FISHERBROYLES®
A LIMITED LIABILITY PARTNERSHIP

Steven C. Papkin
Partner
5670 Wilshire Boulevard, Suite 1800
Los Angeles, California 90036
Direct: (310) 415-6254
steven.papkin@fisherbroyles.com
www.FisherBroyles.com

January 11, 2017

12 Crowns Consulting, Inc. dba CBD Drip
3419 Via Lido, Suite 453
Newport Beach, California 92663

Re: Legality of CBD

Dear CBD Drip:

This office serves as legal counsel to 12 Crowns Consulting, Inc. dba CBD Drip ("CBD Drip"). We have been asked by CBD Drip to review the legality of CBD Drips' products which contain cannabidiol ("CBD"). To make its products, CBD Drip uses hemp oil derived from the mature stalks of industrial hemp grown or sown in the Netherlands. We have reviewed (i) the United States Controlled Substances Act (the "CSA"), (ii) the judicial decision of Hemp Industries Assoc. v. Drug Enforcement Agency (357 F.3d 1012, 9th Cir. 2004) ("Hemp II"), (iii) the Drug Enforcement Agency's Establishment of a New Drug Code for a Marihuana Extract published on December 14, 2016 and (iv) materials made available by CBD Drip's hemp oil supplier.

Based on our review of the information and materials described above, we believe that the CBD in CBD Drip products may be sold in the United States without violating the CSA. "Marihuana" (as marijuana is spelled in the CSA) is listed among the prohibited substances set forth on Schedule I under the CSA. Schedule I is the most restrictive of five "Schedules" of controlled substances established by the CSA with such Schedules differentiated by the scheduled drugs' potential for abuse, usefulness in medical treatment and potential consequences if abused.

The CSA defines "marihuana" broadly to include all parts of the plant Cannabis sativa L, whether growing or not, as well as derivatives and extracts of such plant. Such definition encompasses both the marijuana and hemp. Therefore, hemp and its parts and derivatives are illegal unless some type of exception applies.

Fortunately, there is such an exception, and the hemp oil used in CBD Drip may fit into such exception. The definition of "marihuana" contained in the CSA specifically excludes the following parts of the cannabis plant: "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." The full definition of marihuana under the CSA is set forth in the Appendix to this letter.

CBD Drip uses industrial hemp oil made from mature stalks of industrial hemp plants according to the supplier of such hemp oil. As quoted above the definition, of marihuana specifically excludes the

"mature stalks" of plant Cannabis sativa L and any "derivative . . . of such mature stalks (except the resin extracted therefrom)". We have no reason to believe that the hemp oil supplied to CBD Drip includes resin extracted from mature stalks of the cannabis plant. Therefore, following the logic of the Hemp II case (as discussed below), the possession and use of hemp oil supplied to CBD does not presently violate the CSA.

We note that the DEA has taken positions that would have the effect of banning most products that contain CBD. Such point of view is likely based, at least in part, on the fact such products may contain trace amounts of the hallucinogenic tetrahydrocannabinols ("THC"). We note that despite legal precedent, there may be other law enforcement officials in addition to the DEA who consider products containing CBD illegal.

Schedule I under the CSA is not static. Not only can Congress amend the substances listed on Schedule I but so can the DEA. However, the DEA does not have unfettered discretion to amend Schedule I. It can only do so if it follows the Administrative Procedure Act, which governs actions by federal regulatory agencies.

In 2001, the DEA promulgated a rule that claimed naturally occurring THC was illegal. Specifically, the DEA's rule proclaimed that "any product that contains any amount of THC is a schedule I controlled substance." Since trace amounts of THC are present where CBD naturally occurs in hemp, the effect of this rule would have been to make all hemp products illegal, even products made from those portions of the hemp plant that are excluded from the definition of marihuana under the CSA.

The Hemp Industries Association ("HIA") brought suit to challenge the DEA's rule, and the court sided with the HIA, "permanently enjoining" enforcement the DEA's rule. The court stated that the CSA only banned synthetic THC and THC included in the part of the cannabis plant defined as "marihuana". The court held that naturally-occurring THC in the part of the cannabis plant excluded from the definition of "marihuana" such as mature stalks and the oil and cake derived therefrom was not illegal under the CSA.

In footnote 2 to its opinion, the Hemp II court said that when it referred to "non-psychoactive hemp", it was referring to "hemp stalks, fiber, oil and cake made from hemp seed, and sterilized hemp seed itself", and the court determined that the plain language of the CSA precluded such non-psychoactive hemp from being deemed THC, thereby making the parts and extracts of the hemp plant that are not psychoactive legal under the CSA. To quote the court, "[n]on-psychoactive hemp is explicitly excluded from the definition of marijuana."

The court said that in order for the DEA to place naturally occurring THC on Schedule I (other than THC in marijuana), it would need to conduct a formal rulemaking in accordance with the Administrative Procedure Act and that the DEA had not conducted such formal rulemaking. Moreover, the court said that placing a substance on Schedule I would require the following findings:

(a) The drug or other substance has a high potential for abuse;

(b) The drug or other substance has no currently accepted medical use in treatment in the United States; and

(c) There is a lack of accepted safety for use of the drug or other substance under medical supervision.

The court found that the DEA had not met those scheduling requirements. In fact, the DEA did not even purport that it did. Instead, the DEA claimed it had no obligation to meet the scheduling requirements, saying that naturally occurring THC in hemp had always been illegal. The court disagreed by stating that non-psychoactive hemp was legal and that DEA's rule "improperly" rendered "naturally-occurring non-psychoactive hemp illegal for the first time".

The court concluded its opinion by saying that the DEA "cannot regulate *naturally-occurring* THC *not* contained within or derived from marijuana – i.e., non-psychoactive hemp products -- because non-psychoactive hemp is not included in Schedule I. The DEA has no authority to regulate drugs that are not scheduled, and it has not followed procedures required to schedule a substance." (Italics included in the original court opinion.) The court continued, "The DEA's definition of 'THC' contravenes the unambiguously expressed intent of Congress in the CSA and cannot be upheld." The court granted the HIA's petition with a very clear statement that it was enjoining the DEA's new rules with respect to non-psychoactive hemp and products containing non-psychoactive hemp.

Finally, we call your attention to the DEA's designation of a new four-digit administration code for "marihuana extract" in December 2016. The DEA says it took this action for record-keeping and administrative purposes and to allow the United States to better comply with international treaty obligations. It appears unrelated to the legality of CBD under the CSA. Moreover, it did not add CBD to any of the Schedules promulgated under the CSA.

We have only considered issues raised by the laws referenced herein. This letter does not address any issues that might be raised under the United States Food, Drug and Cosmetic Act nor does this letter address the laws of any state or locality.

Please further note that for purposes of the foregoing letter, we have assumed the truth of all representations that CBD Drip made to us and assumed the authenticity of all documents presented to us. This letter sets forth our thoughts based on laws in effect as of the date hereof as such laws are commonly interpreted. Any subsequent change in the common interpretations of these laws or in the laws themselves might affect our thoughts on these matters. We undertake no obligation to update you in regards to any such changes.

We realize that you intend to show this letter to your customers. Unless any such customers enter into a written engagement agreement with us, we assume no legal obligations to them. Moreover, absent such written engagement agreement, no attorney-client relationship will exist between us and any CBD Drip customer.

Please do not hesitate to contact the undersigned if you have any questions regarding this letter.

Best regards.

Steven C. Papkin

APPENDIX

Definition of Marihuana under the Controlled Substances Act

The Controlled Substance Act defines marihuana in 21 USC §802(16) is as follows:

> The term "marihuana" 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. Such term 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.

DEA Announcement of New Drug Code in 2016

On December 14, 2016, the DEA announced a rule that created a new code for marihuana extract (the "Rule"). This action by the DEA deals with record keeping and administrative matters. It also appears to have been in the works for five years since the rule was first proposed in 2011.

The main purpose of the rule appears to have been to assign a four-digit Administration Controlled Substance Code Number (an "ACSC Number") to marijuana extract. An ACSC Number is used to track quantities of a controlled substance that is imported into or exported from the United States. Previously, unique ACSC Numbers only existed for marijuana and THC. The stated rationale for the new ACSC Number for marihuana extract was to "allow DEA and DEA-registered entities to track quantities of [marijuana extract] separately from quantities of marijuana. This, in turn, will aid in complying with relevant treaty provisions."

Moreover, the DEA stated that under "international drug control treaties administered by the United Nations, some differences exist between the regulatory controls pertaining marihuana extract versus those for marihuana and tetrahydrocannabinols." The DEA had previously established separate ACSC Numbers for marihuana and for tetrahydrocannabinols, but not for marihuana extract. To better track these materials and comply with treaty provisions, DEA said it was creating a separate code number for marihuana extract. The Rule defined "marijuana extract" as "an extract containing one or more cannabinoids that has been derived from any plant of the genus Cannabis, other than the separated resin (whether crude or purified) obtained from the plant."

While the Rule may have alarmed some in the CBD community, the Rule appears on its face to be unrelated to the legality of CBD although the release that contained the Rule says that CBD falls within the definition of "marihuana extract". The Rule was first proposed in 2011, four years before the passage of the Industrial Hemp Farm Act of 2015 and three years before the passage of Farm Act Section 7606 which permitted limited growing of industrial hemp in the United State in certain specified circumstances.