



INSTITUTE FOR JUSTICE

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Via Electronic Mail

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Re: *Kivirist's* Applicability to Business Entities

Dear Mr. Johnson-Karp,

It has come to our attention that DATCP is telling people that the *Kivirist* decision,¹ which ordered DATCP to allow direct-to-consumer sales of homemade, shelf-stable baked goods, does not apply to business entities like LLCs. On January 29, 2026, Regulatory Specialist Daniel Wargolet wrote in an e-mail to a Wisconsinite that DATCP's "legal team . . . confirm[ed] that the [*Kivirist*] exemption applies to individuals and not corporations including an LLC. That means to sell the baked goods out of your home kitchen you could not do it under your LLC but as an individual and take on any risk associated with selling the product individually." In a follow-up e-mail on the same day, Mr. Wargolet wrote that "[t]he basis [for this] comes out of the actual decision from 2017 and subsequent rulings in which *Kivirist's* holding is for Wisconsin individuals directly selling home baked goods to consumers, not business entities. Business entities are not exempt from licensing under *Kivirist*." Respectfully, as explained further below, there is no such basis for excluding LLCs from the *Kivirist* decision. Therefore, I request that DATCP immediately inform its employees that *Kivirist* applies to business entities and allow such entities to conduct these sales.

One would expect that, if the court wished to limit its order to natural persons, it would have said so explicitly. Wisconsin law routinely defines "person," without qualification, to include corporate entities. *See, e.g.*, Wis. Stat. §§ 183.0102(15) ("Person" means an individual, business corporation, nonprofit or nonstock corporation, partnership, limited partnership, limited liability company, general cooperative association, limited cooperative association, unincorporated association, statutory trust, business trust, common-law business trust, estate,

¹ *Kivirist v. DATCP*, Case No. 16-CV-06 (Wis. Cir. Ct. Lafayette Cnty.).

trust, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.”); 990.01(26) (“Person’ includes all partnerships, associations and bodies politic or corporate.”).

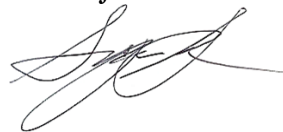
Judge Jorgenson’s order, however, does not even remotely suggest that it is limited to natural persons. In fact, its broader application could not be clearer: “So long as the food is (1) homemade, (2) shelf stable, and (3) has been baked in an oven, Defendants must allow its direct-to-consumer sale.” Dkt. # 218, at 2 (May 20, 2021 Order). That applies to sellers who are natural persons, as well as to sellers who are “[b]usiness enterprises seeking to make a profit.” Dkt. # 62 (Feb. 26, 2018 Order). *Contra* Wargolet E-mail (“ . . . Kivirist’s holding is for Wisconsin individuals directly selling home baked goods to consumers, not business entities.”).

Nor would it make any sense for the court’s order to be limited to natural persons. As Judge Jorgenson explained in his oral decision granting Plaintiffs’ summary judgment, his ruling depended on the safety profile of shelf-stable baked goods, combined with Wisconsin’s exemptions allowing unlicensed sales of similar (or more potentially hazardous) foods by other sellers—including nonprofit *corporate* entities. Dkt. # 202-1 (Transcript of May 31, 2017 Proceedings), at 12–13. There is no way the safety of any given homemade, shelf-stable baked good depends on whether the seller is selling in her own name or under the aegis of a limited liability company, nor is it rational to deny the latter’s sales while allowing nonprofit corporate entities to conduct unlicensed sales of the same (or potentially hazardous) foods.

I trust that the department will agree with the foregoing analysis and that further litigation in this matter will not be necessary. Therefore, please respond as soon as possible with DATCP’s position and specifically whether Wisconsinites wishing to sell their homemade, shelf-stable baked goods via a business entity can expect to do so without DATCP’s interference.

Sincerely,

Suranjan Sen



Attorney

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CC:

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