



1140 South Coast Hwy. 101
Encinitas, CA 92024
Tel 760-942-8505
Fax 760-942-8515
www.coastlawgroup.com

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Memorandum Regarding Legality of Cannabidiol under U.S. Federal Law

Coast Law Group, LLP represents Iso International, LLC. I have been retained to provide a legal opinion regarding the legality of Iso International's Crystalline Cannabidiol ("CBD") and products including CBD designed, marketed, or sold by Iso International, LLC. This Memorandum provides a comprehensive analysis of the applicability of the Controlled Substances Act, Title 21 U.S.C.

§801 et seq. ("CSA") to the sale or use of CBD in the United States.

This Memorandum is for the purpose of clarifying issues related to the sale or use of CBD under United States federal law as set forth by the CSA, and is not intended for any other purpose. It is not intended as a guaranty of success before a court of law, and the opinions expressed herein are subject to change in the event of changes to the CSA.

This Memorandum does not address the implication of rules or regulations arising under the Food and Drug Administration, the Federal Food, Drug, and Cosmetic act, or Investigational New Drug rules.

Question presented:

Does the sale or possession of 99.9% pure Crystalline CBD in the United States constitute a violation of the CSA?

Answer: No, CBD is a product derived from the mature stalks of the Cannabis plant, and is thereby exempted by definition from the regulatory control of the CSA, and beyond the jurisdiction of the Drug Enforcement Agency.

The CSA at §802(16) defines the term, "marihuana" (also spelled, "marijuana"), as "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." Marihuana is a Controlled Substance under §812 of the CSA.

§802(16) however, specifically and expressly excludes from the definition of "marihuana" the parts of the plant from which CBD is derived. §802(16) provides in relevant part, "Such term (marihuana) does not include the mature stalks of such plant, fiber produced from such stalks, oil 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" (Emphasis added). Accordingly, CBD as an oil, cake salt, derivative, manufacture,

preparation, or compound made from the mature stalks of a Cannabis plant is not a controlled substance under any of the “Schedules of Controlled Substances” identified in the CSA. (*Id.* at §812).

Background:

The drug, “Marihuana” is generally made up of the leaves and flowers (buds) of the plant. Industrial uses of the plant, such as fiber used in rope and textiles, are derived from the plant’s stalk. Cannabis grown for industrial use is specifically cultivated for industrial purposes and displays different characteristics than the plants from which the drug is derived. All Cannabis plants contain some amount of Tetrahydrocannabinol (“THC”), the chemical responsible for most of Marihuana’s psychological effects. THC is classified as a hallucinogenic drug, and is listed on the CSA Schedules of Controlled Substances at §812. Plants grown for drug use contain substantially higher concentrations of THC than plants grown for industrial uses. Industrial plants contain only trace amounts of THC. Today, hybridized industrial hemp is engineered to boost production of CBD.

Cannabis cultivated for industrial uses, called “industrial hemp,” is grown in more than two dozen countries for use and export, including China, Canada, England, France and Germany. Iso International, LLC legally imports CBD grown abroad to the U.S.A.

Legal Findings:

The issue of oils and compounds derived from the stalks of industrial hemp is not only the subject of federal statutory law, it has been litigated in a number of cases that are directly on point. In 2004, a federal court for the Ninth Circuit held that CBD (or any other naturally occurring cannabanoids, including THC) from industrial hemp are not listed in the CSA as Controlled Substances, and therefore the Drug Enforcement Agency (“DEA”) has no jurisdiction over CBD. (See, *Hemp Indus. Ass’n v. DEA*, 357 F.3d 1012 (9th Cir. 2004)). The DEA declined to appeal this ruling, demonstrating the Agency’s reluctant willingness to accept both the statutory and common law decriminalization of imported CBD.

The court reasoned in *Hemp Indus. Ass’n v. DEA*, that like “the case of poppy seeds commonly consumed on bagels and expressly exempted from the CSA, that come from a non-drug variety of, but the same species as, the opium poppy. . . non-psychoactive hemp seed products do not contain any controlled substances as defined by the CSA. . .” *Id.* at 1017. The “non-psychoactive hemp. . . in products is derived from the ‘mature stalks’. . . of the Cannabis plant, and therefore fits within the plainly stated exception to the CSA definition of marijuana.” The court concluded by stating, “Congress knew what it was doing and its intent to exclude nonpsychoactive hemp from regulation is entirely clear.” *Id.* at 1018.

Accordingly, industrial hemp, stalk, fiber, seed oil, and compounds derived therefrom are and continue to be lawful under the CSA.

The DEA, however, continues to assert that CBD is a Schedule 1 Controlled Substance under the CSA. Based on the very clear language of the CSA, recognition of Congressional intent, and the interpretation of the CSA by the 9th Circuit, it is my opinion that the DEA is incorrect. The DEA has not prosecuted any case after Hemp Industry Association, or conducted any seizure of CBD. Nor has the DEA or any other government agency taken any steps to implement the complex and lengthy procedure to have CBD listed on the CSA Schedule of Controlled Substances. It is highly unlikely that in light of the holding in Hemp Indus. Ass'n v. DEA, that CBD from industrial hemp could be listed as a Controlled Substance. And, as one commentator has stated, "cases expressly exempt all naturally occurring cannabinoids from CSA's definition of marijuana. . . I seriously doubt that any prosecution under the CSA for industrial hemp derived CBD would survive a Motion to Dismiss. Thus, the DEA's position is devoid of logic, and is unsupported by the law."

State Law Implications:

This Memorandum addresses the implications of United States federal law on the possession and sale of CBD, and products incorporating CBD. It does not address the implications of state law. Each state may address the possession and sale of CBD and products incorporating CBD differently from federal law. Some states may have interpretations that result in laws criminalizing the possession, or some uses of CBD. Some states may define marijuana as including industrial hemp, thereby rendering industrial hemp and its derivatives a Controlled Substance under that state's laws. Purchasers of CBD from Iso International, LLC should investigate the local and state laws in their jurisdiction prior to purchasing, possessing, or selling CBD or products incorporating CBD.

Should you have any questions, please contact me at your convenience.

Gary L. Sirota, Esq.
Coast Law Group, LLP
1140 South Coast Highway 101
Encinitas, CA 92024
(760) 942-8505
GSirota@CoastLawGroup.com