

October 27, 1998

DELIVERED BY FAX

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Attention: Ms. Maria Morellato

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Attention: Mr. Keith Mitchell

Dear Sirs/Mesdames:

**RE: AN APPEAL BY MONEY'S MUSHROOMS LTD. FROM AN
AUGUST 6, 1998 DECISION OF THE BRITISH COLUMBIA
MUSHROOM MARKETING BOARD RECOMMENDING
AGENCY STATUS FOR RIDGE MUSHROOMS INC.**

The hearing of this appeal is scheduled for October 29-30, 1998. In advance of those dates, the parties made written submissions to the British Columbia Marketing Board ("the BCMB") on two preliminary issues:

1. Should the British Columbia Mushroom Marketing Board ("the Mushroom Board") hear the various agency applications and reviews in sequence, or together?
2. Should the BCMB approve agency status for Ridge Mushrooms Inc. ("Ridge") pending the outcome of the appeal?

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The BCMB received and reviewed the following written submissions from the parties:

1. September 1, 1998 Notice of Appeal filed by Counsel for Money's Mushrooms Ltd. ("Money's");
2. October 6, 1998 submission from Counsel for Ridge with respect to Issue #2;
3. October 9, 1998 response from Counsel for Money's;
4. October 16, 1998 submission from Counsel for Money's with respect to Issue #1;
5. October 22, 1998 response from Counsel for the Mushroom Board;
6. October 22, 1998 response from Counsel for Ridge; and
7. October 26, 1998 reply from Counsel for Money's.

DECISION

Issue #1

In considering whether the Mushroom Board made a fundamental error in dealing with Ridge's application for agency status, it is necessary to assess what options were available. Two possible models would appear to exist. One is to wait until a sufficiently large pool develops and then pick the best applicant. This would appear to be the approach suggested by Money's. The second would be to review the applicant "first in line." This is the model that the Mushroom Board has historically followed and applied in this case.

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The Mushroom Board argues that the delay in sending the application back to the Mushroom Board now would work significant prejudice to Ridge and to those growers desiring to do business with an alternate agency. Further, Ridge points out that it is significant that Money's took no issue with Ridge's application being heard independent of the other applications at the original hearing and did not support Champ's Mushrooms Inc. when this issue was raised.

Given the foregoing and the fact that the Mushroom Board in its own hearing was liberal in allowing any party to make submissions regarding Ridge's application, the BCMB is not prepared to find that the Mushroom Board has made a fundamental error in failing to consider Ridge's application as one of a larger pool.

Issue #2

Given the decision on Issue #1, it is necessary to decide whether the BCMB should approve Ridge's application pending appeal. Ridge argues that s. 10(4) of the *Natural Products Marketing (BC) Act* ("the Act") merely gives the BCMB the power to give blanket approval to the Mushroom Board to appoint agencies. Thereafter, the BCMB's role is to hear appeals from those decisions as they arise.

The BCMB is not persuaded by this argument. The plain wording of s. 10(4) is couched in terms of individual agency decisions. Second, if Ridge were correct, s. 10(4) would be unnecessary as the power to appoint agencies could be conferred on the Mushroom Board by Lieutenant Governor in Council like any power in s. 11 of the Act. Third, Ridge's interpretation runs contrary to the BCMB's history of approving agencies in all regulated industries on an individual basis. Fourth, the interpretation given by Ridge fails to properly recognize the unique role, importance, responsibility and privileges of agencies under the Act. The fact that this matter has been given special attention by its own section reinforces the significance of agency status. Finally, the BCMB has never purported to give the Mushroom Board blanket approval to appoint agencies, nor has the Mushroom Board purported to exercise such power.

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While the BCMB is legally capable of approving an agency's designation prior to the determination of an appeal, this jurisdiction must be exercised carefully considering the effect of the determination on the integrity of the appeal process, in conjunction with the needs of the industry and the applicant. In the instant case, the BCMB finds that it is not in the public interest to issue an approval where it is only a matter of days before the appeal is heard on its merits.

Yours truly,



Christine Elsaesser
Vice Chair

