

**IN THE MATTER OF AN APPLICATION MADE BY
MUCCI INTERNATIONAL MARKETING INC. (“MUCCI”)
FOR AN ORDER DESIGNATING IT AS AN AGENCY**

BEFORE: The British Columbia Vegetable Marketing Commission
Derek Sturko, Chair
Craig Evans, Member
Natalie Veles, Member
Hugh Reynolds, Member
Paul Guichon, Member

DATE: August 13, 2024

Introduction

1. “Designated agencies” are a critical component of the regulatory system for vegetables in British Columbia. Agencies are the means by which the Commission achieves its main policy objective of maximizing producer returns through centralized, coordinated marketing of regulated product.
2. Agency designation is a privilege that gives the licence holder the ability to market regulated product to the exclusion of others. The licence is non-transferable and is not approved in perpetuity. It expires annually and the regulated entity must apply each year for its Agency licence to be renewed. The Commission periodically reviews existing Agencies to assess whether Agency status should be maintained, suspended, made subject to terms or conditions, or revoked.
3. Pursuant to section 8 of the *Natural Products Marketing (BC) Act Regulations* (B.C. Reg. 328/75), no designation of any agency is effective unless approved in writing by the BC Farm Industry Review Board (BCFIRB).
4. The decision on whether to designate a new agency for the marketing of regulated vegetables is a matter of fundamental marketing policy determined in the first instance by the Commission and subject to the approval of the BCFIRB. Each application for Agency designation is assessed by the Commission in accordance with PART III of the Agency Order. The Commission may exercise discretion to grant an Agency designation if it is satisfied that the applicant meets the underlying objectives and principles of the designation, and subject to policy judgements relating to the appropriate number of agencies. Too many agencies can lead to excessive competition for the same buyer and erode producer returns. On the other hand, too few agencies may not promote access to new markets or product improvements that may increase consumer demand.

5. On May 31, 2024, Mucci International Marketing Inc. (“Mucci”) submitted an application for Agency designation to the Commission. On June 6 and June 25, 2024, Mucci supplemented its application with certain additional materials.
6. On June 27, 2024, the Commission introduced Amending Order 1 and the Agency Order and invited Mucci to submit a revised application and/or supplemental materials. By email issued July 2, 2024, the Commission wrote to Mucci as follows:

“.. On June 27, 2024, the Commission introduced Amending Order 1 and the Agency Order. Both are attached for your reference.

Amending Order 1 repeals a substantial number of provisions from the General Order of May 29, 2024. This was done for two reasons. First, there were a number of provisions in the General Order that were not necessary, or that otherwise addressed matters properly expressed outside the General Order. These were permanently removed from the General Order because the Commission concluded that their continued presence could give rise to interpretational issues. Second, Amending Order 1 repeals most of the provisions in the General Order that relate to Agencies. This was done so that the Agency provisions could be redrafted and expressed with greater precision in the new Agency Order.

We appreciate that your application materials were prepared under the General Order as it existed prior to Amending Order 1 and the Agency Order. If you intend to revise and/or supplement your application as a consequence of Amending Order 1 and the Agency Order, please submit your revised application and/or supplementary materials by July 11, 2024. Alternatively, if you wish to proceed with your application in its present form, notwithstanding the passing of Amending Order 1 and the Agency Order, please let me know by July 11, 2024. ...”

7. On July 11, 2024, Mucci submitted an amended agency application to the Commission. Included in this amended application was a section titled “Preliminary Matters”, in which Mucci sought “a better understanding behind the timing of the amendments of the General Order.” Among other things, Mucci stated that “it appears irregular for the Commission to initiate significant amendments to the operating General Order during the application review process (as opposed to before, or after). It is the Panel’s view that no procedural unfairness arises from the passage of the Agency Order, given that Mucci was given the opportunity to submit a revised application that is responsive to the Agency Order, and availed itself of that opportunity.
8. On July 15, 2024, the Commission advised Mucci as follows:

“ ... The panel is meeting July 24th, 2024, to review your application for agency designation:

- Applications are to be assessed against Section 8 of the Agency Order - PART III, Application for Designation as an Agency.
- The panel is to decide on how to proceed with each application as outlined in Section 9 of the Agency Order,

Review of Application for Designation as an Agency. Under section 9.(1)(b) of the Agency Order, the Commission may, in its sole discretion: “invite an applicant to present its application to the Commission, and to answer questions from the Commission concerning the application, at such time, and in such a manner, as the Commission may direct.

If the panel decides to invite you to present your application, please reserve the afternoon of Wed. July 31,2024, for your presentation to the panel. Confirmation on this tentative presentation will be provided June 25th. Presentations will be conducted by video conference call (Teams). ... ”

9. The Panel meet on July 24, 2024, to review Mucci’s application for agency designation. As a consequence of those deliberations, a letter was issued to Mucci on July 25, 2024 inviting it to present its application to the Panel and to provide certain additional information:

“ ...

The purpose of this letter is to ask that you provide certain additional information regarding your application in advance of your meeting with the panel. This information should be provided in writing prior to 3:00PM on Tuesday July 30, 2024. You should also be prepared to address these points during your presentation:

1. Please provide additional information that is responsive to paragraphs 8(2)(g), (h), and (i) of the Agency Order:
 - (g) identify the extent to which the applicant has previously participated in the British Columbia industry in other capacities, if any;
 - (h) provide examples of the applicant’s prior cooperative engagements with existing agencies, if any; and

- (i) provide a rationale in support of the application with specific reference to the following:
 - i. existing and anticipated requirements of the market that could be serviced by the applicant;
 - ii. how the applicant would benefit producers shipping through it
 - iii. how the applicant would benefit the industry as a whole; and
 - iv. the impact that the applicant would have on existing Agencies.
- 2. Please provide additional details regarding your current relationship with Country Fresh Produce Inc. (CFP), a licensed agency. Please address the implications of your application, if any, on CFP's agency designation.
- 3. We note that your application included letters from producers. However, it does not appear that these producers have committed to have their regulated products marketed by Mucci Farms. ... Do you have any letters that satisfy paragraph 8(c)(iii) of the Agency Order? Please explain.
- 4. How do you expect your business plan to maximize grower returns and grow the market for BC grown regulated product over the next 5 and 10 years in a manner that benefits the Commission and BC industry as a whole consistent with paragraphs 8(2)(a) and 9(2)(b) of the Agency Order? Please provide your detailed rationale for these benefits.

At present, Mucci Farms serves as a wholesaler in the industry. As such, your focus has been on customers for your products, rather than producer relationships. Please provide additional information that may demonstrate how you are going to build and manage your relationships with producers. In addition, please provide further information responsive to paragraphs 8(1)(g)(i) and (ii) of the Agency Order:

- (g) advancement of Producer and industry interests, including:
 - i. particulars of how the applicant would prioritize the marketing of Regulated Product;

- ii. particulars of how the applicant would encourage collaboration in decision-making with their Producers regarding the production, transportation, packaging, storage, and marketing of Regulated Crops; ...”
10. A supplemental submission in response to the Panel’s letter was received on July 30, 2024.
11. On July 31, 2024, Mucci presented its application to the Panel.

Analysis

12. There is a high threshold to be achieved before an application for agency status will be granted. The designation of a new agency should only follow where the panel is satisfied that the presence of an additional agency will not result in price erosion, lead to market confusion, or otherwise undermine orderly marketing. The panel must be assured that the presence of the agency will enhance orderly marketing, promote the development of industry, and ensure that producer returns are maximized. These considerations are expressed in more detail in PART III of the Agency Order.
13. The panel has thoroughly considered Mucci’s application. There is no doubt that Mucci is a well-established, leading marketer, with direct access to significant customers throughout North America, and has arrangements to deliver programmed business to national retailers. Mucci also has a significant amount of its own production, direct access to production from established acreage and grower partners throughout North America, and access to extensive infrastructure to service its North American customer base and market needs. Mucci also appears to have established some relationships with existing agencies that have regularly bought from, and sold to, Mucci in order to cover shortfalls in supply and manage excess production. Mucci is licensed as a wholesaler of regulated vegetables in BC which enables it to acquire product within BC from existing agencies. In particular, the wholesaler relationship between Mucci and Country Fresh Produce Inc. (CFP) appears to be significant with the agency and Mucci operating out of the same location and Mucci playing a pivotal role in assisting CFP in the distribution of regulated vegetable products marketed through CFP.
14. Mucci further stated that it requires access to BC product to fulfill pre-existing established customer commitments for Mucci products. Mucci states that it has identified areas and customers across North America that “not only prefer Canadian product but specifically product grown in British Columbia.” According to Mucci, “[t]he preference is based on a reduction of food miles and increased shelf life from improved quality over other available sources.”

15. Mucci desires to expand the market and returns for current BC producers. The acreage from BC producers would be incorporated into crop planning for the overall North American West/Mid-West business and complement product sourced from other growing regions. By marketing BC product as an alternative to product from other countries of origin, this will lead to an expansion of the BC growing season and new production under lights to supply product over the winter months. Mucci states that Producers will benefit from a more competitive atmosphere between agencies competing for BC product and the exposure of BC product to new markets, both of which would lead to higher returns, re-investment into production, and ultimately expansion of what it believes to be an underserved market. Mucci further notes that this model is similar in what has been applied to the Ontario market.
16. Nevertheless, the Commission has decided to summarily dismiss Mucci's application. The Commission is not satisfied that Mucci has provided sufficient evidence of commitment from at least two (2) prospective producers that are at arm's-length of each other, who desire to market regulated through the applicant. Further, it is the Commission's view that Mucci does not have a sufficient understanding of the BC market and the regulatory system in which the BC industry operates. Each of these considerations are addressed in more detail below.

Lack of Evidence of Producer Support

17. The applicant has failed to demonstrate that it has commitments from producers that wish to market Regulated Product through Mucci. Applications for designated agency status must include a detailed business plan addressing how the applicant will secure access to regulated product. Pursuant to paragraph 8(1)(c)(iii) of the Agency Order, the plan should include:

“copies of all letters of commitment obtained from at least two (2) prospective Producers, who are at arms-length from each other, who wish to market Regulated Product through the applicant; ...”
18. Mucci has not provided any letters of commitment. Mucci also claims that BC growers are “underserved” in their application, but it does not provide specific examples as to how growers are under-served nor reasons or evidence for why this might be so. Despite references to commitments of production from two producers in the application, one letter is notably absent from the submissions while the other letter expresses its support for the application and the prospect of working with Mucci [on the assumption agency designation is granted]. Though these producers have been selected and “carefully vetted” by Mucci to ensure their products meet their requirements and market preferences, these producers appear to be satisfied with how their current agency is servicing the market. Furthermore, in the presentation to the Panel, Mucci did not cite any examples of producers committed to sign with them. Mucci merely asserted that it has a belief that some would sign.

19. Mucci states that they have engaged multiple producers in “serious discussions” and that these discussions will lead to contractual agreements [on the assumption agency designation is granted]. However, Mucci asserted that at least some of these producers are concerned that they might jeopardize their relationships with their existing agency if they openly express support for Mucci’s application or commit in writing on the acreage they would allocate to Mucci. However, producer support and commitment to ship is an essential prerequisite. Letters of commitment from producers provide evidence of that producer support and commitment to ship for the prospective agency.

Lack of understanding of the BC Market and Regulatory Environment

20. Regulated marketing in BC provides a framework for producer economic stability. It is intended to benefit producers, the sector’s value chain, and the public.
21. Mucci is an Ontario-based greenhouse vegetable producer and marketer, and it is well informed on the regulatory environment in Ontario. However, in the panel’s view, Mucci did not exhibit sufficient familiarity or understanding with the responsibilities of Agencies in BC.
22. When asked to provide additional details regarding its current relationship with Country Fresh Produce Inc. (CFP), a licensed agency, and the implications of this application, if any, on CFP’s agency designation, Mucci acknowledged that it is currently servicing CFP as a wholesaler and that it “plans to continue servicing CFP as a wholesaler, and continue to assist it and other agencies to access broader markets in accordance with the BCVMC’s orders as we have previously been doing regardless of the outcome of this agency application.” Mucci did not appear to appreciate the fact that it could no longer act as a wholesaler if it was designated as an Agency. In addition, Mucci did not seem to appreciate that if it became an Agency, and one of two producers that ship product to CFP were to transfer to Mucci, CFP would likely lack sufficient producer support to justify the continuation of its Agency designation.
23. Further, Mucci did not demonstrate that its management team had established deep relationships from its experience in the industry as a wholesaler, nor did it demonstrate through evidence that it has a market for BC product that cannot already be serviced directly by existing agencies. Both these deficiencies cast doubt in Mucci’s ability to effectively represent producers as an Agency. Mucci appears to acknowledge this deficiency in its written statement: “If Mucci’s application is successful, Mucci expects to gain much more insight into the BC industry and identify other areas of opportunity to the industry as a whole.”
24. Finally, Mucci’s repeated references to greater competition between agencies being of a benefit to producers is also of concern. Mucci asserts that producers will benefit from a more competitive atmosphere between agencies competing for BC product

and the exposure of BC product to new markets, both of which would lead to higher returns, re-investment into production, and ultimately expansion of what it believes to be an underserved market. The Panel does not agree that Mucci has provided sufficient evidence to demonstrate that the market for BC product is underserved and that providing more choice to producers by increasing the number of designated agencies would lead to higher returns. On the contrary, excessive competition among agencies may be detrimental to orderly marketing.

Summary

- 25. The Panel hereby summarily dismisses Mucci’s application for the reasons set out above.
- 26. It is the panel’s considered view that this decision reflects a principled-based approach to supervision and regulation. This principled approach has been defined by the BCFIRB as six principles collectively referred to as the “S.A.F.E.T.I.” principles.
- 27. The S.A.F.E.T.I. analysis of this decision is as follows:

STRATEGIC	Central marketing being the primary mechanism by which producer returns are maximized, the panel is mindful that an application for agency designation should not be considered unless there is evidence of producer commitment to the new agency applicant despite further decentralization of marketing. The applicant also needs to demonstrate through evidence to the satisfaction of the Commission that it has the ability to effectively represent producers as an Agency, and has familiarity with the regulatory system to achieve orderly marketing. In this instance the application was submitted without meeting these requirements.
ACCOUNTABLE	The panel has maintained legitimacy and integrity by discharging its responsibilities according to the detailed criteria for new agency applications published in PART III of the Agency Order. Producer commitment, effective representation of producers, and an understanding of the regulatory system are fundamental pillars of an application in demonstrating through evidence that there is a strong need for another agency.
FAIR	The panel has ensured procedural fairness by providing the applicant with a fulsome opportunity to express their opinions and comply with considerations expressed in detail in PART III of the Agency Order.

EFFECTIVE	The high threshold that must be met to grant agency designation, as well as the process by which such applications are to be made, are both clearly defined in Part III of the Agency Order. The criteria and Commission's expectations are therefore clearly defined for the applicant.
TRANSPARENT	The panel has taken all appropriate measures to ensure that process, practices, procedures, and reporting on how the mandate is exercised are accessible and fully informs the applicant.
INCLUSIVE	The panel has taken all appropriate steps to ensure that appropriate interests are considered.

28. Pursuant to section 8 of the *Natural Products Marketing (BC) Act*, R.S.B.C. 1996, c. 330, any person who is aggrieved or dissatisfied with this decision may may appeal this decision to the BC Farm Industry Review Board within 30 days from the date of this decision.



Derek Sturko, Chair