

To the Board of Directors of Fresh Mushrooms Ltd.  
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Ref. : Advise [www.trufflemagic.com](http://www.trufflemagic.com)  
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Dear Sirs,

Answering your questions about the legal status of your product sclerotium Tampanensis, the *magic truffle*, I can inform you as follows.

Sclerotium Tampanensis is the subterranean substratum of the mushroom Tampanensis. Sclerotium Tampanensis is in many countries, among which The Netherlands, freely available.

Sclerotium Tampanensis is not under control of any international Convention like the 1971 Convention on Psychotropic Substances. This is once again confirmed in 2010 by the *International Narcotics Control Board*: the watchdog for the United Nations drug policy.

## **Is the magic truffle legal?**

### **The Netherlands**

Sclerotium Tampanensis or *magic truffle* is the subterranean substratum of the mushroom Tampanensis. Sclerotium Tampanensis is freely available in The Netherlands.

On December 1, 2008 a new Ministerial Decree made the hallucinogenic mushroom punishable in The Netherlands. This happened by introducing a considerable amount of specific named mushrooms on the official Schedules of controlled substances of the Dutch Opium Act. One of these newly controlled mushrooms is the Tampanensis. However, the

magic truffle itself is not a mushroom. It is only the subterranean substratum of the *Tampanensis* from which the mushroom can grow.

This view is confirmed by scientists like Thom Kuyper, Professor Fungal Ecology and Diversity at the University Wageningen. The truffle must be distinguished from the mushroom. Additionally, the principle of legality is fundamental to criminal law. This principle guarantees that nothing is a crime unless it is clearly forbidden in a law. As a consequence the court applying criminal law shall never interpret a penal provision extensively. The same goes for the truffle. Because the truffle is scientifically distinguished from the mushroom and not explicitly mentioned on the official Schedules of controlled substances of the Dutch Opium Act, the principle of legality prohibits defining them as illegal. This was on February 9, 2009 once more explicitly confirmed by the Dutch Minister of Health in Parliament.

### **International**

The truffle or *Sclerotium Tampanensis* is neither under control of any international Convention like the 1971 Convention on Psychotropic Substances. This convention never intended to impose controls on biological substances from which psychotropic substances could be obtained (Commentary on the Convention on Psychotropic Substances, Vienna, 21 February 1971, United Nations New York, 1976/CN/7/589, hoofdstuk Reservations onder art. 32 PSV (sub 5, p. 385).

In a United Nations Conference for the adoption of a protocol on psychotropic substances, it was discussed psychotropic substances can be found in a large diversity of living organisms, among which are mushrooms, cacti, fishes, and nuts (tenth plenary meeting at Vienna on 2 February 1971, discussing article 6 of the Draft Convention, Records 1971, Volume II, p. 38/39). Any endeavor to control this could result in the extinction and annihilation of a currently unpredictable diversity of plants and animals and would have unforeseeable consequences for food laws. The authors of the Convention on Psychotropic Substances warned against those exact consequences

This interpretation of the Convention is still endorsed by the INCB. This is the International Narcotics Control Board: the watchdog of the United Nations drug policy. Already on September 13, 2001, the Secretary van de INCB, Herbert Schaepe wrote to the Dutch Senior Inspector for Health Care:

*As you are aware, mushrooms containing the above substance are collected and abused for their hallucinogenic effects. As a matter of international law, no plants (natural material) containing psilocine and psilocybine are at present controlled under the Convention on Psychotropic Substances of 1971. Consequently, preparations made of these plants are not under international control and, therefore, not subject to any of the articles of the 1971*

Briefly put, although psilocine and psilocybine itself are controlled by the Convention, this does not imply that the plants containing by nature these substances are also under control of the Convention.

This opinion of the INCB is confirmed in her last report of 2010, in which is written: --- although some active stimulant or hallucinogenic ingredients contained in certain plants are controlled under the 1971 Convention, no plants are currently controlled under that Convention or under the 1988 Convention. Preparations (e.g. decoctions for oral use) made from plants containing those active ingredients are also not under international control. (---)  
Examples of such plants or plant material include magic mushrooms (*Psilocybe*), which contain psilocybine and psilocine (Report of the International Narcotics Control Board for 2010, E/INCB/2010/1, published on March 2, 2011, recommendations 284 and 285).

### **Other countries**

The Dutch courts refer to the Convention on Psychotropic Substances in its interpretation of the Dutch legislation. As a result, fresh mushrooms were not under control of the Dutch Drug Act until December 1, 2008. After all, for penalization new national legislation was needed.

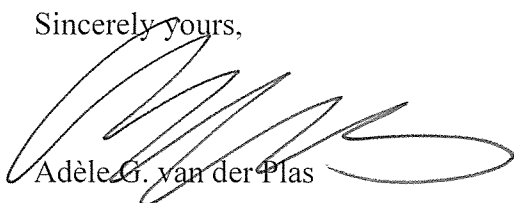
The INCB expresses the same view in her report of 2010, where it recommends member states experiencing problems with regard to persons abusing plant material because of the hallucinogenic ingredients it contains, to consider controlling such plants at the national level. The possession of such plants is not punishable unless a prior law says so.

The principle of legality constitutes a fundamental human right protected by international conventions that also has to be respected by the member states of the United Nations. This implies that hallucinogenic mushrooms are legal unless national legislators or courts have explicitly penalized them. The same goes for truffles, which are scientifically distinguished from mushrooms. The Dutch example shows that bringing a specific hallucinogenic mushroom under the control of the Drug Act, does not imply that also the subterranean substratum of that mushroom, the magic truffle, is controlled by that Act.

For that reason it is advisable to carefully check in every country where you want to buy, sell or possess truffles, if these are explicitly made punishable by national laws or other regulations. As long as this is not the case, they must be assumed to be freely marketable.

I trust this information is sufficient for your purposes,

Sincerely yours,



Adèle G. van der Plas