

**THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE AND CANNABIS BOARD**

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In the Matter of:)	
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LifeLuxee, LLC)	Case No.: 24-ULC-00036
t/a Cannabis Karma)	License No.: N/A
)	Order No.: 2024-904
Summary Action)	
)	
at premises)	
825 Upshur Street, N.W.)	
Washington, D.C. 20011)	
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BEFORE: Donovan Anderson, Chairperson
Silas Grant, Jr., Member
David Meadows, Member

PARTIES: Amber Maiden, Counsel, on behalf of LifeLuxee, LLC, t/a Cannabis Karma and Princess Mirabal, Respondents

Richard Bianco, Counsel, on behalf of Kenneth D. Morris, Landlord Respondent¹

Shani C. Brown, Assistant Attorney General
Office of the Attorney General for the District of Columbia

ORDER AFFIRMING SUMMARY ACTION

On October 16, 2024, the Board issued an order to close, padlock, and seize illegal cannabis at the establishment operated by of LifeLuxee, LLC, t/a Cannabis Karma and Princess Mirabal (hereinafter, collectively the “Respondents”) at 825 Upshur Street, N.W. *Notice of Summary Action*, 1 (24-ULC-00036). After a hearing on November 19, 2024, the Board affirms the summary closure of the establishment where it was established by the Government that the Respondents violated the Board’s Cease-and-Desist Order.

¹ The Landlord Respondent was present but only for the purpose of observing the hearing. The Landlord Respondent is advised to contact OAG to discuss the unsealing of the premises.

FINDINGS OF FACT

The following statements represent the Board's findings of fact based on the evidentiary record.²

1. It is uncontested that ABCA Supervisory Investigator (SI) Jason Peru issued a warning letter to LifeLuxee, LLC, t/a Cannabis Karma, and Princess Mirabal for operating as an unlicensed establishment engaged in illegal cannabis commerce, which was dated March 27, 2024. It is further uncontested that the Board issued a cease-and-desist order on July 10, 2024, in Board Order No. 2024-481. It is also uncontested that the cease-and-desist order against the establishment in Board Order No. 2024-537, was affirmed on August 7, 2024, based on the business illegally offering cannabis for sale in violation of Chapter 16B of Title 7 of the D.C. Official Code.
2. On September 15, 2024, SI Peru observed the Respondents' website in operation. On October 9, 2024, an investigative team engaged in an undercover operation. An undercover agent entered the establishment and purchased a product called "White Cherry Lemon Razz" from a female employee. The undercover agent paid \$80 for the product. The product tested positive for tetrahydrocannabinol (THC) when subjected to a field test.³
3. Respondent Princess Maribal admitted that an employee made a sale of cannabis at the store to the undercover officer.⁴
4. The District of Columbia Department of Health (DOH) previously advised in a 2018 guidance that "THC and CBD are legally considered Cannabis and hashish." *Letter from LaQuandra S. Nesbitt, Director, D.C. Department of Health*, at 2 (Jul. 31, 2018). An opinion issued by the District of Columbia Office of the Attorney General in 2021, affirms DOH's position, and indicates that federal exemptions for hemp products did not legalize hemp derived CBD products in the District of Columbia. *Legal Analysis – Whether CBD is Cannabis, District of Columbia Office of the Attorney General*, AL-21-222, 2-3 (Apr. 28, 2021). Likewise, under the same reasoning, other substances that may be derived from hemp, such as Delta 8 THC, have also not currently been legalized based on the reasoning provided in the memorandum. *See, e.g., id.* This means that under District law, products containing cannabis, hemp derived CBD, Delta 8 THC, or other substances derived from cannabis or cannabis classified as hemp cannot be commercially sold in the District of Columbia under the District of Columbia Uniform Controlled Substances Act of 1981 (effective Aug. 5, 1981, D.C. Law 4-29; D.C. Official Code § 48-901.02 et seq.) unless an appropriate medical cannabis license is obtained, as such products remain classified as cannabis or hashish under District law. This means that it is irrelevant

² This Order was written without the benefit of a transcript given the time required for the issuance of the Order; however, the Board is sufficiently versed in the facts to make these findings after holding the hearing.

³ The website of the Respondents further indicated that the product contained THC and cannabinal (CBD).

⁴ The testimony of Princess Maribal renders the testimony of the officer regarding the sale and testing of cannabis credible and reliable even if the undercover agent did not testify. The Board further notes that hearsay evidence is acceptable in administrative proceedings when credible.

whether a product is legally classified as hemp under federal law, as such a product is still deemed cannabis under District law.

CONCLUSIONS OF LAW

5. Chapter 16B of Title 7 of the D.C. Official Code provides in § 7-1671.08(g)(1) that

Notwithstanding § 7-1671.06(b) and § 7-1671.08(f), ABCA shall have the authority to inspect an unlicensed establishment. If, after an inspection, ABCA determines that an unlicensed establishment presents an imminent danger to the health or safety of the public, as described in paragraph (2) of this subsection, the ABC Board may summarily close and order the padlocking, by ABCA or MPD without a prior hearing, of the unlicensed establishment, and ABCA may seize all cannabis and cannabis products found at the premises.

D.C. Official Code § 7-1671.08(g)(1). An imminent danger may be found under § 7-1671.08(g)(2)(C) when an “unlicensed establishment fails to comply with a cease and desist order.” § 7-1671.08(g)(2)(C).

6. An “Unlicensed establishment” is

a sole proprietorship, partnership, or other business entity that:

- (A) Sells, exchanges as part of a commercial transaction, or delivers cannabis and cannabis products;
- (B) Operates at or delivers from a specific location in the District; and
- (C) Is not licensed by ABCA as a cultivation center, retailer, internet retailer, manufacturer, courier, or testing laboratory.

D.C. Code § 7-1671.01(22).

7. Finally, under § 7-1671.08(h)(1),

- (h)(1) Notwithstanding § 7-1671.06(b) and § 7-1671.08(f), ABCA shall have the authority to investigate an unlicensed retailer. If, after an investigation, ABCA determines that an unlicensed retailer has failed to comply with the provisions of this chapter, ABCA shall have the authority to summarily close the unlicensed retailer and seize any cannabis products inside the establishment.

D.C. Code § § 7-1671.08(h)(1).

8. The Board is persuaded that the Respondents and its agents operate an unlicensed establishment engaged in the illegal sale and distribution of cannabis in violation of the Board’s

cease-and-desist order. *Supra*, at ¶¶ 1-3. Specifically, the Board credits evidence that an undercover agent bought cannabis in violation of the Board’s cease and desist order on October 9, 2024. *Supra*, at ¶ 2-3. Therefore, the summary action under § 7-1671.08(g)(2)(C) is justified.

9. It is not a defense, as argued by the Respondents, that an employee engaged in the sale was a new employee or had alleged instructions to not engage in cannabis sales, as it does not change the fact that the sale of cannabis occurred in violation of the cease-and-desist order or that the employee was given the means to engage in such behavior and they did. It is also not a defense that the business had any sort of difficulty complying with the current law of the District of Columbia.

10. The Board further notes that the sale and distribution of illegal cannabis immediately threatens the health and safety of the public because unregulated product may contain inappropriate and harmful substances (e.g., pesticides, other narcotics). In addition, unlicensed businesses are at risk of selling cannabis to persons that should not have access to cannabis, such as minors, and such sales are not subject to any purchase limits (e.g., 22-C DCMR § 301), THC restrictions, or similar rules. Therefore, the padlocking and seizure of cannabis products are appropriate in this case.

I. The Alleged Failure to Follow the Warrant Procedures is Not Grounds to Suppress the Evidence in this Case.

11. The Board also rejects any defense based on any alleged failure of the Government to comply with any search warrant procedures. As noted in *Criales*, the failure to follow search warrant procedures, such as complying with any of the return procedures, is not sufficient to merit suppression of any evidence unless it is shown “(1) there was “prejudice” in the sense that the search might not have occurred or would not have been so abrasive if the Rule had been followed, or (2) there is evidence of intentional and deliberate disregard of a provision in the Rule.” *Criales v. U.S.*, 621 A.2d 374, 378 (D.C. 1993). Separately, there is also no indication that the search warrant was challenged and voided in the appropriate forum. In this case, where there is no evidence of prejudice or intentional disregard by the police, and the search warrant remains valid under the law, any claim that any evidence obtained by the search warrant must be suppressed or cannot be relied upon is without merit.⁵

II. Cannabis Products Classified as Hemp or Contain Cannabidiol (CBD) are Deemed Cannabis under District Law.

12. The Board also notes that it is not a defense that any cannabis products only contained cannabidiol (CBD) or qualify as hemp under federal law. *Tr.*, 9/19/20 at 76, 81, 101-02. Under District law, CBD and cannabis that qualifies as hemp under federal law are still deemed cannabis under the District’s Controlled Substance Act. *District of Columbia Office of the Attorney General, Legal Analysis – Whether CBD is Cannabis* (AL-21-222), at 2 citing D.C.

⁵ Any challenge against the warrant must be brought in the appropriate forum, as the Board is not authorized to overturn a warrant.

Official Code § 48-901.02.⁶ Therefore, whether the products contained THC or CBD or both, and whether those products qualified as hemp, does not change the fact that cannabis as defined under District law was observed cannabis on the premises.

III. The Interstate Commerce Clause is Not a Defense.

13. The Board rejects any defense by the Respondents under the Interstate Commerce Clause that the Respondents have the right to engage in the large scale storage and export off cannabis or hemp from the District, because the District is permitted to continue to regulate the production of hemp, prohibit the transportation of hemp, prohibit the sale of hemp, and prohibit the possession of hemp. *Legal Analysis – Whether CBD is Cannabis, District of Columbia Office of the Attorney General*, AL-21-222, 4 (Apr. 28, 2021) citing *C.Y. Wholesale, Inc. v. Holcomb*, 965 F.3d 541 (7th Cir. 2020). The District is also free to regulate hemp more strictly than federal law permits. *Id.* As a result, the Interstate Commerce Clause does not permit the Respondents to use the District as a base of operations to store and export cannabis or hemp-derived cannabis products in violation of District law.

IV. The Board Rejects the Respondents’ Selective Enforcement Defense.

14. The Board is further not persuaded by the Respondent’s selective enforcement defense.

To support a defense of selective enforcement or discriminatory prosecution, appellant must show that the government's selection of it for prosecution has been “based upon some form of invidious or otherwise impermissible form of discrimination, or is arbitrary and capricious.”

Hosp. Temps Corp. v. Dist. of Columbia, 926 A.2d 131, 140 (D.C. 2007). In this case, there is no credible allegation of “impermissible discrimination” or that enforcement is arbitrary and capricious. Indeed, the District is not obligated “to turn a blind eye” to the Respondent’s conduct when known, *id.*, and there is no allegation that the enforcement action was based on race, ethnicity, or some other protected class. Separately, the Board further notes that it is perfectly acceptable for the District to focus enforcement efforts and limited enforcement resources on businesses selling high THC, intoxicating cannabis products, products appealing to children, or other valid criteria, if it so chooses.⁷

ORDER

Therefore, the Board, on this 20th day of November 2024, hereby **AFFIRMS** the closure of the establishment pursuant to Chapter 16B of Title 7 of the D.C. Official Code.

⁶ Also available at <https://abca.dc.gov/node/1659216#gsc.tab=0>.

⁷ It should also be noted that no specific cannabis or hemp products sold by other stores have been shown to be in violation of the District’s cannabis laws and these allegations made by the Respondents appear conclusory. It was also not shown legally that the basis of the alleged discrimination resulting in the alleged selective enforcement qualifies for a selective enforcement defense (e.g., big companies vs. small companies), even if it were established during the proceedings.

IT IS FURTHER ORDERED that the Metropolitan Police Department and ABCA shall retain the right to padlock the premises and seize any cannabis or cannabis products found on the premises pursuant to D.C. Official Code § 7-1671.08(g)(1). The Board may consider modifying this Order or the terms of the summary closure upon the submission and approval of a reasonable remediation plan by the property owner that prevents the recurrence of illegal cannabis activity at the premises.

The ABCA shall deliver a copy of this order to the Parties.

District of Columbia
Alcoholic Beverage and Cannabis Board

eSigned via SeamlessDocs.com
Donovan Anderson
Key: ac43cb06c09d5f094b730003d1dccc8

Donovan Anderson, Chairperson



Silas Grant, Jr., Member

Teri Janine Quinn, Member

Ryan Jones, Member

David Meadows

David Meadows, Member

Pursuant to D.C. Official Code § 25-433(d)(1) (applicable to alcohol matters) or 22-C DCMR § 9720 (applicable to medical cannabis matters), any party adversely affected may file a Motion for Reconsideration of this decision within ten (10) days of service of this Order with the Alcoholic Beverage and Cannabis Administration, 2000 14th Street, N.W., Suite 400S, Washington, DC 20009.

Also, pursuant to section II of the District of Columbia Administrative Procedure Act, Pub. L. 90-614, 82 Stat. 1209, D.C. Official Code § 2-510 (2001), and Rule 15 of the District of Columbia Court of Appeals, any party adversely affected has the right to appeal this Order by filing a petition for review, within thirty days of the date of service of this Order, with the District of Columbia Court of Appeals, 430 E Street, N.W., Washington, D.C. 20001 (202/879- 1010). However, the timely filing of a Motion for Reconsideration stays the time for filing a petition for review in the District of Columbia Court of Appeals until the Board rules on the motion. *See* D.C. App. Rule 15(b) (2004).