

ADMINISTRATIVE HEARINGS DIVISION

November 16, 2023

STIPULATED SETTLEMENT AGREEMENT FOR MARIJUANA VIOLATION CASES

1. Oregon Ag and Distribution, LLC
TMBR, Inc., Member
Teresa Erlebach, Pres/Sec/Stkhldr
dba **DARK HORSE DISTRIBUTION**
(Wholesaler)

The Notice charged the following compliance violations:

ORS 475C.085(2), OAR 845-025-3215(4).- From about February 1, 2022, to about June 14, 2022, Licensee processed (as that term is defined in OAR 845-025-1015(85)(a)) marijuana without a processor license issued by the Commission for the premises at which the marijuana items were processed, when Licensee and/or Licensee's employees, agents, or representatives processed at its licensed Wholesaler premises in Huntington Oregon, inhalable cannabinoid products (ICPs) by compounding marijuana extract oil with non-cannabis terpenes to convert the extract oil into flavored ICPs (commonly known as "vape cartridges") to be marketed under the Your Highness Cultivar (YHN) brand.

(Category I)

OAR 845-025-5700(1) - On or before the dates listed below, Licensee failed to comply with the Oregon Health Authority's testing rules in OAR 333-007-0300 to 333-007-0500 and OAR 333, Division 64, specifically OAR 333-007-0341(1)(a)(b)(c), (2) (effective 3/31/2022), prior to the sale or transfer of a marijuana item, when Licensee and/or Licensee's employees, agents, or representatives transferred thousands of ICPs intended for human use via inhalation that constituted "Finished inhalable cannabinoid products" within the meaning of OAR 333-007-0310(32), without testing every process lot for pesticides, solvents, and adult-use cannabinoid and CBD concentration, prior to selling or transferring the product.

Note: Licensee was charged with these violations by Amended Notice dated October 17, 2023. Staff proposed the standard sanction of license cancellation for the compliance violations. Commission staff proposed the standard sanction for the packaging and labeling violations of a \$100,000.00 civil penalty, under the Commission's January 7, 2020, policy on determining sanctions for packaging and labeling violations. Licensee requested a hearing and now wishes to enter into this settlement agreement.

MITIGATION

Staff recommended mitigation because Licensee cooperated in the investigation to the extent that their cooperation demonstrated acceptance of responsibility by promptly recalling unsold products when informed of the risk, and by promptly providing the OLCC with information when requested.

AGGRAVATED

Staff recommended aggravation because all four violations were repeated, and because Violation Number One was intentional.

(continue **DARK HORSE
DISTRIBUTION**)

*Transfers to The Bud House after effective date of
the applicable rule:*

April 1, 2022
April 7, 2022
April 13, 2022
April 18, 2022
April 27, 2022
May 11, 2022
May 19, 2022
May 20, 2022
June 14, 2022

*Transfers to Weedology:
May 27, 2022*

(Category I)

OAR 845-025-8520(10)(b)(C),
OAR 845-025-3265(2)(d), (3), (4) - From about
February 1, 2022 to about June 14, 2022, Licensee
processed, manufactured, possessed, sold, delivered,
or transported prohibited inhalable cannabinoid
products as defined in OAR 845-025-8520(10)(a) and
OAR 845-025-3265(2)(d), when Licensee and/or
Licensee's employees, agents, or representatives
processed, manufactured, possessed, sold, delivered,
or transported ICPs containing soy bean oil, a
triglyceride.

(1st Level Category III)

OAR 845-025-8540(2)(c) - From about February 1,
2022 to about June 14, 2022, Licensee
misrepresented marijuana items to other licensees,
consumers, and the public when Licensee and/or
Licensee's employees, agents, or representatives
overstated the THC levels and both overstated and
understated the CBD levels on the labels they
applied to the below-listed ICPs that they transferred
to other licensees for ultimate sale to consumers.

Violation Number Four Products:

Package	Product Name	THC% stated/actual	CBD% stated/actual
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(continue **DARK HORSE
DISTRIBUTION**)

00152	YHN StrawNana 0 / 5.1	85.3 / 73.9
00154	YHN Grape Vape 0 / 5.7	85.3 / 76.2
00141	YHN Pina Colada 0 / 5.2	85.3 / 76.9
00142	YHN Gorilla Glue#4 0 / 4.7	85.3 / 66.4
00113	YHN NYC Diesel 0 / 4.7	85.3 / 76.6
00112	YHN Tangie Berry 0 / 5.0	85.3 / 74.9
00026	YHN Green Crack 6.4 / 3.2	90.1 / 65.1
00017	YHN Blue Dream 4.6 / 4.5	85.9 / 73.7

(1st Level Category II)

The Notice charged the following packaging and labeling violations:

ORS 475C.644(1), OAR 845-025-7170(1), (2), (3), (4) - On or about the dates listed below, on 16 separate days, Licensee transferred to other OLCC licensees marijuana items for ultimate sale to a consumer that had not received package and label approval prior to the transfer, when Licensee or Licensee's employees, agents, or representatives transferred thousands of YHN brand ICPs intended for sale to consumers for purposes of vaping to licensed retailers The Bud House and Weedology without first obtaining packaging and labeling approval from the Commission as required by ORS 475C.608(2), ORS 475C.616(2), and OAR 845-025-7160(1). Each transfer or sale of a marijuana item that is not compliant with packaging and labeling statutes and rules constitutes a separate violation.

Packaging & Labeling Violation dates:

February 23, 2022 – 810 vape cartridges / violations

February 28, 2022 – 1114 vape cartridges / violations

March 3, 2022 – 829 vape cartridges / violations

March 10, 2022 – 794 vape cartridges / violations

(continue **DARK HORSE
DISTRIBUTION**)

March 16, 2022 – 871 vape cartridges / violations
March 24, 2022 – 500 vape cartridges / violations
April 1, 2022 – 900 vape cartridges / violations
April 7, 2022 – 1620 vape cartridges / violations
April 13, 2022 – 100 vape cartridges / violations
April 18, 2022 – 4762 vape cartridges / violations
(2 manifests)
April 27, 2022 – 200 vape cartridges / violations
May 11, 2022 – 1811 vape cartridges / violations
May 19, 2022 – 939 vape cartridges / violations (2
manifests)
May 20, 2022 – 200 vape cartridges / violations
May 27, 2022 – 1482 vape cartridges / violations
(1382 “received”)
June 14, 2022 – 1486 vape cartridges / violations

SYNOPSIS: This case involved both compliance and packaging & labeling violations by a Recreational Marijuana Wholesaler. When the Licensee submitted a label for OLCC approval, OLCC discovered that Licensee had processed marijuana by compounding marijuana extract oil with non-cannabis additives (terpenes) to create flavored inhalable cannabinoid products (ICPs, commonly referred to as “vape cartridges”). Licensee transferred over 20,000 of these ICPs to marijuana retailers for ultimate sale to consumers without testing the final process lots after addition of the terpenes (the underlying base marijuana oil had passed testing). The ICPs were labeled with inaccurate THC and CBD levels and likely contained soy-bean oil, which is a triglyceride and therefore a prohibited additive. Licensee was of the mistaken belief that they could engage in these activities and that they could transfer these ICPs using only a generic pre-approved label. Licensee cooperated in a recall, the investigation, and voluntarily surrendered the unsold affected ICPs to OLCC for destruction. Although nearly 18,000 units were sold to consumers prior to the recall, no injuries related to the noncompliant ICPs were reported to OLCC.

TERMS OF AGREEMENT

1. Licensee accepts responsibility for the compliance and packaging and labeling violations as set out in the Notice. Violations Number One and Number Two were Licensee’s first and second Category I violations. Violations Number Three and Number Four were Licensee’s first Category III and Category II violations within two years. Any subsequent Category III or Category II violation(s) within the same two years will be charged starting at the second level. The compliance violations will become a permanent part of each licensee’s Commission file and may be considered in any future application for any license or permit by the licensee.
2. Commission staff proposed the standard sanction of license cancellation for the compliance violations. Staff recommended mitigation because Licensee cooperated in the investigation to the extent that their cooperation demonstrated acceptance of responsibility by promptly recalling unsold products when informed of the risk, and by promptly providing the OLCC with information when requested. Staff recommended aggravation because all four violations were repeated, and because Violation Number One was intentional.
3. Commission staff proposed the standard sanction for the packaging and labeling violations of a \$100,000.00 civil penalty, under the Commission’s January 7, 2020, policy on determining sanctions for packaging and labeling violations.

(continue **DARK HORSE DISTRIBUTION**)

4. The Commission will reduce the sanction for Violation Number One and impose a 43-day suspension or a \$10,000.00 civil penalty plus three days mandatory suspension for that violation. The Commission will reduce the sanction for Violation Number Two and impose a 41-day suspension or a \$10,000.00 civil penalty plus one day mandatory suspension for that violation. The Commission will impose a 12-day suspension or a \$3,000.00 civil penalty for Violation Number Three, and a 21-day suspension or \$5,250.00 civil penalty for Violation Number Four.
5. For the packaging and labeling violation, the Commission will impose a \$30,000.00 civil penalty.
6. Licensee will pay a \$58,250.00 civil penalty before 5:00 PM on December 15, 2023 and serve a four-day suspension beginning at 12:00 PM (noon) on December 22, 2023 and ending at 12:00 PM (noon) on December 26, 2023 **OR** pay a \$30,000.00 civil penalty before 5:00 PM on December 15, 2023 and serve a 117-day suspension beginning at 12:00 PM (noon) on December 22, 2023 and ending at 12:00 PM (noon) on April 17, 2024.
7. Licensee withdraws its Request for Hearing.
8. If a licensee's interest in the license expires or is transferred before the Commission issues a final order on the allegations, the licensee agrees to accept a Letter of Reprimand for the compliance violations, and Licensee shall pay the packaging and labeling civil penalty by the above-stated deadline. This reprimand will become a permanent part of the licensee's Commission file and may be considered in any future application for any license or permit by that licensee.
9. This agreement is conditioned upon final approval of the Commission and will be reviewed by the Commissioners at their November 2023 Commission Meeting. If the agreement is not accepted and approved in its entirety by the Commission it is deemed null and void and Licensee's hearing rights, if any, will be restored. If the agreement is accepted and approved in its entirety by the Commission, Licensee waives any and all rights to a contested case hearing under the Administrative Procedures Act (ORS Chapter 183) and to judicial review, or to otherwise challenge this agreement and the final order.

2. Willamette Enterprises, LLC
Tim Horst, Member
dba **SUNDAZE CANNABIS
COMPANY**^[1]

(Producer)

OAR 845-025-2040(2)(c), (7).² - On or before August 18, 2020, Licensee and/or Licensee's employees, agents, or representatives intentionally changed the location of a designated canopy area without obtaining prior written approval from the Commission when approximately 35 mature marijuana plants were growing outside a greenhouse and approximately 300 marijuana plants were kept in pots and were being trimmed and watered in a parking area and neither of those areas were approved mature or immature canopy areas.

(Category I)

OAR 845-025-1450(2)(i) - On or about August 18, 2020, Licensee and/or Licensee's employees, agents, or representatives failed to make video surveillance records and recordings immediately available upon request to the Commission when premises manager Tim Murray was unable to show OLCC Inspectors L. Kleinkopf and J. Merein video surveillance footage because the equipment was locked in a cabinet and he did not have a key.

(1st Level Category II)

SYNOPSIS: On August 18, 2020, OLCC Inspectors went onto Licensee's premises to follow up on a licensing matter. During the visit, the Inspectors discovered 35 mature marijuana plants growing outside a greenhouse and approximately 300 marijuana plants were in pots, trimmed, and watered in a parking area. The Inspectors then requested access to the cameras to ensure that the marijuana plants were under camera coverage; however, Manager Tim Murry stated the cameras were locked in the equipment cabinet and he did not have a key. Violation Number One has since been recategorized as a Category II violation, so the settlement terms take that into account. Additionally, while the marijuana plants were inappropriately placed, at the time the violation occurred, Licensee had six greenhouses totaling 9,600 square feet and was only using one-third of the approved area, so this is not a situation in which Licensee exceeded its approved growing capacity.

TERMS OF AGREEMENT

1. Licensee accepts responsibility for the violations as set out in the Notice. These were Licensee's first Category I violation and first Category II violation, charged at the first level. Any subsequent Category II violation within the same two years will be charged starting at the second level.

¹ Formerly known as Further Farms.

² References are to the rules in effect at the time of the violations, except that aggravation and mitigation are considered under current rules and the current penalty schedule is applied to Category II violations.

Note: Licensee was charged with these violations by Amended Notice dated October 3, 2023. The total proposed sanction was a 60-day suspension or a \$15,000.00 civil penalty. Licensee requested a hearing and now wishes to enter into this settlement agreement.

MITIGATION

Commission staff originally proposed mitigation downward from the standard sanction of license cancellation for Violation Number One to a 30-day license suspension or a civil penalty of \$7,500.00 because subsequent amendment of OAR 845-025-2040 re-categorized this violation, when intentional, as a Category II violation. Staff originally proposed reducing the sanction by three days because Violation Number Two did not personally involve Licensee Tim Horst.

AGGRAVATED

Commission staff added three days of aggravation because Violation Number One was personally committed by Licensee Tim Horst.

(continue **SUNDAZE CANNABIS COMPANY**)

2. Commission staff originally proposed mitigation downward from the standard sanction of license cancellation for Violation Number One to a 30-day license suspension or a civil penalty of \$7,500.00 because subsequent amendment of OAR 845-025-2040 re-categorized this violation, when intentional, as a Category II violation. OAR 845-025-2040(8) (effective 1/1/2022). OAR 845-025-8590(5)(d)(F). The standard sanction for Violation Number Two is a 30-day suspension or a civil penalty of \$7,500.00. Commission staff originally proposed reducing the sanction by three days because Violation Number Two did not personally involve Licensee Tim Horst. Commission staff added three days of aggravation because Violation Number One was personally committed by Licensee Tim Horst. The total proposed sanction was a 60-day suspension or a \$15,000.00 civil penalty.
3. The Commission will reduce the sanction for Violation Number One by nine days and Violation Number Two by eight days.
4. Licensee will either pay a \$10,750.00 civil penalty before 5:00 PM on December 15, 2023 **OR** serve a 43-day suspension beginning at 7:00 AM on December 22, 2023 and ending at 7:00 AM on February 3, 2024.
5. Licensee withdraws the request for hearing.
6. If a licensee's interest in the license expires or is transferred before the Commission issues a final order on these incidents, that licensee agrees to accept a Letter of Reprimand for these violations. This reprimand will become a permanent part of the licensee's Commission file and may be considered in any future application for any license or permit by that licensee.
7. This agreement is conditioned upon final approval of the Commission and will be reviewed by the Commissioners at their November 2023 Commission Meeting. If the agreement is not accepted and approved in its entirety by the Commission it is deemed null and void and Licensee's hearing rights, if any, will be restored. If the agreement is accepted and approved in its entirety by the Commission, Licensee waives any and all rights to a contested case hearing under the Administrative Procedures Act (ORS Chapter 183) and to judicial review, or to otherwise challenge this agreement and the final order.