HOBAN & FEOLA, LLC
ATTORNEYS AT LAW

ROBERT HOBAN, MANAGING PARTNER
303-674-7000 PHONE

Summary Version of Opinion Letter

The sale, production and distribution of CBD oils/products derived from imported raw material industrial hemp is not in violation of the Controlled Substances Act (CSA). In *Hemp Indus. Ass'n. v. DEA,* 357 F.3d 1012 (9th Cir. 2004), the Ninth Circuit ruled that naturally occurring cannabanoids in industrial hemp foods, including oil, were never scheduled under the CSA; therefore, the DEA has no jurisdiction. This means that CBD, and even THC, when in industrial hemp oil, are legal.

The importation of industrial hemp is lawful, as exempt parts of the "marijuana" plant such as industrial hemp fiber, stalk, seed and oils can be lawfully imported into the United States and these portions of an industrial hemp plant may enter into United States commerce. *See Limbach v. Hoover & Allison Co*., 466 U.S. 353 (1984); *Hemp Indus. Ass'n v. DEA,* 333 F.3d 1082, 1089 (9th Cir. 2003). More importantly, industrial hemp products are not considered "marijuana" under the CSA. A company may acquire, possess, and produce products that are not defined as "marijuana." The CSA definition of "marijuana" expressly and intentionally excludes "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 mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination." *See* 21 U.S.C. § 802(16). Thus, imported industrial hemp stalks, fibers, oils, or cakes derived from a hemp plant imported internationally are not legally defined as marijuana, and are, therefore lawful to possess. The DEA has no authority to regulate drugs that are not scheduled/defined. *Id.*; *Hemp Indus. Ass'n. v. DEA,* 357 F.3d 1012, 1014 (9th Cir. 2004).

Even industrial hemp containing THC is lawful under the CSA because natural THC that is not derived from "marijuana" is lawful under the CSA. The DEA can regulate products containing natural THC if it is contained within "marijuana," and can regulate *synthetic* THC of any kind. But it cannot regulate *naturally-occurring* THC *not* contained within or derived from "marijuana," i.e., non-psychoactive hemp products, because non-psychoactive hemp from the stalks and fibers of such a plant are not included in Schedule I. The DEA has no authority to regulate drugs that are not scheduled/defined. And the definition of THC under the CSA includes *only* synthetic THC. 21 C.F.R. § 1308.11(d)(27); *Hemp Indus. Ass'n. v. DEA,* 357 F.3d 1012, 1014 (9th Cir. 2004)(quoting *Hemp Indus. Ass'n v. DEA,* 333 F.3d 1082, 1089 (9th Cir. 2003).