

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

OFFICE OF CANNABIS MANAGEMENT,

Petitioner,

-against-

DECISION
Inspection No. - 119202601290023

CLOUD MAFIA SMOKE SHOP, INC.,

Respondent.

Respondent requested a hearing on February 4, 2026, for an inspection which occurred on January 29, 2026. The hearing was held on February 9, 2026.

The Respondent was represented by Phil Modrzynski, Esq.

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

Investigator Antonino Giovenco (hereinafter “Giovenco”) testified on behalf of OCM.

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

I. ISSUE

The allegations set forth in the Notice of Violation, Order to Cease Unlicensed Activity, and Order to Seal (jointly hereinafter “OTS”) asserts that the Respondent was offering cannabis products, as defined by Cannabis Law Article 3, for sale without an appropriate registration, license, or permit. These allegations are based upon observations made during an inspection conducted at 1765 Orchard Park Rd., West Seneca, NY 14224.

The scope of the emergency hearing was limited solely to the issue as to whether the padlocking provisions of Cannabis Law Article 6 § 138-b have been met by a preponderance of the evidence.

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 §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 § 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 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 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 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 9 NYCRR 133.25(f)(1)(i-vii).

III. FINDINGS OF FACT

1. On January 29, 2026, OCM conducted an inspection of Cloud Mafia Smoke Shop, Inc. (hereinafter “Cloud Mafia”), located at 1765 Orchard Park Rd., West Seneca, NY 14224 (Ex. A). At that time, an OTS was issued, and the premises were sealed. On February 4, 2026, Respondent requested an emergency hearing, which was held on February 9, 2026.

2. The testimony and evidence support a finding that Respondent was actively selling cannabis. Testimony presented by Giovenco detailed a purchase made from the store involving items labeled as cannabis. Further, an amount of cannabis, well beyond what can be accounted for under personal use, was discovered on site.

3. The activity occurring at Cloud Mafia constituted more than a de minimis part of the business’ commercial activity. Respondent argued that considering the size of the store and the wide array of products Cloud Mafia offered for sale, that the “limited amount” of cannabis seized from the premises constituted only a small portion of the total sales. This, Respondent contends, makes the illicit transactions de minimis to the total business activity. However, a significant amount of illicit product was discovered in the shop and Respondent stored the product in a

manner consistent with a somewhat sophisticated operation making significant sales. OCM recovered an amount of illicit products that constitutes an amount well beyond that allowed for personal usage and, further, the store had signs and symbols that indicated that a customer could acquire illicit products from Cloud Mafia. Factors delineated in Cannabis Law Article 6 §138-b (7) and OCM Regulations part 133.25(f)(3) are confirmed by the evidence and support a finding that the store's illicit activity constituted more than a de minimis part of the business activity.

4. The unlicensed activity being conducted at Cloud Mafia constituted an imminent threat to public health, safety, and welfare based on sales of, or offers to sell, cannabis products that were not tested or labeled lawfully in accordance with Cannabis Law Article 6.

5. The Office of Cannabis Management conducted a proper search of the location. Giovenco testified that a request for illicit cannabis, made by an employee of OCM, resulted in an offer to sell by an employee of Cloud Mafia. OCM conducted a regulatory inspection after the offer to sell occurred.

6. Service was properly effectuated by OCM. The OTS issued on January 29, 2026, was given to an employee (possibly the owner) of the business and no address for the owner was provided to OCM. Further, notice was posted on the storefront, and Respondent requested a hearing using the information provided on the OTS.

IV. ANALYSIS AND CONCLUSIONS OF LAW

Regulatory Inspection

Giovenco, who served as the sole witness during the hearing, testified that upon arriving at Cloud Mafia, he saw in the store's window an illuminated sign reading "OPEN" (Ex. C1). He testified that the doors were open, and the evidence submitted shows that the front door had a decal stating which credit cards the business would accept as payment (Ex. E1). Upon entering the store, Giovenco observed an ATM, point-of-sale system, and various products displayed with price tags (Ex. C2-3 & 7-8). These observations alone are sufficient to show by a preponderance of the evidence that Cloud Mafia acted as a publicly facing store and was open at the time of the inspection. Additionally, Giovenco testified that prior to entering the store, OCM conducted an "undercover buy," sending in an employee of OCM to ask about obtaining cannabis products. Before entering the store, this employee placed a call to a cell phone in possession of other OCM employees, including Giovenco, from which the other OCM employees could hear the conversation occurring inside. Giovenco testified that he heard the OCM employee asking for cannabis and, shortly thereafter, heard the employee, later identified as Karim Kaid (Ex. A3) – who also listed himself as the owner of the business on the Request for Hearing received by the Office of Administrative Hearings – state that he had various flavors of cannabis vapes that he could sell. At this point, OCM investigators entered Cloud Mafia and conducted a regulatory search.

The evidence presented by OCM showed Cloud Mafia to be a publicly facing business and open at the time of the inspection. The "undercover buy" confirmed this fact and OCM's

presence on site on the date in question and as a result of the store offering cannabis products is, therefore, legal and their inspection of the store is valid.

Illicit Product

While the “undercover buy” established the active nature of Cloud Mafia’s cannabis sales, it also provided the first variety of cannabis possessed by the store. The inspection of Cloud Mafia uncovered a number of illicit cannabis products. Giovenco testified that he searched OCM’s records and found no record of either an adult-use cannabis or hemp license. This lack of a license, therefore, made all cannabis products or products labeled as a cannabis product, illicit.¹ The amount found, while not overwhelming, constituted 32 bags of highly concentrated cannabis edibles and 19 vapes (see Ex. D5-18). OCM submitted additional evidence that a small number of cannisters containing cannabis flower were also recovered from the showroom floor (Ex. D1-2). I find that the evidence presented to support the assertion of illicit cannabis flower is insufficient. The flower containers are labeled as containing “No THC.” Despite this label, Giovenco testified that he checked the QR code contained on the packaging and found a lab report stating that the product contained illegal amounts of THC (Ex. D3). This lab report was disputed by Respondent. Respondent argued that there is no way to connect the lab report to the product presented. During the hearing I used the QR code visible in the picture (Ex. D2) and am forced to agree with Respondent. When used, the QR code displayed a variety of lab reports linked to a variety of products. It was impossible to connect the product presented into evidence to the specific lab report (compare Ex.D1-2 & D3). At best, there is conflicting evidence as to whether the cannisters of flower recovered from the store contained THC. I therefore disregard these three items and focus only on the edibles and vapes seized from the store. These products, however, were sufficient to find that Cloud Mafia was trading in illicit products. Forty-nine cannabis products were discovered on site during OCM’s inspection (see Ex. B). The amount of THC in these products is far above that allowed for personal use and, even if I were to discount the fact that OCM made an “undercover buy” (which I find no reason to do), I would conclude that Cloud Mafia was engaged in the sale of illicit products based on the number of products found in its possession.

Respondent argued that there is an inconsistency between the vouchers submitted into evidence and the bags of edibles displayed in the photos, but I find no such discrepancy. While the number of bags of edible products visible in evidentiary photos is not entirely clear, the pile of product is roughly equivalent to the number memorialized on the voucher – thirty-two (see Ex. B1 & D9). Respondent also argued that the backpack in which these edibles were discovered is too small to fit such a large number, but I also find this to be unpersuasive (see Ex. D4). While the picture of the backpack submitted into evidence does not present a clear picture (id.) – there was also some question as to whether the picture was taken before or after products were removed – but I find the evidence supports a finding that the products were found in the backpack and that the total number reported by OCM to be reasonable and correct. I find no

¹ Respondent’s attorney argued that testing to confirm the presence of cannabis is necessary to affirm a finding under Cannabis Law § 138-B. To support this, he highlights the differences in language between Cannabis Law §§ 138-A & 138-B. Specifically, he identifies the language in 138-A which allows for products “marketed or labeled” as cannabis to be used to support a finding under this statute. He correctly points out that similar language is absent from § 138-b and, instead, he argues that § 138-B requires actual, proven cannabis products (see § 138-B(4)(b) & (g)). However, § 138-B(1) incorporates Cannabis Law § 132(1) & (8) into this section of law. Using the language of § 132, OCM is not required to test products to justify an Order to Seal and may use products that are either known to be cannabis or “any product marketed or labeled as such” (Cannabis Law § 132(1)(a)).

reason to discount Giovenco's credible testimony and credit the vouchers submitted as true and accurate.

Residence

Giovenco testified that he saw no evidence that the store was being used as a residence. Although he stated he saw a microwave, the store did not possess a kitchen, shower, or stored clothing. None of the typical accoutrements of a residence were present. Respondent did not dispute this fact.

De Minimis

A large portion of Respondent's arguments during the hearing concerned whether the amount of illicit product discovered in Cloud Mafia rose beyond the point at which it could be called "de minimis" under Cannabis Law. The law allows for a finding that the illicit products recovered are more than a "de minimis part of the business activity" if "one or more" of the factors delineated in the statute are substantiated. Respondent cited the size of the store and the vast array of legal products contained in the store and suggested that a "comparison" of the legal and illicit trades should be conducted. Compared to the "limited" number of illicit products, Respondent claimed, the cannabis trade engaged in by Cloud Mafia was a de minimis part of the business activity. OCM responded by stating that a comparison of legal products to the illicit products recovered is not allowed under the statute. Instead, OCM suggested that a strict reading of the statute is necessary. In essence OCM argues that anything beyond a "trifle" found in a store would necessitate a finding of "more than de minimis."

I do not find OCM's definition under the statute to be practical. First, using this definition would ignore the complete language of the statute which states that the activity is a "de minimis part of the business activity." This would seem to necessitate some type of accounting of the business' activity. Further, using their interpretation would simply replace one nebulous concept (de minimis) with another (trifle). While the statute does not provide a concrete definition for what constitutes de minimis, it does provide guidance. In the Matter of Cloud Mafia, I find two of the four factors determinative. First, Cloud Mafia did possess signs and symbols that may indicate to a customer that cannabis may be procured from the shop. Shirts, socks, bags and trays were all present on site. Many had cannabis leaves, words or phrasing associated with cannabis, or other markings and pictures that would be readily recognizable by customers looking to buy cannabis (Ex. C9-10). While these items are not illegal, they do provide indications that the store trades in illicit products. The second prong which I find most persuasive is the volume of cannabis present. Although the number of individual products seized by OCM is smaller than has been recovered in other cases, it is not a small amount. Forty-nine products were recovered and available for purchase. I find this amount alone to be sufficient for finding that the activity was more than de minimis. While a full accounting of the store's business is not provided, assuming the store is at the level argued by Respondent, I would find that this number of products is not an insignificant amount. Further, the products were kept in a portable backpack, which suggests that they were removed from the store on a regular basis. It is logical to assume that a limited number of items (perhaps the number that the store believed it could sell each day) were brought into the store and that the bag would be "refilled" once stock ran low. This would explain the products' presence in a backpack and allow for nearly unlimited sales to occur by restocking on a semi-regular basis. Finally, while a strict interpretation of "volume" would satisfy the requirements under the law, there is another, more relevant consideration that

supports a finding of more than de minimis. While “volume” may mean the total number of packages, it could also speak to the volume of illicit product – in this case THC – that was recovered.

When establishing standards for cannabis, New York Law does not treat all containers the same. The law understands that not all cannabis products are created equal and some may contain a high concentrate of THC while others may contain less. This is why the law uses amount of THC when it sets legal limits for processors. The potency limit for each product is set at 10 mg/serving with no more than 100 mg/package (9 NYCRR 123.6(f)(1)). The edible packets recovered at Cloud Mafia were very high concentrate – 2000 mg/package and 100 mg/serving. They far exceeded the amount of a legal package of cannabis with twenty times the legal limit in each packet. Under New York Law, this would mean that each packet had 200 servings of cannabis per bag. It seems illogical to treat all items the same when considering volume. Instead, looking at the total volume of THC seems a better indicator. The edibles recovered by OCM at Cloud Mafia totaled 64,000 mgs of THC according to the vouchers submitted into evidence (this is derived/confirmed by the packaging). This would mean that well over 6,000 servings of cannabis were present in the edibles alone. While it is not absolutely necessary to rest my findings on this interpretation of volume, I believe it is a fair and accurate reading of the statute. For all of the reasons discussed above but primarily based on 1) the signs and symbols and 2) the sizeable number of products recovered from the store (49), I find that the activity rose beyond a de minimis level of activity.

Imminent Threat to Public Health, Safety, and Welfare

The products seized from Cloud Mafia were not labeled or tested in accordance with New York law. There is no evidence that any testing was conducted and none of the products had the necessary confirmation of testing or required warnings (see generally Ex. D). The edibles do not comply with New York law and would not have been approved for sale in New York, even for a licensed operation. The danger associated with such a high concentrate edible is one of the rationales for requiring the testing and labeling requirements. The cartoon character present on the packaging and phrasing “GUMMY WORMS” do not comport with the requirements designed to protect users and the public (see, e.g., D10). Due to the lack of testing, I find that Cloud Mafia’s actions presented an imminent threat to health and safety.

Service

Respondent made no challenge of the service requirements under Cannabis Law 138-B. The OTS was given to an employee (possibly the owner) of suitable age and in apparent control of Cloud Mafia (Cannabis Law 138-B(2); Ex. A3). The document was also placed on the store front along with a notice that OCM had been present on site. The OTS listed the purported violations and the laws under which OCM acted. Further, a hearing was requested using the process outlined on the OTS. Finally, Respondent retained counsel who appeared at the hearing, indicating that Respondent had full knowledge of the proceedings.

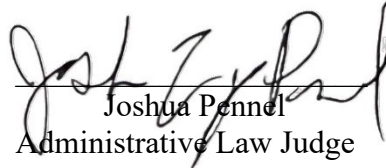
V. DECISION

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 1765 Orchard Park Rd., West Seneca, NY 14224. In so doing, Respondent violated Cannabis Law Article 6. The Order to Seal is hereby affirmed.

WHEREFORE, PURSUANT TO CANNABIS LAW ARTICLE 6 §138-b (9), THE ORDER TO SEAL, ISSUED ON JANUARY 29, 2026, IS HEREBY EXTENDED FOR ONE YEAR FROM THE DATE OF THIS DECISION.

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

Dated: February 12, 2026


Joshua Pennel
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 §§ 133.23(g)(5) and 133.25(k).

This decision was sent via email on February 12, 2026, to the following:

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