Summary of D8 Litigation

* Last April, the Department of Agriculture issued a legal opinion authored by its general counsel Joe Bilby, asserting that Delta-8 is a controlled substance and illegal under federal and state law.
* The opinion appears to have been circulated to all holders of hemp licenses in Kentucky.
* Not long after the opinion, the Kentucky State Police conducted several raids on retail establishments that sell hemp and CBD products. KSP confiscated products containing Delta-8 THC worth many thousands of dollars.
* Many members of the Kentucky Hemp Association sell Delta-8 THC, and find that it is a profitable product and beneficial to its users.
* KYHA believes that Delta-8 THC that is derived from hemp is legal under the 2018 Farm Bill, which makes hemp and all of its “extracts” and “derivatives”. If it comes from hemp, Delta-8 THC is legal.
* KDA disagreed with KYHA and refused to rescind its opinion. In order to protect its members from wrongful prosecution, and confiscation of their legal products, On July 16, 2021, KYHA filed for a temporary injunction in Boone Circuit Court to declare Delta-8 legal and to enjoin enforcement of the KDA opinion. The docket number is 21-CI-00836.
* Meanwhile, the federal Drug Enforcement Agency has determined that the CSA excludes from control tetracannabinols in hemp (as defined under section 1669o of Title 7): “[C]annabinoids extracted from the cannabis plant that have a Delta-9 concentration of not more than 0.3 percent on a dry weight basis meet the definition of “hemp” and thus are not controlled under the CSA.” See DEA Letter to Alabama Board of Pharmacy, September 15, 2021. DEA’s letter confirms that Bilby’s opinion is wrong, yet KDA has not dismissed its suit.
* Depositions were taken. Although KDA claims there have been reports of adverse health reactions to Delta-8 THC products, and production using dangerous substances (like battery acid), they were unable to substantiate those assertions with evidence.
* The motion for temporary injunction has been fully briefed. The Boone Circuit Court held a hearing on December 16, 2021 , and has taken the matter under submission. An opinion is expected at any time.