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IN THE MATTER OF THE
NATURAL PRODUCTS MARKETING (BC) ACT
AND AN APPEAL FROM A DECISION
OF THE BRITISH COLUMBIA MUSHROOM MARKETING BOARD
DATED DECEMBER 16, 1998

BETWEEN:

ALL SEASONS MUSHROOM FARMS INC.

APPELLANT

AND:

BRITISH COLUMBIA MUSHROOM MARKETING BOARD

RESPONDENT

**REASONS FOR DECISION
PRELIMINARY ISSUES**

APPEARANCES:

For the
British Columbia Marketing Board

Ms. Christine J. Elsaesser, Vice Chair
Ms. Karen Webster, Member
Mr. Hamish Bruce, Member
Mr. Richard Bullock, Member

For the Appellant

Mr. J. Michael Le Dressay, Counsel
Mr. David A. Critchley, Counsel

For the Respondent

Ms. Lisa D. Hynes, Counsel

For Do Holdings Ltd.

Mr. Bruce W. Davies, Counsel

For Mr. Martin Chia

Mr. Keith E.W. Mitchell, Counsel

For Money's Mushrooms Ltd.

Mr. Stein K. Gudmundseth, QC, Counsel

Date of Hearing

March 29, 1999

Hearing by Written Submission

BACKGROUND

1. On March 29, 1999, the British Columbia Marketing Board ("BCMB") rendered an interim decision concerning the conduct of this appeal and requests by various parties to participate in the appeal. These are the reasons for that decision.
2. The main appeal is brought by All Seasons Mushroom Farms Inc. ("All Seasons") from a December 16, 1998 decision of the British Columbia Mushroom Marketing Board (the "Mushroom Board"). That decision concluded as follows (p. 26):

Unless the following three conditions are satisfied within 90 days, All Seasons' agency licence will be revoked:

- (a) the Mushroom Board is provided with either a court order confirming the valid legal identity of All Seasons directors, or, alternatively, proof of a mediated settlement of the issue; and
 - (b) the Mushroom Board is provided with proof that only one company is operating at the end of the 90 day period under the All Seasons agency licence and name; and
 - (c) the Mushroom Board is provided with a single postal address for All Seasons and the name of a contact person for All Seasons.
3. Concern about the status of All Seasons was originally expressed in the BCMB's May 22, 1998 reasons in the Truong Mushroom Farm Ltd. Appeal (#1), which state as follows:
 195. The BCMB made a decision in August of 1997 that the mushroom industry would benefit from another agency. With the merger of Money's and Pacific Fresh, the second agency has been in name only. All Seasons made a good case for agency status and the BCMB supported it in its quest. However, it appears that All Seasons is crumbling from the inside. There is outright hostility between the principals. It is difficult to say if or how much the Order led to this falling out.
 196. It may be that All Seasons can resurrect itself and the BCMB feels it should be given that opportunity. Accordingly, the BCMB orders that All Seasons be given a period of 90 days in which to demonstrate that it can operate as a viable agency with an actual market.
 197. If after 90 days All Seasons cannot demonstrate its viability, then the Mushroom Board should revoke its agency licence. The Mushroom Board is free to entertain other requests for agency status in the meantime. However, should another candidate apply, the Mushroom Board is ordered to hold a public hearing to deal with the application. Notice of the application should be given to all growers and agencies, including All Seasons.

4. As noted above, the Mushroom Board issued its decision concerning the viability of All Seasons on December 16, 1998. That decision includes this finding at paragraph 73:

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....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.

5. On January 14, 1999, All Seasons appealed the December 16, 1998 Findings and Decision of the Mushroom Board. A stay is presently in place with respect to the Mushroom Board's decision to revoke All Seasons' licence.
6. In accordance with the BCMB's practice, a pre-hearing conference was conducted in respect of the appeal. One outcome of that conference was the commitment that the BCMB would provide industry-wide notice of the appeal and specific notice to counsel for Do Holdings Ltd. ("Do Holdings") and counsel for Mr. Martin Chia. Mr. Chia and Do Holdings are a competing faction asserting rights to and within All Seasons.
7. Do Holdings is a corporate entity that was one of three principals described in All Seasons' original application for agency status. The Mushroom Board's decision under appeal notes that Mr. Hung Do asserts that he is still a director of All Seasons, that attempts to remove him have been invalid and that Do Holdings was operating its own version of All Seasons. This latter finding is one of the subjects of appeal.
8. Mr. Chia now operates a competing agency, Ridge Mushrooms Inc. Mr. Chia was also involved in the original All Seasons application. Paragraph 7 of the Mushroom Board's decision describes Mr. Chia's position before them as follows:

Counsel for Mr. Chia stated that there was an ongoing dispute among the investors in All Seasons with respect to the respective shareholdings of the various investors. Mr. Chia's position, simply put, was that the company had not been organized, no officers had been appointed, and no shares had been issued to the intended shareholders. According to Mr. Chia, the intended shareholders of All Seasons were to be Mr. Chia, Ty Truong, the Do family, and Binh Trinh, or their respective corporate vehicles.

APPLICATIONS FOR INTERVENOR STATUS

9. In response to the notifications that were issued, the following were received:
- A. Request for Intervenor status from Money's Mushrooms Ltd. ("Money's"), through counsel, dated March 5, 1999. The Appellant opposes this request.
 - B. Notice of intent, through counsel, by Mr. Chia to participate in the appeal, including:
 - (a) a request that the March 23-24, 1999 hearing dates be adjourned; and
 - (b) raising the issue whether "those purporting to represent All Seasons on this appeal" in fact have the right to do so.
 - C. Application by Do Holdings, through counsel, for Intervenor status.
10. The Appellant's position, as we understand it, is that it does not oppose intervenor status being granted to Do Holdings and Mr. Chia to the extent that their participation is limited to a response to its ground of appeal challenging the factual finding of the Mushroom Board that Do Holdings is "carrying on business as an agency under the name and logo of All Seasons." However, the Appellant takes strong issue with such intervention if they seek to raise the question of whether All Seasons has corporate authority even to commence this appeal.

ROLE OF THE MUSHROOM BOARD ON APPEAL

11. In addition to the above applications, we have also received submissions from the Mushroom Board commenting on its intended role on this appeal. These representations will also be addressed in this decision.

DECISION

Participation of Do Holdings Ltd., Mr. Martin Chia and Money's Mushrooms Ltd.

12. The first question concerns whether Do Holdings, Mr. Chia and Money's should be allowed to participate in this appeal. In our March 29, 1999 decision, we answered this question in the affirmative.
13. Section 6(8) of the *Natural Products Marketing (BC) Act Regulations* (the "*Regulations*") states that, on an appeal, the board "may in its discretion hear any interested persons".

14. The subject of this appeal is the Mushroom Board's decision that All Seasons should not continue to have the statutory responsibility and privilege of agency status unless the conditions set out in its December 16, 1998 decision are satisfied. Based on all the evidence it heard, including evidence on behalf of Do Holdings and Mr. Chia, the Mushroom Board concluded as follows:
70.in our view this evidence in support of All Seasons' operational viability cannot override two additional and serious considerations, namely, the uncertainty surrounding All Seasons' legal authority to carry on business as a designated agency of the Mushroom Board through various directors, and the regulatory disorder flowing from two separate groups who each purport to operate under the same name and licence.
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.
15. All Seasons' appeal is founded on 3 grounds: (a) that the finding of two competing All Seasons entities is erroneous; (b) that it was not reasonable for the Mushroom Board to revoke the agency licence based on the concerns of the Do's and Mr. Chia; and (c) that in any event All Seasons did not have proper notice that revocation of its licence could be a result of the Mushroom Board's proceedings.
16. Appeals by designated agencies concerning their status and privileges transcend the personal interest asserted by private party. They raise issues of concern to the industry generally. These industry wide interests are magnified where the appeal arises from a governing commodity board's concern that the agency is so internally troubled that those difficulties may cause serious harm to its growers and impair its ability to properly carry out its appointed responsibilities. This is a serious matter.
17. In this context, it is important in our view that we apply s. 6(8) of the *Regulations* in a generous fashion to ensure that we hear from persons who have a genuine interest in the subject matter of the appeal and who can contribute to a better understanding of the issues.

Do Holdings Ltd. and Mr. Martin Chia

18. Dealing first with Do Holdings and Mr. Chia, they should in our opinion be granted intervenor status. One of the very grounds of appeal is whether the Mushroom Board acted reasonably based on their concerns about the internal operations of All Seasons. They are genuinely interested in the outcome of the appeal. In our view, their participation will assist the BCMB in assessing the Appellant's grounds of appeal. As noted above, the Appellant conceded this much in the pre-hearing conference.
19. What the Appellant disputes, however, is the suggestion by Mr. Chia's counsel that he intends to raise an entirely new threshold question as to whether the Appellant even has status to bring this appeal for "All Seasons" in view of the internal management issues asserted by Mr. Chia.
20. We do not intend to proceed as suggested by Mr. Chia's counsel. Having agreed to hear Mr. Chia, we think it proper and accordingly direct that he focus his submissions on the grounds of appeal raised. All of his evidence and arguments in support of his "preliminary" issue can and should be raised in support of any submissions regarding the ground of appeal which asserts that it was unreasonable for the Mushroom Board to act upon Mr. Chia's concerns.
21. In our opinion, it would put the cart before the horse for the BCMB to decide internal management issues in a preliminary fashion. This is especially so when none of the parties have seen fit to proceed to court to resolve the issue, and when a central issue before us, as it was before the Mushroom Board, will be whether the BCMB can or should purport to make a formal finding as to the proper internal management of All Seasons.
22. At issue in this appeal is the viability of All Seasons as an agency and whether All Seasons should continue to enjoy the privilege of being an agency. The conduct of those parties who purport to act on behalf of All Seasons forms a necessary part of the BCMB's consideration of whether the privilege should continue. This issue cannot be determined without a full hearing.

Money's Mushrooms Ltd.

23. In the unique circumstances of this appeal, we think it would be valuable to hear from Money's. Money's has significant experience as an established agency and has interacted with All Seasons over the past year. As an agency that must cooperate with All Seasons in many respects, Money's has a genuine interest in the outcome of this matter and will have helpful information to provide with respect to the grounds of appeal, particularly the grounds in connection with the operation of two agencies operating under the name "All Seasons" and the impact of an internal power struggle on the ability to effectively discharge agency responsibilities.

24. As we have noted in another context: “The failure of agencies to work effectively to combat bootlegging will adversely affect the industry as a whole, including Money’s. If the mushroom industry suffers because an agency operates improperly or ineffectively, it is reasonable to expect that both the supply of and demand for mushrooms, and hence Money’s economic interests, would be adversely affected”: *Money’s Mushrooms Ltd. v. Ridge Mushrooms Inc.* (BCMB, Nov. 30, 1998, p. 8).

Role of the Mushroom Board

25. The Mushroom Board is the Respondent before the BCMB. The role of the Mushroom Board in an appeal is the same as any other commodity board appearing before the BCMB. Although the commodity board is not acting as a partisan adversary, this does not mean that it does not actively participate in the hearing. The commodity board is created to protect the interests of the producer and the industry at large. In this role, the commodity board is not limited to clarifying the record and ensuring that the entire record is before the BCMB and dealing with questions of jurisdiction. It is often imperative that the commodity board take an active role in the appeal to ensure that the BCMB is made aware of the broader producer and industry interest. As such, commodity boards are full participants in our hearings, calling witnesses and enjoying full rights of cross-examination to test the evidence.
26. In this context, it is important to remember that the law governing the role of statutory tribunals before the courts arises, despite their legal status as parties, as a matter of judicial policy. The extent of a particular board’s participation on appeal will depend very much on the issues, its role and all the circumstances. In proceedings before the BCMB, we must determine where the balance properly lies between preserving the neutrality of the commodity board and having a properly argued appeal, informed by all relevant considerations.
27. In this case, while the BCMB would not expect the Mushroom Board to appear and take sides in the dispute between the principals of All Seasons, at the very least the Mushroom Board would be expected to reflect the industry and producer interest and test the evidence to ensure that the evidence before the BCMB is complete and accurate.
28. Clearly, if the Mushroom Board appears and does not take an active role in the hearing, the BCMB’s decision making is compromised. This is especially so if the Appellant tenders evidence that was not placed before the Mushroom Board. In that event, we would expect the Mushroom Board to test that evidence and provide the BCMB with its objective view of its significance in light of industry and producer interests. This will ensure that, in addition to the comprehensive reasons given, the BCMB has the benefit of the Mushroom Board’s view of the issues being heard.

Hearing dates

29. As reflected in our Decision, the March hearing dates for this appeal have been adjourned to its new dates in April. A second pre-hearing conference has been scheduled for April 8th. We would encourage the parties to make every effort to address procedural issues, within the context outlined above, in that forum so that the hearing may commence without further delay.

Stay

30. We confirm that our March 19, 1999 stay of the Mushroom Board's December 16, 1998 decision will remain in effect until this appeal is heard and decided by the BCMB.

Dated at Victoria, British Columbia, this 7th day of April, 1999.

BRITISH COLUMBIA MARKETING BOARD
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Christine J. Elsaesser, Vice Chair