

**BEFORE THE CANNABIS CONTROL DIVISION
FOR THE STATE OF NEW MEXICO**

IN THE MATTER OF:

Case No. 2023-001

Paradise Distro LLC,
License No. CCD-2022-0111

Respondent.

FINAL DECISION AND ORDER

THIS MATTER having come before the New Mexico Regulation and Licensing Department (the “Department”) for consideration and decision on June 30, 2023, upon completion of an evidentiary hearing held on April 27, 2023, at the Regulation and Licensing offices located at 5500 San Antonio Dr NE, Albuquerque, NM 87109; the State of New Mexico having been represented at the hearing by Cannabis Control Division Counsel Robert Sachs (“Administrative Prosecutor”); Respondent Paradise Distro LLC having not made an appearance at the hearing; the duly appointed Hearing Officer Alissa Berger (“Hearing Officer”) having timely submitted to the Department a written report setting forth her findings of fact, in accordance with 61-1-7(A) NMSA 1978, of the Uniform Licensing Act, the Department issues the following:

FINDINGS OF FACT

The Department adopts the Hearing Officer’s Findings of Fact, numbered 1 through 5, and incorporates them into this Final Decision and Order as stated herein:

1. The Respondent possessed illegal product that was not native to New Mexico, whether it was for the Respondent’s own personal or commercial use, there were several examples of cannabis product marked with California stamping;

2. The Respondent received product that was not native to New Mexico [thereby not] documenting this purchase and/or receipt in the state track and trace system, known as BioTrack;
3. The Respondent sold product that was not native to New Mexico [thereby not] properly documenting these sales in the state track and trace system known as BioTrack;
4. The Respondent had received and displayed products such as edibles and concentrates in the dispensary that were not properly documented on their required manifests; and
5. The Respondent inaccurately reported sales data as discrepancies arose between the sales noted in the state's BioTrack system and the third-party point-of-sale system.

CONCLUSIONS OF LAW

The Department reaches these Conclusions of Law:

1. In New Mexico, the standard of proof applied in administrative hearings, with few exceptions, is a preponderance of the evidence. *Foster v. Board of Dentistry of State of New Mexico*, 103 N.M. 776, 714 P.2d 580 citing *State Department of Motor Vehicles v. Gober*, 85 N.M. 457, 513, P.2d 391; *Seidenberg v. New Mexico Board of Medical Examiners*, 80 N.M. 135, 452 P.2d 469 (1969).
2. Adequate grounds exist for revocation of the Respondent's license based upon the evidence and testimony elicited related to six (6) separate regulatory violations.
3. It is noted that the Hearing Officer, in arriving to these legal conclusions and analysis did not take into account the Respondent's previous violations of the CRA from 2022 which were resolved.
4. The Hearing Officer based the conclusions of law only upon the evidence and testimony presented at the Hearing regarding the violations of the CRA and the New Mexico

Administrative Code (“NMAC”) that formed the basis of the NCA issued on January 13, 2023.

5. Related to the violation, “Illegal Purchase and Sale of Cannabis,” the Hearing Officer found that Respondent violated 16.8.2.8(E) and 16.8.2.39(A)(2) NMAC.
6. 16.8.2.8(E), General Operational Requirements for Cannabis Establishments subsection E, reads, “Licensees shall not knowingly and intentionally sell, deliver, or transport cannabis or cannabis products to any person that is not authorized to possess and receive the cannabis or cannabis products pursuant to state law or division rules.”
7. 16.8.2.39(A)(2) NMAC, Cannabis Retailer Policies and Procedures, Subsection (A), Minimum policy and procedure requirements, number (2): employee policies and procedures to address the following minimum requirements, requires:
 - (a) Adherence to state and federal laws; (b) responding to an emergency, including robbery or a serious accident, (c) alcohol and drug-free workplace policies and procedures; (d) safety and security procedures; (e) occupation safety; (f) crime prevention techniques; and (g) confidentiality laws, including the Health Insurance Portability and Accountability Act of 1996 . . .
8. Through evidence, testimony, and through Exhibit 3, CCD pages 010-013, the State demonstrated at the Hearing that the Respondent had product with California markings and stamping.
9. Whether or not this California product was for commercial or personal use, the product was found during the inspection by the Division staff in the Respondent’s display case.
10. Related to the violation, “Improper Acceptance of Cannabis Product without a Shipping Manifest,” the Hearing Officer found that Respondent violated 16.8.2.13(E) NMAC.
11. 16.8.2.13 NMAC, Requirements for the Transportation of Cannabis subsection (E) states, “Licensees shall not take into possession or transport: (1) any cannabis or cannabis

products that are not on the shipping manifest; or (2) any cannabis or cannabis products that are less than or greater than the amount reflected on the shipping manifest, with the exception of marginal weight difference due to curing transport.”

12. Evidence and testimony presented at the Hearing as well as Exhibit 8, CCD-026 and Exhibit 9, CCD-027-028 showed that the Respondent listed only flower lot inventory.
13. Evidence and testimony presented at the Hearing demonstrated that during site inspections, Division staff viewed the Respondent had received product such as edibles and concentrate that was not properly documented on their required manifests; and displayed these products for sale in the Respondent’s dispensary.
14. Related to the violation, “Sales of Illegal and Improper Cannabis Product,” the Hearing Officer found that Respondent violated 16.8.2.40(G) NMAC.
15. 16.8.2.40(G) NMAC, Minimum Standards for Retail of Cannabis Products, subsection (G)(1), entitled, “Cannabis and cannabis products for sale” reads:

A licensed retailer shall not make any cannabis or cannabis products available for sale or delivery to a customer unless” (a) the cannabis or cannabis products were received by the retail licensee from a licensed producer, licensed producer microbusiness, licensed manufacturer, licensed vertically integrated cannabis establishment, or licensed integrated cannabis microbusiness; (b) the licensed retailer has verified that the cannabis or cannabis products have not exceeded their expiration or sell-by date if one is provided; (c) in the case of manufactured cannabis products, the cannabis product complies with all requirements of the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act and division rules; (d) the cannabis or cannabis products have undergone laboratory testing as required by the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act and division rules; (e) the packaging and labeling of the cannabis or cannabis product complies with all applicable requirements found in the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act and division rules.

16. Evidence and testimony presented at the Hearing, in addition to Exhibit 7, CCD-0025, demonstrated that the Respondent possessed and intended to sell cannabis products without proper labeling, which should, but did not, include an expiration date.

17. Evidence and testimony presented at the Hearing demonstrated that the Respondent possessed and intended to sell cannabis products with no evidence or quality assurance testing and without proper documentation of a transport manifest.
18. The first product that raised concern was unlabeled concentrate where only the amount was labeled (.05 grams), called, “Grape Ape” which also had a California cannabis product stamp.
19. Compliance officer Silva, who testified at the Hearing, noted only the quantity of the unlabeled concentrate while all other requirements for the label were not present. Compliance Officer Silva also noted other instances of product that were either mislabeled, not labeled at all, or had California cannabis product stamping.
20. Further photographic evidence regarding unmarked and unlabeled product demonstrated an edible marked with the potency and trade name, but all other required packaging, testing information and quality assurance information were not present on the label.
21. The CRA as well as the NMAC requires that each cannabis product, depending on the size, must be labelled with an identifier as to what the product is, the product’s quantity and potency, the product’s manufacturing date, the name of the product’s manufacturer, the expiration date, and the BioTrack identification number.
22. Related to the violation, “Inaccurate Sales Records,” the Hearing Officer found that Respondent violated 16.8.2.40(L) NMAC.
23. 16.8.2.40(L) NMAC entitled, “Minimum Standards for Retail of Cannabis Products” subsection L, Record of Sales holds:
 - (1) A licensed retailer shall maintain an accurate record of every sale of cannabis and cannabis product made to a customer.
 - (2) a record of cannabis or cannabis products should to a customer shall contain the following minimum information: (a) the first name and employee number of the employee who processed the sale; (b) the date and

time of the transaction; (c) a list of all the cannabis or cannabis product purchased, including the quantity purchased; and (d) the total amount paid for the sale including the individual prices paid for each cannabis or cannabis product purchased and any amounts paid for cannabis excise tax. (3) For the purposes of this section, an employee number is a distinct number assigned by a licensed retailer to their employees that would allow the licensed retailer to identify the employee on documents or records using the employee number rather than the employee's full name. A licensed retailer shall be able to identify the employee associated with each employee number upon request from the division. (4) All licensed retailer-specific records shall be maintained for at least 12 months.

24. Evidence and testimony, along with Exhibit 5, CCD-023, along with Exhibit 10, CCD-029-030, demonstrated sales reports from the Respondent's third-party point of sale system and the information input by the Respondent into the BioTrack System were inconsistent.
25. The state's traceability system, BioTrack, noted sales from the beginning of the Respondent's operation until the inspections that formed the basis of this NCA totaling \$9,495.06. While the Respondent's third-party point of sale system noted \$56,374.84 in cash and \$8,338.94 in additional funds that were not reported in BioTrack.
26. Respondent is not properly reporting their sales.
27. Related to the violation, "Inaccurate and Missing Cannabis Finished Product Labeling," the Hearing Officer found that Respondent violated 16.8.3.9(A)-(H), (J)-(L) NMAC.
28. As noted above in the violation, evidence and testimony from the Hearing, along with Exhibit 7, CCD-025, demonstrated that the Respondent possessed and intended to sell cannabis products without proper labeling, including an expiration date and other required markings including the product's potency.
29. The Division's rules require that each cannabis product, depending on the size, must be labeled with an identifier as to what the product is, the product's quantity and potency, the product's manufacturing date, who manufactured the product, the expiration date and the BioTrack identification number.

30. Related to the violation, “Inaccurate Tracking of Cannabis Sales,” the Hearing Officer found that Respondent violated 16.8.7.11(A) NMAC.

31. 16.8.7.11(A) NMAC entitled, “Conduct While Using Track and Trace System,” subsection

A reads:

Licensees or designated track and trace administrator(s) and track and trace system user(s) shall enter data into the track and trace system that fully and transparently accounts for all inventory tracking activities and authorized transfers. Both the licensee and the individuals using the trace and trace system are responsible for the accuracy of all information entered into the track and trace system.

32. Evidence and testimony along with Exhibit 5, CCD-023, along with Exhibit 10, CCD-029-030, demonstrated sales reports from the Respondent’s third-party point of sale system and the information input by the Respondent into the BioTrack system were inconsistent.

33. BioTrack noted sales from the beginning of the Respondent’s operation until the inspections that formed the basis of this NCA totaling \$9,495.06. While the Respondent’s third-party point of sale system noted \$56,374.84 in cash and \$8,338.94 in additional funds that was not reported in the BioTrack System.

34. The Respondent is not properly reporting their sales.

ORDER

Based on these Findings of Fact and Conclusions of Law, the Department **ORDERS**:

- A. Respondent’s license **REVOKED** effective fourteen (14) calendar days from the receipt of this order via certified mail.
- B. Respondent shall immediately cease all commercial cannabis activity defined by the CRA except as necessary to sell to another CRA licensee or waste any remaining cannabis or cannabis products remaining within the remaining fourteen (14) calendar days prior to revocation.
- C. No later than the date of revocation, Respondent shall surrender their license by certified mail to the division. All certified mail shall be sent to 2550 Cerrillos Rd., P.O. Box 25101, Santa Fe, NM 87504 ATTN: Cannabis Control Division. All email correspondence shall be sent to Division Counsel, Robert Sachs at Robert.Sachs@rld.nm.gov.

D. This Order constitutes a final decision for purposes of initiating any contemplated judicial review pursuant to the provisions of the Uniform Licensing Act, 61-1-17 NMSA 1978, and 39-3-1.1 NMSA 1978. An aggrieved party has the right to judicial review of this Order by filing a notice of appeal under Rule 1-074 NMRA within thirty (30) days of the date of filing of the final decision. Any pleadings filed with the district court must be served on the Division's counsel, Robert Sachs, at 2550 Cerrillos Rd., P.O. Box 25101, Santa Fe, NM 87504 ATTN: Cannabis Control Division, Robert.Sachs@rld.nm.gov.

IT IS SO ORDERED.

Linda Trujillo
Superintendent
NM Regulation and Licensing Department

Date