

LAWRENCE G. WASDEN
Attorney General

JOHN C. KEENAN, ISB No. 3873
Deputy Attorney General
Idaho Department of Insurance
700 West State Street
P.O. Box 83720
Boise, ID 83720-0043
Telephone: (208) 334-4283
Fax: (208) 334-4298
john.keenan@doi.idaho.gov

FILED
JUL 16 2020 *WMA*
Department of Insurance
State of Idaho

BEFORE THE DIRECTOR OF THE DEPARTMENT OF INSURANCE

STATE OF IDAHO

In the Matter of:

J K MARKETING, LLC, an Idaho limited liability company, doing business as ACME DISCOUNT FIREWORKS, holding Idaho Fireworks License No. FW-023,

Respondent.

Docket No. 18-3800-20

**CEASE AND DESIST ORDER
AND NOTICE**

**TO: J K MARKETING, LLC, and its managers Jared Jensen and Karen Jensen,
doing business as ACME DISCOUNT FIREWORKS:**

Pursuant to the authority found in the Idaho Insurance Code, Idaho Code § 41-101, *et seq.*, and in particular Idaho Code § 41-213(1)(a), as well as the Administrative Procedures Act, Idaho Code § 67-5201, *et seq.*, the Director of the Department of Insurance, State of Idaho (“Director”), issues this Cease and Desist Order without prior notice but with the opportunity for hearing based upon the following:

IDAHO LAW

The Idaho Fireworks Act of 1997, chapter 26, title 39, Idaho Code, provides for the

regulation of fireworks as defined, provides for licensing of fireworks wholesalers and importers, and sets forth standards for how fireworks may be sold wholesale or retail, and such other standards as provided thereunder. Pursuant to such Act, the Idaho Department of Insurance, Division of State Fire Marshal, is charged with issuance and regulation of persons importing fireworks into Idaho or operating a wholesale fireworks business within the state of Idaho. Further, Idaho Code § 39-2612 provides that chapter 26, title 39, Idaho Code, shall be enforced by the Department of Insurance, cities, counties, fire protection districts or other law enforcement agencies of the state of Idaho.

Idaho Code § 39-2606(1) provides, in relevant part, that nonaerial common fireworks may be sold at retail “beginning at midnight June 23, and ending at midnight July 5[.]”

Idaho Code § 39-2607 provides standards for temporary fireworks stands and provides at section 39-2607(7) that any such temporary fireworks stand

shall not be erected before May 5 nor remain up after July 20 for the first sales period; nor shall it be erected before December 7 or remain up after January 16 for the second sales period. The premises on which the stand is erected shall be cleared of all structures and debris no later than July 20 or January 16, respectively.

Idaho Code § 41-213(1)(a) authorizes the Director to issue an order requiring a person to cease and desist from engaging in any act or practice constituting a violation of the Idaho Insurance Code or any other law the Director has authority to enforce.

Idaho Code § 67-5247 provides that an agency may act through an emergency proceeding in a situation involving an immediate danger to the public health, safety, or welfare requiring immediate agency action.

RESPONDENT

1. J K MARKETING, LLC, is an Idaho limited liability company doing business as

ACME DISCOUNT FIREWORKS (hereinafter “ACME”) and holds Idaho Fireworks License No. FW-023 issued by the State Fire Marshal.

FINDINGS OF FACT

2. On behalf of ACME, Abigail Jensen submitted an application for an Idaho Fireworks License, which was received by the State Fire Marshal’s Office on or about April 20, 2020. License No. FW-023 was issued by the State Fire Marshal on April 24, 2020.

3. As of July 13, 2020, ACME was selling and continues to sell fireworks, as defined in Idaho Code § 39-2602, at a temporary fireworks stand within the County of Franklin, State of Idaho, and possibly other counties within the state of Idaho.

CONCLUSIONS OF LAW

4. All of the foregoing paragraphs are incorporated herein as though set forth in full.

5. Pursuant to Idaho Code § 39-2606(1), ACME was not permitted to sell fireworks after midnight July 5, 2020. ACME’s continued retail sale of fireworks after said date is and remains unlawful.

6. Idaho Code § 39-2602(3) defines fireworks as “any combustible or explosive composition, or any substance or combination of substances, or article prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration or detonation.” By nature, fireworks are of concern to public safety and are therefore properly and strictly regulated in accordance with law. Where wholesale or retail sales of fireworks do not comply with the law, the same presents an immediate danger to the public health, safety, or welfare, necessitating immediate action. The Director therefore concludes that an emergency exists, as contemplated by Idaho Code § 67-5247, requiring immediate agency action.

ORDER

NOW, THEREFORE, acting pursuant to the public interest and Idaho Code §§ 41-213(1)(a) and 67-5247, the Director HEREBY ORDERS that J K MARKETING, LLC, doing business as ACME DISCOUNT FIREWORKS, holding Idaho Fireworks License No. FW-023, its managers, owners, officers, employees, agents and successors, **IMMEDIATELY CEASE AND DESIST** from marketing and selling fireworks at its location or locations in the County of Franklin, State of Idaho, or other locations, if any, within the state of Idaho.

NOTICE

RESPONDENT IS HEREBY NOTIFIED that this Cease and Desist Order is a final order of the Director, subject to Respondent's right to timely file a motion for reconsideration or a request for hearing. Pursuant to Idaho Code §§ 41-232 and 67-5246, Respondent may file a motion for reconsideration of this Cease and Desist Order or a request for hearing within fourteen (14) days of the service of this Order.

Any hearing and subsequent proceedings in this matter will be conducted in accordance with chapter 2, title 41, Idaho Code, and the Idaho Administrative Procedure Act, Idaho Code § 67-5201, *et seq.*

If Respondent timely files a motion for reconsideration, the Department will dispose of such motion within twenty-one (21) days of its receipt, or the motion will be considered denied by operation of law, pursuant to Idaho Code § 67-5246(4).

If Respondent timely files a request for hearing, Respondent will be notified of the date, time and place of the hearing, as well as the name of the presiding officer. At the hearing, Respondent will be entitled to enter an appearance, introduce evidence, examine and cross-

examine witnesses, make arguments, and generally participate in the conduct of the proceedings. Respondent may also be represented by legal counsel at its own expense.

Any motion for reconsideration or request for hearing must be timely made in writing, addressed to:

Dean L. Cameron, Director
Idaho Department of Insurance
700 W. State Street, 3rd Floor
P.O. Box 83720
Boise, Idaho 83720-0043

With a copy sent to:

John C. Keenan
Deputy Attorney General
Idaho Department of Insurance
P.O. Box 83720
Boise, Idaho 83720-0043

Pursuant to Idaho Code §§ 67-5270 and 67-5272, any party aggrieved by this final order may appeal from such order to the district court by filing a petition in the district court of the county in which:

- a. a hearing was held;
- b. the final agency action was taken;
- c. the party seeking review of the order resides, or
- d. the real property or personal property that was the subject of the agency action is located.

An appeal must be filed within twenty-eight (28) days: (a) of the issuance of this Order, (b) of the issuance of an order denying a motion for reconsideration, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. Idaho Code § 67-5273(2). The filing of an appeal to the district court does not itself stay the effectiveness of enforcement of the order being appealed.

IT IS SO ORDERED.

DATED this 16 day of July, 2020.

STATE OF IDAHO
DEPARTMENT OF INSURANCE

A handwritten signature in black ink, appearing to read "Dean L. Cameron". The signature is written in a cursive style with a large initial "D" and "C".

DEAN L. CAMERON
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of July, 2020, I caused a true and correct copy of the foregoing CEASE AND DESIST ORDER AND NOTICE, together with a copy of the AFFIDAVIT OF STATE FIRE MARSHAL KNUTE SANDAHL on file herein, to be served upon the following by the designated means:

J K Marketing, LLC
Jared and Karen Jensen, Managers
32 Buckhorn Way
Preston, ID 83263

- first class mail
- certified mail
- hand delivery
- via facsimile

J K Marketing, LLC
dba ACME Discount Fireworks
4268 S. State Street
Preston, ID 83263

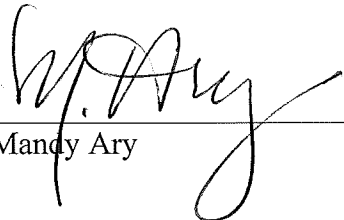
- first class mail
- certified mail
- hand delivery
- via facsimile

ACME Discount Fireworks
c/o Jared Jensen
32 Buckhorn Way
Preston, ID 83263-6727

- first class mail
- certified mail
- hand delivery
- via facsimile

John C. Keenan, Deputy Attorney General
Idaho Department of Insurance
700 W. State Street, 3rd Floor
Boise, ID 83720-0043

- first class mail
- certified mail
- hand delivery
- via facsimile



Mandy Ary