

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA  
CENTRAL DIVISION

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CLIMBING KITES, LLC and FIELD DAY )  
BREWING COMPANY, LLC, )

Plaintiffs, )

v. )

THE STATE OF IOWA; KELLY GARCIA, )  
in her official capacity as Director of the )  
Iowa Department of Health and Human )  
Services; and IOWA DEPARTMENT OF )  
HEALTH AND HUMAN SERVICES, )

Defendants. )

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Case No. 4:24-cv-00202

**DECLARATION OF SCOTT SELIX IN  
SUPPORT OF RENEWED MOTION  
FOR PRELIMINARY INJUNCTION**

I, Scott Selix, pursuant to 28 U.S.C. § 1746(2), declare under penalty of perjury, the following:

1. I am over the age of 21 and have personal knowledge of several items set forth below. To the extent I have no personal knowledge of such items, I have consulted with employees and colleagues of Climbing Kites, LLC (“Climbing Kites”), and my knowledge is based on my investigation. I am acting in a representative capacity for Climbing Kites, and I am competent to testify about the matters set forth herein.

2. I am the Co-Founder of Climbing Kites. Climbing Kites was formed in 2023 and is headquartered in Des Moines, Iowa.

3. Iowa law requires any business that manufactures or sells a consumable hemp product at retail to register with the Department of Health and Human Services (“DHHS”) in advance of the manufacture or sale of that product. Climbing Kites has maintained its hemp registration through DHHS throughout its existence.

4. Hemp manufacturers must submit product information to DHHS through an online portal. Once DHHS reviews product information and determines the product complies with Iowa law, DHHS “approves” the product using its online portal and the manufacturer can begin selling the approved product. DHHS maintains an “approved product list” for all hemp manufacturers, which includes all products DHHS has previously approved. There is no renewal process for approved products. Approved products maintain their approved status so long as the manufacturer maintains their hemp manufacturing license.

5. For purposes of consumable hemp beverages, DHHS requires a manufacturer or seller to specify within the portal the total amount of hemp-derived THC or cannabinoids per serving. “Cannabinoids,” in this context, refers to the amount of hemp-derived THC and inert CBD within the product. DHHS also requires a total amount of THC or cannabinoids per container to be entered in the portal.

6. Because Climbing Kites only manufactures and/or sells 12-ounce beverages, the number of “servings” of total THC in DHHS-approved products can be deduced from the amount of cannabinoids-per-container divided by the amount of cannabinoids-per-serving:

7. For example, as of February 2024, DHHS had approved each of the following products for manufacture and/or sale by Climbing Kites:

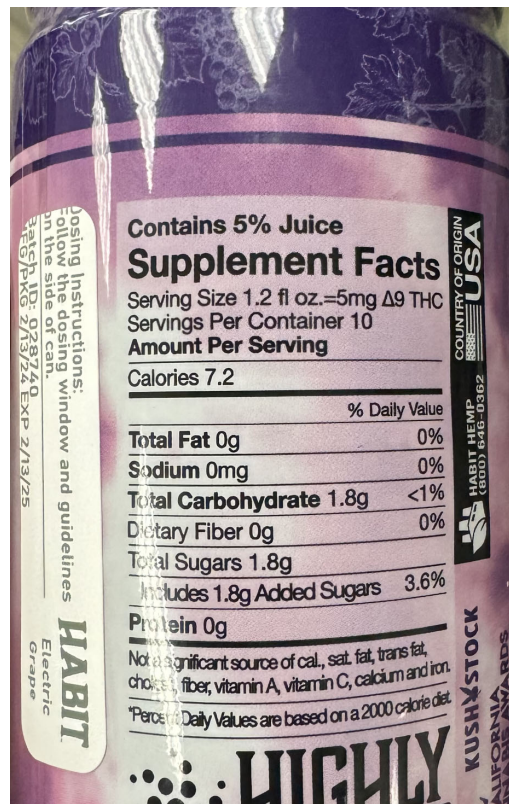
- Product 1 (SKU50047-90600), which contained 7.5 mg cannabinoids per serving (2.5 of hemp-derived THC), 30 mg cannabinoids per container, resulting in 4 “servings” of hemp-derived THC (10mg total) in a can.<sup>1</sup>
- Product 2 (SKU50047-90601), which contained 7.5 mg cannabinoids per serving (2.5 of hemp-derived THC), 7.5 mg cannabinoids per container, resulting in 1 “serving” of hemp-derived THC (2.5 mg total) in a can.
- Product 3 (SKU50047-90602), which contained 7.5 mg cannabinoids per serving (2.5 of hemp-derived THC), 15 mg cannabinoids per container, resulting in 2 “servings” of hemp-derived THC (5 mg total) in a can.

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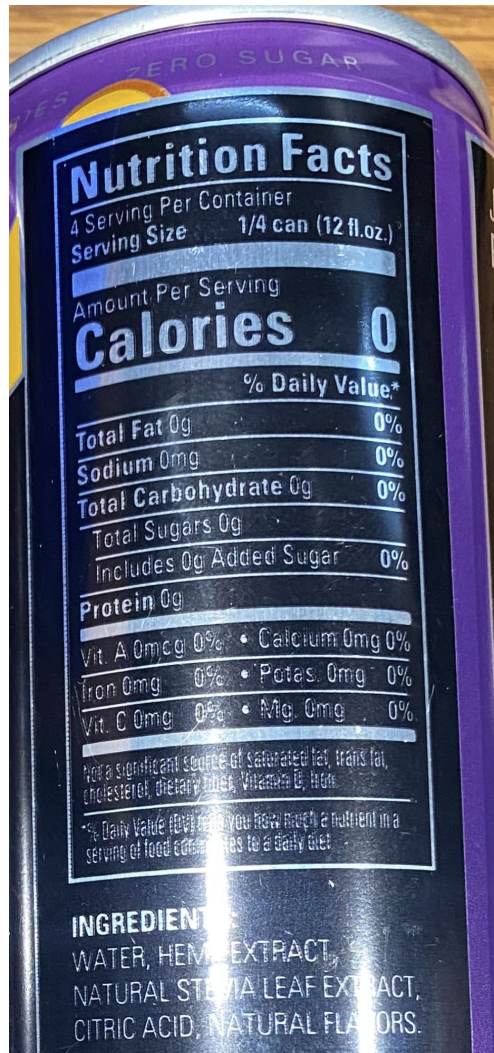
<sup>1</sup> This can complies with Iowa’s potency-limit statute as enacted in HF2605.

8. It is my understanding that in the above-captioned litigation, DHHS has argued that 12 fluid ounces is the only reasonable “serving size” for beverages that contain hemp-derived THC. The approval of Climbing Kites’ products indicates otherwise.

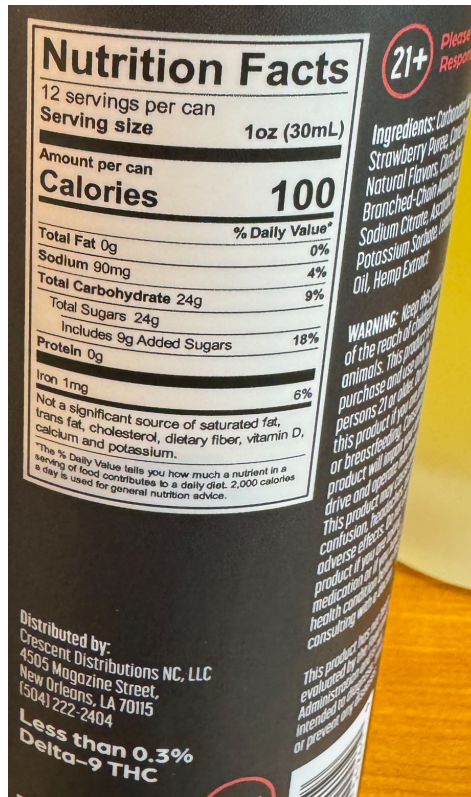
9. It is my understanding DHHS has also approved the following products for manufacture and/or sale within the State of Iowa, as displayed by the product’s nutrition information:



This product, which was found on the shelf of an approved Iowa hemp retailer, indicates there are ten “servings” of total THC in a 12-ounce can. On information and belief, this product was approved by DHHS.



This product, which was found on the shelf of an approved Iowa hemp retailer, indicates there are four “servings” of total THC in a 12-ounce can. On information and belief, this product was approved by DHHS.



This product, which was found on the shelf of an approved Iowa hemp retailer, indicates there are twelve “servings” of total THC in a 12-ounce can. On information and belief, this product was approved by DHHS.

10. It does not appear 12 fluid ounces is the “serving size” for beverages that contain hemp-derived THC, as demonstrated by products approved by DHHS for manufacture and/or sale by Climbing Kites or other market participants.

11. It is my understanding that in the above-captioned litigation, DHHS has argued that any enforcement of HF2605’s potency limits are not currently, and will not be, enforced until its administrative rules are in effect.

12. Based on understanding and belief, since July 1, retailers of consumable hemp beverages have been asked by individuals entering stores whether the retailer has any Climbing Kites cans containing 10mg total THC—which were a previously approved DHHS product. Based

on the training and experience of those retailers, it is my understanding the retailers believed the individuals to be law enforcement, conduct what essentially amounts to a “sting” operation. The clear impression of these visits was that Climbing Kites’ products containing 10mg total THC, which previously were approved by DHHS, are now illegal as of July 1.

13. Sometime between July 1 and July 7, DHHS removed all previously approved consumable hemp beverages manufactured and/or sold by Climbing Kites from Climbing Kites’ Approved Product List, including those containing 2.5 milligrams of hemp-derived THC. As of today, Climbing Kites has no approved products on its Approved Products List. Climbing Kites was provided no notice or explanation of DHHS’s decision.

14. As a result of DHHS’s removal of all previously approved consumable hemp beverages from its online portal, retailers have raised significant concerns to Climbing Kites whether the retailer could sell *any* Climbing Kites products, including those now-unapproved products.

15. Thus, after HF2605 was enacted and before DHHS finalized any purported administrative rules, Climbing Kites continues to suffer harm and significant market confusion regarding the manufacture and/or sale of consumable hemp beverages.

[SIGNATURE ON NEXT PAGE]

A handwritten signature in black ink, appearing to read "Scott Selix", written over a horizontal line.

Scott Selix