

IN THE MATTER OF
THE NATURAL PRODUCTS MARKETING (BC) ACT
AND A REVIEW OF A RECOMMENDATION OF
AGENCY DESIGNATION FOR RIDGE MUSHROOM FARM INC. BY
THE BRITISH COLUMBIA MUSHROOM MARKETING BOARD
DATED AUGUST 6, 1998

RIDGE MUSHROOM FARM INC.

APPLICANT

AND:

BRITISH COLUMBIA MUSHROOM MARKETING BOARD

RESPONDENT

AND:

MONEY'S MUSHROOMS LTD.
FARMER'S FRESH MUSHROOMS LTD

INTERVENORS

DECISION

APPEARANCES:

For the British Columbia Marketing Board	Ms. Christine Elsaesser, Vice Chair Ms. Karen Webster, Member Mr. Richard Bullock, Member
For the Applicant	Mr. Keith Mitchell, Counsel
For the Respondent	Ms. Maria Morellato, Counsel
For Money's Mushrooms Ltd.	Mr. Stein Gudmundseth, Counsel
For Farmers' Fresh Mushrooms Ltd.	Mr. Nguyen, self-represented
Date of Hearing	December 28, 1998
Place of Hearing	Richmond, BC

INTRODUCTION

1. On February 25, 1998, Ridge Mushroom Farm Inc. ("Ridge") applied to the British Columbia Mushroom Board ("Mushroom Board") for an agency license to market mushrooms in British Columbia.
2. On May 22, 1998, as part of its decision in the Truong Mushroom Farm Ltd. appeal, the British Columbia Marketing Board ("BCMB") ordered the Mushroom Board to conduct public hearings for any new agency applications.
3. The Mushroom Board conducted a public hearing on May 8, 1998 and July 2, 1998. In comprehensive written reasons dated August 6, 1998, the Mushroom Board recommended that Ridge be designated an agency subject to certain conditions. The majority of these conditions are operational and thus have not been implemented, as Ridge is not yet an agency. The Mushroom Board has however received a contingency plan from Ridge should it cease to exist.
4. On December 28, 1998, pursuant to s. 10 (4) of the *Natural Products Marketing (BC) Act* (the "*Act*"), the BCMB conducted a supervisory hearing into whether Ridge should be designated an agency. Money's Mushrooms Ltd. ("Money's") and Farmers' Fresh appeared as Intervenor's opposing the Ridge application.
5. Given that there is some urgency in this application, the BCMB has decided to release its decision in an abbreviated form. Should further reasons be required, the BCMB is prepared to receive those requests.

ISSUES

6. Should the Mushroom Board have recommended agency status for Ridge?
7. Should the Mushroom Board have carried out an independent investigation of Ridge?
8. Is Ridge a viable agency in terms of its business and marketing plans?

FINDINGS

9. The BCMB is of the view that the process followed by the Mushroom Board in reviewing Ridge's agency application was appropriate in the circumstances. The Mushroom Board has followed the directions of the BCMB contained in both the August 1997 review and the BCMB Guidelines for Approving the Appointment of Designated Agencies (the "*Guidelines*").
10. The BCMB is sensitive that agency designation is a new process especially for the mushroom industry. Some flexibility and latitude is necessary to ensure fairness to all concerned.

11. Issue was raised by Ridge as to the delay in the process. However, it should be noted that any delay was largely due to the unavailability of Ridge's spokesman, Mr. Martin Chia. The Mushroom Board has proceeded in a timely fashion giving an opportunity for all affected parties to be heard.
12. The BCMB is satisfied in these circumstances that the Mushroom Board was not required to undertake an independent investigation of Ridge. However, that does not mean that situations will not arise in the future, which make such an investigation appropriate. As set out earlier, this is an evolving process in which the Mushroom Board will have to develop appropriate procedures and guidelines to ensure the stability and sustained growth of the industry in the public interest.
13. As for financial viability, Money's called no expert evidence to challenge Ridge's business plan. Mr. Nguyen, on behalf of Farmers' Fresh, pointed to several flaws and assumptions that he viewed as overly optimistic.
14. The BCMB has reviewed the plan. It appears to be comprehensive in nature and not surprisingly mirrors the earlier successful proposal of All Seasons Mushroom Farms Inc. ("All Seasons") in which Mr. Chia was also involved.
15. In addition, much was made of Mr. Chia's lack of character. A former business failed leaving significant outstanding debts owed to creditors. Mr. Chia is currently defending these claims of approximately \$1,000,000 in a lawsuit.
16. Mr. Chia in his defence adduced many letters of support from business associates in the produce industry. In addition, he submitted a letter from his banker, who reviewed the business plan and states "CIBC is very supportive of his efforts and has full confidence in his philosophy and growth strategy towards becoming a dominant player in the mushroom industry". Dr. Yang, his partner in the Ridge venture, submitted a reference letter from his commercial banker at the Toronto Dominion Bank who attested to Dr. Yang's business acumen and personal net worth to undertake the Ridge project. It is significant to note that there was no attack on Dr. Yang's character; he is held in high esteem in his community.
17. Ridge has agreed to post an irrevocable letter of credit in the amount of \$500,000 as security for unpaid growers. This was not required of All Seasons in its application.
18. On August 19, 1997, the BCMB made a decision that the mushroom industry would benefit from another agency and approved All Seasons' application. Unfortunately, due to ongoing disputes amongst its principals, All Seasons has not been able to establish itself as an agency. Given the instability in the mushroom industry, the need for a new agency is likely greater today than it was eighteen months ago.

DECISION

19. The BCMB in the exercise of its supervisory jurisdiction and after giving careful consideration to both the hearing before it and the proceedings before the Mushroom Board confirms the August 6, 1998 decision of the Mushroom Board.
20. The BCMB directs the Mushroom Board to grant Ridge agency status subject to the conditions imposed in the Mushroom Board's August 6, 1998 decision and the following:
- a) Ridge will co-operate with other agencies during a transition period not to exceed 90 days, under the authority of the Mushroom Board.
 - b) Ridge will fully co-operate with the Mushroom Board in its efforts to address the illegal sale of regulated product outside the British Columbia Mushroom Marketing Scheme.
 - c) Ridge will obtain the approval of the Mushroom Board to ensure that the terms of the letter of credit protect the interests of all concerned.
 - d) Ridge's agency designation is a privilege conferred under the *Act*. It is not transferable and is not an approval in perpetuity. Ridge's designation may be reviewed by the Mushroom Board from time to time and upon any material change in the circumstances giving rise to this approval. In the event of a proposed sale of Ridge's business whether by sale of assets or of shares, a third party seeking to continue the business of the agency must receive prior approval from the Mushroom Board. In the absence of prior approval, this agency license will terminate.
21. The BCMB directs the Mushroom Board to advise all producers using this agency of the following disclaimer contained in s. 17 of the BCMB Guidelines:

BCMB approval is not a warranty to producers concerning any respect of the agency's business, including the ability of the agency to pay for products delivered to them. Producers should independently and consistently assure themselves of the financial viability of the entity to which they sell product.

Dated at Victoria, British Columbia this 31st day of December, 1998.

BRITISH COLUMBIA MARKETING BOARD

Per

(Original signed by):

Christine Elsaesser
Vice Chair