

Federal Court Ruling Boosts Confidence Among Hemp Operators

Hemp Industry Celebrates Court Ruling Challenging DEA's Ban on Synthetic Cannabinoids

The hemp industry is celebrating a significant legal victory following a federal appeals court decision last week that challenges the U.S. Drug Enforcement Administration's (DEA) ban on synthetic cannabinoids. The ruling, issued by the U.S. Fourth Circuit Court of Appeals, has sparked optimism among hemp advocates while also prompting caution from legal experts over the implications for hemp-derived products.

Court Ruling Challenges DEA's Stance on Synthetic Cannabinoids

Some cannabis attorneys believe that the recent court ruling reaffirms the legality of certain intoxicating hemp products not specifically mentioned in the 2018 Farm Bill, the legislation that legalized hemp cultivation and its derivatives across the United States. The ruling has been hailed as a positive step for the hemp industry, particularly for those who produce and sell hemp-based products such as THC-O, a synthetic cannabinoid.

However, while many in the hemp industry are optimistic, some legal experts warn that the ruling does not give blanket approval for all hemp-derived products. Michael McQueeney, co-chair of Foley Hoag's cannabis practice, emphasized in a blog post that the decision does not mean all products derived from hemp are automatically legal.

Farm Bill Restrictions Still Apply

Despite the Fourth Circuit ruling, the 2018 Farm Bill maintains strict regulations regarding THC content in hemp products. Specifically, it prohibits any hemp-derived product from containing more than 0.3% delta-9 tetrahydrocannabinol (THC) by dry weight. Delta-9 THC is the primary psychoactive compound in cannabis.

McQueeney and other legal experts stress that the ruling does not invalidate this critical aspect of the Farm Bill. Hemp operators must remain cautious and ensure that their products comply with federal guidelines regarding delta-9 THC content.

Employment Dispute in North Carolina

The Fourth Circuit's decision stems from an employment dispute in North Carolina, where a woman was terminated after testing positive for THC. She argued that the hemp-based products she used were legal under the 2018 Farm Bill. However, her employer countered that she had admitted to using THC-O, a synthetic cannabinoid that the DEA declared illegal in a widely circulated opinion letter.

The appeals court rejected the DEA's declaration, citing a recent U.S. Supreme Court decision that no longer requires courts to defer to agency interpretations of laws. However, the court did not definitively rule THC-O products as legal. Instead, the legality of these products depends on their delta-9 THC content.

Delta-9 THC: The Key Legal Distinction

In its ruling, the Fourth Circuit emphasized the critical distinction between illegal marijuana and legal hemp under both state and federal law. The key factor is the concentration of delta-9 THC in a given product. The court pointed out that the plaintiff in the case never established the delta-9 THC content of the hemp products she used, leaving their legality in question.

“The critical distinction that separates illegal marijuana and THC from legal hemp under both state and federal law is a product's delta-9 THC concentration,” the court wrote. The fact that the products were sold over the counter in gas stations and stores across North Carolina was not, in itself, evidence of their legality.

The court further noted that such products are notoriously difficult to regulate and often contain higher concentrations of THC than permitted by law, even if they advertise otherwise.

Broader Implications for Hemp-Derived Products

Rod Kight, a North Carolina hemp attorney whose inquiry to the DEA prompted the agency's letter banning THC-O, commented on the ruling in a blog post. Kight suggested that the court's decision could have broader implications for the hemp industry, particularly in overturning other DEA interpretations of the 2018 Farm Bill.

“This bodes well for the hemp industry,” Kight wrote. “In particular, it seems to be a win of sorts for the burgeoning market in THCA flower, which the DEA contends is illegal.”

THCA and the Future of Hemp Products

THCA (tetrahydrocannabinolic acid) is the precursor to delta-9 THC. When THCA is exposed to heat, such as through smoking or cooking, it converts to the psychoactive delta-9 THC. This process has led to confusion and controversy over the legality of THCA-rich hemp products.

While some states have enacted laws that include THCA when calculating total THC content, others have moved to ban THCA flower outside regulated cannabis markets altogether. As a result, the Fourth Circuit's decision may pave the way for further legal challenges and clarifications regarding the legality of THCA and other hemp-derived cannabinoids.

Moving Forward: Caution and Opportunity

Although the ruling marks a significant moment for the hemp industry, operators are urged to proceed with caution. While the court ruling challenges the DEA's interpretation of the Farm Bill, it does not grant blanket approval for all hemp-derived products, particularly those with synthetic cannabinoids like THC-O.

Hemp businesses are advised to closely monitor future legal developments and ensure compliance with state and federal THC regulations as the legal landscape surrounding hemp continues to evolve.

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