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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

West Winds Wellness
c/o LegalCorp Solutions, LLC
301 Route 17 North, Suite 800
PMP #12-99
Rutherford, New Jersey 07070

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, West Winds does not sell marijuana but instead sells jars and stickers and provides consumers with “a promotional unrequired gift to pair with their [m]erchandise purchase.” Your website states that the “promotional” gift is “up to an ounce of [c]annabis.” Your website further states “Our [delivery] drivers are Independent Contractors and

can gift up to 1 ounce of cannabis as a promotional gift to another adult 21+ yrs or older with valid ID from any state if they choose to do so.”

Contrary to those representations, it appears that West Winds is engaged in the unlicensed sale and distribution of marijuana. The jars offered for sale on your website are priced between \$45 and \$350. The stickers offered for sale on your website are priced between \$10 and \$280. Despite a disclaimer on the order form that a promotional gift is not required, asterisks indicate that consumers must select and specify the desired type and quantity of the promotional marijuana gift. Moreover, age verification is purportedly conducted for every transaction, which would be unnecessary if the only products West Winds sold were jars and stickers. Any “gift” provided by drivers thus does not appear to be discretionary or a gift at all, but rather central to the consumer’s purposeful transaction.

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 West Winds has been licensed or permitted by the Commission to engage in any of its business practices. Accordingly, the present business activities of West Winds 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 West Wind’s 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 that reads "Kaitlin Caruso". The signature is written in a cursive, flowing style.

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