade occurred (Cannabis Law Article 6 §138-b(7)). Nowhere in those factors is a comparison of legal to illegal products highlighted. Such a comparison is irrelevant and the amount of illicit product should be evaluated using the relevant factors identified in the statute. Regardless, even if a the legal/illicit comparison were conducted, the volume of legal products do not constitute a significant enough “counterbalance” so as to make the illicit products de minimis; the volume of illicit product is simply too large. By a preponderance of the evidence, the totality of the evidence demonstrates that the trade of illicit product at Hazy Cloudz was more than de minimis and the volume and variety of product shows that the store was primed to make significant sales in illicit cannabis.

4. The unlicensed activity being conducted at Hazy Cloudz constituted an imminent threat to public health, safety, and welfare. There were sales of, or offers to sell, cannabis products that were not tested or labeled lawfully in accordance with Cannabis Law Article 6. Further, the presence of scales (one with apparent cannabis residue), empty baggies, and cannabis flower

suggests that there was a level of processing occurring on the premises (Ex. B 23-25 & C 1). Many of the items found during the inspection were labeled as cannabis products and either contained an inspection stamp of production outside New York State (many appeared with a California stamp) or no inspection stamp at all (see Ex. B). It is likely that none of the products were tested in New York as the products shown in the photographs and submitted into evidence lacked the inspection stamp of New York State (Ex B). Coons testified that some of the products found at Hazy Cloudz had a high level of THC which far exceeded the legal limit under New York Cannabis Law. While having products not in compliance with safety standards is not an enumerated factor under the law, the reason for testing is to ensure that consumers are protected from dangerous products. Further, any processing which occurred at Hazy Cloudz, which the evidence and testimony seems to suggest occurred, this would directly violate the law and constitute an imminent threat. Due to the probable processing and the volume of product not tested in New York which was discovered during the inspection as demonstrated by the absence of labels or labels not in accordance with New York state law, the activity occurring at Hazy Cloudz constituted an imminent threat to public health, safety and welfare.

5. OCM requested the maximum fine of \$10,000 be levied against Hazy Cloudz for the violations that were discovered during the inspection. While the statute does not provide extensive guidance for determining the penalty for violations under Cannabis Law Article 6 §125, 132, and 138-a, it does require a penalty proportionate to the violation (Cannabis Law Article 6 §132(1)(c)). In the Matter of Hazy Cloudz, Coons testified that the number of certain products (vapes) discovered during the inspection of Hazy Cloudz constituted some of the largest variety and volume of those products he had seen during his extensive experience conducting inspections. While vapes are only one type of illicit product which were found on premises, the totality of cannabis product seized from the store was voluminous. Five contractor-sized garbage bags were used to contain the products (Ex. B 26) and Coons stated that over 150 pounds in total were recovered from the store. This level of cannabis constitutes a level that requires a significant penalty and for that reason, I am assessing the maximum fine of \$10,000.

DECISION

The Respondent engaged in the sale of illicit cannabis and cannabis products without a license, registration, or permit to do so, at the location of 100 East State St., Johnstown, NY 12095. In so doing, Respondent violated Cannabis Law Article 6. The Order to Cease Unlicensed Activity and Order to Seal are hereby affirmed and a penalty is assessed.

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

FURTHER, THE RESPONDENT IS HEREBY ORDERED TO PAY A \$10,000 FINE UNDER CANNABIS LAW ARTICLE 6 §132 FOR VIOLATIONS UNDER §125, AND AS A PROPORTIONATE PENALTY, FOR THE UNLICENSED SALE OF ILLICIT CANNABIS ON JUNE 6, 2024.

Dated: November 20, 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 November 20, 2024, to the following:

Joseph Sise, Esq.

Sisi Wu, Esq.

Nickolas Perry

Sheila Wagner

Celena Ditchev, Esq.