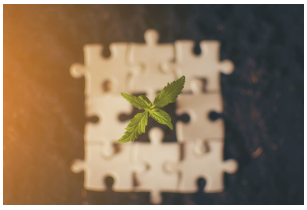

Hemp and CBD Class Actions

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Authors:

Martin E. Rose
Jonathan S. Miller

Early this year, plaintiffs' lawyers filed seven nationwide class actions in California federal court against some of the largest cannabidiol (CBD) providers in the United States. In these class actions, plaintiffs alleged that the very sale of CBD products is illegal. Plaintiffs bolstered their theory by picking and choosing among nonbinding Food and Drug Administration (FDA) communications, taking advantage of the unsettled state of the law.

Frost Brown Todd's (FBT) Hemp Class Action team, led by Martin Rose, defended two of these cases. Based on this experience, below is a description of the new threat posed by class actions to the hemp and CBD industry, along with an update on the cases, and FBT's unmatched success at defending against them.

First, a brief introduction to class actions.

The High Stakes of Class Actions

A class action is a special type of collective litigation that permits one plaintiff to represent all similar plaintiffs and collect damages for the whole group. Plaintiffs lawyers file class actions because it allows them to obtain higher monetary damage awards. If a plaintiff's class action is successful, the defendant faces an aggregation of all the damages owed those consumers, thereby making that company obligated to pay the extremely high litigation damages all at once. These class actions put companies at risk of owing tens of millions of dollars, sometimes hundreds of millions if the defense is unsuccessful. In the class actions referred to below, plaintiffs sought the disgorgement of all defendants' profits from all CBD products sold over the last seven years.

Plaintiffs' Class Action Claims

Plaintiffs made the following claims based on the labeling and advertising of CBD products:

- CBD products were mislabeled as "dietary supplements" because the FDA had not approved CBD as a dietary

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supplement.

- Some CBD product labels included inaccuracies, such as too much CBD, too little CBD, or unlisted impurities (lead, mold, etc.).
- CBD product labels did not include adequate directions for use.
- CBD products were advertised as food for adults or animals, which has not been approved by the FDA.
- CBD products were advertised as having medical benefits that are unproven.

In addition to these claims, other non-class action lawsuits have alleged that people who have taken CBD products have failed drug tests for marijuana.

FBT's Defense Against These Actions

FBT has spearheaded an aggressive approach to help the industry counter these class actions. While the exact defense against a class action will depend on the facts related to that company, FBT has successfully undermined plaintiffs' claims by showing that the FDA statements plaintiffs rely on do not have the status of binding legal authority. Most importantly, FBT has directly challenged plaintiffs' claims by exposing plaintiffs' pleading deficiencies and misapplication of the law. FBT's careful analysis and proactive approach have put pressure on plaintiffs and exposed the overreaching nature of their claims.

Status of the Class Actions and FBT's Unmatched Success

Currently, four of the seven class actions remain pending litigation cases. FBT's Hemp Class Action team has gotten both of its CBD class actions dismissed. The team has also prevented two other class actions from even being filed without any monetary payment to the plaintiffs' attorneys who were threatening the lawsuits. FBT has achieved these results through a team with broad and deep consumer class action experience, having successfully defended cases in many federal circuits, including the Second Circuit (New

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York), Fourth Circuit (Virginia and South Carolina), Fifth Circuit (Louisiana and Texas), Seventh Circuit (Illinois), Eighth Circuit (Missouri), Ninth Circuit (California), and Eleventh Circuit (Alabama and Florida).

Plaintiffs' Attorneys Will Continue to Target Hemp and CBD

Our experience has made clear that plaintiffs' attorneys view the hemp and CBD industry as a continuing target for class actions. Copycat cases by other plaintiffs' law firms are already being threatened. FBT can help. Jonathan Miller, general counsel of the U.S. Hemp Roundtable—the industry's leading national advocacy organization—leads FBT's full-service Hemp Industry Team. Our team offers the deep understanding of regulations, laws, and litigation that helps companies get superior results when facing hemp-related litigation and class actions. Learn more about our Hemp Industry Team.

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