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February 22, 2021

Sent Via E-mail

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Re: Marketing, Distribution, and Transportation of Hemp-Derived Products in Interstate Commerce

Dear Mr. Fontes:

I have been asked to evaluate a question regarding the ability of Kairos Venture Group, Inc. dba Trojan Horse Cannabis (hereinafter “Kairos”) to legally market, distribute, and transport certain hemp-derived products in interstate commerce under federal law.

As set forth more fully below, after evaluating a description of Kairos’ hemp-derived products against the provisions of the 2018 Farm Bill, the USDA Final Rule, and the DEA Final Interim Rule, **it is my opinion that Kairos may lawfully market, distribute, and transport its hemp-derived products as described herein in interstate commerce among the various states so long as each product contains no more than 0.3% delta-9 tetrahydrocannabinol on a dry weight basis.** Although Congress has specifically stated that the U.S. Food and Drug Administration (“FDA”) maintains authority to regulate hemp products under the Federal Food, Drug, and Cosmetic Act (“FD&C Act”), this opinion does not address Kairos ability to market and distribute its hemp-derived products in relation to the FD&C Act or other FDA rule/regulation.

DESCRIPTION OF KAIROS’ HEMP-DERIVED PRODUCTS

Based upon our telephone conversations and other correspondence, the following is a description of the hemp-derived products that Kairos seeks to market and distribute in interstate commerce among the several states: Edible and tincture/oil hemp-derived products that leverage the total weight of the product (including each individual unit) and the allowable delta-9 tetrahydrocannabinol (“THC”) percentage to produce a product that contains more than a negligible amount of THC on a dry weight basis. As it relates to Kairos’ hemp-derived edible product, Kairos has represented that each unit in a ten (10) unit product shall be five (5) grams in total weight containing ten (10) milligrams of THC and between one-hundred and fifty (150) and two-hundred and seventy (270) milligrams of cannabidiol (“CBD”). Kairos has indicated that its tincture/oil hemp-derived product will contain a total of sixty (60) milligrams of THC per each

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thirty (30) milliliter bottle. Each serving of the tincture/oil (one (1) milliliter) shall contain approximately two (2) milligrams of THC. Kairos has not provided an estimated range for the CBD content for its tincture/oil hemp-derived product.

ANALYSIS

I. KAIROS MAY MARKET, DISTRIBUTE, AND TRANSPORT ITS HEMP-DERIVED PRODUCTS IN INTERSTATE COMMERCE AMONG THE VARIOUS STATES UNDER THE 2018 FARM BILL.

A. The 2014 Farm Bill.

On February 7, 2014, then-President Barack Obama signed the Agricultural Act of 2014 (the “2014 Farm Bill”) into law. Section 7606 of the Bill, titled “Legitimacy of Industrial Hemp Research,” defined industrial hemp as distinct from marijuana. It further authorized institutions of higher education or state’s departments of agriculture, notwithstanding the provisions of the federal Controlled Substances Act (“CSA”), to regulate and conduct hemp research pilot programs in states that had authorized the growth and cultivation of hemp. As to the definition of “industrial hemp,” the 2014 Farm Bill defined it as follows: “the plant *Cannabis sativa* L. and any part of such plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.”

Following the passage of the 2014 Farm Bill, research pilot programs sprung up across the country as America rediscovered its relationship with hemp, a relationship that, until the passage of the Marihuana Tax Act of 1937 and later the CSA, had a long history dating back to colonial times. It is important to note that, because the primary goal of the 2014 Farm Bill was to generate hemp research and protect its cultivation, the Bill did not expressly address the processing of hemp or the manufacture, distribution and sale of products made from hemp. Furthermore, the 2014 Farm Bill did not modify the provisions of the CSA to exclude from Schedule I either hemp or products containing THC derived from hemp. This led to some confusion about the legality of hemp products under federal law. However, annual appropriations bills passed after the 2014 Farm Bill was signed into law made clear that the U.S. Department of Justice and the U.S. Drug Enforcement Administration (“DEA”) were barred from using federal funds in contravention of the 2014 Farm Bill. As a result, the threat of federal criminal prosecution for manufacturers and distributors of hemp-derived CBD products was effectively eliminated. Nonetheless, the 2014 Farm Bill left uncertainties over the ability to produce hemp and market, distribute, and transport hemp-derived products.

B. The 2018 Farm Bill.

Significantly expanding on the efforts of the 2014 Farm Bill and addressing several of the issues left unresolved by the Bill, Congress passed, and former President Donald Trump signed into law on December 20, 2018, the Agricultural Improvement Act of 2018 (the “2018 Farm Bill”). The 2018 Farm Bill, according to those analyzing the Bill’s contents, represented a drastic

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transformation in federal hemp policy for several reasons. First, Section 12619 of the Bill removed hemp from the definition of “marihuana” in Section 102(16) of the CSA. The Bill also created an exception for “tetrahydrocannabinols” in hemp from the listing for THC in Schedule I of the CSA.

Second, the 2018 Farm Bill defined hemp more broadly than the 2014 Farm Bill. In fact, the 2018 Farm Bill dropped the term “industrial” altogether from the definition of hemp. Under Section 10113, “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).

Finally, Section 10114(a) of the 2018 Farm Bill, titled “Interstate Commerce,” states that “[n]othing in this title or an amendment by this title prohibits the interstate commerce of hemp.” Section 10114(b) bars States or Indian tribes from “prohibit[ing] the transportation or shipment of hemp or hemp products produced in accordance with subtitle G of the Agricultural Marketing Act of 1946 (as added by section 10113) through the State or the territory of the Indian Tribe, as applicable.”

By removing hemp (and the tetrahydrocannabinols in hemp) from the CSA, Congress paved the way for the wholly legal cultivation, possession, sale, and distribution of hemp and hemp-derived products in America. Additionally, Congress’ statements that the interstate commerce of hemp is not prohibited by the 2018 Farm Bill and that States and Indian tribes may not bar the transportation of hemp or hemp products through their requisite jurisdictions, mean that lawful hemp and hemp-derived products may be marketed and distributed in interstate commerce and otherwise transported across the country without interference.

When the pronouncements of Congress are applied specifically to Kairos’ hemp-derived products, the provisions of the 2018 Farm Bill authorize the production, marketing, distribution, and interstate transport of such products so long as the products are: 1) derived from legal hemp; and 2) the products contain a “delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.” Or, in other words, so long as the delta-9 THC concentration of Kairos’ hemp-derived products does not make up more than 0.3% of the total, dry weight of the product, then the product is lawful. Based upon the above description of Kairos’ hemp-derived products, the products’ delta-9 THC concentration does not exceed the allowable 0.3% delta-9 THC by dry weight threshold applicable to hemp-derived products.

II. NOTHING IN THE USDA FINAL RULES PROHIBITS KAIROS FROM MARKETING, DISTRIBUTING, AND TRANSPORTING ITS HEMP-DERIVED PRODUCTS IN INTERSTATE COMMERCE.

Pursuant to the requirements of the 2018 Farm Bill, on October 31, 2019, the USDA published its Interim Final Rules (“USDA IFR”) to establish a national regulatory framework for hemp production in the United States. The USDA IFR outlined the framework or regulations for the USDA to approve plans submitted by States and Indian tribes for the production of hemp. The

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USDA IFR also established a federal plan for hemp producers in State or territories of Indian tribes that do not have their own USDA-approved hemp production plan.

After taking public comment as part of the rulemaking process and refining certain provisions of the USDA IFR, the USDA issued its Final Rules governing the hemp industry on January 15, 2021. Based upon a review of the Final Rules, the rules speak solely to licensing hemp producers, sampling, testing/testing laboratories, harvesting, disposal and remediation of non-compliant hemp, compliance/enforcement, approval of State and Indian tribe hemp production plans, and regulations for producers that are not operating under a USDA-approved hemp production plan. The rules, specifically the USDA's total-THC (delta-9 THC + THCA) testing requirements, do not address the production, marketing, and distribution of hemp-derived products under federal law. Rather, the USDA's Final Rules are appropriately limited to the hemp plant itself and the production, testing, and harvesting thereof.

Because the USDA's Final Rules address, among other things, the production of hemp, not hemp-derived products, nothing in the Final Rules prohibits Kairos from marketing, distributing, and transporting its hemp-derived products in interstate commerce. As a result, no governmental body or other regulatory agency can legally argue that Kairos' hemp-derived products must comply with either the USDA's total-THC testing requirements or other pre-harvest testing requirements imposed by a state or Indian tribe hemp production plan. Any testing requirements promulgated by the USDA or a state or Indian tribe, apply only to the pre-harvest testing of hemp thirty (30) days prior to harvest. Thus, as it relates specifically to Kairos' hemp-derived products, such products are legal under federal law so long as they comply with the provisions of the 2018 Farm Bill or other applicable federal law described elsewhere herein. The foregoing statements do not take into account the provisions of the FD&C Act or other FDA rule or regulation.

III. THE DEA FINAL INTERIM RULE SUPPORTS THE POSITION THAT KAIROS MAY MARKET, DISTRIBUTE, AND TRANSPORT ITS HEMP-DERIVED PRODUCTS IN INTERSTATE COMMERCE.

On August 20, 2020, the DEA published an Interim Final Rule ("DEA IFR") regarding hemp and hemp derivatives to purportedly conform DEA regulations with the 2018 Farm Bill. The DEA IFR was issued even though hemp (as defined above), including its "derivatives, extracts, [and] cannabinoids," is not considered "marihuana" for purposes of the CSA and is therefore outside the DEA's jurisdiction. Even though the DEA lacks authority over hemp and hemp-derived products that comply with the definition of "hemp" in the 2018 Farm Bill, certain provisions of the DEA IFR are instructive for purposes of this opinion.

First, the DEA IFR takes the position that hemp processors may convert what would be otherwise legal "hemp" into illegal "marihuana," thereby bringing it back under the DEA's authority, if such processing and extraction increases the THC content above the 0.3% THC threshold, even momentarily. While the foregoing position taken by the DEA is not addressed in this opinion letter, the DEA has made it clear in the interim rule that:

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[T]he definition of hemp does not automatically exempt any product derived from a hemp plant, regardless of the $\Delta 9$ -THC content of the derivative. *In order to meet the definition of ‘hemp,’ and thus qualify for the exemption from [S]chedule I, the derivative must not exceed the 0.3% $\Delta 9$ -THC limit.* The definition of ‘marihuana’ continues to state that ‘all parts of the plant *Cannabis sativa* L.,’ and ‘‘every compound, manufacture, salt, derivative, mixture, or preparation of such plant,’ are [S]chedule I controlled substances unless they meet the definition of ‘hemp’ (by falling below the 0.3% $\Delta 9$ -THC limit on a dry weight basis) or are from exempt parts of the plant (such as mature stalks or non-germinating seeds) . . . *As a result, a cannabis derivative, extract, or product that exceeds the 0.3% $\Delta 9$ -THC limit is a [S]chedule I controlled substance, even if the plant from which it was derived contained 0.3% or less $\Delta 9$ -THC on a dry weight basis.* (Emphasis added).

The DEA IFR further states, similar to Section 12619(b) of the 2018 Farm Bill, that the definition of “tetrahydrocannabinols” in Schedule I “does not include any material, compound, mixture, or preparation that falls within the definition of hemp set forth in 7 U.S.C. 1639o.” The rule also removes import and export controls for hemp extract that does not exceed the statutory 0.3% THC limit.

When read together, the aforementioned provisions of the DEA IFR support the above-interpretation of the 2018 Farm Bill. Like Sections 10113 and 12619 of the 2018 Farm Bill, the relevant provisions of the DEA IFR set forth herein make clear that hemp-derived products that meet the federal definition of “hemp” (meaning they contain no more than 0.3% delta-9 THC on a dry weight basis) are exempt from the CSA and therefore legal under federal law.

CONCLUSION

Based upon the definition of “hemp” in the 2018 Farm Bill, as supported by the DEA IFR, Kairos may lawfully market, distribute, and transport (without interference from States or Indian tribes) its hemp-derived products as described herein in interstate commerce among the various states. This opinion is based solely on the pronouncements of Congress in the 2018 Farm Bill and the USDA/DEA in their hemp rules. It does not address the legality of Kairos’ hemp-derived products, and by extension Kairos’ ability to market, distribute, and transport such products in interstate commerce under the FD&C Act or other FDA rule or regulation.

I will continue to closely monitor all federal statutes or other rule or regulation regarding hemp, including any (federal) government actions which may affect this opinion or Kairos’ future plans with regard to marketing, distributing, and transporting its hemp-derived products in interstate commerce among the various states. This opinion may be shared at your discretion with any Kairos’ customers or clients. I am happy to speak with current or potential customers or clients who have questions or concerns as it relates to your hemp-derived products or this opinion. Please provide your customers or clients with my contact information and recommend they contact me with any questions or other concerns they may have. Further, if any law enforcement or regulatory officials question the federal legality of Kairos’ hemp-derived products, please refer them to my

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office so as to provide background education regarding the legality of Kairo's hemp-derived products under the 2018 Farm Bill and related rule or regulation.

Sincerely yours,

CHRISTENSEN & JENSEN, P.C.

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke extending to the right.

J. D. Lauritzen