

IN THE MATTER OF THE NATURAL PRODUCTS
MARKETING (BC) ACT

AND

IN THE MATTER OF AN APPEAL TO THE
BRITISH COLUMBIA MARKETING BOARD
FROM A DETERMINATION DATED JULY 2, 1987
OF THE BRITISH COLUMBIA MUSHROOM MARKETING BOARD

BETWEEN:

WREDE'S MUSHROOM FARM LTD.

APPELLANT

AND:

BRITISH COLUMBIA MUSHROOM MARKETING BOARD

RESPONDENT

REASONS FOR DECISION

Appearances: D. Critchley, Legal Counsel
K. Wrede, Vice-President
H. Wrede, President
P. R. Jutras, Production Manager
R. Sidhu, Mushroom Picker
M. Basrah, Mushroom Picker

APPELLANT

H. Blackmore, Legal Counsel
M. Dube, Secretary

RESPONDENT

1. The matter before the British Columbia Marketing Board ("the Board") is an appeal by Wrede's Mushroom Farm Ltd. from a determination made July 2, 1987 of the Respondent, the B.C. Mushroom Marketing Board ("Mushroom Board") serving notice of the Mushroom Board's intention to cancel Wrede Mushroom Farm Ltd.'s grower licence for 1987 effective July 31, 1987 at midnight.
2. The appeal was filed with the Board on July 9, 1987 and was heard in Richmond, B.C. on July 15, 1987.
3. Both the Appellant and the Respondent were represented by legal counsel and were given the opportunity to call and cross-examine witnesses, present documentary evidence, file written submissions and make oral submissions on the facts and the law.
4. The Appellant is seeking to have the Notice of Intent to cancel his producer licence nullified and rendered unenforceable by the Board. He argued that he has already admitted, both before the Board on October 16, 1987 and before the Provincial Court of British Columbia on June 19, 1987, to bootlegging the regulated product, for which he has already been fined \$200.00 by his Honour Judge Drysdale of the Provincial Court of British Columbia; and that the Board, in its judgment of November 18, 1986 as set out in Section 11 of the Reasons for Decision, determined that:

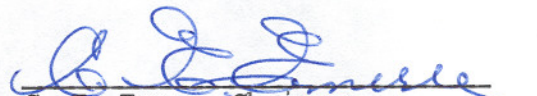
"Having considered all the evidence and submissions at the hearing of this appeal, the Board has determined that the appeal should be denied and that all concerned should put their efforts towards improving the industry. The Board further determines that the Appellant shall pay to the Respondent all levies due on the product sold outside the designated Agency, the Fraser Valley Mushroom Growers Co-operative Association, and upon payment of levies due, that the Respondent shall reinstate the Appellant's producer licence."

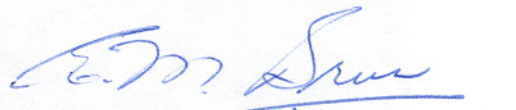
5. In response to this, the Respondent asserts that the real issue to be resolved is whether the cancellation of Wrede Mushroom Farm Ltd. producer's licence is a sufficiently strong deterrent against the alleged widespread incidence of bootlegging that now prevails in the mushroom industry. Moreover, the Respondent also claims that the only remedial recourse that the Mushroom Board has under the B.C. Mushroom Marketing Scheme is the cancellation of Mr. Wrede's licence inasmuch as Wrede's Mushroom Farm Ltd. has benefitted substantially from his bootlegging operations for which a fine of only \$200.00 was imposed by the Provincial Court of British Columbia.
6. The Board finds that:
 - a) there is no evidence that Wrede's Mushroom Farm Ltd. has been involved in any further bootlegging operations since his appeal before the Board on October 16, 1987.

- b) that in compliance with the directives of the Board as set out in Section 11 of its Reasons for Decision of November 18, 1986, that the Appellant has paid by cheque to the Respondent on the 27th of November 1986 the sum of \$875.23 as levies due on the product that Wrede's Mushroom Farm Ltd. sold outside the designated agency, the Fraser Valley Mushroom Growers Co-operative Association, including product sold by the Appellant on the 6th day of October, 1986. It was noted that the cheque in the above amount was cashed.
 - c) the Provincial Court of British Columbia on June 27, 1987 had already fined Wrede's Mushroom Farm Ltd. \$200.00 in respect of its bootlegging operations. Therefore, this matter has clearly been adjudicated and dealt with by the Court.
 - d) consequently, neither the Board nor the Mushroom Board has the authority or the jurisdiction to review the issue of Mr. Wrede's licence which has already been adjudicated. Therefore, the Board cannot appropriately assess the harshness of the penalty imposed by the Provincial Court of British Columbia.
7. The Mushroom Board now opines that the fine imposed by the Provincial Court of British Columbia is not harsh enough, and as a consequence, it proposes to increase the severity of the fine that Wrede's Mushroom Farm Ltd. should pay for its bootlegging operations.
 8. The Mushroom Board has served notice of its intention to cancel Wrede's Mushroom Farm Ltd. producer's licence for the remainder of 1987, as it argues that this is the only action that is available to it under the terms of the B.C. Mushroom Marketing Scheme.
 9. Clearly, from the evidence submitted to the Board, there is an alleged serious bootlegging problem in the mushroom industry; and that there is an urgent need for the Mushroom Board to improve immediately the effectiveness of its monitoring operations over these alleged bootlegging operations so as to upgrade the administration of the B.C. Mushroom Marketing Scheme.
 10. Therefore, the Board will move, if requested, to pursue an amendment to the B.C. Mushroom Marketing Scheme whereby the Mushroom Board will be empowered to impose heavy fines, including the cancellation, suspension revocation or variation of a producer's licence for offenses of bootlegging, inasmuch as the Scheme does not now allow for any punitive action other than the cancellation of a producer's licence.
 11. However, as the case against Wrede's Mushroom Farm Ltd. for its bootlegging activities has already been adjudicated in the Provincial Court of British Columbia, it is not now considered appropriate that Wrede's Mushroom Farm Ltd. producer's licence should now be cancelled, merely to increase the severity of the fine already imposed by the Provincial Court of British Columbia for its bootlegging operations.

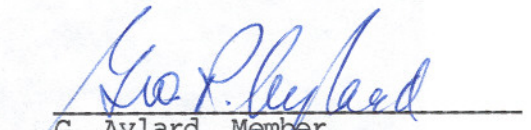
14. In the circumstances, and in view of the judgment handed down by the Board in its November 18, 1986 Reasons for Decision, in respect of Wrede's Mushroom Farm Ltd.'s bootlegging operation, the Board orders the Mushroom Board to desist from taking any actions to cancel Wrede's Mushroom Farm Ltd.'s producer licence for an offense that has already been adjudicated by the Provincial Court of British Columbia and the Board. It further orders that the Mushroom Board rescind the notice of intent to cancel Wrede's Mushroom Farm Ltd.'s licence effective July 31, 1987, and that Wrede's Mushroom Farm Ltd. undertake to market its produce through the appropriate agency designated by the Mushroom Board and to follow the rules and regulations issued by the Mushroom Board.
15. In accordance with this Board's rules of appeal, the whole of the Appellant's deposit shall be refunded.

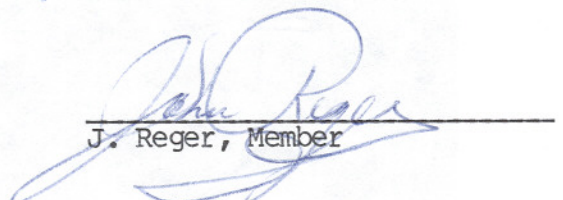
Dated this 23 day of July, 1987 in Richmond, British Columbia.


C. E. Emery, Chairman


E. M. Brun, Vice-Chairman


O. Austrung, Member


G. Aylard, Member


J. Reger, Member