



Tuesday, November 29, 2011

SECRETARY

Standards Management Officer  
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REF: Application A1039 – Low THC Hemp as Food and Department Health and Ageing letter dated 28<sup>th</sup> May 2011 from Jane Halton PSM

Dear Sir/Madam

I refer to Application 1039 and the considered response from Jane Halton for the Department of Health and Ageing.

In accord with FSAN's consideration, Hemp Foods Australia Pty Ltd a Company registered in Australia offers a response to this letter.

- 1) The Department is concerned that allowing the use of hemp seed and hemp seed oil containing low levels of THC as food, has the potential to promote a public perception that cannabis is an acceptable and safe product to consume. The Department then goes on to discuss the drug form of cannabis and THC, which seems to have little relevance to this application. Hemp Foods Australia is not aware of any country with a history of using hemp as a food, including England, Germany, Spain, France, Portugal, USA, Canada and others, where it has been shown that allowing hemp as a food gives any impression that the drug form of cannabis is safe to consume. This has generally been dealt with by using the term 'hemp' to refer to the non-psychoactive and proven healthy hemp food variety in comparison with the term 'marijuana' for the drug form of cannabis. Furthermore, labeling claims do not allow any misconceptions in relation to attempting to persuade the public other than the facts – ie. that hemp foods are other than healthy natural whole foods.

- 2) The Department then goes on to state that ‘to permit the use of products from cannabis with a quantifiable level of THC would be inconsistent with .... the Single Convention on Narcotic Drugs, 1961...’. This is an over-arching statement that seems to be the basis to much of the Department’s problems. The issue here seems to be what is “quantifiable”. This seems to us to be the crux of the issue and can allow for a smooth transition where a change in legislation is not inconsistent. If for example “quantifiable” was determined at any amount above 0.01% THC (or an amount FSANZ would recommend based upon their research of existing data and studies), then anything less than this – which in the form of hemp food products, whose raw ingredient is the hemp seed, could not be consumed in quantities that were in large enough to produce any psychoactive affect, then any amount of THC below such a specified amount be considered “quantifiably” as zero. This over-arching issues is exactly as dealt with by the United States DEA in 2001 – see attachment.
- 3) Although 2) may seem like work to create, once in existence the actual day to day business about testing a product for THC would be simple and generally not required.
- 4) It is duly noted that any change of legislation may create extra work for regulatory agencies to understand the differences between products with high and low levels of THC. The extra work should not be a burden if it is in the benefit of the Australian people.

On the basis of the issues outlined above, Hemp Foods Australia and its supporters recommend the support of the proposed application to allow the use of Cannabis sativa with ‘zero’ levels of THC as a food.

Additional background material is attached which may assist FSANZ in their consideration.

Yours sincerely,

Paul Benhaim  
Director

**hempfoods**  
AUSTRALIA

## ATTACHMENTS

The following are brief comments from:

[http://votehemp.com/legal\\_cases\\_DEA.html](http://votehemp.com/legal_cases_DEA.html) which we recommend is read, with all it's attachments in detail.

After extensive meetings and discussions with most of the major hemp food companies, it became clear that according to the official Health Canada testing protocol these hemp food companies' products generally did not have any detectable THC and should therefore remain perfectly legal for resale and consumption.

However, since the DEA had not specified a detection protocol and a corresponding de minimus limit of detection, companies had no way of knowing for sure if their products would be legal under the DEA's new rules.

Hemp seeds and oil have absolutely no psychoactive effect, and are about as likely to be abused as poppy seed bagels for their trace opiate content or fruit juices for their trace alcohol content (present through natural fermentation). Furthermore, the hemp industry has established the science-based [TestPledge](#) program. TestPledge companies clean their seed and oil to assure consumers a wide margin of safety from falsely confirming positive in a workplace drug-test even when eating an unrealistic amount of hemp food daily. The DEA's actions were especially puzzling, as they had not targeted poppy seed manufacturers for the trace opiates present in their products. In fact, the U.S. government raised drug-test thresholds for opiates in the 1990's to accommodate the poppy seed industry.

On March 21, 2003, the DEA published two new Final rules regarding industrial hemp products in the Federal Register, which were scheduled to go into effect on April 21, 2003. Despite [overwhelming opposition](#), the DEA issued a [Final Clarification Rule](#) banning hemp seed and oil food products that contain any amount of trace residual THC. The DEA also issued a [Final Interim Rule](#) exempting hemp body care and fiber products from DEA control; however, this rule did not allow hemp seed and oil to be imported for processing and manufacturing in the U.S. thereby effectively destroying body care manufacturers' ability to obtain the hemp oil they need to make their products.

On March 28, 2003, the [Hemp Industries Association](#), several hemp food and body care companies and the [Organic Consumers Association](#) filed an [Urgent Motion for Stay](#) in the 9th Circuit Court of Appeals. The industry was optimistic that the Court would grant the Stay, given previous Court action on the issue. In the meantime, the law of the land affirming hemp food's legality remained in effect.

On February 6, 2004 the Ninth Circuit Court of Appeals issued a [unanimous decision](#) in favor of the HIA in which Judge Betty Fletcher wrote, "[T]hey (DEA) cannot regulate naturally-occurring THC not contained within or derived from marijuana-i.e. 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. The DEA's definition of "THC" contravenes the unambiguously expressed intent of Congress in the Controlled Substances Act (CSA) and cannot be upheld". On September 28, 2004 the [HIA claimed victory](#) after DEA declined to appeal to the Supreme Court of the United States the ruling from the Ninth Circuit Court of Appeals protecting the sale of hemp-containing foods. Industrial hemp remains legal for import and sale in the U.S