



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

DECISION

Michael Nacmias, Esq. - Nacmias Law Firm 592 Pacific Street 1st Floor Brooklyn, NY 11217	Summons No: 0208228561 et al. (1 Summons) DEPT OF FINANCE, -against- STAR VAPE CORP Hearing Date: 10/29/2024 Hearing Location: Remote Type of Hearing: By Telephone
---	--

Total Penalty Amount: \$10,000.00
Community Service(Hr): Not Applicable

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
0208228561	Sustained	07/25/2024	283 67 Street Brooklyn

LINE ITEM	OATH CODE	CODE SECTION/RULE	RESULT	PENALTY
1	ABE1	AC 7-551(A)	Sustained	\$10,000.00

Findings of Fact & Conclusions of Law

The hearing was conducted on October 29, 2024, by Court Call. Petitioner appeared through counsel, Evan Gluck, Esq. (Evan.Gluck@nypd.org). Respondent, Star Vape Corp. , appeared through counsel, Michale Nacmias, Esq. of Nacmias Law (michael@nacmiaslaw.com). Respondent declined to request the presence of the issuing officer. Neither party presented witnesses.

The summons, issued on July 25, 2024, alleges a violation of Administrative Code 7-551(a): Cannabis violation by a place of business. The sworn summons was read into the record. The summons avers that cannabis and cannabis marketed products were observed for sale without a valid cannabis license.

Petitioner relies on the affirmations of the sheriff and submits the summons (with affidavit of service), Order to Cease Unlicensed Activity and Seizure Notice dated 7/25/24, Sheriff's Certification of Service (SAD and Posting) dated 7/25/24, Sheriff's Certificate of Service (Mailing) dated 10/24/24, NYC DOF Seizure Receipt # 020523 dated 7/25/24, NYPD Property Clerk Invoice #5000256020 dated 7/25/24, Photographs taken during inspection/sealing (color pictures), NYS OCM Directory of Licensed Adult-Use Cannabis Dispensaries, Table of Authorities, Petitioner's Memorandum of Law, and exhibit list. Respondent's counsel does not object to Petitioner's exhibits. I credit the sworn summons and evidence submitted by the Petitioner.

Petitioner argues that the summons should be sustained. Petitioner notes that the sale of cannabis without registration, license or permit is not permitted. Petitioner argues that Respondent's business does not hold a cannabis CAURD-license (as required by §125), evidenced by their lack of being named in NYS OCM Directory of Licensed Adult-Use Cannabis Dispensaries Petitioner, per Exhibit 5. Petitioner admits that the products seized from Respondent were not tested but were, nonetheless, sold in violation of 7-551(a) of the administrative code, as they were marketed and labeled as cannabis or cannabis products. Petitioner states that the products at issue were all pre-rolls and that, pursuant to NYS Cannabis Law, cannabinoid hemp may not be sold as pre-rolls or in any form where it may be smoked. Petitioner states that, as seen in the photographs taken by the Sheriff, the seized pre-rolls were in containers which were marked with cannabis leaves, the name (Stizzy) of a known cannabis brand, and other markings, such as "With Kief," which exhibits Respondent's intent to sell or market the items as Cannabis.

Respondent presents a notarized affidavit of Abdul Hassen, Invoices from Go CBD, allegedly for the seized products, together with several laboratory testing reports for Go CBD products listed in the invoices. While Petitioner does question the validity of the provided test reports, they do not otherwise object to the admission of Respondent's exhibits. I credit the sworn affidavit and evidence submitted by Respondent.

Respondent does not deny that the seized items were offered for sale at the cited premises. Respondent argues, however, that the seized items were not cannabis products under the law. Respondent states that the items seized were, instead, cannabinoid hemp purchased from Go CBD and tested to have less than 0.3% THC. Respondent argues that pursuant to the testing reports provided by GO CBD, the seized products were purchased under the impression that they could be sold without a license as cannabinoid hemp. Respondent argues that they have rebut any presumption that the seized items were cannabis and proven that the seized items were instead cannabinoid hemp excluded from the ambit of Administrative Code 7-551(a).

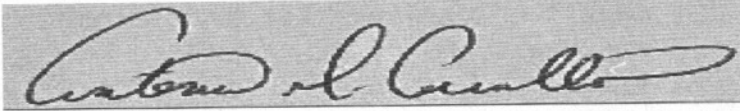
Administrative Code 7-551(a) incorporates several provisions of 125 of the NYS Cannabis Law. Relevant here, Section 125 of the Cannabis Law provides that "no person shall distribute for sale or sell at wholesale or retail or deliver to consumers any cannabis, cannabis product...or any product marketed or labeled as such ... without obtaining the appropriate registration, license, or permit." The Cannabis Law defines a "retail sale" as "to solicit or receive an order for, to keep or expose for sale, and to keep with intent to sell." Similarly, wholesale is defined as "to solicit or receive an order for, to keep or expose for sale, and to keep with intent to sell," and delivery is defined as "the direct delivery of cannabis products...to a consumer." Administrative Code 7-551(a) does, however, exempt "cannabinoid hemp" and "hemp extract products" from its coverage.

I find that Petitioner has established that Respondent sold products "marketed or labeled" as cannabis "without obtaining the appropriate registration, license, or permit." There is no requirement that the cited items must be tested and verified as cannabis to substantiate a violation. In any event, Petitioner's pictures depict several items marked in a manner which establishes marketing or labeling as cannabis. Moreover, cannabinoid hemp which is excepted from the ambit Administrative Code 7-551(a) may not, under NYS Law, be sold as pre-rolls or in any smokeable form. Respondent's purported ignorance of this fact does not allow them to safely presume that the seized products were properly sold without appropriate registration, license, or permit as cannabinoid hemp. The seized products were clearly displayed and sold in a fashion which would lead one to believe that they were cannabis products. In fact, nowhere on the packaging of these products was there any indication of any sort that the products were instead cannabinoid hemp.

I find that Respondent is not listed as a licensed business on the OCM Dispensary list. I find that the summons makes out a prima facie case and that Petitioner's Exhibit 5 show cannabis marketed products being sold by Respondent.

Accordingly, the Summons is sustained.

OATH's decision regarding the SUMMONS is a final administrative determination and cannot be appealed at OATH or to the NYC Sheriff (See Administrative Code section 7-552(b)(2)).



10/29/2024

10/29/2024

Antonio Cavallaro, Hearing Officer

Date