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Attempts To Ban Hemp Food Products Go Up In Smoke

BY ELIZABETH STARR MILLER

THANKS TO THE Hemp Industries Association (HIA), health conscious consumers will be able to have their hemp and it eat too.

After a two-and-a-half-year legal battle against the Drug Enforcement Administration (DEA), the HIA, which represents more than 200 companies in North America, won the right on Feb. 6 to sell hemp-based food products, such as nutrition bars, veggie burgers and salad dressing.

Filed in the San Francisco Court of Appeals, HIA's lawsuit challenged the DEA's "Final Rules on Cannabis Products," which the agency issued in March 2003, and effectively banned the sale of hemp-based products.

Blindsiding An Industry

Trouble began for the hemp-foods industry in October 2001 when the DEA tried to stop hemp-based food products from reaching store shelves. The DEA claimed edible hemp was prohibited under Schedule I of the Controlled Substance Act, which makes drugs such as heroin, LSD and marijuana illegal.

Before the plaintiffs could win a court-ordered stay following the DEA's "Final Rules," many retailers—including organic supermarket chain Whole Foods—removed hemp-based food products from their shelves, causing many small companies to lose business.

"The DEA came in and blindsided the industry, and tried to undercut one of the most promising markets in the United States," says David Bronner, president of Dr. Bronner's Magic Soaps, which financed a major portion of the lawsuit against the government.

Today, hemp cannot be grown in the United States, and all hemp products are imported. "All the European countries, Canada and Asia grow hemp, and no one is trying to smoke it," Bronner says.

Hemp food products contain only trace amounts of tetrahydrocannabinol (THC)—the chemical that gets marijuana-smokers high—and do not effect drug-tests, according to a 2000 study by Gero Leson and Petra Pless of Leson Environmental Consulting in Berkeley, Calif. The study showed that eating six tablespoons of hemp oil, or half a pound of commercial quality hemp seeds, every day wouldn't interfere with federal drug-test programs. "Even hemp food connoisseurs rarely consume such quantities," note Leson and Pless in the study.

Furthermore, hemp and marijuana come from different varieties of the plant, Bronner says. "It's like the difference between a Chihuahua and a Great Dane. They are both dogs, but very different," he adds.

The variety of the cannabis plant that is used for industrial hemp is considered industrial because its flowers contain only trace amounts of THC. Industrial hemp is grown for its stalks, not its flowers, so plants are tall and grow close together. The seed of the plant that is used in food products is similar to a small nut and is either hulled for consumption or crushed for oil.

Based on the above, the court ruled in favor of the plaintiffs because Schedule I of the Controlled Substance Act states that any fiber, oil or cake made from the hemp seed are excluded from the legal definition of marijuana.

Interpreting Rules

The DEA couldn't be reached for comments and a spokesman for the U.S. Department of Justice (DOJ) Office of



Hemp-based food products, such as the bread pictured here, only contain trace amounts of THC, the psychoactive chemical in marijuana. Yet the DEA still tried to ban the sale of these products. It lost that battle in February.

Public Affairs said that the agency had no statement. He also said they hadn't decided whether or not to appeal the ruling.

However, it's unlikely the government would appeal, according to Joseph Sandler, a partner at Sandler, Reiff and Young in Washington, D.C., and the lead attorney for the plaintiffs.

"The court agreed with us on the question of interpretive laws covering edible hemp," Sandler says. "The court said the DEA has to go through the whole procedure for adding a new substance into Schedule I of the Controlled Substance Act. They would have to find that it has a potential for abuse, like heroin."

However the DOJ knew that edible hemp doesn't trigger a psychoactive affect and therefore importation could not be prohibited, according to memos obtained by VoteHemp, a hemp advocacy group.

These memos from the Office of National Drug Control Policy (ONDCP) and the DOJ showed that two departments couldn't agree on what to do about edible hemp.

In one of the memos, dated March 22, 2000, John Roth, chief of the Narcotic and Dangerous Drug Section of the DOJ told the U.S. Customs Service that the government lacked the authority to prohibit the importation of hemp products used for human consumption because, "those hemp products ... have THC at levels too low to trigger a psychoactive effect and are not purchased, sold or marketed with the intent of having a psychoactive effect."

But just one month later, on April 10, 2000, Ed Jurith, general counsel at the ONDCP stated, "allowing the importation and sale of 'hemp' products in the United States threatens the viability of our Federal drug-testing system and supports a movement to grow *Cannabis sativa* in this country."

In March 2003, the DEA's "Final Rules" tried to ban edible hemp altogether, stating that because hemp prod-

ucts contain trace amounts of THC, they fell under the Controlled Substance Act. The act states that anything containing any quantity of a controlled substance is itself a controlled substance.

In February, however the three-judge panel of the San Francisco Court of Appeals ruled otherwise, saying the DEA couldn't qualify hemp foods as controlled substances.

"The DEA's Final Rules purport to regulate foodstuffs containing 'natural and synthetic THC.' And so, in keeping with the definitions of drugs controlled under Schedule I of the CSA, the Final Rules can regulate foodstuffs containing natural THC if it is contained within marijuana, and can regulate synthetic THC of any kind," wrote Chief Judge Betty B. Fletcher. "But they 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."

Bronner says the ruling was common sense. "We convinced a conservative judge in the 9th Circuit, so [this suit] can't be characterized as liberal versus conservative," he says. "It's more of common sense versus absurdity."

The plaintiffs are deciding whether or not to sue the government for damages, or at least recover their legal fees of \$200,000 under the Equal Access to Justice Act, which allows for the recovering of attorney fees from the government on behalf of small businesses.

The ruling leaves the door open for further arguments as to whether or not industrial hemp should be grown again in the United States. Already companies such as Ford are testing industrial hemp for use in car textiles and as a replacement for fiberglass. ◀

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Bank of America Ordered To Pay \$75 Million

A jury in San Francisco ordered Bank of America in February to pay \$75 million in damages to elderly and disabled customers who had Social Security checks directly deposited into their accounts from the government since 1994.

In the class action suit filed on behalf of 1.1 million customers, the court ruled the bank had broken a state law by telling customers it could take money from their

Social Security funds in order to cover bank charges—such as bounced checks and overdraft charges. The jury also ruled that Bank of America should pay \$1,000 to each customer who suffered substantial damages, bringing the total amount the bank might have to pay to \$1 billion.

Bank of America plans to appeal the ruling.

—Elizabeth Starr Miller

Weyerhaeuser Settles Antitrust Case

Weyerhaeuser agreed on March 9 to pay \$34.5 million to settle a lawsuit that charged the company altered wood prices in order to drive competitors out of business.

Brought by four lumber companies, the suit alleged Federal Way, Wash.-based Weyerhaeuser Co. raised prices for alderwood, a hardwood used for furniture

and flooring.

This settlement follows a \$79 million verdict against the company in a similar case last year, which is currently in the appeals process with the 9th Circuit Court of Appeals in San Francisco. Two other suits are scheduled for trial this year.

—Elizabeth Starr Miller