

STATE OF VERMONT

SUPERIOR COURT

CIVIL

DIVISION

ADDISON UNIT

PARK REC LLC d/b/a/ FLÖRA
CANNABIS,

Plaintiff

v.

VERMONT CANNABIS CONTROL
BOARD, JAMES PEPPER,
Chairperson, in his official capacity,
and OLGA FITCH, Executive Director,
in her official capacity,

Defendants

Docket No.

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

NOW COMES Park Rec LLC d/b/a FLÖRA CANNABIS, by and through counsel, and hereby files this Complaint for Declaratory and Injunctive Relief, pursuant to Chapter 1, Article 13 of the Vermont Constitution, to remedy unconstitutional restraint of protected commercial speech by Vermont's Legislature and Cannabis Control Board and to help assure the State of Vermont's substantial interest in nurturing a robust regulated cannabis market that protects the health and safety of Vermont's adult cannabis users by ensuring products are free of dangerous pesticides and other contaminants through rigorous testing protocols, that promotes public safety by replacing the unregulated "legacy" cannabis market with a well-regulated market where sellers check ID's to prevent sales to underage consumers rather than targeting them,

and that raises sufficient tax revenues to fund important state priorities including a comprehensive after-school care programs for at-risk youth.

NATURE OF CLAIM

1. Plaintiff Park Rec LLC d/b/a FLORA CANNABIS brings this Complaint for Declaratory and Injunctive relief in response to Defendants' promulgation and enforcement of unconstitutional restrictions on commercial speech. Defendants' unconstitutional actions include enforcing an unreasonably expansive definition of "advertisement", an unprecedented and unreasonable pre-approval requirement that operates as a prior restraint on protected speech, an unreasonable requirement to include a lengthy and ineffective "health warning" on all "advertisements", an unreasonable burden to demonstrate that not more than 15% of the people who are potentially exposed to an "advertisement" are under the age of 21, an unreasonable prohibition on common promotional offers, and an unreasonable prohibition on depicting or describing particular cannabis products on social media websites. Defendants' unconstitutional actions are detrimental to the generally understood and Legislatively acknowledged goal of protecting the health and safety of Vermont's adult cannabis users by replacing the existing, unregulated "legacy" market with a well-regulated market where all products are subjected to rigorous testing for potency, pesticides, and other harmful contaminants and where sellers are required to check ID's to prevent the sale of cannabis to underage buyers and do not sell other, more dangerous substances alongside cannabis, as well as raising sufficient taxes to provide important programs designated by the Legislature to be funded by cannabis tax revenues.

PARTIES

2. Plaintiff Park Rec LLC d/b/a FLORA CANNABIS is a duly incorporated and licensed cannabis retail business under Vermont law since 2022, with principal place of business being Middlebury, Vermont.
3. Defendant Vermont Cannabis Control Board (hereinafter "CCB") is an independent Commission within the Executive Branch legislatively authorized to regulate commercial sales of cannabis through enforcement of State statutes, rules, regulations and policies pursuant to Act 164 of 2020. The CCB is empowered for the purpose of

safely, equitably, and effectively implementing and administering the laws enabling access to adult-use cannabis in Vermont. 7 V.S.A. §§831, 843(a).

4. Defendant James Pepper is the Chairperson of the CCB authorized to, inter alia, carry out rulemaking and enforcement of CCB directives. 7 V.S.A. §843(b).
5. Defendant Olga Fitch is the Executive Director of the CCB, authorized to supervise and administer enforcement of CCB rules and guidance. 7 V.S.A. §843(f).

JURISDICTION AND VENUE

6. This Court has jurisdiction over the subject matter of this dispute pursuant to 4 V.S.A. § 31.
7. Venue is proper in this territorial unit of the Court under 12 V.S.A. § 402(a) as Plaintiff's business is based in Middlebury, Addison County, Vermont.
8. This Court has personal jurisdiction over Defendants because Defendants operate within Addison County, Vermont and the events giving rise to the instant Complaint impact Plaintiff's business in Addison County, Vermont.

PRELIMINARY STATEMENT

9. After years of legislative fits and starts, Vermont legalized the sale of cannabis to persons aged 21 or over (hereinafter referred to as "Adults") by licensed retailers in August 2020, becoming just the second state to do so through its legislature, as opposed to a popular referendum, when Act 164 became law without the Governor's signature. On September 19, 2022, the first licenses were issued to cannabis retailers, including to Plaintiff.
10. Pursuant to its license, Plaintiff opened its store in a historic c.1800 former hotel in beautiful downtown Middlebury and recorded the first legal sale of cannabis in Vermont, on September 29, 2022.
11. The legislation that became Act 164 initially contemplated an outright ban on advertising by licensed cannabis establishments. In legislative debates, opponents of legalization argued that the continued federal illegality of cannabis meant that licensed cannabis establishments would have no free speech rights under the First Amendment to the United States Constitution, and the bill as initially passed by the House of Representatives contained such an outright ban.

12. During the deliberations of the Committee of Conference, the bill which would become Act 164 was revised to eliminate the speech ban, and instead call for a legal review of the free speech issue by the Attorney General's Office and a report to the Legislature in 2021.
13. The Attorney General's Office, represented by then-Assistant Attorney General David Scherr, in 2021 advised the Legislature that licensed cannabis establishments likely enjoy commercial free speech protection under Article XIII of the Vermont Constitution regardless of the federal legal status of cannabis, that an outright ban on advertisements would likely fail judicial review, and that any advertising restrictions imposed by the Legislature must comply with the guidelines laid out by the Supreme Court of the United States in *Central Hudson Gas & Electric Corp. v Public Service Commission of N.Y.*, 447 U.S. 557 (1980), its landmark commercial free speech decision.
14. *Central Hudson* and its progeny lay out a straight-forward three-part test for determining the constitutionality of restrictions on commercial free speech. In short, so long as the speech in question concerns lawful conduct, the government's proposed regulations must (i) be narrowly tailored (ii) to directly advance (iii) a substantial state interest. The Supreme Court has upheld and clarified the *Central Hudson* test multiple times, including as recently as 2011, when it held in *Sorrell v IMS Health Inc.*, 564 U.S. 552 (2011) that "heightened judicial scrutiny" is warranted whenever a "content-based burden" is imposed on commercial speech.
15. In response to Assistant Attorney General Scherr's advice, rendered in public committee hearings, the Legislature reluctantly abandoned its efforts to impose a complete ban on cannabis advertising and instead adopted the nation's broadest, most restrictive set of restrictions on speech by licensed cannabis establishments. Rather than narrowly tailoring its approach as required by *Central Hudson*, the Legislature chose a scatter-shot approach, layering restriction upon restriction, including an unprecedented prior restraint regime which in practice has acted not only as a muzzle on all manner of traditional advertising by cannabis businesses, but also as a convenient and unlawful tool to prevent all manner of speech and even non-speech activities which cannot rationally be considered "advertising" at all.

16. The scope and breath of Vermont's restrictions on Plaintiff's free speech rights are breathtaking:
17. Pursuant to 7 VSA §§861(2) and 864(e), any "statement, depiction, or illustration" uttered by Plaintiff or its employees, in any medium and any context, must be submitted in advance to the Cannabis Control Board for the State's prior approval if the utterance may be construed as "inducing sales". This includes not only traditional advertisements (i.e., paid media insertions such as television, radio, and print ads), but also in-store signage, Plaintiff's own website's contents, and even direct communications with individual customers both in-person, by phone, via email, or through social media platforms.
18. No such prior restraint regime exists in Vermont for any other industry, including other "regulated vice" industries such as sports gambling, alcohol, or tobacco, and no such prior restraint regime exists for licensed cannabis businesses in any other state.
19. Pursuant to "Advertising Guidance" published by the Cannabis Control Board in July, 2024, 7 VSA §864(e)'s prior restraint requirements has been interpreted to broadly apply not only to "statements, depictions, and illustrations" related to cannabis, but also to those relating to non-cannabis items, the advertising of which are entirely unregulated when made by people who do not hold state cannabis licenses. For example, a convenience store is free to advertise the sale of non-intoxicating CBD products, in any medium and without restriction, while Plaintiff must first ask for the CCB's permission before making an identical statement about the identical product.
20. In order to obtain the CCB's approval, Plaintiff is required to demonstrate, to the CCB's satisfaction, that no more than 15% of the likely audience for any particular "advertisement" are under the age of 21. 7 V.S.A. §864(c). While age-based audience composition tests are common in other states with regulated cannabis markets, Vermont's 15% limit is roughly twice as strict as the analogous restrictions in other states.
21. Plaintiff and all other licensed cannabis businesses in Vermont are prohibited by the CCB's Rule 2.2.11 from showing a picture of a cannabis product, or even describing a particular product with text, in any social media website. Meanwhile, social media platforms are teeming with paid advertisements from out-of-state businesses selling

so-called “hemp-derived” THC and THC-derivative products with potencies that far exceed the legal limits applicable to products sold by Plaintiff, and which can be easily purchased by Vermonters over the internet.

22. According to the CCB’s Rule 2.2.12 Advertising Guidance, licensed cannabis retailers are prohibited from displaying cannabis products in their windows. Such a product display is deemed by the CCB to be an “advertisement” which can be seen by the general public, and thus in violation of the 15% audience composition requirement.
23. According to the CCB’s Advertising Guidance, licensed cannabis establishments are prohibited from selling non-cannabis items, such as branded clothing or non-intoxicating CBD products, outside of their licensed premises (e.g., at a farmer’s market), even though no such restriction applies to people who do not hold cannabis business licenses, and CBD products are mainstays of Vermont’s lively farmer’s market economy. According to the CCB, offering such products for sale is an illegal outdoor “advertisement”.
24. According to the CCB’s Advertising Guidance, Vermont’s licensed cannabis establishments are prohibited from engaging in a wide variety of common retail-based marketing activities, such as offering a customer a promotional certificate redeemable for a certain amount off the price of a future purchase as an inducement to make a purchase. According to the CCB, such offers are, absurdly, deemed an illegal advertisement of “free samples”.
25. Vermont’s licensed cannabis establishments are required to include a 135-word “Health Warning” on each “advertisement”, which must be printed in at least 6-point font when presented visually or recited aloud at a moderate pace when presented verbally such as in a radio advertisement. 7 V.S.A. §864(d); CCB Rule 2.2.10. When read aloud at the pace required by the CCB, the Health Warning takes about 30 seconds to recite in full, making the cost of utilizing radio advertisements prohibitively expensive and unattractive to listeners.
26. The legislative history makes clear that this buckshot approach was intended by the Legislature to get as close as possible to an outright ban on advertising, without calling it an outright ban *per se*. On multiple occasions while deliberating these restrictions, both Assistant Attorney General Scherr and key legislators publicly mused about how

layering multiple restrictions, rather than a blanket ban, would allow some of these restrictions to survive should a licensed cannabis business challenge the constitutionality of the scheme, as a court might strike down only parts of the advertising provisions. Rather than heeding the requirements of *Central Hudson* to narrowly tailor their restrictions in order to advance a substantial state interest, the Legislature sought to suppress as much protected speech as they could get away with, choosing the broadest possible array of restrictions, and punting to the Judiciary the hard work of determining what is and is not reasonable narrow, rationally related, or reasonably advancing of a substantial state interest. Plaintiff urges the Court to decline the Legislature's invitation to do their work for them and reject the entire regulatory scheme instituted by 7 VSA §§861(2) and 864(e) as an unconstitutional restriction on protected speech.

FACTS

27. The Vermont Constitution, Chapter 1, Article 13 states: *That the people have a right to freedom of speech, and of writing and publishing their sentiments, concerning transactions of government, and therefore the freedom of the press ought not to be restrained.*
28. General Assembly of Vermont has reiterated that "freedom of expression and freedom of the press are fundamental principles in our democratic society granted to every citizen of the nation by the First Amendment to the U.S. Constitution and to every resident of this State by Chapter I, Article 13 of the Vermont Constitution." 16 V.S.A. §1623(a).
29. Vermont Constitutional Free Speech protections have been found to be at least co-extensive with Free Speech protections found in the First Amendment to the U.S. Constitution.
30. In 2018 Vermont law legalized possession, use and personal cultivation of cannabis. In 2020 Vermont law authorized a regulated and taxed market to sell cannabis to Adults in Vermont. In 2022 licensed Cannabis retailers began selling cannabis to Adults.
31. The Cannabis Control Board (hereinafter CCB) was created by the Vermont Legislature through Act 164 of 2020. 7 V.S.A. §831.

32. The CCB was created within the Executive Branch as an independent commission for the purpose of safely, equitably, and effectively implementing and administering the laws enabling access to adult-use cannabis in Vermont. The CCB was empowered to do rulemaking, administration and enforcement related to Vermont's newly created lawful commercial cannabis market. 7 V.S.A § 843(a)(b).
33. The State's self-acknowledged substantial interests in regulating otherwise valid commercial speech related to legal cannabis sales is to prevent licensed cannabis establishments from marketing cannabis to people under the age of 21.
34. In Legislative testimony in 2021, the Attorney General's Office explicitly rejected the notion that discouraging cannabis use by Adults is a legitimate substantial interest of the State in regulating otherwise valid commercial speech by licensed cannabis establishments.
35. The State also has a substantial interest in a regulated and taxed cannabis market to assure tax income is obtained from cannabis sales, assure cannabis products are safe and safely distributed, and to displace the unregulated, untaxed "legacy" cannabis market by redirecting consumers to licensed retailers.
36. Legal restrictions that prevent licensed cannabis establishments from effectively and responsibly marketing to Adults undermine the State's self-acknowledged goal of shifting consumers from the "legacy" market to the regulated market in order to protect consumer health and safety, promote public safety, and collect sufficient tax revenues to finance both the regulatory apparatus itself and other important state programs. Unlicensed sellers, including both traditional "dealers" and slickly advertised, well-funded, multi-state internet-based operations selling so-called "hemp-derived" cannabis products, are not subject to any of the restrictions contained in 7 VSA §864 or the CCB's rules and guidance, and thus have an unfair advantage in freely marketing to Vermonters, depriving consumers of the health and safety benefits promised by Act 164, depriving the state of much-needed tax revenues, and causing financial harm to Vermont's licensed cannabis businesses, who collectively pay millions of dollars in licensing fees to the state each year.
37. Pursuant to 7 V.S.A. §861(2) "Advertisement" means any written or verbal statement, illustration, or depiction that would reasonably have the effect of inducing sales of

- cannabis or cannabis products, including any written, printed, graphic, or other material; billboard, sign, or other outdoor display; other periodical literature, publication, or in a radio or television broadcast; the Internet; or in any other media.
38. When adopting the broad definition of “Advertisement” the Legislature abandoned the traditional and reasonable definition requiring that the communication be published through payment to a publisher or other media entity to be considered an “advertisement”.
 39. Pursuant to 7 V.S.A. §864 (e) all advertisements shall be submitted to the Board on a form or in a format prescribed by the Board, prior to the dissemination of the advertisement. The Board may:(1) require a specific disclosure be made in the advertisement in a clear and conspicuous manner if the Board determines that the advertisement would be false or misleading without such a disclosure; or (2) require changes that are necessary to protect the public health, safety, and welfare or consistent with dispensing information for the product under review.
 40. The CCB issued Rules, including Rules 2.2.10(a), Rule 2.2.11, and Rule 2.2.12. See: <https://ccb.vermont.gov/sites/ccb/files/2023-10/CCBRule2-Regulation.pdf>.
 41. The CCB issued “advertising guidance” in July 2024; See https://ccb.vermont.gov/sites/ccb/files/2024-07/Advertising.Guidance_07.09.2024.pdf
 42. CCB Advertising Guidance includes that “Cannabis establishment websites and social media posts must comply with general advertising requirements, including prepublication review...and the mandatory health warning. Cannabis establishments may only promote products using links to their age-gated websites... Retail establishments that lawfully collect customer contact information may send text or email messages only to age-verified customers who have expressly consented to receive promotional messaging. Messages that meet the definition of ‘advertising,’ by tending to promote sales, must be submitted to the Board for review and approval.”
 43. The CCB’s Guidance indicates that virtually all statements by cannabis retailers like Plaintiff, even statements promoting non-cannabis merchandise like clothing or non-intoxicating CBD products, are considered “advertising” subject to the pre-approval process and other restrictions.

44. The CCB's guidance and enforcement related to non-cannabis products allows for non-cannabis merchandise, for example t-shirts with the Plaintiff's logo and promotional information, sold within a retail cannabis establishment and not visible from within the establishment by passersby, to be considered as not "advertising" and not subject to pre-approval and related restrictions.
45. The same t-shirt described in the preceding paragraph would be considered "advertising" by the CCB if provided for sale or display in a public place by the Plaintiff.
46. The CCB guidance on non-cannabis merchandise is senseless and unreasonable given the fact that, for example, the above-referenced t-shirt, once purchased by an adult within a retail establishment, will likely be worn out in, and seen by, the public, without regard to the public's age and without review of the content of the t-shirt purchased in the cannabis retail establishment. However, the same t-shirt, if sold at a farmer's market or other public venue, would have to have the 135-word "Health Warning" printed on it, would have to be submitted for pre-approval by Defendants, and would ultimately be rejected by the CCB as an unlawful outdoor advertisement.
47. Pursuant to CCB guidance "non-compliant advertising" is a Category III violation Rule 4.5.3(h) punishable, inter alia, by up to a \$10,000 fine. Repeat violations are punishable by revocation of licensure.
48. On information and belief, Vermont is the only adult-use cannabis jurisdiction in the United States that currently requires licensees to submit their advertisements for regulatory approval prior to disseminating them.
49. Promulgation and enforcement of §861(2) (definition of advertisement) and §864(e)(prior approval of advertisement requirement) and related Rules and Guidance result in absurd and unreasonably harmful impacts on Plaintiff and other licensed cannabis establishments, including prohibiting Plaintiff and others from promptly responding to customer inquiries, or updating Plaintiff's website or in-store signage in a timely manner and without having to wait for days, weeks, or even longer for a response from the CCB, by which time the customer question or sales opportunities often are moot.

50. The State's restrictions on common forms of in-store marketing, such as offering a promotional certificate redeemable for dollars off a future purchase to customers who meet pre-defined purchase criteria (e.g., "spend \$100 get \$10 off your next purchase") is not narrowly tailored or rationally related to fulfilling the State interest to prevent minors from being subject to advertising of cannabis products, as minors are prohibited from entering a cannabis establishment in the first place. Further, prohibiting such promotions on the basis of the statutory prohibition on offering "free samples" of cannabis is irrational in this context and generally the statutory prohibition on offering "free samples" to Adults itself is not narrowly tailored or rationally related to the State's interest in preventing marketing of cannabis to minors.
51. Pursuant to 7 V.S.A. §864(c), cannabis establishments shall not advertise their products via any medium unless the licensee can show that not more than 15 % of the audience is reasonably expected to be under 21 years of age. Because more than 15% of Vermont's general population is under 21, CCB Rule 2.2.12 and 7 V.S.A. § 864(c) create a presumption that advertisements to the general public will not comply with the 15% rule.
52. The 15% audience composition requirement was modeled on restrictions on cannabis advertising found in other states, including Colorado. Pursuant to Colorado law, Colorado cannabis retailers must refrain from advertising cannabis products where more than 28.4% of the audience is likely to be under the legal age to purchase cannabis. See 1 Colorado Code of Regulation §212-3-3-720.
53. The current Vermont requirement of no more than 15% of a potential advertising audience being under the age of 21 years old is unreasonably more restrictive than similar restrictions in Colorado, California, and other states, which allow almost twice as large of a potential minor audience before Free Speech is restricted.
54. Given the regulatory and tax structures in place to sell cannabis lawfully, there is a substantial State interest in not unnecessarily restricting commercial speech when that speech furthers that State interest of shifting cannabis sales from the untaxed and unregulated "legacy" market to licensed retailers.
55. The CCB's own 2022 estimates for retail cannabis sales in 2023 was \$215 million; actual sales in 2023 were only \$108.7 million, roughly half the CCB's projections.

56. The severe underperformance of the Vermont retail cannabis market noted above was due at least in part to the unnecessary, overly restrictive and unconstitutional restrictions on marketing enforced by Defendants and complained about herein by Plaintiff, as licensed cannabis establishments were unable to effectively market the benefits of the regulated cannabis market to would-be consumers while “legacy” and internet-based sellers face no such restrictions.
57. The CCB has no effective enforcement authority over sellers of “hemp-derived” cannabis located outside of Vermont but doing business in Vermont through internet sales.
58. For example, out of state on-line retailers sell “hemp-derived” cannabis infused gummies to Vermonters because those gummies, while very potent, contain less than .3% THC on a dry weight basis and are thus marketed as “hemp” rather than cannabis.
59. Cannabis dispensaries operated on Native American Nations land in New York State advertise cannabis sales in Vermont media, including Seven Days, without complying with the restrictions imposed by 7 V.S.A. §864.
60. In 2024 the Vermont Senate Committee on Economic Development, considering amendments to Vermont cannabis laws, received written and in-person testimony from representatives of the Vermont cannabis industry identifying both the unconstitutional nature of Vermont’s restrictions on advertising as well as the harm to both Vermont commercial cannabis retailers and the legitimate goals of the Vermont Legislature caused by these unconstitutional restrictions, including that legitimate, regulated advertising would “draw customers away from gray-market online sellers, local unlicensed sellers, and stores in neighboring states.”
61. Defendants failed to carefully calculate the costs and benefits associated with the burdens on speech imposed by the restrictions included 7 V.S.A. §§ 861(2) and 864, and related Rules and Guidance.
62. Plaintiff has restricted, limited and foregone advertising efforts, and expects to continue to do so, due to the chilling effect of the aforementioned unconstitutional restrictions on Plaintiff’s commercial speech, including but not limited to by limiting media options for advertisement due to the 15% media market rule and overly

burdensome warning statement requirement, and by subjecting Plaintiff to unpredictable delays inherent in a pre-approval regime.

63. Plaintiff inquired with two local radio stations about purchasing local radio advertisement but was told that reading the 135-word required warning would add approximately 30 seconds to the overall advertisement, thus drastically increasing the cost of utilizing radio advertising. Based on the additional costs imposed by the CCB warning requirement, Plaintiff did not utilize this otherwise effective and economically advertising option that is available to non-cannabis businesses in Vermont.
64. Plaintiff's efforts to comply with the pre-approval rule have met with varied and unpredictable responses from Defendants, including taking several weeks to respond and not responding at all in one instance.
65. Plaintiff has experienced, and expects to continue to experience, lost sales opportunities due to the chilling effect of the aforementioned unconstitutional restrictions not only on Plaintiff *but also on other licensed cannabis establishments'* commercial speech, as increased advertising by Plaintiff's vendors (licensed cultivators, manufacturers, and wholesalers) would lead to more customers purchasing those licensees' products from Plaintiff's store.
66. Plaintiff has experienced, and expects to continue to experience, lost sales opportunities and customer loyalty/commitment due to the inability of both plaintiff and its vendors to effectively market to customers using social media channels.
67. One example of Plaintiff's harm caused by the unconstitutional restrictions imposed by Defendants includes that in 2023, Plaintiff purchased a custom tent and furnishings for use at "farmer's market" type events. In the Summer of 2023, Plaintiff used these purchased materials at the local craft market in downtown Middlebury where Plaintiff sold CBD products and branded merchandise (e.g., clothing, hats). However, after the CCB advertising guidance was promulgated in April 2024 specifically prohibiting selling merchandise at markets as an "advertisement", Plaintiff did not continue that practice in 2024, losing not only the sales opportunities, but also the social marketing opportunity of being out in the community talking with people who are in town to

shop, as well as not being able to make use of the tent and furnishings, which cost over \$2,000.

68. Defendants' enforcement of 7 V.S.A. §§861 and 864, and related CCB Rules and Guidance, as noted above, are not narrowly tailored to directly advance a substantial government interest, nor are they reasonable and proportional to the substantial governmental interests involved.
69. Despite Plaintiff's and other Vermont commercial cannabis retailers' efforts to educate and inform the Vermont Legislature and CCB about the Constitutional infirmities of the specific sections of §§ 861 and 864 and related Rules and Guidance, Defendants failed to remedy those infirmities in the 2023-2024 Legislative session or by amending Rules and Guidance, and Defendants continue to enforce the identified unconstitutional provisions.

CAUSES OF ACTION

COUNT I - 7 V.S.A. §861 AND §864, AND THE RULES PROMULGATED THEREUNDER, ARE UNCONSTITUTIONALLY OVERBROAD RESTRAINTS ON COMMERCIAL SPEECH.

70. Paragraphs 1–69 are incorporated by reference as if set forth at length here.
71. Plaintiff has a guaranteed right to free speech, including commercial speech, related to Plaintiff's cannabis business, protected by Chapter 1, Article 13 of the Vermont Constitution.
72. 7 V.S.A. §861 and §864 and the rules promulgated under it are, taken together, an overly broad, unduly restrictive and not narrowly tailored scheme that prevents even reasonable, lawful communications by Plaintiff and fails to effectively promote the State's interest in a safe, regulated cannabis market that protects against access to cannabis by youth, including by deterring "legacy" and out of state unregulated distributors and raising State tax revenue for substance abuse prevention and rehabilitative efforts.
73. Plaintiff has been harmed because of Defendants' unconstitutional actions in promulgating and enforcing §861 and §864 as referenced above.

**COUNT II –THE DEFINITION OF “ADVERTISEMENT” CREATED BY 7
V.S.A. §861(2) AND ENFORCED BY DEFENDANTS IS AN
UNCONSTITUTIONALLY OVERBROAD RESTRAINT ON COMMERCIAL
SPEECH IN VIOLATION OF CHAPTER 1, ARTICLE 13 OF THE VERMONT
CONSTITUTION.**

- 74. Paragraphs 1–69 are incorporated by reference as if set forth at length here.
- 75. Plaintiff has a guaranteed right to free speech, including commercial speech related to Plaintiff’s cannabis business, protected by Chapter 1, Article 13 of the Vermont Constitution.
- 76. Defendants’ definition of advertising to include in-store displays not visible to the outside public, social media, and other direct communications sent to pre-registered, age-appropriate customers, promotions of non-cannabis products, specifically not exempting un-paid communications not delivered through print or online media outlets, violates Plaintiff’s Article 13 right of Free Speech because the definition advertisement is overly broad, unduly restrictive and not reasonably tailored to promote the State’s interest in a safe, regulated cannabis market that protects against access to cannabis by youth, including by deterring “legacy” and out of state unregulated distributors.
- 77. Plaintiff has been harmed because of Defendants’ unconstitutional actions in promulgating and enforcing §861(2) as referenced above.

**COUNT III - THE APPLICATION OF §864 TO ADVERTISEMENTS OF NON-
CANNABIS ITEMS, INCLUDING CBD PRODUCTS AND BRANDED
MERCHANDISE, IS AN UNCONSTITUTIONAL RESTRAINT ON
COMMERCIAL SPEECH IN VIOLATION OF CHAPTER 1, ARTICLE 13 OF
THE VERMONT CONSTITUTION.**

- 78. Paragraphs 1-69 are incorporated by reference as if set forth at length here.
- 79. Plaintiff has a guaranteed right to free speech, including commercial speech related to Plaintiff’s cannabis business, protected by Chapter 1, Article 13 of the Vermont Constitution.
- 80. Defendants’ promulgation and enforcement of prohibitions on commercial speech regarding non-cannabis items violates Plaintiff’s Article 13 right of free speech

because the Defendants' interpretation of §864 is overbroad, unduly restrictive and not reasonably tailored to promote the State's interest in a safe, regulated cannabis market that protects against access to cannabis by youth, including by deterring "legacy" and out of state unregulated distributors.

81. Plaintiff has been harmed because of Defendants' unconstitutional actions in promulgating and enforcing guidance under §864 as referenced above.

COUNT IV – PRE-APPROVAL OF ADVERTIZING REQUIRED BY 7 V.S.A. §864 (e) AND ENFORCED BY DEFENDANTS IS AN UNCONSTITUTIONAL PRIOR RESTRAINT ON COMMERCIAL SPEECH IN VIOLATION OF CHAPTER 1, ARTICLE 13 OF THE VERMONT CONSTITUTION.

82. Paragraphs 1–69 are incorporated by reference as if set forth at length here.
83. Plaintiff has a guaranteed right to free speech, including commercial speech related to Plaintiff's cannabis business, protected by Chapter 1, Article 13 of the Vermont Constitution.
84. Defendants' promulgation and enforcement of the prior review and approval process for advertising violates Plaintiff's Article 13 right of free speech because the §864(e) is overbroad, unduly restrictive, and not reasonably tailored to promote the State's interest in a safe, regulated cannabis market that protects against access to cannabis by youth, including by deterring "legacy" and out of state unregulated distributors.
85. Plaintiff has been harmed because of Defendants' unconstitutional actions in promulgating and enforcing §864(e) as referenced above.

COUNT V - THE PROHIBITION AGAINST PLAINTIFF OFFERING PROMOTIONAL CERTIFICATES AND SIMILAR INCENTIVES FOR PURCHASING CANNIBIS, INCLUDING FREE SAMPLES, IMPOSED BY 7 V.S.A. §864(b)(4)-(5) AND ENFORCED BY DEFENDANTS IS AN UNCONSTITUTIONAL RESTRAINT ON COMMERCIAL SPEECH IN VIOLATION OF CHAPTER 1, ARTICLE 13 OF THE VERMONT CONSTITUTION.

86. Paragraphs 1–69 are incorporated by reference as if set forth at length here.

87. Plaintiff has a guaranteed right to free speech, including commercial speech related to Plaintiff's cannabis business, protected by Chapter 1, Article 13 of the Vermont Constitution.
88. Despite amendments to Vermont's Cannabis laws enacted by Act 164 of 2024, Defendants' CCB guidance still prohibits Plaintiff from providing free samples or gift certificates to otherwise qualified customers.
89. Defendants' promulgation and enforcement of prohibitions on free samples, discounts and other inducements otherwise legal violates Plaintiff's Article 13 right of free speech because the Defendants' interpretation of §864 is overbroad, unduly restrictive and not reasonably tailored to promote the State's interest in a safe, regulated cannabis market that protects against access to cannabis by youth, including by deterring "legacy" and out of state unregulated distributors.
90. Plaintiff has been harmed because of Defendants' unconstitutional actions in promulgating and enforcing guidance under §864(b) as referenced above.

COUNT VI – THE PROOF OF 15% OF MEDIA AUDIENCE UNDER 21 YEARS OLD REQUIRED BY 7 V.S.A. §864(c) AND ENFORCED BY DEFENDANTS IS AN UNCONSTITUTIONAL RESTRAINT ON COMMERCIAL SPEECH IN VIOLATION OF CHAPTER 1, ARTICLE 13 OF THE VERMONT CONSTITUTION.

91. Paragraphs 1–69 are incorporated by reference as if set forth at length here.
92. Plaintiff has a guaranteed right to free speech, including commercial speech related to Plaintiff's cannabis business, protected by Chapter 1, Article 13 of the Vermont Constitution.
93. Defendants' promulgation and enforcement of the 15% media market rule, requiring Plaintiff to *prove* that advertisements will not be viewed by a media market made of more than 15% people under 21, violates Plaintiff's Article 13 right of free speech because §864(c) is overbroad, unduly restrictive, and not reasonably tailored to promote the State's interest in a safe, regulated cannabis market that protects against access to cannabis by youth, including by deterring "legacy" and out of state unregulated distributors.

94. Plaintiff has been harmed because of Defendants' unconstitutional actions in promulgating and enforcing §864(c) as referenced above.

COUNT VII – THE PROHIBITION AGAINST DISPLAYING PRODUCTS TO THE PUBLIC REQUIRED BY 7 V.S.A. §864(c) AND ENFORCED BY DEFENDANTS IS AN UNCONSTITUTIONAL RESTRAINT ON COMMERCIAL SPEECH IN VIOLATION OF CHAPTER 1, ARTICLE 13 OF THE VERMONT CONSTITUTION.

95. Paragraphs 1–69 are incorporated by reference as if set forth at length here.
96. Plaintiff has a guaranteed right to free speech, including commercial speech related to Plaintiff's cannabis business, protected by Chapter 1, Article 13 of the Vermont Constitution.
97. Defendants' promulgation and enforcement of the prohibition against displaying products, related to the 15% media market rule, violates Plaintiff's Article 13 right of free speech because §864(c) is overbroad, unduly restrictive, and not reasonably tailored to promote the State's interest in a safe, regulated cannabis market that protects against access to cannabis by youth, including by deterring "legacy" and out of state unregulated distributors.
98. Plaintiff has been harmed because of Defendants' unconstitutional actions in promulgating and enforcing §864(c) as referenced above.

COUNT VIII – THE PROHIBITION AGAINST POSTING PICTURES OR DESCRIPTIONS OF PRODUCTS ON SOCIAL MEDIA PURSUANT TO CCB RULE 2.2.11 IS AN UNCONSTITUTIONAL RESTRAINT ON COMMERCIAL SPEECH IN VIOLATION OF CHAPTER 1, ARTICLE 13 OF THE VERMONT CONSTITUTION.

99. Paragraphs 1–69 are incorporated by reference as if set forth at length here.
100. Plaintiff has a guaranteed right to free speech, including commercial speech related to Plaintiff's cannabis business, protected by Chapter 1, Article 13 of the Vermont Constitution.
101. Defendants' promulgation and enforcement of the prohibition against posting pictures or descriptions of products on social media pursuant to CCB Rule 2.2.11 (e) violates Plaintiff's Article 13 right of free speech because §864(c) is overbroad, unduly

restrictive, and not reasonably tailored to promote the State's interest in a safe, regulated cannabis market that protects against access to cannabis by youth, including by deterring "legacy" and out of state unregulated distributors.

102. Plaintiff has been harmed because of Defendants' unconstitutional actions in promulgating and enforcing §864(c) as referenced above.

COUNT IX – THE REQUIREMENT OF INCLUSION OF THE 135-WORD WARNING FOR RADIO ADVERTISING IS AN UNCONSTITUTIONAL RESTRAINT ON COMMERCIAL SPEECH IN VIOLATION OF CHAPTER 1, ARTICLE 13 OF THE VERMONT CONSTITUTION.

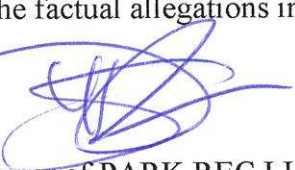
103. Paragraphs 1–XXX are incorporated by reference as if set forth at length here.
104. Plaintiff has a guaranteed right to free speech, including commercial speech related to Plaintiff's cannabis business, protected by Chapter 1, Article 13 of the Vermont Constitution.
105. Defendants' requirement that radio advertisement include the 135 – word warning pursuant to CCB Rule 2.2.10 violates Plaintiff's Article 13 right of free speech because the cost of including the warning is prohibitive making the warning requirement as enforced is overbroad, unduly restrictive, and not reasonably tailored to promote the State's interest in a safe, regulated cannabis market that protects against access to cannabis by youth, including by deterring "legacy" and out of state unregulated distributors.
106. Plaintiff has been harmed because of Defendants' unconstitutional actions in promulgating and enforcing §864(c) as referenced above.

WHEREFORE Plaintiff prays that the Court issue the following relief:

- a. A declaratory judgment that Defendants have violated Plaintiff's rights under Chapter 1, Article 13 of the Vermont Constitution by unreasonably restricting lawful commercial speech through promulgation and enforcement of 7 V.S.A. §§861 and 864, as specified above, and related Rules and Guidance;
- b. An injunction preventing the Defendants from enforcing the specifically identified, unconstitutional aspects of the aforementioned Statutes, Rules and Guidance;

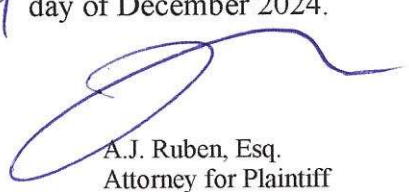
- c. An injunction that further requires Defendants to promulgate, with input from stake holders and within a reasonably prescribed time period, constitutionally appropriate Statutes, Rules and Guidance to assure the substantial State interest in preventing access to cannabis products by people under 21;
- d. An award of Plaintiff's reasonable costs and attorney's fees; and
- e. Any further relief that the Court determines appropriate.

I hereby verify that the factual allegations in this Complaint are true to the best of my personal knowledge.


David Silberman, Owner of PARK REC LLC d/b/a/ FLÖRA CANNABIS

Signed and sworn at Middlebury, Vermont on 5th day of ~~November~~ December 2024.

Signed and dated at Pittsfield, Vermont this 9 day of December 2024.


A.J. Ruben, Esq.
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