

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

OFFICE OF CANNABIS MANAGEMENT,

Petitioner,

-against-

DECISION
Inspection No. 134202406200019

CLOUD ATLAS CONVENIENCE INC.
CLOUD ATLAS CONVENIENCE 2 INC.

Respondent.

Respondent requested a hearing to vacate an order to seal.

The hearing was conducted via WebEx on November 22, 2024, at 10 a.m. The inspection was conducted on June 20, 2024 and an Order to Seal was issued the same day. OCM Ex. A.

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

OCM Investigator Jillian Agnew testified on behalf of OCM.

The Respondent was represented by Nadia Kahnauth of Kahnauth Law Group PLLC, 96-01 Liberty Avenue, Ozone Park, New York 11417 (nadia@klgpllc.com).

The Respondent did not call any witnesses or offer any exhibits.

The shareholders (i.e., the owners) of the Respondent did not attend the hearing and were not identified.

ISSUE

The allegations set forth in the Notice of Violation (OPP Ex. A) assert that the Respondent was selling and offering for sale 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 20, 2024 at Cloud Atlas Convenience, 198 Underhill Avenue, Brooklyn, New York 11238 (OCM Ex. B5¹). The NYS Department of Taxation and Finance also entered the premises and inventoried some of the products. *See* OPM Exs. C10, C11.

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

APPLICABLE 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 for 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,

¹ A business card that was found in the store during the inspection identified the business as “Cloud Atlas Convenience.” OPM Ex. B5.

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. The premises at 198 Underhill Avenue, Brooklyn, New York is rented or owned by Cloud Atlas Convenience Inc. or Cloud Atlas Convenience 2 Inc. See OCM Exs. B5 and Testimony of Investigator Agnew. Both names appear on the Notice of Violation. OCM Ex. A.²
2. The premises is not being used as a residence. At the time of the inspection, Investigator Agnew did not observe any kitchen, shower, living area, or other signs indicating that someone lived in the premises. This is a commercial property. This testimony was not challenged.
3. Investigator Agnew testified that Respondent was not licensed to sell adult-use cannabis or hemp³. This testimony was not challenged.
4. Investigator Agnew received training related to the identification of cannabis products.
5. During the inspection, Investigator Agnew personally took the photographs that are shown in OCM Exs. B, C, and D. These photographs were taken inside the store except for the photographs showing the outside of the store. She testified that the photographs accurately show what she observed during the inspection.
6. The unlicensed activity which warrants an order to seal constitutes more than a “*de minimis*” part of the business activity at the premises. Cannabis Law § 138-b (7) and OCM Regulations 133.25(f)(3) identify the factors that may be considered in determining if unlicensed activity occurring within a respondent’s premises is more than *de minimis*. The factors for determining whether the unlicensed activity is *de minimis* are set forth above.

During the inspection of the Respondent’s premises, Investigator Agnew found a large volume of cannabis products and a large variety of cannabis products. She found cannabis flower (OCM Exs. B7, B14[pre-rolls], B22[pre-rolls], B23[pre-rolls], B24[pre-rolls], B25[pre-rolls], C6, C12), cannabis edibles such as gummies (B10, B11, B12, B13, B15, B16, B19 [top shelf, first four items on the left], B20, B23), and cannabis concentrates (B17, B18, B21, C1). Numerous package labels explicitly stated that the products were cannabis products and/or were cannabis-infused (e.g., B12, B13, B15, B17, B18, B20, B23, C1[“Product Contains Marijuana”], C6, C7, C12). Investigator Agnew testified that she also found vape products in the store; she stated that she considered these to be in the concentrate category.

² Respondent asserted that the Notice of Violation was defective because it allegedly was issued to Cloud Atlas Convenience instead of Cloud Atlas Convenience 2, Inc. In fact, the Notice of Violation listed both names. OCM Ex. A. At the end of the hearing, the undersigned asked Respondent’s counsel who she represented and she responded that she represented Cloud Atlas Convenience 2 Inc., which she said owned and operated the store.

³ During the hearing, Investigator Agnew identified one hemp product (B19, top shelf, fifth and sixth packages from the left). Investigator Agnew stated that a sealing order would not have been issued based on hemp products being for sale in the store. I did not consider the hemp products in reaching the conclusion set forth in this Decision.

The cannabis products came in multiple flavors including Cherry (B10, B15), Peach (B10), Blue Raspberry Blast (B12), Watermelon Wave (B13), Peach Mango (B16), Watermelon (B18), Chiquita Banana (B21), Raw Garden (B23), Lemon (B20, C6), and Wedding Grape Pie (C7). The products found during the inspection were in a variety of strains: Sativa (B10, B15), Indica (B13), and Trainwreck (B17).

One factor that may be considered in determining whether unlicensed activity in a store is more than *de minimis* is the presence of signs or symbols, indoors or out, advertising the sale of cannabis or otherwise indicating that cannabis is sold on the premises. Here, Investigator Agnew testified to a numerous such items in the Cloud Atlas store. There was a poster or mural of Bob Marley, a user and promoter of cannabis, which displayed cannabis leaves in the background (B2); a point-of-sale system with a sticker for “Sluggers Hit”, a known brand of cannabis products (B8); a sign promoting the sale of “Raw” wrapping papers which are often used to roll cannabis products (C2); a depiction in the store of a smiley face smoking with cannabis leaves as part of the depiction (C3); a painting of cannabis flower (C4); a sign stating “SMOKE Weed” next to a cannabis leaf and a person smoking (C5); a display with the symbol “420”, a common reference to cannabis (C9); and a cannabis leaf painted on the ceiling (B3). While none of these items are illegal to sell and while these items would not by themselves conclusively establish that the store sells cannabis, the combination of them is evidence that the store does sell cannabis. In this case, this circumstantial proof is unnecessary because there is strong direct proof of offers to sell.

The Cloud Atlas store also had a spin wheel (B6) which customers could spin to win items such as “Free 0\$ edibles” and “Free Baby Jeeter”, a cannabis product not licensed in New York State. The center of the spin wheel bore the words “SPIN TO WIN.”

Tags were on a number of products indicating what Investigator Agnew interpreted as a price (e.g. B25, C1-a tag with the number 5000).⁴

At the hearing, Respondent’s counsel asked Investigator Agnew on cross-examination if she could identify products, such as gummies, as cannabis if she observed them without the packaging they came in. She testified that simply if she simply saw a gummy on a countertop, she could not identify it as cannabis but indicated that the packaging as shown in the photographs of the products which were displayed in the public retail portions of the store clearly stated in numerous ways that the products were cannabis. I find by a preponderance of evidence that this is sufficient to identify the products as cannabis. Where a retailer displays products for sale in packaging that describes the identity and characteristics of the product inside, the retailer is estopped from arguing that the product inside was something other than described. Such an argument by the retailer would, in effect, be an argument that the retailer was misleading the public and defrauding its customers. I do not accept such an argument.

⁴ On cross-examination of Investigator Agnew, Respondent’s counsel asked questions that implied that the tag might not be a price tag because there was no dollar sign or any period between the “50” and the “00.” I agree with Investigator Agnew’s testimony that this tag was a price tag. Despite the skepticism expressed by the Respondent’s counsel in her question, Respondent did not offer any alternative explanation of what that tag might be. More importantly, Respondent offered no testimony or evidence of what that tag was other than a price tag.

Based upon the totality of this testimony and the exhibits, I find that OCM met its burden of establishing that the sales of cannabis and offers to sell cannabis products were more than a *de minimis* part of the business activity on the premises.

6. OCM has established that the Respondent's store poses an imminent threat to public health, safety, and welfare. Numerous products identified by Investigator Agnew as cannabis were not properly labelled. Several of the products in the premises had California—and not New York—labels (e.g., B12, B13, B17, B25, C1, C7) and were therefore not legal to sell in New York State. Some packages did not contain New York State warnings (e.g., B11, B12, B13, B15, B17, B18, B20, B25, C1, C7, C12). Some pre-packaged cannabis was packaged in packages with bright colors and/or cartoon-like characters that were likely to appeal to persons under the age of 21 (OCM Exs. C6, C7, C8, C12). Investigator Agnew credibly testified that this type of packaging is not legal in New York State.

7. During the inspection, the Cloud Atlas premises was being managed by a 31-year-old man named Shaik Aamir Shaik Akhil. That identity was established by a driver's license issued by the Indian Union, Telangana State (D1). The Notice of Violation was handed to this man, a person of suitable age and discretion, who refused to sign for it (OCM Ex. A and Testimony of Investigator Agnew). This man also refused to identify the owner of the store. Testimony of Investigator Agnew. A copy of the Notice of Violation was affixed to the front of the store by Investigator Agnew (D2). Investigator Agnew testified that it was the practice of OCM to mail a copy of the Notice of Violation to the owner. Whether or not it was mailed, the Respondent had actual notice of the Notice of Violation. As represented by OCM counsel Kevin Brown—and not contradicted by Respondent's counsel—Respondent requested a hearing so Respondent must have known about the Notice of Violation. And Respondent, through counsel, attended the hearing on behalf of Cloud Atlas Convenience 2, Inc., which Respondent's counsel, at the hearing, identified as the owner of the store.

WHEREFORE, PURSUANT TO CANNABIS LAW §138-b (9), THE ORDER TO SEAL, ISSUED ON JUNE 20, 2024, IS HEREBY EXTENDED FOR ONE YEAR FROM THE DATE OF THIS DECISION.

Dated: November 25, 2024

Paul Perlman

Paul Perlman
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 25, 2024, to the following:

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