

VICENTE SEDERBERG LLC

PARTNERS

BRIAN VICENTE, ESQ. (CO)
CHRISTIAN SEDERBERG, ESQ. (CO)
JOSHUA KAPPEL, ESQ. (CO)
ADAM FINE, ESQ. (MA, NJ, PA)

COUNSEL

CHARLES ALOVISETTI, ESQ. (CO, NY)
ALICIA ASHCRAFT, ESQ. (NV)
JEFFREY BARR, ESQ. (NV)
ADAM BERGERON, ESQ. (CO)
COREY COX, ESQ. (CO)
COLIN FLETCHER, ESQ. (CO)
CASSIA FURMAN, ESQ. (CA, CO)
SHAWN HAUSER, ESQ. (CO)
BRANDON KURTZMAN, ESQ. (MA)
TYLER NIXON, ESQ. (CA)

OFFICES IN DENVER, BOSTON, LAS VEGAS, LOS ANGELES, AND WASHINGTON, D.C.

455 SHERMAN STREET, SUITE 390
DENVER, COLORADO 80203
(T) 303-860-4501
(F) 303-860-4505

SALLY KENT PEEBLES, ESQ. (CO, FL, OR)
JERRICO PEREZ, ESQ. (CO)
FRANK ROBISON, ESQ. (CO)
KELLY ROSENBERG, ESQ. (CO, WY)
JESSICA SCARDINA, ESQ. (CO)
JEREMY SHAW, ESQ. (MA)
PHILIP SILVERMAN, ESQ. (MA)
DAVID ULLIAN, ESQ. (D.C., MA, SC)
JORDAN WELLINGTON, ESQ. (CO)
CARL WERNER, ESQ. (CO)

SPECIAL COUNSEL

PHILIP A. CHERNER, ESQ. (CO)
STEVE FOX, ESQ. (MA)
M. ALLEN HOPPER, ESQ. (CA)

August 11, 2017

CBD Drip
ATTN: Boyd Easley
3419 Via Lido, Ste. 453
Newport Beach, CA 92663

RE: Legal Status of Hemp Materials Imported

Dear Mr. Easley:

Vicente Sederberg LLC (the “**Firm**”) is acting as special legal counsel to CBD Drip, a California Corporation (the “**Company**”). The Company has retained the Firm to provide an opinion as to the legal status of the Company’s hemp business operations. As set forth in this memorandum (this “**Memorandum**”), the Firm concludes that the Company’s use of imported hemp biomass is lawful under applicable federal law.¹

In support of this Memorandum, the Firm has reviewed the documents in Schedule A related to the imported shipments of hemp products provided by the Company (the “**Importation Documents**”) and representations of the Company. The Firm assumes that the Importation Documents are authentic and accurate and generally representative of shipments of hemp products provided to Company. Except as expressly stated in this Memorandum, the Firm has not made any independent investigation to determine the accuracy or authenticity of the Importation Documents and representations. A notable exception is that Company’s federally licensed U.S.

¹ For the purposes of this Memorandum, “applicable federal law” means solely the Controlled Substances Act (“CSA”).

custom's broker has provided an affidavit indicating that certain Importation Documents, specifically Schedule A, numbers one through four, are true, authentic, and correct.

This Memorandum² is divided into five parts. First, it provides a brief answer in support of the Firm's opinion. Second, it provides the factual background relevant to the Firm's analysis. Third, it provides the legal background relevant to the Firm's analysis, including an overview of the U.S. federal regulatory scheme. Fourth, it provides a legal analysis of the question presented. Finally, the Firm provides a conclusion, including the limitations of this Memorandum.

I. Brief Answer

Under the Controlled Substance Act (the "CSA") the respective definitions of "marijuana"³ specifically *exclude*, "the mature stalks of [the cannabis] plant, any other compound, manufacture, salt, derivative, mixture or preparation of such mature stalks . . . fiber, oil or cake, or the sterilized seed of such plant. . . ."⁴ The Company works with legally imported hemp materials—compounds and oils derived from cannabis stalks—that fall within this exclusion from the definition of the controlled substance, marijuana. As such, subject to the assumptions and limitations set forth in this Memorandum, it is the Firm's opinion that the Company's use of imported hemp is lawful under applicable federal law.

II. Background

The Company has been in business since 2014 and supplies a broad range of hemp products derived from imported hemp biomass to various customers. The Company only uses hemp biomass that has been imported into the United States that has cleared U.S. Customs, including review and inspection by multiple U.S. agencies, as applicable, through a U.S. Port of Entry.

The Company purchases and imports EU-sourced hemp products. In turn, the Company purifies such hemp products and sells them to retailers and manufacturers worldwide. The Company has capacity to extract up to 20 tons of imported hemp biomass per day. The Company offers a wide range of vegan, gluten free, non-GMO, non-toxic products, from bulk oil in both decarboxylated and non-decarboxylated forms, to highly processed compounds and consumer-ready retail products.

Putting the Company's business activities in the context of U.S. markets, hemp materials and products derived or made from non-controlled parts of the cannabis plant are regularly imported

² This Memorandum uses the phrase "parts of the cannabis plant excluded from the CSA's definition of marijuana" and minor derivation to it to refer to materials that are derived from the cannabis plant, but are excluded from that definition of marijuana under the Controlled Substance Act and may be imported into the United States, subject to certain conditions, some of which are addressed in this Opinion. Other similar phrases employed in this Memorandum included "materials and products derived or made from non-controlled parts of the cannabis plant."

³ The United States Code uses an antiquated spelling of "marihuana." We employ the modern spelling "marijuana" in the Memorandum unless quoting a body of law that uses that antiquated spelling.

⁴ 21 U.S.C. § 802(16) (2016).

into the United States from foreign countries.⁵ U.S. consumers have increased access to hemp products in many markets and stores nationwide.⁶

Hemp, hemp products and hemp compounds are used in products sold in many U.S. markets, including feed, textiles, cosmetics and food.⁷ Hemp “has a better profile of key nutrients, such as essential fatty acids and gamma-linolenic acid, than other oils ... and a similar profile of other nutrients, such as sterols and tocopherols.”⁸ As another example, parts of the cannabis plant excluded from the CSA’s definition of marijuana are also recognized as high quality automotive parts material: “Hemp fiber is one of the inexpensive and readily available best natural fiber and has attracted considerable attention of researchers and auto-parts manufacturers in Europe and North America.”⁹

Hemp, according to its proponents, will provide the world with cheap nutritious food, be a source of fuel, reverse climate change, remove harmful heavy metals from the soil and, as illustrated by an example above, be a primary component of textiles, among numerous other benefits.

III. Legal Background

Hemp is a commonly used term for non-intoxicating varieties of the species *Cannabis sativa L.*¹⁰ Hemp materials and products derived or made from non-controlled parts of the cannabis plant are imported regularly into the United States from foreign countries.¹¹

The CSA provides that cannabis, including hemp, stock, fiber, oil and sterilized seeds are not controlled as marijuana.¹² Specifically, the CSA states:

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*

⁵ See U.S. Customs and Border Protection, Importing Hemp Products into the United States, (Mar. 1, 2016), https://help.cbp.gov/app/answers/detail/a_id/1751/~importing-hemp-products-into-the-u.s.

⁶ See e.g., http://www.wholefoodsmarket.com/site_search “hemp” (last visited April 27, 2017)

⁷ See e.g., Amazon, <https://www.amazon.com/>, search “hemp” (last visited July 19, 2017); see also e.g., Walmart, <https://www.walmart.com>, search “hemp oil” (last visited July 19, 2017).

⁸ See e.g., Thompson, Berger & Allen, Univ. of Kentucky Center for Business and Economic Research, Economic Impact of Industrial Hemp in Kentucky 7–8 (July 1998), available at www.industrialhemp.net/pdf/hempstudy.pdf.

⁹ See e.g., Panthapulakkal and Sain, JOURNAL OF APPLIED POLYMER SCIENCE, “Injection-molded short hemp fiber/glass fiber-reinforced polypropylene hybrid composites—Mechanical, water absorption and thermal properties,” Vol. 103, Issue 4, pp. 2432–2441, Feb. 15, 2007 (“Hemp in the form of nonwoven fiber mat was used as reinforcement for thermoset resins such as soy oil-based resin, unsaturated polyester resin, novolac resin, epoxy resin, and acrylic resin and for thermoplastics such as PP and polystyrene.”).

¹⁰ See Congressional Research Services, Hemp as an Agricultural Commodity (July 24, 2013).

¹¹ See e.g., U.S. Customs and Border Protection, Importing Hemp Products into the United States, (Mar. 1, 2016), https://help.cbp.gov/app/answers/detail/a_id/1751/~importing-hemp-products-into-the-u.s.

¹² 21 U.S.C. § 802(16).

*mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination.*¹³

For historical context, in the United States, the stalks and fiber produced from stalks, oil derived from seeds and any compound derived from stalks has been excluded from the definition of marijuana for eighty years.¹⁴ Since 1937, federal law has provided that certain statutory parts of the cannabis plant, such as hemp stalks, fiber, sterilized seed and seed oil, are exempt from the definition of marijuana and, thus, are not controlled substances under the respective bodies of law.¹⁵

Pursuant to the statutory definitions noted above, parts of the cannabis plant excluded from the CSA's definition of marijuana, including "compounds," do not fall under the definition of marijuana under federal law.¹⁶ To support this plain interpretation of the CSA, in 2003 and 2004, the Ninth Circuit Court of Appeals held that naturally-occurring derivatives of the parts of the cannabis plant that are not included in the statutory definition of marijuana, for example, mature stalks and crushed or sterilized seed, are not controlled substances.¹⁷ This conclusion is self-evident from a plain reading of the CSA.

IV. Analysis

The processing and production of hemp oils and other hemp goods, regardless of whether cannabidiol (commonly known as "**CBD**") or other cannabinoids are present in such hemp materials, derived from imported hemp is not in violation of applicable federal law as long as such materials are parts of the cannabis plant excluded from the CSA's definition of marijuana or derived from such parts.¹⁸ The Company imports hemp biomass from the European Union and processes them with its proprietary technology and sells such materials to a variety of customers.¹⁹

The United States Customs Border and Protection (the "**CBP**") plays an important role in importations of goods and merchandise into the United States. It determines whether goods and merchandise, including hemp products, are lawful to import into the United States based on information provided to it by the importer, the exporter and inspections of the goods, among other

¹³ Id. (emphasis added).

¹⁴ See Marihuana Tax Act of 1937; the Controlled Substances Act of 1970; codified in the United States Code as 21 U.S.C. § 801, *et seq.*

¹⁵ Id.

¹⁶ 21 U.S.C. § 802(16).

¹⁷ Hemp Indus. Ass'n. v. Drug Enf't Admin., 333 F.3d 1082 (9th Cir. 2003). (*hereinafter* "Hemp I"); Hemp Indus. Ass'n. v. Drug Enf't Admin., 357 F.3d 1012, 1018 (9th Cir. 2004). (*hereinafter* "Hemp II").

¹⁸ Notably, the Ninth Circuit holds that "the definition of 'THC' in Schedule I refers only to synthetic THC, and that any THC occurring naturally within *Cannabis* is banned only if it falls within the Schedule I definition of 'marijuana.'" Hemp II at 1013.

¹⁹ See Schedule A.

means.²⁰ Further, the CBP is the largest law enforcement agency in the world and is charged with facilitating lawful international trade.²¹

The Harmonized Tariff Schedule of the United States (the “**HTSUS**”) establishes codes for all merchandise that enter the United States. In accordance with the CSA, the HTSUS provides codes for parts of the cannabis plant excluded from the CSA’s definition of marijuana, including the following:

1207.99.03.20 Other oil seeds and oleaginous fruits, whether or not broken: Other; *Hemp Seed*.

1515.90.80.10. Other fixed vegetable fats and oils (including jojoba oil) and their fractions, whether or not refined, but not chemically modified: *Hemp Oil*.

1901.90.9095 Vanilla Hemp Protein and the Dark Chocolate Hemp Protein products.

2306.90.01.30 Oilcake and other solid residues, whether or not ground or in the form of pellets, resulting from the extraction of vegetable fats or oils, other than those of heading 2304 or 2305: Other Of *Hemp Seeds*.

2202.10.0040 Hemp Soda.

2907.29.05.00. Phenol-alcohols. [Organic Chemical Compound, Phenyl phenol]

3301.90.50.00. Essential oils (terpeneless or not), including concretes and absolutes; resinoids; extracted oleoresins; concentrates of essential oils in fats, in fixed oils, in waxes or the like, obtained by enfleurage or maceration; terpenic by products of the deterpenation of essential oils; aqueous distillates and aqueous solutions of essential oils:

The above are a mere sample of HTSUS codes that may be used in connection with the importation of hemp products and materials—parts of the cannabis plant excluded from the CSA’s definition of marijuana.

According to the Importation Documents provided by the Company to the Firm, the CBP has cleared various shipments of hemp products imported by the Company and, thus, such hemp materials have entered the stream of U.S. commerce.²² The Company uses a valid HTSUS code to import hemp into the United States through a CBP designated U.S. Port of Entry.²³ Further, the Company specifically represents that it sources and imports hemp materials that have been

²⁰ 6 U.S.C. § 211.

²¹ U.S. Customs and Border Protection, “About CBP,” <https://www.cbp.gov/about>.

²² See Schedule A.

²³ *Id.*

derived from parts of the cannabis plant that are legal under the CSA.²⁴ After the hemp biomass is imported, the Company processes the materials.

In determining whether certain products fall within the CSA's definition of marijuana, the Ninth Circuit states, "The non-psychoactive hemp in . . . products derived from the 'mature stalks' or is 'oil and cake made from the seeds' of the Cannabis plant . . . fits within the plainly stated exception to the CSA definition of marijuana."²⁵ The Court elaborates, "Congress knew what it was doing, and its intent to exclude non-psychoactive hemp from regulation is entirely clear."²⁶

As the hemp industry in the U.S. increases in size, the DEA, in its "Clarification of the New Drug Code (7350) for Marijuana Extract," attempts to distinguish what is a legal and an illegal part of the cannabis plant under the CSA. The DEA acknowledges that "cannabis extracts,"

[do] not include materials or products that are excluded from the definition of marijuana set forth in the Controlled Substances Act (CSA). [A "cannabis extract"] includes only those extracts that fall within the CSA definition of marijuana. If a product consisted solely of parts of the cannabis plant excluded from the CSA definition of marijuana, such product would not be included in the new drug code (7350) or in the drug code for marijuana (7360).²⁷

Nevertheless, it continues by qualifying its statement:

According to the scientific literature, cannabinoids are not found in the parts of the cannabis plant that are excluded from the CSA definition of marijuana, except for trace amounts (typically, only parts per million) that may be found where small quantities of resin adhere to the surface of seeds and mature stalk.²⁸

To put the DEA's statements in the context of this Memorandum, the salient question here is not whether cannabinoids are found in parts of the cannabis plant that are excluded from the definition of marijuana, but rather whether the Company is working with parts of the cannabis plant that are in fact excluded from the definition of marijuana. The Company represents that its imported hemp biomass is comprised of materials excluded from the CSA's definition of marijuana. In this context, the Company's activities are lawful under applicable federal law.²⁹

To conclude, the Company's use of the parts of the cannabis plant that are excluded from the CSA definition of marijuana is legal under federal law pursuant to the Firm's analysis of applicable law.

²⁴ Id.

²⁵ Hemp II, 357 F.3d at 1017.

²⁶ Id. at 1018.

²⁷ See U.S. Department of Justice, DEA, Diversion Control Division, Clarification of the New Drug Code (7350) for Marijuana Extract, https://www.deaiversion.usdoj.gov/schedules/marijuana/m_extract_7350.html, (Clarification).

²⁸ Id.

²⁹ The DEA uses two sources of authority to support the assertion in footnote 28. Both pertain to seeds, not stalks of the cannabis plant. Based on information provided to the Firm, the Company only uses materials processed from hemp stalks, excluding any resin.

The salient issue is whether the Company uses and processes parts of the cannabis plant that are excluded from the CSA's definitions of marijuana. Based on the Firm's review of applicable law and precedent, representations of the Company and the Importation Documents, we understand this to be the case.

V. Conclusion

Based on the Firm's analysis of the foregoing, the Firm concludes that parts of a cannabis plant that are not included in the CSA's definition of marijuana are not scheduled controlled substances and, thus, are legal to import into the United States. Furthermore, the Company is using imported hemp products that are not scheduled controlled substances. Subject to the assumptions set forth in this Memorandum, in the Firm's opinion, the Company's use of such products—parts of the cannabis plant excluded from the CSA's definition of marijuana—is in compliance with applicable federal law.

The Importation Documents and representations support the conclusion that the Company uses products that have been lawfully imported into the United States. Further, the Importation Documents and representations support that the materials used by the Company are parts of the cannabis plant that are not defined as a controlled substance under the CSA. We express no opinion as to the validity and authenticity of the Importation Documents provided to the Firm or the representations of the Company to the Firm. We have conducted a narrow independent investigation to determine the accuracy or authenticity of key Importation Documents. Specifically, Company's federally licensed U.S. custom's broker has provided the firm an affidavit indicating that certain Importation Documents, specifically Schedule A, numbers one through four are true, authentic and correct.

We express no opinion as to the laws of any jurisdiction other than the laws specifically addressed in this Memorandum. The Memorandum is limited to the laws in effect as of its date and assumes the laws will be interpreted pursuant to the DEA's statement:

If a product consisted solely of parts of the cannabis plant excluded from the CSA definition of marijuana, such product would not be included in the new drug code (7350) or in the drug code for marijuana (7360).³⁰

We assume that the relevant legal authorities and regulatory agencies will enforce the laws and regulations as they are in effect as of the date of this Memorandum. By providing the Company with this Memorandum, the Firm is not responsible to advise the Company of any change in law, fact, policy or agency practice regarding any matter whatsoever set forth in this Memorandum. The Firm's opinion(s) contained in this Memorandum are limited to the matters expressly stated in this Memorandum and no additional opinions are to be inferred or implied beyond what is stated herein. Except as expressly set forth in this Memorandum, we have not undertaken any

³⁰ U.S. Department of Justice, DEA, Diversion Control Division, "Clarification of the New Drug Code (7350) for Marijuana Extract," 2017, https://www.deadiversion.usdoj.gov/schedules/marijuana/m_extract_7350.html

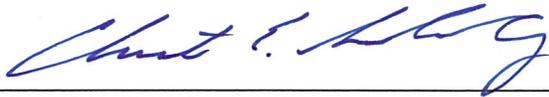
independent investigation to determine the existence or absence of any such facts or other information, and no inference as to our knowledge of the existence or absence of any facts or other information should be drawn from the fact of our issuance of this opinion.

The opinion(s) expressed in this Memorandum are solely for the benefit of the Company, and the Company may not, without the Firm's express prior written consent, disclose or allow the Memorandum or any opinions contained therein to be relied upon in any manner by any other entity in anyway whatsoever; provided, however that the Memorandum may be disclosed to the Company's customers so long as such customer has a non-disclosure agreement in place with the Company and that the entirety of this Opinion is included under such non-disclosure agreement and that a term of such non-disclosure agreement is that the customer may not download or otherwise disseminate this Opinion in any way whatsoever.

Sincerely,



Frank Robison, Esq.
Colorado Registration No. 45749
U.S. Customs Broker License No. 31543



Christian Sederberg, Esq.
Colorado Registration No. 36665

SCHEDULE A

Below is a list of documents related to the imported shipments of hemp products reviewed by the Firm in connection with this Memorandum:

1. U.S. Customs Entry Form 7501 for 100-200 tons of hemp materials, June 26, 2017.
2. U.S. Customs Entry Form 7501 for 100-200 tons of hemp materials, April 27, 2016.
3. U.S. Customs Entry Form 7501 for approximately 20 tons of hemp materials, March 16, 2016.
4. Material Safety Data Sheet, indicating materials are derived from part of cannabis plant excluded from definition of marijuana, October 12, 2015.
5. Commercial Invoice, February 15, 2016.
6. Affidavit – Signed by Company’s agricultural partner, affirming that the materials are derived from parts of cannabis plant excluded from CSA’s definition of marijuana, March 24, 2017.
7. Assurance Letter – Issued by Company, stating that it uses lawfully imported materials derived from parts of cannabis plant that are excluded from definition of marijuana, January 6, 2017.
8. Affidavit – Signed by Company’s U.S. Custom’s broker, affirming that the U.S. Entry Forms referenced in this opinion and other corresponding importation documents are true, correct and authentic.