

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. - 114202505020019**

**MAD FLAVOR CONVENIENCE CORP.,**

Respondent.

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Respondent requested a hearing on May 6, 2025, for an inspection which occurred on May 2, 2025. This hearing requested an adjudication of the Order to Seal (hereinafter “OTS”), which the Office of Cannabis Management (hereinafter “OCM”) imposed on the store upon completion of the inspection. Respondent subsequently withdrew this request, at which point OCM requested a hearing on May 19, 2025, for the same inspection, to adjudicate the Notice of Violation/Order to Cease Unlicensed Activity (jointly hereinafter “NOV”). The hearing was held on June 24, 2025.

The Respondent was represented by Mike Pattison and called no witnesses.

The Office of Cannabis Management was represented by Abir Ahmed, Esq.

Investigator Eva Chumsky (hereinafter “Chumsky”) testified on behalf of OCM.

Joshua Pennel, Esq. Administrative Law Judge (the Presiding Judge)

**I. ISSUE**

The allegation in the NOV indicates 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 2761 E. Henrietta Rd., Henrietta, NY 14467.

The scope of the hearing involves the determination of whether OCM, by a preponderance of the evidence, was justified in issuing to Respondent the NOV and what penalty, if any, under Article 6 § 132 is justified. OCM requested the maximum fine of \$10,000.

## **II. 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...”

## **III. FINDINGS OF FACT**

1. On May 2, 2025, OCM conducted an inspection of Mad Flavor Convenience Corp. (hereinafter “Mad Flavor”) located at 2761 E. Henrietta Rd., Henrietta, NY (Ex. A). At that time, OCM issued the NOV (Ex. A). That same month, OCM requested a hearing, which was held on June 24, 2025.

2. Mad Flavor did not possess an adult-use cannabis license. The facts and evidence presented show, by a preponderance of the evidence, that the store was selling cannabis products. This combination of factors makes Mad Flavor’s action illicit and warrants a penalty under Cannabis Law Article 6 §132.

3. On the date of inspection, an itemized menu was visibly displayed and placed directly next to a series of containers holding what appeared to be cannabis flower (Ex. E7). The menu listed product names and pricing in units of measurement commonly associated with cannabis transactions.

4. Chumsky testified credibly, based on training and experience, that she was able to identify the displayed materials as cannabis flower. She further testified that the menu listings corresponded to specific cannabis products displayed adjacent to them.

5. Adjacent to both the menu and the cannabis flower were two digital scales, which Chumsky observed to have visible cannabis residue on their surfaces (Ex. E7; H1). Additional close-up photographs show cannabis products displayed in glass showcases, with several items tagged with price labels (Ex. E6; F12).

6. A large quantity of pre-packaged items were discovered on site. The majority of the products were advertised with terms such as “THC or cannabis”, lacked safety protocols, and violated the packaging rules and regulations, which require a substantial penalty. Other products had government warnings that they contained cannabis. This combination of cannabis flower, commercial-scale packaging, product menus, price labels, calibrated scales with cannabis residue, and products with cannabis-specific warnings and labeling is consistent with a retail operation engaging in the unlicensed sale of cannabis products.

7. Although Respondent made no argument concerning service, I find that OCM properly effectuated service of the NOV.

#### **IV. ANALYSIS AND CONCLUSIONS OF LAW**

Chumsky testified at the hearing that her presence at Mad Flavor was in conjunction with an action taken by local law enforcement and pursuant to a search warrant.<sup>1</sup> Chumsky testified that Mad Flavor showed the hallmarks of a business open to the public. A large sign above the door served as advertising/notification for the store, a sign on the front window stated the store was “open,” a point-of-sale system, and an ATM were all present on site (see Ex. D 1 & 5-8). Further, Chumsky testified that customers were present on the date in question. A large “Raw” inflatable decoration hung from the ceiling (Ex. D 3); Chumsky testified that the inflatable, according to her training and experience, is a symbol and indication for customers in search of cannabis that the store may trade in cannabis products. Additionally, glassware and some of the décor of the shop are frequently viewed by potential customers as a sign that cannabis may be obtained on site (Ex. D 3-4). While signs and symbols are not directly pertinent when determining the validity of an NOV, these objects demonstrate the openness with which Mad Flavor operated a business of selling cannabis.

Mad Flavor had numerous display cabinets, which were set up in a manner that allowed customers to peruse a large number of the displayed products. Chumsky testified that she recognized many of the products in the store as containing cannabis and suspected that other displayed products also contained cannabis (Ex. E 1-5). A menu was displayed and placed next to a wide variety of cannabis flowers (Ex. E 7). Chumsky testified that she could identify the cannabis flowers based on her training and experience and that the menus correspond with the cannabis flowers displayed. The menu also listed prices in units of measurement consistent with

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<sup>1</sup> The search warrants were not submitted into evidence, but OCM’s presence at Mad Flavor was in line with its powers to conduct regulatory inspections.

the cannabis trade (Ex. E 7). Further, next to both the menu and the flower were two sets of scales that appeared to have cannabis residue on them (Ex. E 7 & H 1).<sup>2</sup> More detailed pictures of the products on display in the showcases were tagged with prices (Ex. E6, F12). A majority of the products present had markings that identified them as cannabis products. Some advertised their contents as containing THC or cannabis (Ex. F 11 & 15-16, G 2-3, 9, 11 & 14-17, H 4, 6, 23-24 & 27-28). Others contained a government warning or a warning symbol that the products contained cannabis (Ex. F 2, 5, 8 & 13, G 1, 3, 6-8, 12-13 & 15). Still others had words which, according to Chumsky's testimony, are frequently used on cannabis products (Ex. F 4, G 5, 6, 10 & 16, H 10-13, 19, 21-22 & 25-26).

The sheer volume of cannabis found at Mad Flavor makes it more likely than not that the store was trading in illicit cannabis. The amounts seized far exceed the amounts an individual is allowed to possess under New York State law. In total, it appears that the store had hundreds of individual products in addition to the cannabis flower that could be individually packaged and sold. The store boldly displayed its large quantities of cannabis, and Chumsky's testimony makes it clear Mad Flavor was open for retail business when OCM entered the store. The menu and pricing listed on some products reinforce that the cannabis products discovered on site were being sold and available for retail at the time of the inspection. Chumsky testified that Mad Flavor did not possess an adult use license, making the sale of the cannabis products found on site illicit and warranting a penalty under Cannabis Law Article 6 §132.

The Respondent did not assert that service was not effectuated. However, if he had, I would have found that the service was proper and that the Respondent had adequate notice. An employee of the store was served with the NOV, and the Respondent requested an emergency hearing within days of the NOV being issued; one can assume, using the instructions provided on the NOV. Since notice and not personal jurisdiction is the purpose of service in administrative matters (*see Drolet v. New York State Racing & Wagering Bd.*, 115 Misc. 2d 7, 10, 453 N.Y.S.2d 361, 363 (Sup. Ct. 1982) citing *Avelli v. Town of Babylon*, 54 Misc.2d 662, 665, 283 N.Y.S.2d 261; *Olin Industries v. NLRB*, 192 F.2d 799 [5th Cir., 1951])(*see also e.g., Dep't of Buildings v. Owner, Occupants and Mortgagees of 845 Walton Avenue, Bronx, New York*, OATH Index No. 234/95 (Jan. 19, 1995)), I find that notice was proper. I also find that the Respondent's presence at the hearing supported a finding of adequate service.

## V. PENALTY

When deciding upon an appropriate penalty under Cannabis Law, Cannabis Law Article 6 §132 (1)(c) requires that penalties must consider the "nature of such violations" and be "proportionate to the violation." Such factors as the amount of product, the potency of the product, violations of packaging requirements, and any other factors that might increase the danger associated with selling the products seized are pertinent when determining an appropriate penalty. In the present case, the amount of product found on site at Mad Flavor constituted a tremendous amount that indicated a sizable illicit trade was operating on site. There were vast varieties that would, no doubt, cater to a wide array of customers and generate a substantial amount of revenue. Further, none of the products appear to have undergone testing in New

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<sup>2</sup> The residue, in the form of small bits of flower, was found in the orange cups placed on the scales (Ex. E 7). Chumsky testified that the "residue" was present across the entirety of the counter on which the scales were located.

York.<sup>3</sup> The lack of testing means that it is unclear whether the products have any dangerous additives or are within guidelines for safety and potency. Furthermore, Mad Flavor sold products that significantly exceeded the maximum THC levels set for their respective products (see Ex. F15, G9 & 15, H22-24 & 27-28), rendering them unsafe. Many of the products found on site violated New York’s packaging and labeling rules, which are designed to prevent children from mistaking the items for food/candy or being enticed to eat the contents (Ex. F15, G12-13 & 15). Some of the products which exceeded the maximum levels of THC and had very high potency also violated the New York rules on packaging, a combination that makes them particularly dangerous (see e.g., Ex. F15 & H27-28). Finally, it appears from the evidence that Mad Flavor was processing cannabis flower on-site. This is also a safety concern (see Cannabis Law Article 6 §138-b (3)) as sanitation protocols and health inspections were likely not occurring in the store. Overall, Mad Flavor possessed a substantial quantity of untested products that could pose risks to consumers. This requires a substantial penalty, as I find no mitigating factors that would lessen the degree of severity.


### **DECISION**

OCM showed by a preponderance of the evidence that the Respondent engaged in the sale of illicit cannabis or cannabis products without a license, registration, or permit to do so, at the location of 2761 E. Henrietta Rd., Henrietta, NY 14467. I find that Respondent violated Cannabis Law Article 6. The Order to Cease Unlicensed Activity is hereby affirmed, and a penalty of **\$10,000** is assessed.

**WHEREFORE, 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 MAY 2, 2025.**

This constitutes the final decision of the Office of Administrative Hearings. A copy of this decision shall be served upon the parties.

Dated: July 14, 2025

  
Joshua Pennel  
Administrative Law Judge

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<sup>3</sup> The sole exception discussed during the hearing was a collection of gummies with a cannabis warning label and a “NY” stamp underneath (Ex. H24). However, I do not believe that these products were tested in New York, as the stamp is not consistent with New York labels, and the potency of the gummies far exceeds the standards in New York, meaning the product would not pass New York testing protocols. Even if this sole product underwent testing, it would not change the fact that the remainder of the products found on site did not.

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 §§ 133.23(g)(5) and 133.25(k).

This decision was sent via email on July 14, 2025, to the following:

Abir Ahmed, Esq.

Mike Pattison, Esq.

Nickolas Perry

Sheila Wagner

Celena Ditchchev, Esq.