

It's About Time: Federal Court Addresses Delta-8

Written By **Allen N. Trask, III** (ant@wardandsmith.com) and
Amy H. Wooten (ahwooten@wardandsmith.com)

May 26, 2022



Delta 8 tetrahydrocannabinol ('THC'), an intoxicating form of THC often derived from hemp-derived cannabidiol (aka 'CBD'), has been at the center of numerous hot button issues since its arrival in the broader hemp product market last year.

We have tracked those issues as they have evolved. Like many things in the hemp-derived world, federal courts and regulatory agencies have struggled to keep up with the developments in the market, and Delta-8 THC is at the forefront. But recently, the Ninth Circuit Court of Appeals (the "Court") in a copyright and trademark infringement case called *AK Futures LLC v. Boyd Street Distro, LLC*, issued a strongly-worded opinion for publication that offers guidance on how other courts can and should treat Delta-8 THC. The Court's opinion may be found [here](#).

The core issue on appeal was whether Delta-8 THC is a legal product under the 2018 Farm Bill. Plaintiff AK Futures LLC ("AK"), an e-cigarette and vaping product manufacturer, sued Boyd Street Distro, LLC ("Boyd Street") in the United States District Court for the Central District of California for copyright and trademark infringement. AK alleged that Boyd Street sold counterfeit versions of its Delta-8 THC products, and it asked the District Court to order Boyd Street to stop. The District Court ruled in favor of AK, holding that the 2018 Farm Bill legalized delta-8 THC products, and Boyd Street appealed. On appeal, Boyd Street did not deny selling the counterfeit products but instead argued that it could not have infringed on any copyrights or trademarks because (i) copyrights and trademarks can only protect legal products and (ii) Delta-8 THC is not a legal product.

The Court disagreed with Boyd Street and affirmed the District Court's order. In affirming the District Court, the Court noted that (i) hemp-derived Delta-8 THC that meets the Delta-9 THC concentration requirements of the 2018 Farm Bill is legal, (ii) any competing regulatory interpretation from, e.g., the Drug Enforcement Administration, would not be considered because the statutory text was clear and unambiguous, and (iii) if Delta-8 THC was the product of some unintended loophole in the 2018 Farm Bill, that was a problem for the US Congress to address, not the Courts.

The Court's language was strong and to the point, and it will serve as a guide for other courts around the nation grappling with these issues. That said, the Court's opinion is not binding authority on courts across the country, and the possibility of other interpretations remains. We will continue to monitor and report on these

emerging developments.

If you have any questions about Delta-8 THC or its treatment under the law and applicable regulations, please contact a member of Ward and Smith's Hemp + Cannabis Law team.

--

© 2023 Ward and Smith, P.A. For further information regarding the issues described above, please contact Allen N. Trask, III or Amy H. Wooten.

This article is not intended to give, and should not be relied upon for, legal advice in any particular circumstance or fact situation. No action should be taken in reliance upon the information contained in this article without obtaining the advice of an attorney.

We are your established legal network with offices in Asheville, Greenville, New Bern, Raleigh, and Wilmington, NC.