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Governor

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New Jersey Office of the Attorney General

Division of Consumer Affairs
Office of Consumer Protection
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June 15, 2021

Sky High Munchies LLC
c/o United States Corporation Agents, Inc.
330 Changebridge Rd., Ste. 101
Pine Brook, New Jersey 07058

WARNING TO CEASE AND DESIST

Dear Sir or Madam,

You are hereby on notice that your business activities related to gifting or free samples of marijuana or cannabis items in connection with the sale of other goods may violate New Jersey consumer protection laws. As discussed below, these activities are not authorized by the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act, P.L. 2021, c.16, or any other law. Instead, it appears that such activities include the unlicensed sale and/or advertisement of marijuana, and violate the New Jersey Consumer Fraud Act (“CFA”), N.J.S.A 56:8-1 to -226, among other laws and regulations.

The CFA prohibits the “act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, [or] misrepresentation . . . in connection with the sale or advertisement of any merchandise . . . whether or not any person has in fact been misled, deceived or damaged thereby.” N.J.S.A. 56:8-2. Making false or misleading statements regarding the merchandise offered for sale or the legality of how a business offers that merchandise for sale also violates the CFA. Additionally, without limiting the application of the CFA, the Regulations Governing General Advertising Practices (“Advertising Regulations”), N.J.A.C 13:45A-9.1 to -9.8, identify unlawful advertising practices which include “the making of false or misleading representations of facts concerning the . . . nature of an offering.”

Each misrepresentation in the sale or advertising of merchandise constitutes a separate violation, and you may be subject to a penalty of \$10,000 for the first violation and \$20,000 for each subsequent violation. The CFA also authorizes other relief, including but not limited to injunctive relief.

The Division of Consumer Affairs, which enforces the CFA, has received information that your business purports to engage in “cannabis gifting” and similar activities. According to statements made on your website, Sky High Munchies “sell[s] fresh baked Chocolate Chip Cookies, Marshmallows and more” and gives consumers the “option” to choose one of Sky High Munchies’ “FREE GIFTS,” “which can include up to 28g (1 ounce), of some of the finest cannabis and cannabis products in the state of New Jersey.” Your website states that, there is a “Free Gift with Every Purchase!” and that Sky High Munchies “follows all of NJ State Laws that were signed

on Feb 22, 2021.”

Contrary to those representations, it appears that Sky High Munchies is engaged in the unlicensed sale and distribution of marijuana. The packages offered for sale on your website offer mainly commercial-brand snack items. Prices for these packages begin at \$165.00. Moreover, a consumer must select a desired “gift” for every order from a list of marijuana strains and associated THC percentages. With certain packages, consumers also have the option to add an additional snack to their purchase with a specific corresponding gift (i.e. one mini bottle of water for +\$90). The “gift” thus is central to the transaction and does not appear to be a gift at all.

P.L. 2021, c.16 established a new approach to New Jersey’s marijuana policies by controlling and legalizing a form of marijuana, to be referred to as cannabis. N.J.S.A. 24:6I-32(a). The legislation was “designed to eliminate the problems caused by the unregulated manufacturing, distribution, and use of illegal marijuana within New Jersey,” N.J.S.A. 24:6I-32(c), to “strike a blow at the illegal enterprises that profit from New Jersey’s current, unregulated illegal marijuana market,” N.J.S.A. 24:6I-32(h), and to “prevent the sale or distribution of cannabis to persons under 21 years of age,” N.J.S.A. 24:6I-32(b), among other objectives. Thus, the law provides for “a controlled system of cannabis manufacturing, distribution, and sales . . . designed in a way that enhances public health and minimizes harm to New Jersey communities and families.” N.J.S.A. 24:6I-32(l).

Under the law, the Cannabis Regulatory Commission is charged with issuing licenses to cannabis cultivators, manufacturers, wholesalers, distributors, retailers, and delivery services, and issuing permits to medical cannabis alternative treatment centers. It does not appear that Sky High Munchies has been licensed or permitted by the Commission to engage in any of its business practices. Accordingly, the present business activities of Sky High Munchies appear to be unauthorized.

In addition, it does not appear that your business activities are authorized by N.J.S.A. 2C:35-10a. That provision states that, in certain carefully defined circumstances, it is not unlawful for persons 21 years of age or older to engage in specific conduct, including:

Transferring without remuneration: one ounce (28.35 grams) or less of usable cannabis; the equivalent of one ounce (28.35 grams) or less of usable cannabis as a cannabis product in solid, liquid, or concentrate form, based upon the equivalency calculation for different product forms set by the commission pursuant to subsection a. of this section; or five grams (0.176 ounce) or less of cannabis resin to a person who is of legal age for purchasing cannabis items, provided that such transfer is for non-promotional, non-business purposes.

N.J.S.A. 2C:35-10a(b). Based on a preliminary review of available information, it appears that your business activities may involve (i) marijuana, and not cannabis or any cannabis product or resin; (ii) transfers of marijuana for remuneration, and (iii) transfers made for business and/or promotional purposes.

The State will enforce the limits of the law relating to the unlicensed sale of marijuana or cannabis, including to prevent unlawful sales to individuals under the legal age and to protect the integrity of the regulated cannabis market created by the Legislature. By this letter, you are on notice that Sky High Munchies’ conduct may violate the CFA and related laws and regulations, which could subject you to penalties as set forth herein and/or other relief. Although no final determination has been made, and the Division’s investigation is ongoing, to the extent you are

engaged in conduct in violation of the CFA or Advertising Regulations, however, you are hereby warned to cease and desist such conduct.

Please be guided accordingly.

Sincerely,

A handwritten signature in black ink, appearing to read "Kaitlin Caruso". The signature is written in a cursive, flowing style.

Kaitlin A. Caruso
Acting Director
New Jersey Division of Consumer Affairs