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CALIFORNIA

Hemp Imports Run Afoul of DEA Rule

■ Trade: Canadian supplier, claiming the ban violates NAFTA provision, threatens to sue the U.S. government.

By MELINDA FULMER, TIMES STAFF WRITER

The hemp industry is taking on the establishment, seeking to prevent the U.S. government from crushing the small, but rapidly growing, hemp food and beverages industry.

Canadian hemp supplier Kenex Ltd. on Monday signaled its intent to sue the U.S. government for \$20million under provisions of the North American Free Trade Agreement. Kenex claims that a ban on foods that contain hemp, instituted by the U.S. Drug Enforcement Agency in October, violated its rights under NAFTA.

Kenex and several other food companies also have filed suit against the DEA in federal appeals court, seeking to overturn the rule. Hemp oil and seeds increasingly have been used in processed foods in the U.S., showing up in everything from corn chips to beer to salad dressing and cereal. Hemp seeds are considered beneficial because of their high protein content and because they are rich in essential fatty acids and vitamins.

Like poppy seeds, these products until recently were considered exempt under the Controlled Substances Act of 1971.

However, under a new rule issued by the DEA that takes effect next month, these foods are considered illegal. The agency claims all hemp products contain minute traces of tetrahydrocannabinols (THC), the hallucinogenic substance found in cannabis.

Hemp can still be used under the new rule in products consumers don't ingest, such as shampoo, soap, clothing, lotion and birdseed.

Kenex contends the rule is discriminatory to Canadian producers, who provide the bulk of hemp products to the U.S. because Americans are banned from growing the plant.

"Our company has invested a significant amount of money in Canada and the U.S. to develop these markets for the past three years, and it has been one stumbling block after another," said Jean Laprise, Kenex president. "They're squashing an emerging industry."

The Kenex case adds more heat to a debate over the provision of NAFTA that allows private investors to sue governments for taking actions that restrict trade. Since NAFTA was enacted, 15 such cases have been filed.

Critics argue the provision gives companies too much power and undermines the ability of governments to protect their citizens.

But Laprise says it's necessary to protect companies' rights when the law is discriminatory.

DEA officials refuse to comment on the issue because of the pending litigation. But DEA Administrator Asa Hutchinson put forward the agency's position recently when he said that "many Americans do not know that hemp and marijuana are both parts of the same plant and that hemp cannot be produced without producing marijuana."

The DEA says consumers have until Feb. 6 to dispose of these items or be subject to penalty.

Although hemp and marijuana come from the plant species, cannabis, the variety grown for industrial hemp contains much lower amounts of THC, a point the DEA acknowledges.

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The burning issue for the DEA is: When can cannabis legally be sold as hemp, and when is it still a drug?

Hemp oil and seeds can't make people high, but they do contain minuscule amounts of THC, much as poppy seeds contain trace amounts of opium.

"The leaves and flowers on industrial hemp, when you smoke them, it gives you a headache," said John Roulac, president of Nutiva in Sebastopol, Calif., which makes snack bars and chips out of hemp. "If you smoke more, you just get a bigger headache."

If there weren't a cloud hanging over the industry from this regulation, manufacturers say, it would grow exponentially over the next several years as demand for functional foods grows.

However, confusion over the new rule, and high-profile seizures of hemp-containing products such as birdseed, should keep many companies from using the controversial ingredient, Roulac said.

Many, however, say they plan to continue to sell their products.

Food companies that use hemp ingredients hope that the industry and government can come up with guidelines that will allow the industry to grow as it was expected to before the rule was published.

Without them, they say, the DEA's ambiguous standards will make that difficult.

"Their whole intention is to just put a cloud on the marketplace so it disintegrates and goes away on its own," said David Bronner of Dr. Bronner's Magic Soaps in Escondido, which has helped fund the industry's litigation. We [as an industry] are going to proceed and continue selling it."

*

Times staff writer Evelyn Iritani contributed to this report.

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