

CAUSE NO. D-1-GN-21-006174

SKY MARKETING CORP., DBA	§	IN THE DISTRICT COURT
HOMETOWN HERO, CREATE A CIG	§	
TEMPLE, LLC, DARRELL SURIFF, and	§	
DAVID WALDEN	§	
Plaintiffs,	§	
VS.	§	
	§	126 <sup>TH</sup> JUDICIAL DISTRICT
TEXAS DEPARTMENT OF	§	
STATE HEALTH SERVICES, and	§	
JOHN HELLERSTEDT, in his official	§	
capacity as Commissioner of the Texas	§	
DSHS,	§	
Defendants.	§	TRAVIS COUNTY, TEXAS

TEMPORARY INJUNCTION

On November 5, 2021, the Court held a hearing on the Application of Plaintiffs for a Temporary Injunction and Defendants’ Plea to the Jurisdiction. Michelle Williamson, official court reporter for the 345<sup>th</sup> District Court made a record.

After considering the pleadings on file, the admissible evidence, and the arguments of counsel, the Court GRANTS the Plaintiffs’ Application for a Temporary Injunction, finding that:

1. Plaintiffs have asserted a valid *ultra vires* claim against Commissioner Hellerstedt for declaratory and injunctive relief for his amendments to the definitions for the terms “tetrahydrocannabinols” and “Marihuana extract” as reflected in the 2021 Department of State Health Services’ Schedule of Controlled Substances.
2. Plaintiffs have asserted a valid cause of action under the Administrative Procedures Act (APA) against DSHS for its changes to DSHS’s webpage

wherein DSHS proclaims that Delta-8 in any concentration is considered a Schedule I controlled substance.

3. Plaintiffs have shown a probable right to declaratory and injunctive relief because Commissioner Hellerstedt's action amending the definitions failed to meet the requirements found in § 481.034 of the Texas Health & Safety Code, and DSHS's rule as stated on its website concerning Delta-8 failed to comply with the rule making requirements found in the APA.
4. As a result of Commissioner Hellerstedt's *ultra vires* actions and DSHS's APA violations, Plaintiffs will suffer imminent and irreparable harm such as brand erosion, reputational damage, including loss of customers' goodwill, unsalvageable loss of nationwide customers, loss of market share, loss of marketing techniques, employee force reduction, revenue lost and costs incurred by not being able to manufacture, process, distribute, or sell hemp products that fall within the newly adopted definitions for "tetrahydrocannabinol" and/or "Marihuana extract," having to relocate or shut down part of Plaintiffs' businesses and contributing to the insolvency of Plaintiffs' vendors and customers, and subjecting all of Plaintiffs' employees and similarly situated company employees and individual consumers to potential arrest and other criminal penalties. In addition, Plaintiffs Darrell Suriff and David Walden, along with other similarly situated individual consumers throughout Texas, will have no effective treatment to anxiety, depression, insomnia, migraines, loss of appetite, chronic pain, and nausea. Plaintiffs, along with these other individuals, may be forced to seek other

dangerous alternatives, like opioids or street drugs.

5. Plaintiffs cannot be adequately compensated in damages because the damages are not quantifiable and there is no monetary relief that can be obtained from Defendants. Such injuries would be compounded should Defendants not be immediately restrained from their activities.
6. This Temporary Injunction will preserve the status quo that existed prior to Commissioner Hellerstedt's *ultra vires* conduct and DSHS's APA violations and is in the public's interest. The harm to the Plaintiffs if this Temporary Injunction is not granted outweighs any potential harm to the Defendants by this Temporary Injunction's issuance. Granting injunctive relief will benefit the public interest.

IT IS THEREFORE ORDERED, ADJUDGED, and DECREED that Plaintiffs' Application for a Temporary Injunction is GRANTED and DSHS and DR. JOHN WILLIAM HELLERSTEDT, in his official capacity as Commissioner of DSHS, his officers, agents, servants, employees, attorneys, and all other persons or entities in active concert or participation with the Defendants who receive actual notice of this Order by personal service or otherwise are enjoined as follows:

1. The Court hereby enjoins the effectiveness going forward of amendments to the terms "'tetrahydrocannabinols" and "Marihuana extract" in the 2021 Department of State Health Services's Schedule of Controlled Substances. More specifically, DSHS shall remove from its currently published Schedule of Controlled Substances the most recent modifications of the definitions to the following terms: "(31) Tetrahydrocannabinols" and "(58) Marihuana

extract,” and any subsequent publications of the same (if any) until further order of this Court.

2. The Court hereby enjoins the effectiveness going forward of the rule stated on DSHS’s website that Delta-8 THC in any concentration is considered a Schedule I controlled substance.

This prohibition lasts until the conclusion of the final trial of this case or further notice of the Court.

Actual notice of this Temporary Injunction shall be made by personal service in accordance with the Texas Rules of Civil Procedure.

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that a final trial on the merits is set for January 28, 2022.

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that Plaintiffs shall post with the Clerk of this Court a bond in the amount of \$1000.00.

SIGNED on November 8, 2021, at 10:22 a.m.

  
Ian Soifer, Judge Presiding