

July 2018

Bud Branders (still) Beware: Your Guide for the Cannabis Packaging and Labeling Requirements

On June 27th 2018, Health Canada released the much-anticipated *Cannabis Regulations* (the “Regulations”) to accompany the *Cannabis Act* (the “Act”).¹ While the *Regulations* have sparked much buzz around micro-licensing and outdoor cultivation, equally of note are the restrictive provisions on the packaging and labeling of cannabis products. Before products hit the shelves, producers and marketing teams will need to comb through these *Regulations* to ensure they remain onside of the mandated branding practices.

Comparing the proposed regulations to the final regulations:

In our previous publication, [Bud Branders Beware](#) (“Bud Branders Beware”), we discussed the *Act’s* proposed regulations outlined in Health Canada’s March 2018 report² (the “Report”). In the Report, Health Canada took a public health approach in their packaging and labeling regulatory proposals, focusing on how to minimize appeal to youth, minimize the risk of accidental consumption, and allow consumers to make informed decisions. Given that legalisation is but a few months away, up until now industry players have been obliged to operate under the proposed regulations as they scramble to have their products ready for sale. The good news is, the industry can

¹ *Cannabis Regulations*: SOR/2018-144.

² Health Canada, *Proposed Approach to the Regulation of Cannabis: Summary of Comments Received during the Public Consultation* (Ottawa: Health Canada, 2018). Available [here](#) [The Report]

engage in a coordinated sigh of relief as few changes have been made between the proposed and final regulations. The bad news is that the industry's cries of protest as to what some considered to be unduly restrictive branding rules clearly fell on deaf ears.

To save readers from having to compare the proposed regulations with the final edition, below we have updated *Bud Branders Beware*. Any additional information, that was not included in *Bud Branders Beware*, and that is now confirmed in the new Regulations, is indicated in italics:

Grace period for medical, not for recreational

The government indicated that they would allow a grace period for licensed medical producers to comply with the new packaging and labeling requirements. Under the *Regulations*, licensed medical producers will in fact have a six month grace period which will begin after the new *Regulations* come into force.³ However, as indicated before, participants in the recreational space will be expected to comply with the *Regulations* when they come into force.

Mandatory label content and display requirements

The following must be included on the label that is applied to any container in which a cannabis product is packaged:

- Standardized rotating health warnings in a yellow box, which must be displayed on the principal display panel⁴ or, if there are separate principal display panels for English and French, on each principal display panel. The health warning message must be in black, in a type size equal to, or larger than, the type size used for the brand name. The word "WARNING" must be bolded and in

³ Health Canada, *Cannabis Regulations*, found in the *Regulations to Support Coming Into Force of the Cannabis Act*, at s. 360 [*Cannabis Regulations*]

⁴ As per the *Cannabis Regulations*, the principal display panel "has the same meaning as in s. 2(2) of the *Consumer Packaging and Labelling Regulations*." As per the *Consumer Packaging and Labelling Regulations*, principal display panel means "(a) in the case of a container that is mounted on a display card, that part of the label applied to all or part of the principal display surface of the container or to all or part of the side of the display card that is displayed or visible under normal or customary conditions of sale or use or to both such parts of the container and the display card, (b) in the case of an ornamental container, that part of the label applied to all or part of the bottom of the container or to all or part of the principal display surface or to all or part of a tag that is attached to the container, and (c) in the case of all other containers, that part of the label applied to all or part of the principal display surface."

upper case letters. The warning “KEEP OUT OF REACH OF CHILDREN/TENIR HORS DE LA PORTEE DES ENFANTS” must also appear but is not required to be on the principal display panel.⁵

- The standardized cannabis symbol, which must appear in the upper left 25% of the principal display panel, or if there are separate principal display panels for English and French, in the upper left 25% of each principal display panel, with a size of at least 1.27 cm by 1.27 cm, and displayed with a white border.⁶
- Information specifying the THC and CBD content of the product, which must be displayed on the principal display panel, with these provisions organized under separate sections depending on if the product is dried or fresh cannabis, or cannabis oil, and whether the product is sold in discrete units, or not.⁷
- Product source information, including the name and contact information of the processor who packages the product, the description of the product including the brand name and the class of cannabis, the product lot number, the product weight or volume, the date of packaging, and the recommended storage conditions.⁸
- For cannabis oils, information on the type of carrier oil and the name of any allergens.⁹

Restrictions on Branding, Logos and Use of Colours

- The brand name must be displayed only once on the principal display panel, or if there are separate principal display panels for English and French, only once on each principal display panel. It can be in any font style and any size, so long as it is equal to or smaller than the health warning message. The font must not be

⁵ Cannabis Regulations, *supra* note 3 at ss. 123(4), 130(6)(a)-(c), 130(6)(g), 123(1)(d)

⁶ *Ibid* at ss. 130(5)(a)-(c)

⁷ *Ibid* at ss. 124-127

⁸ *Ibid* at ss. 123(1)(a)(i), 123(1)(a)(ii), 123(1)(c)(i), 123(1)(b), 123(1)(c)(ii), 124 (a), 124(c), 125(a), 126(a), 126(c), 127(a), 123(1)(c)(iv) and 123(1)(c)(iii)

⁹ *Ibid* at ss. 126(h), 126(i), 127(f) and 127(g)

in metallic or florescent colour¹⁰ but it is unclear if the font must be in “a single, uniform colour” as was proposed.¹¹

- In addition to the brand name, only one other brand element can be displayed.¹² *Although “logo” and “slogan” are not explicitly mentioned, the Act’s definition of brand element includes “slogan” and “logo”.*¹³ If it is a text element, the font size must be equal to or smaller than the font size for the health warning message and it must be in a single uniform colour. If it is an image, it can be no larger than the standardized cannabis symbol.¹⁴ *Note that the term “graphic” no longer appears in the Regulations¹⁵, but “graphic arrangement” is included in the definition of “brand element” in the Act.*¹⁶
- All over wraps must be clear, and the interior surface and exterior surface of any container in which a cannabis product is packaged cannot have any embossing, texture, foil, or cut outs.¹⁷ The Report explicitly stated that peel-away labels would be prohibited,¹⁸ but they are not explicitly barred in the new Regulations, although its prohibition may be captured in a provision prohibiting “fold-out panels.”¹⁹ Note that this provision is not under the section that pertains to labeling, but rather it is found under packaging of cannabis products.

¹⁰ *Ibid* at ss. 130(4)(a)-(d)

¹¹ In Section B1.4 of *The Report*, “Annex B: Details of Proposed Label Display Requirement for Cannabis” on page 32, it was proposed that the font of the brand name must be “a single, uniform colour” but this language is not present in the *Cannabis Regulations*

¹² *Cannabis Regulations*, *supra* note 3 at s. 130(9)

¹³ Bill C-45, *An Act respecting cannabis and to amend the Controlled Drugs and Substances Act, the Criminal Code and other Acts*, 1st Session, 42nd Part, 2017 (as assented to on June 21, 2018) at s. 2(1), available online [here](#) [*Cannabis Act*]

¹⁴ *Cannabis Regulations*, *supra* note 3 at ss. 130(9)(e), 130(a), 130(8)(a) and 130(9)(d)

¹⁵ In Section B1.5 of *The Report*, “Annex B: Details of Proposed Label Display Requirement for Cannabis,” on page 34, it was proposed that other than “one brand element” that may be “a graphic image or a logo,” no other images or graphics were permitted but the term “graphic” is not present in the *Cannabis Regulations*

¹⁶ *Cannabis Act*, *supra* note 13

¹⁷ *Ibid* at ss. 120, 115(1) and 121

¹⁸ See Section 6.3 of *The Report*, “Detailed Packaging and Labelling Requirements” on page 34

¹⁹ *Cannabis Regulations*, *supra* note 3 at s. 116(1)(b)

Packaging Requirements

- *Immediate* containers in which a cannabis product is packaged must be tamper-evident, child-resistant, prevent contamination and keep the cannabis dry, which is consistent with the requirements currently set out in the ACMPR.²⁰
- *Immediate* containers can be either opaque or translucent.²¹
- *The interior surface and exterior surface of any container in which a cannabis product is packaged can neither be fluorescent nor metallic in colour, and the colour adopted must contrast with the colours of the standardized cannabis symbol and the background of the health warning messages.*²² The surfaces must be uniformly coloured (*except where provided for in the Act, any other Act of Parliament or any Provincial Act*), but the exterior surface may be a different colour than the colour of the interior surface²³.
- No images are allowed (except where provided for in the Act, any other Act of Parliament or any Provincial Act),²⁴ but as mentioned above, the term “graphic” is now absent in the Regulations.
- Packaging cannot have any coatings, cut-outs or inserts, nor leaflets.²⁵ As mentioned above, the Report explicitly stated that peel-away labels would be prohibited, but they are not explicitly barred in the new Regulations, although its prohibition may be captured in a provision prohibiting “fold-out panels.”

²⁰ *Ibid* at ss. 108(b)-(e) and 110(a)

²¹ *Ibid* at s. 108(a)

²² *Cannabis Regulations*, *supra* note 3 at ss. 113(2)(a)-(c)

²³ *Ibid* at s. 113(1)

²⁴ *Ibid* at s. 112

²⁵ *Ibid* at ss. 115(1), 120, 121 and 132

New information pertaining to regulations on packaging and labeling:

The following provisions were not discussed in the Report but have been incorporated into the *Cannabis Regulations*:

Packaging

- No more than 30 g of dried cannabis in one immediate container (determined in accordance with s. 2(4) of the *Act*,²⁶ which establishes equivalent amounts of various cannabis products to dried cannabis²⁷).
- No heat activated ink or feature visible through technological means.²⁸
- No scent or sound.²⁹
- No brand element on the covering of any container in which a cannabis product is packaged.³⁰

Labeling

- The number of cannabis plants or seeds in a package must be included on the label.³¹

Closing Remarks

Those wishing to compete in the recreational cannabis industry should not be surprised by these Regulations. Health Canada remained consistent with almost all of the proposed regulations outlined in the Report, and has remained steadfast with its overarching goal of making cannabis products minimally appealing to youth and ensuring consumers are presented with clear information. While the Regulations will make it difficult for industry players to

²⁶ *Ibid* at s. 108(f)

²⁷ *Cannabis Act*, *supra* note 13 at s. 2(4)

²⁸ *Cannabis Regulations*, *supra* note 3 at s. 116(1)(a)

²⁹ *Ibid* at s. 117

³⁰ *Ibid* at s. 118

³¹ *Ibid* at ss. 128-129

differentiate themselves given the uniformity required by the Regulations, there *may* be opportunities for differentiation, as explored in our bulletin to be published next week *Cannabis Labeling Regulations: Is it Time to Cue the QR Code?*

by Christie Bates and Maressa Singh (Summer Law Student)

For more information on this topic, please contact:

Toronto Christie Bates 416.945.8001 christie.bates@mcmillan.ca

a cautionary note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

© McMillan LLP 2018