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USPTO Issues Guidelines on Hemp-Related Trademarks

With the United States legal marijuana market projected to reach $66.3 billion by the year 2025, and research suggesting an approximate growth rate as high as 33.7% by the year 2025 with respect to the industrial hemp market, companies in the cannabis industry are starting to look for methods of brand protection in a highly evolving and competitive market place. On May 2, 2019, the United States Patent and Trademark Office ("USPTO") issued guidance regarding the federal registration and application procedures for marks covering cannabis and cannabis-related goods and services.

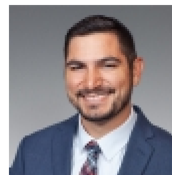
Until Examination Guide 1-19, "Examination of Marks for Cannabis and Cannabis-Related Goods and Services after Enactment of the 2018 Farm Bill" ("Guide"), all federal registration of trademarks for cannabis and cannabis related goods and services were prohibited. The USPTO refused registration for all such trademark applications on the grounds that the marks violated the Controlled Substances Act ("CSA") and further stated that all marks in commerce had to be lawful under federal statutes regardless of the legality of state activities.

The Agriculture Improvement Act of 2018 (the "2018 Farm Bill"), which was signed into law on December 20, 2018, changes certain federal authorities relating to the production and marketing of "hemp", defined as "the plant Cannabis sativa L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis."

Even if the identified goods are legal under the CSA, not all goods for cannabidiol ("CBD") or hemp-derived products are lawful following the 2018 Farm Bill. Registration of hemp related marks may still be denied if the product is not legal under all federal statutes. For example, the 2018 Farm Bill established the FDA's certain authorities relating to the production and marketing of hemp and hemp derivatives, therefore, registration of marks for foods, beverages, dietary supplements, or pet treats containing CBD will still be refused as unlawful. Given that marijuana and its derivatives are still controlled substances under the CSA, any applications for marks for marijuana or marijuana derived-CBD goods or for services involving marijuana-related activities will continue to be rejected as unlawful under

Trademark Law

For questions regarding the USPTO's guidelines for your hemp related goods and services trademarks, or regarding other trademark matters, cannabis law matters, or general corporate matters, please contact:



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At Osborn Maledon, our experienced team of trademark professionals assist clients in managing, maximizing the value of, and protecting their brands throughout the world. We bring to the table comprehensive experience in a wide variety of industries, representing both United States based companies and international businesses as they expand into the United States market. For more information, please contact:

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federal law. This includes marks used in commerce in states which have legalized medical and adult-use marijuana. A trademark attorney should be consulted prior to any application for registration to conduct an application analysis and filing strategy. Simply because a service is tangentially related to the cannabis industry, registration may still be obtainable if the business does more than sell marijuana or marijuana derived products such as providing consulting services, education services, and software as a service.

The USPTO has established certain requirements with respect to federal registration of marks relating to hemp-related goods and services.

Applications Filed On or After December 20, 2018

Federal registration requires legality of the underlying goods and services. Therefore, trademarks for cannabis related goods and services are eligible for federal registration if they have a filing date and first use date of December 20, 2018 or after, the enactment date of the 2018 Farm Bill. If the underlying goods encompass CBD, the CSA is no longer a restriction against registration if: (i) the goods are derived from "hemp"; and (ii) the identification of goods specifies that the goods contain less than .03% delta-9 tetrahydrocannabinol ("THC") by dry weight. For applications that recite services involving the cultivation or production of cannabis that is "hemp" within the meaning of the 2018 Farm Bill, the examining attorney will also issue inquiries concerning the applicant's authorization to produce hemp.

Applications Filed Before December 20, 2018

The USPTO will continue to issue refusals for unlawful use or lack of bona fide intent to use in lawful commerce under the CSA for applications filed before December 20, 2018. The USPTO has offered two options: (i) amend the previously filed application to confirm with the requirements above and such amendment must state for the record that such a change to the filing date is authorized; or (ii) abandon and refile the application, however, this would provide a later filing date.

As companies continue to flood the marketplace, the USPTO will see an influx of applications with respect to hemp related goods and services. In this fast paced and competitive market, companies should consider the value of their brand and take preventative measures for its protection by seeking the counsel of a trademark attorney with experience in the cannabis industry.

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