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FOOD + AG



OPPORTUNITIES IN THE CANNABIS INDUSTRY: PERU

FABIANA VITTORIA, MIRANDA & AMADO ABOGADOS

The cannabis industry is flourishing worldwide and the cannabis market in Peru is not an exception. As of 2017, when the law governing the medicinal and therapeutic use of cannabis and its derivatives (Law No. 30681) came into force, Peru joined the list of countries in favor of promoting the cannabis industry. While some states have adopted more flexible policies regarding the use of cannabis (allowing the use of this plant for cosmetic and recreational purposes), in Peru, cannabis may be legally used for medicinal and therapeutic purposes.

In 2019, regulations were enacted to define the scope of the legal framework, establish the requirements and licenses necessary to carry out research, production, import and commercialization activities. The degree of scrutiny reflected in these requirements will depend on whether it is psychoactive or non-psychoactive cannabis, the latter also known as “hemp” and which THC (tetrahydrocannabinol) value cannot be greater than 1% of its dry weight pursuant to the Peruvian regulations.

FROM THE EDITOR

The Food + Ag Task Force was started to open a rapidly growing legal area to ABA SIL members.

We stay current on evolving legal issues and trends in food + agriculture and share that information via our newsletter, monthly calls, and webinars. We invite your participation.

Please join the Food + Ag Task Force in the ABA Connect section of the section's website.

-Susan Burns

NB: Opinions are those of the author, not the American Bar Association.

The Ministry of Health, the Ministry of Agriculture and the Ministry of Interior are the main authorities involved in controlling compliance with the cannabis regulations in their respective jurisdictions.

The high demand for medical cannabis in Peru is expected to be covered (in the short and medium term) by the import of cannabis-derived products and the national production of this plant. Regarding the latter, it is important to highlight that Peru has comparative advantages at an agricultural and climatic level for cannabis cultivation, particularly compared with other countries in the region. According to authorized technical sources, Peru's coastal lands offer the possibility of obtaining several annual crops of cannabis cultivation (in cycles of 4 to 5 months) with a production of up to 150 kilograms per hectare, within reasonable distance from ports in the Pacific.

Additional legal protocols are expected to add further specificity in on the regulatory framework for the medicinal and therapeutic use of cannabis.

These pending regulations are expected to provide clarification about the cultivation of cannabis—particularly related to the non-psychoactive variety (“hemp”)—the criteria for the application of suspension or cancellation of licenses, and the procedure through which the control, security and inspection of all the operations related to the production and commercialization of cannabis will be guaranteed, among other subjects.

Notwithstanding the foregoing, the Peruvian Government has shown determination to support a viable cannabis industry in Peru. In that sense, once production is boosted, it is estimated that medical cannabis could be positioned among the most valuable agricultural export products in our country. The doors of Peru are open for investors interested in exploring the cannabis business.

Editor's Note: MJ Biz reported on 2/22/20 that Peru's only medical cannabis product was out of stock, less than three months after sales began.

IDENTIFYING THE BEYOND: RESTRICTIONS ON LABELLING MEAT ALTERNATIVE PRODUCTS IN CANADA

DENES ROTHSCILD AND DANIELLE RIDOUT

Over the past year, there has been an explosion of plant-based “alternative” meat products in the market in Canada. Many fast food chains, including Tim Hortons, A&W and Harvey's, have introduced alternative meat products to their menus. This growing market, while providing an alternative source of protein for non-meat eaters, has been met with resistance from traditional Canadian meat suppliers.

The Canadian Food Inspection Agency (CFIA) has released guidelines on labelling “simulated meat and simulated poultry products,” which are defined as “...products that do not contain any meat or poultry, but are represented as having the physical and nutritive characteristics of meat or poultry.” These guidelines include:

- The complete common name “simulated [naming the meat or poultry]” must appear on labels and in advertisements for all simulated meat and poultry products.

- The product must contain the phrase “contains no meat” or “contains no poultry” on the principal display panel of the label, in close proximity to the common name of the product, in the same size and prominence as the product's common name.

There are minimum vitamin, mineral and protein ratings that must be met for simulated meat and poultry. For example, a simulated meat product that resembles ground beef must have a protein rating of not less than 40.

Likewise, the term “meat product” has a specific definition in Canadian law. Under the Safe Food for Canadians Regulations, under the Canadian Food and Drugs Act, the term “meat product” has been defined as “the carcass of a food animal, or a product or by-product of its carcass, or any food that contains the blood of a food animal or a product or by-product of its carcass...”

Following the influx of alternative meat products into the Canadian market, Canadian meat suppliers have been particularly vocal about meat labelling issues, filing complaints with CFIA over various claims made by alternative meat products, claiming that their product is “vegetable-made meat” or “plant-based meat”.

In January 2019, the Quebec Cattle Producers Federation (QCPF) filed a complaint pertaining to the fast food chain A&W’s French-language ads, which promoted the Beyond Meat burger sold in its restaurants as “fait de viande végétale” or “vegetable-made meat.” This complaint resulted in A&W agreeing to change or remove any advertising referring to its Beyond Meat burger as a meat product.

In May 2019, the QCPF filed another complaint with CFIA against the company Beyond Meat, taking issue with the company’s classification of their product as “plant-based meat” in promotional material and on product packaging in grocery stores. The QCPF alleged that classifying Beyond Meat’s product as “plant-based meat” was also false and misleading.

Canada’s competition and misleading advertising watchdog, the Competition Bureau, has not issued any guidance on the advertising of alternative meat products. However, there is a general prohibition under the Canadian Competition Act against making false and misleading representations in promoting the supply or use of a product or business interest. Violating the Competition Act can result in a criminal conviction, or a hefty administrative monetary penalty of up to \$10,000,000 for a first offence for corporations.

In Canada, the word “meat” has a specific regulatory meaning. When offering and advertising alternative meat products for the Canadian market, companies should be sure to properly label the product, ensuring that it is obvious the product is a ‘simulated’ product (directly referencing the type of protein that is being simulated) and not generally labelling a product as a vegetable or plant-based “meat”.

INDUSTRY SHORTS: AROUND THE GLOBE | SUSAN BURNS

MEXICO IMPOSES AN IMPORT BAN FOR ELECTRONIC CIGARETTES AND VAPORIZERS

Mexican President, Andres Manuel Lopez Obrador, issued a decree modifying import and export tariff laws to prohibit the import of electronic nicotine or nicotine-free consumption systems, electronic cigarettes and vaporizing devices, its solutions, and mixtures for such devices. This prohibition is effective February 20, 2020.

The Ministry of Health and the Federal Commission for the Protection against Sanitary Risks (“COFEPRIS”) stated that the prohibition is based on the public health protection policy and in response to communications from the World Health Organization. It should be noted that COFEPRIS had previously issued a pronouncement against the sale of these products and had performed several seizures of such products.

Judicial challenges have been filed before the Mexican Supreme Court of Justice against these prohibitive policies and decrees. Grupo Sanborns is one business that has filed a claim (docket number, or Amparo en Revisión 853/2019). They are requesting the SCJN to determine that the sale of these products is legal and permissible under the Mexican Constitution. This case is on the watchlist for possible precedent-creating case law.



HEMP PRODUCTION IN THE USA: FARMERS UNHAPPY WITH THE USDA

Late last year, the USDA published its highly anticipated Interim Final Rule on industrial hemp. It was supposed to provide clarity, which it arguably does, but hemp growers and other stakeholders are not happy with many of the provisions. Chief among them is on how much THC is allowed to be present in hemp, legally defined under the 2018 Farm Bill as having no more than 0.3 percent THC, with a negligence threshold of 0.5 percent. Farmers whose plants test positive for having above that 0.5 percent limit three times in a 10-year window will be prohibited from cultivating it.

Lawmakers and industry stakeholders have made numerous appeals to the department to change its regulations, but USDA officials say their hands are tied. They are unable to increase the THC limit by regulation because it's statutory, not regulatory. Because legalized hemp is defined in the Farm Bill as having 0.3 percent THC or less, it is an issue that only Congress can resolve by changing the legislation.

The problem with the definition is that THC levels can spike even if a farmer does everything "right" to keep it below 0.3 percent. Multiple factors such as seed genetics and environmental factors can result in higher THC concentrations. Nonetheless, under current laws, hemp that exceeds that limit—or "hot hemp"—must be disposed of and is ineligible for federal crop insurance programs. Because of the difficulties with the Interim Final Regs, many states are operating under their pilot hemp programs, rather than USDA regulations, through 2020.

LUIS MIGUEL HUMMEL AND 5TH SUN GARDENS, LLC V. MINNESOTA DEPARTMENT OF AGRICULTURE, ET AL, U.S. DISTRICT COURT - DISTRICT OF MINNESOTA CASE NO. 19-CV-1431

After a Minnesota hemp farmer created products that tested too high for THC, he was charged with several felonies and had his license revoked by state officials. The farmer, Luis Hummel, sued the Minnesota Department of Agriculture for revoking his license without first providing a pre-deprivation hearing.

When a federal court held that the license constituted a constitutionally protected property interest, however, the State reversed its decision to order Hummel to destroy his crop. "This marks the first time – to our knowledge – that any court in the United States has concluded that a hemp license bestows constitutional protections," said Jason Tarasek, Hummel's attorney.

Through a recent settlement, the State is allowing Hummel to process and sell his hemp – valued at more than \$1 million.

Despite this victory in federal court, Hummel still faces felony charges in state court because his hemp wax tested at roughly 3% THC.

WILL MARIJUANA BE LEGAL IN MEXICO?

Last year, the Supreme Court of Mexico ruled that the ban on personal cannabis use was illegal and ordered that the ban be lifted, and that the cannabis market should be legally regulated. While, the Senate received 13 proposals last year, lawmakers were unable to review and finalize a bill before the Court's October 2019 deadline. As a result, they asked the Supreme Court for an extension. That request was granted, and the new deadline is April 30, 2020.

Word is that Mexico's amended cannabis bill is similar to the bill submitted in October, with increases in the number of grams of marijuana individuals may possess from 5 to 28 grams, and the number of plants for home cultivation and personal use is six plants per household. Also, product labels and packaging must contain a "unique and visible sign of high security controls" certifying the product's compliance with traceability procedures. Other features, courtesy of attorney, Luis Amendariz:

- Medical, pharmaceutical or palliative use of cannabis would not require prior authorization or license.
- A new license is included for investigation purposes.
- The cultivation license is limited to one hectare per licensee for outdoor, and 1,000 M2 for indoor.
- An exception to the prohibition of vertical integration is included for farming communities or ejidos, who could now hold more than one license.
- The restriction on foreign investment would be increased to a maximum of 49% equity (from the previous limit of 20%) of license-holder entities.

- Products for cosmetic use, edibles, and beverages are permitted, provided they do not exceed the 1% THC limit. Edibles and beverages for medical, pharmaceutical or palliative use products are excepted from this limit.
- Synthetic cannabis is prohibited, except for medical, pharmaceutical or palliative use and investigation procedures.
- The percentage of cultivation licenses shall be initially granted with preference to farming communities or ejidos, and that percentage was increased from 20 to 40.
- Personal and recreational users are required to register seeds, plants and plantations within 6 months after publication of the official law and decree.

The Mexican Cannabis Institute will be charged with issuing licenses and developing rules for the market. The institute is authorized to grant five kinds of licenses—cultivation, transformation, marketing, exports and imports, and research. Because there continues to be opposition to legalization, lawmakers are concerned that not all of the provisions in the bill will be approved.

CHILEAN FOOD LAW RESULTS IN DECREASE IN SUGARY DRINK CONSUMPTION

A recently published study finds that a landmark law, enacted in 2016, requiring warning labels on unhealthy foods made a swift difference in purchases of sodas, bottled water and juices. To combat staggering obesity rates, Chile adopted a host of regulations restricting advertising unhealthy foods, requiring bold front-of-package warning labels, and a ban on junk food in schools. Consumption of sugar-sweetened drinks dropped nearly 25 percent in the 18 months after the regulations were adopted.

Central to the regulations is a series of black stop signs that must appear on the front of packaged foods and beverages high in salt, sugar, fat or calories. These logos are credited with having an unmistakable impact on the way Chileans shop for groceries, including stories of parents being reprimanded at the supermarket by their children if they reach for products emblazoned with the stop signs. (¡Vámonos niños!) No research on the impact on obesity rates has been published to date.

The Chilean-style front-of-package label requirements have also been adopted by Peru, and Uruguay. Brazil and Mexico are expected to finalize similar requirements soon.

MEANWHILE, BACK AT THE RANCH, THE FOOD FIGHT CONTINUES ...

There is a continuing food fight in the US between the meat industry and the plant-based protein industry. The fight started over what to call plant-based protein ... certainly not “meat” said the meat industry. This resulted in meat producers taking the issue of labeling “fake meat” to lawmakers.. At least 25 states have introduced bills that make it illegal to use the words “beef” or “meat” on products made from plant ingredients or cultured meat that is grown in a lab. Missouri became the first state to pass such a law last year; the bill that became law was initially proposed by the Missouri Cattlemen’s Association.

In October 2019, Representative Roger Marshall, Republican from Kansas—and the top recipient of livestock industry donations in the House—introduced a federal bill that would require companies to put the word “imitation” on plant-based meat products. The bill calls for the products to carry a statement on their packages “that clearly indicates the product is not derived from or does not contain meat.”

Now, the meat industry is taking it to the streets with a warning for consumers: Beware of plant-based meat!

Recently, the Center for Consumer Freedom placed full-page ads in The New York Times and other media outlets raising health concerns about plant-based meat substitutes like the Impossible Burger and the Beyond Burger, which are designed to look, taste and even appear to bleed like real meat. These ads call plant-based foods “ultra-processed imitations” and cite the numerous ingredients. For example, The Beyond Burger has about 18 ingredients, including purified pea protein, soy, coconut and canola oils, rice protein, potato starch and beet juice extract for coloring. In addition, opinion pieces have been written that claim these foods, because they are processed, can spur weight gain.

Dr. Frank Hu, chairman of the nutrition department at the Harvard T.H. Chan School of Public Health, and other experts, published a report in JAMA in October 2019 that explored whether plant-based meats can be part of a “healthy low-carbon diet.” Studies show that replacing red meat with nuts, legumes and other plant foods can lower mortality and chronic disease risk, but according to Dr. Hu, it isn’t possible to extrapolate that processed burgers made with purified soy or pea protein have the same health benefits.

Does anyone else feel class action litigation in the air?
To be continued.



COMMITTEE MEMBER GLOBAL TRAVEL NOTES (AND VOLUNTEER OPPORTUNITY)

MUSHROOMING IN BHUTAN | SUBMITTED BY NICOLE COOK, ENVIRONMENTAL AND AGRICULTURAL FACULTY LEGAL SPECIALIST, AGRICULTURE LAW EDUCATION INITIATIVE, UNIVERSITY OF MARYLAND EASTERN SHORE

In 2018, I spent three wonderful weeks in Bhutan as part of an intrepid group of professional and amateur mycologists. We went to the Land of the Thunder Dragon hoping to crawl on our bellies over the high Himalayan mountaintops alongside the locals scouring the grasses as part of the annual hunt for the highly prized *Cordyceps sinensis*, otherwise known as the “caterpillar fungus.” Little did I know what true riches I would find in a Buddhist country governed under a constitutional monarchy that has kept itself relatively isolated from the rest of the world, and as a result now finds itself a model of ecotourism, ecological development and organic farming.

Our guides were Daniel Winkler, owner of Mushroaming Eco-Tours, and Ulrike Čokl (“Ulli”), founder of Bhutan Network. In addition to some of the most fantastic (and at times thrilling) mushroom hunting I’ve ever done, we saw vast amounts of Bhutan and stayed in the homes of small family farms. We also met women entrepreneurs running farm cooperatives.

Curiously, despite having some of the most delectable edible mushrooms growing wild in their forests, mushrooms are not used in Bhutanese cuisine. In fact, we learned that many Bhutanese don’t realize the Netcapped King bolete (*Boletus reticulocephus*), which grows abundantly in areas of Bhutan, is a much-sought-after edible mushroom in Europe and the U.S. But, once we explained this to an enterprising woman who led a farming cooperative and ran a restaurant, the idea to help them start marketing mushrooms quickly blossomed. By the time we’d finished lunch, our group had collected money to buy a commercial drier so the women could dry the mushrooms that they would learn to collect to sell.

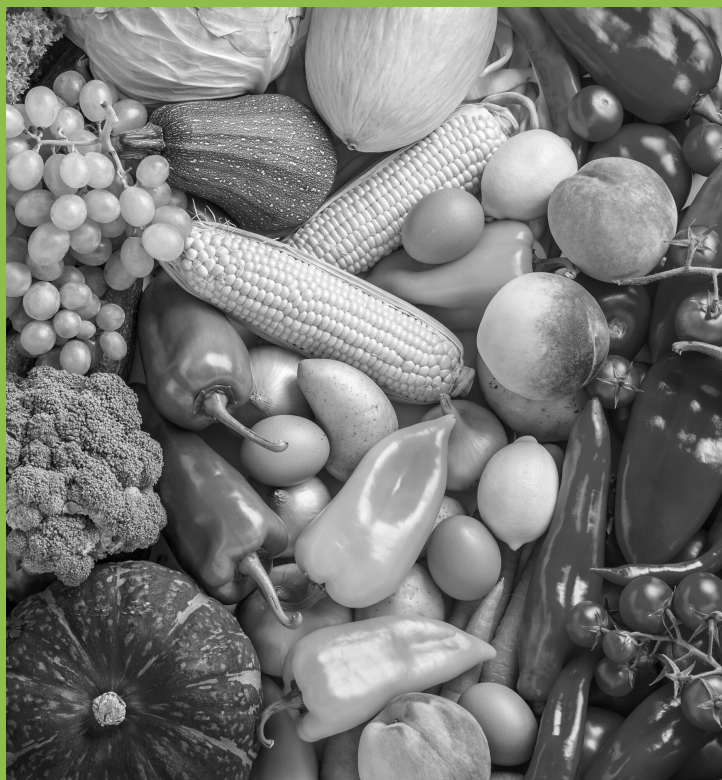
I returned home from that trip determined to partner with Bhutan Network to establish a farmer exchange project sending farmers from the U.S. to Bhutan to help educate the Bhutanese farmers about various farming techniques to help them grow their enterprises. I will be working with Bhutan Network USA™, a 501(c)(3) organization formed to provide a proactive approach to reduce the rural exodus and unemployment of youth in Bhutan and to fund farmer exchanges.

Bhutan Network USA collaboratively supports organic farming, vocational training, sustainable land use, equity and innovative entrepreneurship in several ways: it sends experts to Bhutan with specific skill sets requested by Bhutanese partners for training; it provides supplies for specific projects, as requested by its Bhutanese partners, and it provides an international farmer exchange program. The organization is still in the early stages of formation, but is already planning its first fundraiser, a K9 Nose Work competition in Oregon in August. For information about the competition, email Nicole Cook at nlcook@umes.edu

For information about [traveling with] Bhutan Network, visit <https://www.bhutan-network.org>

For information about amazing Mushroaming™ foray trips with Daniel Winkler in Bhutan, Columbia and other spectacular places, visit <http://www.mushroaming.com/>

To read more about the excitement for mushrooms that’s taken a hold of Bhutan, visit Bhutan Network’s Mushrooming in Bhutan! page at <https://www.bhutan-network.org/2019/10/21/mushrooming-in-bhutan/>



**WE INVITE YOUR
CONTRIBUTIONS
AND COMMENTS**

Please send by email to
susan@susanburnsllc.com