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A Study in THC-O: Unpacking the Recent Anderson Case

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Recently, the United States Court of Appeals for the Fourth Circuit handed the Drug Enforcement Administration ("DEA") a big loss when it comes to hemp. In *Anderson v. Diamondback Investment Group, LLC*, the court ruled that the DEA's interpretation, which classified a host of hemp-derived products as illegal, was incorrect.

I've previously written about the impact of *Loper Bright Enterprises v. Raimondo* on cannabis and hemp in this blog, and *Anderson* is one of the first cases to show how courts will handle cannabis law post-*Chevron*. In *Loper*, the Supreme Court ended the long-standing doctrine of *Chevron* deference. That doctrine required federal courts to defer to an agency's interpretation of an ambiguous statute, so long as it was "reasonable," even if the court didn't agree with it. Now, courts don't have to give the DEA (or any agency) that kind of leeway. If the agency's interpretation isn't the best reading of the statute, it is merely persuasive material at best.

This reminds me of my days of clerking on the Court of Common Pleas. Oftentimes, lawyers would cite other non-binding Common Pleas decisions, and the judge would merely say he would consider them but did not view them as binding. It's almost like *déjà vu* for me now with *Loper*, on a grander scale.

Since *Loper* was decided, everyone has had theories about how it could impact things like cannabis rescheduling or the legality of hemp-derived cannabinoids. In particular, the DEA has been flexing its muscles with opinion letters about what it considers to be legal or illegal cannabinoids. This is where *Loper* comes into play. In theory, the DEA can still issue its opinions, but the courts aren't going to roll over and accept those interpretations without question anymore. That's exactly what happened in *Anderson*.

Without getting into the weeds of the case too much, here's the gist: an employee was fired after drug tests allegedly showed cannabis use. She sued her employer, claiming she was using legal hemp-derived products. The court said she didn't provide enough evidence to prove those products contained less than 0.3% Delta-9 THC—the magic number that separates hemp from cannabis under federal law. So, in the district court's view, she did not have a case.

But the important part for us is what the court said about the 2018 Farm Bill and the DEA's interpretation of cannabinoids like THC-O. THC-O is a synthetic compound made from hemp derivatives, and there's been a long debate about whether products like THC-O or Delta-8 THC fall

under the “hemp” umbrella.

The DEA considers synthetic cannabinoid-controlled substances, and they’ve argued that products like THC-O are illegal. The Ninth Circuit took on this issue a few years ago in *AK Futures LLC v. Boyd Street Distro, LLC*, where they ruled that Delta-8 THC products derived from hemp with less than 0.3% Delta-9 THC were legal under the 2018 Farm Bill.

In *Anderson*, the Fourth Circuit agreed with the Ninth Circuit’s logic, holding that “we think the Ninth Circuit’s interpretation of the 2018 Farm Act is the better of the two.” The court went even further, rejecting the DEA’s argument outright, thanks to the post-*Loper* world we now live in, where the DEA’s interpretation no longer gets automatic deference.

Here’s the key takeaway: according to the Fourth Circuit, if a product is derived from hemp and doesn’t contain more than 0.3% Delta-9 THC, it’s legal—even if it’s been processed into something like Delta-8 THC. But if a cannabinoid is made entirely from synthetic materials, it’s not hemp, and it’s not protected by the 2018 Farm Bill.

Now, before anyone starts thinking this is an all-clear for hemp products, there’s still a lot to unpack. While *Anderson* pushes back against the DEA’s overreach, it doesn’t mean every hemp-derived product is automatically legal. The 0.3% Delta-9 THC threshold is still critical, and businesses need to make sure they’re playing by the rules. Plus, this ruling doesn’t mean states won’t have their own say about what’s legal within their borders.

To sum it all up, the *Anderson* decision is important because it reinforces that courts are not bound by the DEA’s interpretations, especially post-*Loper*. This decision helps the hemp-derived cannabinoid market. As always, businesses must stay compliant with both federal and state laws to avoid legal headaches.

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