

5-27-20

From: Dustin Robinson, Esq. CPA, Founding Partner of Mr. Cannabis Law
To: [REDACTED]
Re: Legal Opinion on Legality of Delta-8 THC

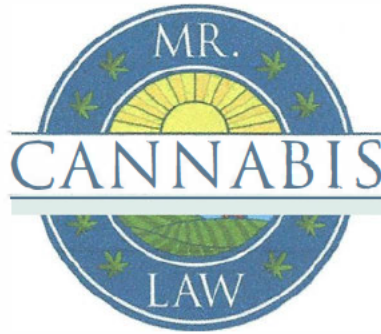
Mr. Beckham,

Thank you for retaining my firm to provide this Legal Opinion. The facts as we understand them are that you want to know whether the delta-8 products are legal for sale in the United States and Florida. In short, a delta-8 Tetrahydrocannabinol product most likely complies with federal and state regulations and can be sold within the United States if (a) the delta-8 Tetrahydrocannabinol was wholly derived from hemp; (b) the hemp it was derived from was grown in compliance with the 2014 Farm Bill or 2018 Farm Bill; (c) the delta-8 Tetrahydrocannabinol product does not contain any synthetic cannabinoids; and (d) the delta-8 Tetrahydrocannabinol product does not contain any other controlled substances. This opinion is limited to the legality of the delta-8 Tetrahydrocannabinol as a controlled substance under federal law and state law in Florida. This opinion does not address compliance with Federal Food, Drug & Cosmetic Act (FDCA), the Code of Federal Regulations, and state laws and regulations outside of Florida.

1. Background on Delta-8 Tetrahydrocannabinol

Delta-8 THC is a double bond isomer of Delta-9 THC and is generally found at very low concentrations in cannabis. While Delta-8 THC has historically not had the type of popularity as some of the cannabinoids, new methodologies for achieving higher concentrations of Delta-8 THC are exponentially increasing its popularity. According to the National Cancer Institute, delta-8 THC is “An analogue of tetrahydrocannabinol (THC) with antiemetic, anxiolytic, appetite-stimulating, analgesic, and neuroprotective properties. [Delta-8-THC] binds to the cannabinoid G-protein coupled receptor CB1, located in the central nervous system...This agent exhibits a lower psychotropic potency than [delta-9-THC], the primary form of THC found in cannabis.” Therefore, delta-8 THC provides users with the benefit of appetite stimulus, pain relief, and nausea relief with much less of the psychoactive effects experienced from delta-9 THC. While delta-8 THC has a

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similar stimulating effect on the nervous system, delta-8 THC has a substantially different psychoactive effect than delta-9 THC. According to Hello MD, delta-8 THC appears to offer its user more clear-minded experience with less anxiety than compared to a user's experience with delta-9 THC.¹ On the other hand, delta-8 THC can still provide a user with around 2/3 of the psychoactive "potency" of delta-9 THC.²

2. Delta-8 Tetrahydrocannabinol derived from hemp is no longer a controlled substance under the Controlled Substance Act.

a) The Improvement Act of 2018 ("2018 Farm Bill") amended the Controlled Substances Act to exclude tetrahydrocannabinols derived from hemp.

Under the Controlled Substances Act (CSA), various controlled substances are categorized by "Schedules" depending upon the controlled substance's acceptable medical use and the drug's abuse or dependency potential. There are five separate schedules, with Schedule I being the highest regulated controlled substance, and Schedule V controlled substances being the least regulated. Schedule I controlled substances by definition are drugs or other substances that have "no currently accepted medical use in treatment in the United States," pursuant to 21 U.S.C. § 812(b)(1)(B). In the CSA, "Tetrahydrocannabinols (THCs)" were listed as a Schedule I controlled substance with other narcotics such as heroin, lysergic acid diethylamide (LSD), methaqualone, and peyote. As a result, THCs were federally illegal.

In 2018, the Agriculture Improvement Act of 2018 ("2018 Farm Bill") modified the definition THCs in the CSA with § 12608(b). The definition of THCs was modified to exclude "THCs" in hemp as defined under section 297A of the Agricultural Marketing Act of 1946." Looking towards the definition of hemp under 297A of the Agricultural Marketing Act of 1946, hemp is defined as the plant *Cannabis sativa L.* and any part of that plant, including the seeds thereof and *all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.* (emphasis added). Thus, any THCs which derive wholly from a hemp plant (any cannabis plant with less than 0.3% delta-9 THC on a dry weight basis) is excluded from the CSA. In other words, the 2018 Farm Bill explicitly made THCs derived from hemp federally legal.

¹ "What Is Delta-8 THC & What's It Good for?" *HelloMD*, hellomd.com/blogs/articles/what-is-delta-8-thc-and-whats-it-good-for.

² *Ibid.*



Because hemp naturally contains delta-8 THC and delta-8 is a type of THC, delta-8 THC may lawfully be concentrated if derived from cannabis plant material with less than 0.3% delta-9 THC. Therefore, the starting concentration of delta-9 THC in cannabis plant material will determine if the delta-8 THC concentrate from the cannabis plant material is compliant with federal regulations. In sum, a delta-8 THC product must wholly derive from cannabis plant material with less than 0.3% delta-9 THC on a dry-weight basis to be compliance with the CSA.

By contrast, if the delta-8 THC derived from a cannabis plant with a concentration of more than 0.3% delta-9 THC (i.e., marijuana plant material, and thus, not a hemp plant material), then the delta-8 THC would be a controlled substance under the CSA. As a result, all delta-8 THC that derives from marijuana plant material is federally illegal under the CSA.

b) There are other laws and regulations a delta-8 THC producer must consider.

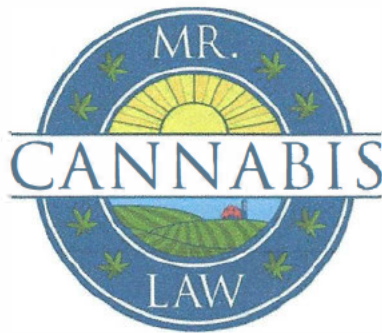
The issue of whether delta-8 THC is a controlled substance or not is just one legal issue for a delta-8 THC producer to consider. There are other considerations, including delta-8 THC's status under the Federal Food, Drug & Cosmetic Act (FDCA), the Code of Federal Regulations, varying state laws and regulations, and the individual policies of various federal and state agencies. Moreover, a producer must be aware of another country's hemp regulations before importing or exporting hemp-derived delta-8 THC products from other countries. For instance, while hemp-derived delta-8 THC may be legal in the United States, it may be illegal in other countries with regulated hemp industries.

3. Delta-8 Tetrahydrocannabinol derived from hemp is legal in Florida if: (a) the delta-8 THC was wholly derived from hemp; (b) the delta-8 THC product does not contain any synthetic cannabinoids; and (c) the delta-8 THC product does not contain any other controlled substances.

a) The delta-8 THC was wholly derived from hemp.

Similar to the federal definition of hemp, Florida defines hemp as "...the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof, and *all derivatives, extracts, cannabinoids...* that has a total delta-9- THC concentration that does not exceed 0.3 percent on a dry-weight basis" under § 581.217(3)(d), Fla. Stat. (emphasis added). Therefore, if delta-8 THC derives from a cannabis plant with less than 0.3% delta-9 THC on a dried-weight basis (i.e., hemp),

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then the delta-8 THC may lawfully be sold in Florida. Thus, it is critical that all delta-8 THC products derive from cannabis material that has been tested by an independent laboratory to prove the cannabis contains 0.3% delta-9 THC or less to ensure the starting cannabis material is hemp. If the delta-8 THC derives from laboratory tested hemp, the delta-8 THC product can lawfully be sold in Florida and nationwide. By contrast, any starting material that derives from marijuana, or cannabis that contains more than 0.3% delta-9 THC is considered a schedule I marijuana-controlled substance, and may not be lawfully sold until the product complies with all of Florida's Medical Marijuana regulations.

b) The delta-8 THC hemp extract does not contain synthetic cannabinoids.

Processors must extract and concentrate delta-8 THC because delta-8 THC exists only in small percentages naturally within the cannabis plant. Therefore, all delta-8 THC products will be considered hemp extracts. Under 5K-4.034(2)(e), hemp extract does not include any...quantity of synthetic cannabinoids. Further, § 893.03(1)(c)(190)(a), Fla. Stat. defines synthetic cannabinoids as "any substance...containing the synthetic equivalents of the substances contained in the plant or in the resinous extracts of...Cannabis, or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity, including, but not limited to...Delta 8 THCs and their optical isomers..." Therefore, even if a delta-8 THC derives wholly from hemp, the delta-8 THC product cannot contain any synthetic cannabinoids. Specifically, synthetic cannabinoids are human-made chemicals that are made to replicate THCs and other cannabinoids naturally found in the cannabis plant. Synthetic cannabinoids are commonly referred to as "spice" and can be very harmful to the end user. Specifically, synthetic cannabinoids have caused users paranoia, heart palpitations, and seizures. Thus, a hemp processor cannot create any delta-8 THC molecules. By contrast, a processor may only concentrate the delta-8 THC that is naturally found in the starting hemp plant material. Thus, a compliant delta-8 THC product will only contain delta-8 THC that was wholly derived and concentrated from hemp plant material.

c) The delta-8 THC hemp extract does not contain any other controlled substances.

Florida restricts extracts from containing any other controlled substance, pursuant to § 581.217(3)(e), Fla. Stat. As a result, a hemp extract may not contain any controlled substances listed in § 893.03, Fla. Stat. The biggest implication this restriction has for a delta-8 THC producer is the addition of other cannabinoids to a hemp-derived delta-8 THC product. The source of added cannabinoids can cause an otherwise compliant delta-8 THC product to become noncompliant by

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