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Canadian producer sues U.S. over proposed DEA hemp ban

By BARRIE MCKENNA
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- Page B1

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WASHINGTON

-- Its makers tout the substance as an excellent source of vitamin E, protein and fatty acids that can be added to everything from pretzels to ice cream.

U.S. drug enforcement authorities say it's part of a family of dangerous hallucinogens.

Today, North America's largest producer of hemp seed, **Kenex Ltd.** of Chatham, Ont., plans to file a \$20-million-plus (U.S.) NAFTA lawsuit against the U.S. government, arguing that a looming ban would destroy its growing business in the United States, according to a copy of the filing obtained by The Globe and Mail.

The rare private lawsuit, which under Chapter 11 of the North American free-trade agreement allows investors to sue governments directly, is just one of a handful of cases ever filed against the United States by a company based in Canada.

"We have a Canadian investor who had an investment and was going to make a larger investment, but then it was stripped away," Todd Weiler, Kenex's NAFTA lawyer and a law professor at the University of Ottawa, said in an interview.

"The benefits that these products can give you are wonderful. It's ridiculous that they are punishing people just because of the word hemp and symbol of the marijuana leaf. This is simply about being treated fairly."

The problem for both sides is that hemp, like marijuana, is made from the infamous cannabis plant. The flowering tops of the plant can contain concentrations of up to 30 per cent of the hallucinogen THC, or tetrahydrocannabinol, the illegal drug that gives marijuana users a "high." The rest of the cannabis plant, including the hardy stalks, generally contains less than 1 per cent THC, and is commonly referred to as industrial hemp.

As a part of its crackdown on the burgeoning hemp industry, the U.S. Drug Enforcement Agency has ordered any food containing the substance off store shelves by Feb. 6.

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Kenex has set up a U.S. subsidiary, has an extensive distribution network and soon planned to open a plant in the United States.

The company also says it's being penalized because it won't be able to ship its hemp across the border, which even after the ban can continue to be sold legally in U.S. soaps, cosmetics and clothes. The hemp business is worth more than \$30-million a year in the United States, and has been growing rapidly, particularly as a food additive.

Kenex's NAFTA lawsuit against the U.S. ban has at least the tacit backing of the Canadian government. In a recent letter to the DEA, Canadian trade officials warned the agency that its ban threatens a legitimate, regulated Canadian industry and violates World Trade Organization rules requiring countries to conduct risk-assessment tests before prohibiting products.

Canada has allowed commercial farming of hemp since 1998 and has actively encouraged farmers to get into the business.

The prohibition is also being fought by the U.S. hemp-food industry, which sells \$5-million a year of grocery items such as Hemp Chips, Hempmylk, Healthy Hemp Sprouted Bread, Hemp Plus Granola Bars and Hempzel Pretzels.

The Hemp Industry Association recently filed a lawsuit of its own against the DEA in a San Francisco court. Kenex is among the co-plaintiffs in the case.

The hemp-food industry argues that its products are being unfairly singled out even though they contain only trace amounts of THC. In Canada, for example, hemp products must be labelled, and neither stems, seeds or flowers of industrial hemp plants can contain more than 0.3 per cent THC.

DEA administrator Asa Hutchison, who announced the ban on Oct. 9, argued hemp must be banned because THC is a controlled illegal substance.

"Many Americans do not know that hemp and marijuana are both parts of the same plant and that hemp cannot be produced without producing marijuana," he said.

The hemp industry insists, however, that the plants it grows are a completely different variety from those used to produce THC-laced marijuana.

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FTSE100	-85.1	5113.8
Nikkei	0	10441.58
HSeng	42.97	11209.4
DJ Net	-2.3	65.7
Gold (NY)	-2.00	285.70
Oil (NY)	-0.79	18.88
CRB Index	-1.85	192.90
30 yr Can.	+0.00	5.52
30 yr U.S.	+0.02	5.38
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US\$	+0.0005	0.6266
Yen	-0.2735	82.5600
Euro	-0.0006	0.7023
US\$ buys		
CDN\$	-0.0011	1.5967
Yen	-0.3820	131.7600
Euro	-0.0019	1.1208

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