Products made with CBD Oil Legally Sourced and Lawfully Imported can be Manufactured, Distributed and Sold in the U.S.

Cannabidiol (CBD) is a naturally occurring substance found in *Cannabis sativa L.* plants. CBD is one of at least 85 different cannabinoids isolated from cannabis. Tetrahydrocannabinol (THC), a psychoactive substance, is another such cannabinoid. Unlike THC, CBD is a non-psychoactive cannabinoid.

Industrial hemp is a variety of *Cannabis sativa L.* and is one of the same plant species as marijuana. However, hemp is genetically different and distinguished by its use and chemical makeup. Unlike marijuana, hemp produces very little THC. Hemp is cultivated for industrial purposes. It is a commercial crop - grown as a seed and/or fiber crop. Many products derived from imported industrial hemp, including CBD oil derived from hempseed, food, and fiber products are available throughout the U.S. and the world. However, because *Cannabis sativa* is regulated as a controlled substance (with the exception of certain hemp products described below) under the Controlled Substances Act, hemp currently cannot be legally cultivated in the U.S. for commercial purposes.

While commercial industrial hemp cultivation is illegal in the U.S., hemp products legally sourced and lawfully imported can be manufactured, distributed and sold in the U.S.

Legal Background

Marijuana Tax Act

In 1937, Congress passed the Marihuana Tax Act (MTA), the first federal law enacted to discourage *Cannabis sativa L.* production for marijuana, while still permitting industrial uses of the crop. *See* Marihuana Tax Act of 1937, 50 Stat. 551 (repealed 1970). The MTA was designed to allow legitimate industrial and medical uses of *Cannabis sativa.* The purpose of the Act was to levy a token tax on all buyers, sellers, importers, growers, physicians, and any other persons who dealt in marijuana.

Under the MTA, the term "marihuana" ("marijuana" is used in older statutes; "marijuana" more recently) means:

> "all parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds, or resin – *but shall not include the mature stalks of such plant*, fiber produced from such stalks, *oils or cake made from the seeds of such plant*, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, *or the sterilized seed of such plant* which is incapable of germination."

See Marihuana Tax Act of 1937 sec. 1(b) Ch. 553, 50 Stat. 551, 555 (emphasis added). Because parts of the hemp plant commonly used in industrial applications (the seed, oil, and fiber) were

exempted from the marijuana definition entirely, no taxation was to be applied to people and/or businesses who obtained stalks, seeds, and other derivatives from producers. *Id.*

Controlled Substances Act

In 1970, the Controlled Substances Act (CSA) was enacted, displacing the MTA. The MTA definition of marijuana, including the exemption, was adopted verbatim by the CSA. *See* Comprehensive Drug Abuse Prevention and Control Act of 1970, Pub. L. No. 91-513, 84 Stat. 1236, 21 U.S.C. sec 802(16) (emphasis added). Pursuant to the CSA, marijuana is categorized as a Schedule I controlled substance. *See* 21 U.S.C. sec 812(c), Sch. I(c)(10). In a separate category, Congress added *synthetic* THC to the CSA. *Id.,* Sch. I(c)(17) (emphasis added).

2001 DEA Interpretive Rule

In 2001, the DEA published an interpretive rule stating that under the CSA and DEA regulations, any product that contains any amount of THC is a Schedule I controlled substance, even if such product is made from those portions of the cannabis plant that are excluded from the CSA definition of marijuana. The rule, therefore, classified **any** product containing **any** amount of THC as a Schedule I controlled substance even if exempted from the CSA. *See* Interpretation of Listing of "Tetrahydrocannabinols" in Schedule I, 66 Fed. Reg. 51,530, 51,533 (Oct. 9, 2001). The rule would thus have made the importation of hemp and hemp products without DEA authorization illegal.

The Ninth Circuit struck down the 2001 DEA interpretive rule in *Hemp Indus. Ass'n v. DEA,* 357 F.3d 1012, 1018 (9th Cir. 2004), on the grounds that it contravened the unambiguously expressed intent of Congress. The court held that the DEA failed to follow the formal rulemaking procedures required by 21 U.S.C. 811(a) to schedule a new substance and failed to evaluate the products' potential for abuse as required by 21 U.S.C. 812.

The court reiterated its' earlier holding in *Hemp* I, (*Hemp Indus. Assoc. v. DEA*, 33 F.3d 1082 (9th Cir. 2003)) that "the definition of THC in Schedule I refers only to synthetically-created THC, and that any THC occurring naturally within *Cannabis* is banned only if it falls within the Schedule I definition of "marijuana."" *Id.* at 1015. The court also found that hemp products with a low THC do not fall within the jurisdiction of marijuana under 21 U.S.C. 802(16). *Id*. at 1017. Rejecting the DEA's claim that it was merely clarifying an existing law, the court held that the statutes were unambiguous. *Id.* at 1016-17. Citing the exemptions from the definition of marijuana in 21 U.S.C. 802(16), the court explained: "Congress knew what it was doing and its intent to exclude non-psychoactive hemp from regulation is entirely clear." *Id.* at 1018.

In summary, the court in the *Hemp* cases concluded that under the CSA, the DEA can regulate foodstuffs and related products containing natural THC if it is contained within "marijuana," and can regulate synthetic THC of any kind. But the DEA cannot regulate *naturally-occurring* THC *not* contained within or derived from marijuana – i.e., non-psychoactive industrial hemp products – because non-psychoactive industrial hemp is not included in Schedule 1 of the CSA. *Id.*