

## Trademark Protection for Cannabis Brand Owners

One of the most important considerations for business owners is how to protect valuable intellectual property and brand assets. Registering your cannabis brand can ensure that competitors cannot use confusingly similar marks in the same industry or geographic market, enabling consumers to differentiate between your goods and those of competing producers. You want consumers seeking to buy your quality products to get what they are looking for and to prevent your brand from being diluted by competitors seeking to ride on your brand's coattails. Competitors can do this by adopting a confusingly similar mark, using a foreign-language translation of the mark, or integrating the mark into a social media or domain name. You want to be sure that consumers typing your name into an internet search locate your website and social media, and do not get misdirected to your competitor.

The benefits don't stop there. Trademark registration provides stronger rights in name or logo disputes and the ability to use the federal court system to sue infringers and seek greater damages. It also has financial advantages for the trademark owner as a tangible asset that can add value when the business owner sells or seeks financing and in creating licensing revenue stream opportunities.

Cannabis related businesses face unique challenges due to the status of cannabis as a controlled substance under federal law. Federal trademark registration at the US Patent and Trademark Office (USPTO) is only available for goods or services that are lawful in interstate commerce, and since marijuana is illegal for adult use as a Schedule I drug under the Controlled Substances Act, applicants cannot satisfy the "lawful use in commerce" requirement. Thus, the USPTO cannot currently register trademarks for marijuana strains, plants or seeds, marijuana dispensaries or dispensary services, or marijuana-related products.

CBD products derived from hemp, however, are treated differently after the 2018 Farm Bill that decriminalized hemp. Provided the hemp-based products have less than .03% THC, federal registration is available for products provided they do not violate the FDA prohibition on CBD and hemp-oil extracts as prohibited "food additives." Even though hemp derived CBD is legal, use as a food supplement remains unlawful under the FDCA. Registration will be refused for some uses while allowed for others.

Trademark protection for cannabis brand owners can require some creative strategies. If you are looking to protect your cannabis brand, or have filed an application and been denied registration, we may be able to help. Our team may still be able to help create strategies for brand protection for cannabis brand owners. Contact our trademark team to discuss your particular circumstances.

### ATTORNEY ADVERTISING

Tracy Jong is a Senior attorney at Evans Fox LLP with 30 years of experience focusing her practice in business law, intellectual property and licensing for alcohol and cannabis. Tracy Jong is a member of the

New York Bar and is a registered attorney at the United States Patent and Trademark Office. She can be reached at [Tjong@EvansFox.com](mailto:Tjong@EvansFox.com).