

June 25, 1999

DELIVERED BY FAX

McCarthy Tetrault
Barristers & Solicitors
PO Box 10424, Pacific Centre
Suite 1300
777 Dunsmuir Street
Vancouver, BC V7Y 1K2
Attention: Mr. Barry Fraser

Blake, Cassels & Graydon
Barristers & Solicitors
Suite 2600, Three Bentall Centre
PO Box 49314
595 Burrard Street
Vancouver, BC V7X 1L3
Attention: Ms. Lisa Hynes

McAlpine Gudmundseth Mickelson
Barristers and Solicitors
The Landing
250 - 375 Water Street
Vancouver, BC V6B 5C6
Attention: Mr. Stein K. Gudmundseth, Q.C.

Sliman, Stander & Company
Barristers and Solicitors
#204 - 45389 Luckakuck Way
Chilliwack, BC V2R 3C7
Attention: Mr. Delwen Stander

Davis & Company
Barristers & Solicitors
2800 Park Place
666 Burrard Street
Vancouver, BC V6C 2Z7
Attention: Mr. Keith E.W. Mitchell

Dear Sirs/Mesdames:

**RE: AN APPEAL BY ALL SEASONS MUSHROOM FARMS INC. FROM A
DECEMBER 16, 1998 DECISION OF THE BRITISH COLUMBIA
MUSHROOM MARKETING BOARD CONCERNING THE VIABILITY OF
ALL SEASONS MUSHROOM FARMS INC. AS AN AGENCY
-- APPLICATION FOR THE PRODUCTION OF DOCUMENTS**

The Appellant, All Seasons Mushroom Farms Inc. ("All Seasons") is seeking production of certain documents from Do Holding Ltd. and Martin Chia.

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By way of background, on December 16, 1998, the British Columbia Mushroom Marketing Board (“Mushroom Board”) released its decision with respect to the viability of All Seasons as an agency. The Mushroom Board held:

71. The Mushroom Board, as a regulatory body, owes a duty to all industry stakeholders, including mushroom growers whose livelihoods are at stake. It is not in the best interest of the industry, nor in the best interest of the public generally, to permit a licenced agency to continue to operate in circumstances where its lawful authority to enter into contracts and to carry on business is open to challenge. The current situation under which All Seasons is operating gives rise to a great deal of uncertainty in the industry, and that uncertainty will likely not diminish unless and until the continuing disputes with respect to who has authority to run the company have been resolved.

For several months now, whenever the Mushroom Board has had a need to deal with its agencies, it has been at a loss as to who is legally entitled to represent All Seasons. As a consequence, it has had to correspond with all of the Truong Group, Do Holdings and Mr. Chia. This is unwieldy, compromises our ability to regulate and makes it impossible for the Mushroom Board to stabilize the industry for the benefit of all stakeholders. This cannot continue.

72. Furthermore, as noted above, the uncertainty created by the internal corporate struggle is exacerbated by the fact that there are now two separate operations claiming the right to operate as agencies under one licence. Both the Truong Group and Do Holdings are representing themselves as authorized by the Mushroom Board to operate a marketing agency under the All Seasons name and logo. The Mushroom Board cannot properly regulate two competing entities, each purporting to operate as All Seasons under a single licence. Again, this is not an acceptable situation.

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73. After considering all of the materials provided to us during our investigation, and in light of the submissions of all parties during the course of this review, the Mushroom Board has reached the following decision. All Seasons cannot operate as a viable agency while uncertainty exists regarding the lawful authority of those who claim to control its operations and while both the Truong Group and Do Holdings are each purporting to operate under a single licence. Nonetheless, the Mushroom Board is cognizant of the fact that both the Truong Group and Do Holdings are currently involved in growing, marketing and shipping regulated product. As such, the immediate revocation of All Seasons' licence could impose undue hardship on those mushroom growers who rely upon All Seasons to market their product, as well as on those employees who have been hired by All Seasons. Accordingly, All Seasons will have a period of 90 days from the date of this decision to resolve the ongoing disputes with respect to the internal control of the company.

On January 14, 1999, All Seasons appealed the December 16, 1998 decision of the Mushroom Board. The appeal, after several pre-hearing conferences and adjournments, is scheduled to be heard July 19-23, 1999. Do Holding Ltd., Martin Chia and Money's Mushrooms Ltd. have been granted intervenor status in the appeal.

The following submissions have been received in respect to this application:

- June 1, 1999 letter from Mr. Barry Fraser, Counsel for the Appellant;
- June 9, 1999 letter from Mr. Delwen Stander, Counsel for Do Holding Ltd.;
- June 9, 1999 letter from Mr. Keith Mitchell, Counsel for Martin Chia;
- June 10, 1999 letter from Ms. Lisa Hynes, Counsel for the Mushroom Board; and
- June 11, 1999 letter from Mr. Fraser in reply to the submissions of the other counsel.

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The Appellant seeks production of a whole host of documents, both in respect of the agency said to be operated by Do Holding Ltd. and/or Mr. Martin Chia and the business being conducted by Do Holding Ltd. These documents include:

- (i) business license, GST registration, PST registration and Workers' Compensation Board registration;
- (ii) employment records for 1997, 1998 and 1999;
- (iii) financial statements for 1997, 1998 and 1999, including any partial or cuff statements;
- (iv) all income tax, GST and PST filings for 1997, 1998 and 1999;
- (v) any lease agreements, title certificates, vehicle registrations and conditional sales agreements for 1997, 1998 and 1999;
- (vi) all banking records and loan agreements for 1997, 1998 and 1999;
- (vii) all contracts with growers, suppliers, customers, truckers and distributors, including all contracts with Monterey Mushrooms and Ridge Mushrooms, entered into in 1997, 1998 and 1999;
- (viii) the names and addresses of all accounts receivable for 1997, 1998 and 1999; and
- (ix) all corporate records including directors' resolutions, annual reports, minutes of director's meetings and filings with the B.C. Registrar of Companies.

The Appellant claims these documents are relevant to the issue of whether two separate entities are operating under the All Seasons name and are material to the determination of the viability of the Appellant.

The Appellant argues that although Do Holding Ltd. and Martin Chia are intervenors in this appeal, s. 8(5) of the *Natural Products Marketing (BC) Act* ("the Act") applies. It provides:

On its own motion or, on the written request of a party to an appeal under subsection (1), the Provincial board may direct that a party to the appeal provide the Provincial board and other parties to the appeal with a copy of each document the Provincial board specifies in its direction.

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The Appellant argues that s. 8(5) should be given a practical and common sense interpretation, such that the intervenors should be considered “parties to the appeal.”

The Appellant also argues that the British Columbia Marketing Board (“BCMB”) has the implied authority under s. 6(7) of the *Act’s Regulations* to receive evidence, which at our discretion we consider necessary.

Do Holding Ltd. and Mr. Chia argue that the documents are irrelevant to this hearing. These documents were not before the Mushroom Board and therefore, are not relevant to this appeal. Counsel for Do Holding Ltd. takes the position that as this appeal is in the nature of a rehearing on the record, as opposed to a re-consideration of the entire matter (a hearing *de novo*), new document disclosure is unnecessary.

Do Holding Ltd. and Mr. Chia also argue that the BCMB lacks the authority, under s. 8(5) to make the order requested. As intervenors, Do Holding Ltd. and Mr. Chia are not “parties” and as such are not subject to the disclosure requirements of s. 8(5).

Decision

The decision of the Mushroom Board turned, fundamentally, on its assessment that as a regulatory body with actual notice of irregularities in the management of All Seasons, it could not simply rely on the corporate register. The Mushroom Board found that it was not tolerable to turn a blind eye to the internal uncertainties affecting the validity of the actions of an agency appointed under statute. It was genuinely unable to answer the question regarding “who has authority to run the company”. Accordingly, the Mushroom Board ordered All Seasons to resolve the dispute either through settlement or by application to the Supreme Court. If All Seasons did not resolve the dispute, its agency licence would be revoked.

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Our decision with respect to the production of documents must be predicated on the foregoing foundation. The BCMB is not the forum to finally determine disputes among shareholders or directors as to corporate control. The question before us is whether the doubts expressed by the Mushroom Board, regarding the validity of acts taken by Mr. Ty Truong on behalf of All Seasons, justified its order from a regulatory perspective. The documents in question are irrelevant to that issue.

As a subsidiary finding, the Mushroom Board found that Do Holding Ltd. was representing itself as the “All Seasons” authorized by the Mushroom Board. The Appellant does not appear to be questioning that finding as far as it goes, but seeks to assert (with reference to the requested documents or the absence thereof) that Do Holding Ltd. is not conducting itself formally and properly as an agency should. We find, however, that whatever Do Holding Ltd. is doing in representing itself as All Seasons, this would not answer the fundamental concern of the Mushroom Board on appeal to the BCMB. This focuses on its “notice” of the internal management difficulties of the registered All Seasons operation and the questions raised as to who the Mushroom Board and growers should be dealing with.

We note that the intervenors will, in the nature of things and in answer to the appeal, be expected to give evidence to advance their assertions regarding internal management difficulties they alleged before the Mushroom Board. Should their evidence or submissions in response to the appeal place in issue various records that fall within the categories requested by the Appellant, the BCMB will be prepared to reconsider the request. In the interim, the BCMB is not prepared to make the global order sought and therefore dismisses the application.

The foregoing conclusion renders detailed discussion of the jurisdictional objections to disclosure unnecessary.

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We would however make one brief comment. Counsel for Do Holding Ltd. has argued that appeals before the BCMB are limited to the record before the Mushroom Board. This improperly conceives our jurisdiction. The right of appeal granted under s. 8 of the *Act* is broad, especially when contrasted with the limited scope of appeals, on a “question of law”, which can be taken from the BCMB under s. 9 of the *Act*.

The broad scope of hearings before the BCMB is further supported by s. 8(5), which gives the BCMB the power to order the production of “each document” the BCMB might specify. This is in addition to the automatic production of documents “touching on the matter under appeal” in s. 8(4). Further, s. 8(9)(c) authorizes the BCMB, in deciding an appeal, to “make another order it considers appropriate in the circumstances.” Sections 6(7) and 6(8) of the *Regulations* allow the BCMB to “receive evidence or information as it in its discretion considers necessary and appropriate” and “in its discretion hear any interested persons” whether or not they appeared before the initial hearing.

Given the foregoing, it is the position of the BCMB that the *Act* and *Regulations* give the BCMB the flexibility to conduct appeals in the manner which best suits the circumstances. In some situations, an appeal will proceed more in the nature of a rehearing on the record, in other situations it will proceed as a hearing *de novo*. We are not constrained by the evidence which was presented to the board below.

BRITISH COLUMBIA MARKETING BOARD
Per

(Original signed by):

Christine J. Elsaesser
Vice Chair