



COLORADO

Department of Revenue

Enforcement Division - Marijuana
1707 Cole Blvd., Suite 300
Lakewood, CO 80401

September 13, 2017

SENT VIA EMAIL to: [REDACTED]

Vicente Sederberg LLC
Attn.: Jordan Wellington
455 Sherman Street, Suite 390
Denver, Colorado 80203

Dear Mr. Wellington:

This letter is in response to your request for a Statement of Position pursuant to Rules M 104(A), 1 CCR 212-1, and R 104(A), 1 CCR 212-2, dated July 13, 2017.¹ You have asked for a statement of position from the Marijuana Enforcement Division (“Division”) regarding Rules M 403(G.3), 1 CCR 212-1, and R 402(P), 1 CCR 212-2 (“Edible Rules”), which go into effect October 1, 2017. In particular, you requested answers to the following questions”

“1. Does the phrase ‘the distinct shape of a human’ include any and/or all individual human body parts?”

2. Does the term ‘likeness’ in the prohibition of a shape that ‘bears the likeness or contains characteristics of a realistic or fictional human, animal, or fruit, including artistic, caricature, or cartoon renderings’ include any and/or all individual human body parts?”

3. Does the term ‘characteristics’ in the prohibition of a shape that ‘bears the likeness or contains characteristics of a realistic or fictional human, animal, or fruit, including artistic, caricature, or cartoon renderings’ include any and/or all individual human body parts?”

Division Response

The State Licensing Authority promulgated the Edible Rules pursuant to subsections 12-43.3-202(2.5)(III)(A) and 12-43.4-202(3)(c)(IX)(A), C.R.S., which mandate that the State Licensing Authority promulgate rules to prohibit the production and sale of marijuana products “that are in the distinct shape of a human, animal, or fruit.” Consistent with this directive, the Edible Rules specifically prohibit marijuana products in “[t]he distinct shape of a human,” and in any “shape that bears the likeness or contains characteristics of a realistic or fictional human . . . including artistic,

¹ Original request for Statement of Position submitted by Kelly A. Rosenberg.



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caricature, or cartoon renderings.” Rules M 403(G.3)(1), 1 CCR 212-1, and R 402(P)(1), 1 CCR 212-2.

Your request seeks to clarify the application of the Edible Rules to edibles in the shape of “individual body parts.” Your request refers to “individual human body parts” generally, and does not request the Division’s position with respect to any particular individual human body part. Your request also poses three specific questions. However, the stated purpose of your request as whole is to determine the risk of enforcement based on edibles in the shape of individual body parts. As a general matter, the Division’s position is that the Edible Rules clearly prohibit marijuana products in the shape of individual human body parts.

More specifically, you have identified several terms from the Edible Rules. Each of the terms you have identified in your request include individual body parts. The phrase “the distinct shape of a human” includes the shape of any and all individual human body parts that make their human form readily distinguishable. Similarly, under the Edible Rules, the term “likeness” encompasses any shape which resembles a realistic or fictional human, including any or all individual body parts which produce such resemblance. Finally, the term “characteristics” includes the shape of any and all individual body parts which are distinguishing of a realistic or fictional human body. Individual human body parts are easily identifiable as belonging to a human and are necessarily “characteristics” of a human.

Thank you for your inquiry.

Sincerely,

James Burack
Director
Marijuana Enforcement Division

VICENTE SEDERBERG LLC

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July 13, 2017

Director Burack
Marijuana Enforcement Division
1707 Cole Blvd #300
Lakewood, CO 80401
Via email: Jim.Burack@state.co.us

Dear Director Burack:

We submit this request for a statement of position pursuant to Rule M/R 104 on behalf of our client, a duly licensed marijuana-infused products manufacturer. We request an expedited review of this request.

This request for a position statement relates to Rule R 402(P) and Rule M 402(G.3) (“Edible Rules”), which go into effect October 1, 2017. While the rules are not yet in effect, we believe this request is ripe for the Marijuana Enforcement Division’s consideration as our client does not wish to potentially risk enforcement for alleged violation of the Edible Rules.

The Edible Rules state that beginning October 1, 2017:

1. The sale or donation of Edible Medical Marijuana-Infused Products in the following shapes is prohibited:
 - a. The distinct shape of a human, animal, or fruit; or
 - b. A shape that bears the likeness or contains characteristics of a realistic or fictional human, animal, or fruit, including artistic, caricature, or cartoon renderings.
2. The prohibition on human, animal, and fruit shapes does not apply to the logo of a licensed Medical Marijuana Business. Nothing in [the Edible Rules] alters or eliminates a Licensee’s obligation to comply with the requirements of rule M 1001.5 – Labeling and Packaging Requirements: General Applicability.
3. Edible Medical Marijuana-Infused Products that are geometric shapes and simply fruit flavored are not considered fruit and are permissible; and

4. Edible Medical Marijuana-Infused Products that are manufactured in the shape of a marijuana leaf are permissible.

We request the Division's position regarding the Edible Rules relative to the following questions:

1. Does the phrase "the distinct shape of a human" include any and/or all individual human body parts?
2. Does the term "likeness" in the prohibition of a shape that "bears the likeness or contains characteristics of a realistic or fictional human, animal, or fruit, including artistic, caricature, or cartoon renderings" include any and/or all individual human body parts?
3. Does the term "characteristics" in the prohibition of a shape that "bears the likeness or contains characteristics of a realistic or fictional human, animal, or fruit, including artistic, caricature, or cartoon renderings" include any and/or all individual human body parts?

Thank you for considering this request for a position statement. If you have further questions or need clarification, please do not hesitate to contact me directly.

Sincerely,
VICENTE SEDERBERG, LLC

/s/ Kelly A. Rosenberg
Kelly A. Rosenberg