

February 26, 2024

The Honorable Kathy Hochul
Governor of New York
State Capitol
Albany, NY 12224

Dear Governor Hochul,

The rollout of the licensed cannabis industry in New York has been challenging in many ways. We are writing to you to bring your attention to a matter of urgent concern regarding the proliferation of unlicensed cannabis stores in New York facilitated and promoted by social media companies. It has come to our attention that numerous unlicensed cannabis businesses throughout the state are actively listing themselves on various social media platforms and utilizing paid advertising space to promote their products and services, thereby evading regulatory oversight and fueling the flooding of our communities by unlicensed stores. These social media companies are complicit by engaging in conduct that facilitates deceptive acts and practices and furnishes a service to these unlicensed operators that is in violation on state law. These companies must be held accountable for their part in enabling illicit cannabis activity and failing to uphold the standards necessary to protect New York consumers and uphold the law.

As you are aware, the legalization of cannabis in New York State represents a significant step forward in promoting public health, safety, and economic growth. However, the success of this endeavor hinges on the effective regulation and oversight of licensed cannabis businesses, which are subject to rigorous standards to ensure consumer protection and compliance with state laws.

The unchecked presence of unlicensed cannabis stores on popular social media platforms not only undermines the integrity of the regulated market but also poses serious risks to public health and safety. These unlicensed businesses operate outside the bounds of the law, potentially exposing consumers to untested and unsafe products, while depriving the state of much-needed tax revenue. These social media companies often hide behind claims that they are absolved of any responsibility by the First Amendment and the Communications Decency Act, specifically citing Section 230, which they say protects them from being held liable for user experiences on their platforms. This issue is not a federal one, it is one that is rooted in New York General Business Law, as what these social media companies are engaging in is a violation of New York's consumer protection statute, which broadly prohibits any deceptive, "consumer-oriented" business conduct.

Social media platforms like Google are complicit by allowing unlicensed cannabis stores to engage in "false advertising", identifying themselves as a "Cannabis Store" on their sites

which misleads and deceives reasonable consumers in violation of New York State law. New York consumers trust the results of a Google search and are being misled on a daily basis by social media companies search engines, mapping features and review listings that direct unknowing consumers to unlicensed and illegally operating cannabis stores in New York State. The actions and practices of these social media companies fuel unlawful acts and practices causing adverse effects to consumers in every part of the state.

We urge you to take immediate action to address this issue by engaging with the State Attorney General to initiate a lawsuit that sends a strong message to these main social media platforms to require them to remove unlicensed cannabis stores with-in the confines of New York State from their platforms, restoring trust and accountability. This legal action would have no bearing on the dormant Commerce Clause as this “false advertising” matter relates exclusively to intrastate commerce with-in New York State. Additionally, in accordance with New York State law, any person who has been injured as a result of the violation of section 349 of the NY General Business Law should also be entitled to bring an action in their own name to enjoin against such unlawful act or practice, and be part of an action to recover actual damages.

Social media companies must be held accountable and required to enforce stricter policies and procedures for the verification and monitoring of cannabis-related businesses on their platforms. This may include implementing verification processes with-in the state like mandating that social media companies utilize the NYS OCM Dispensary Verification tool to ensure that only licensed cannabis businesses are permitted to list themselves and purchase advertising space with-in New York State. By working collaboratively we can stem the tide of illicit cannabis activity and safeguard the integrity of the legal market.

Thank you for your attention to this matter, and I look forward to your prompt action in addressing the fueling of the proliferation of unlicensed cannabis stores in New York State by social media companies. Your leadership and commitment to upholding the principles of cannabis legalization are essential in ensuring the success of this transformative initiative for the benefit of all New Yorkers.

Respectfully,

