

BUD BRANDERS BEWARE: PROPOSED CANNABIS PACKAGING AND LABELING REQUIREMENTS DON'T LEAVE ROOM FOR IMAGINATION

Posted on April 2, 2018

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As Bill C-45, Canada's proposed *Cannabis Act*,^[1] makes its way through the Senate in advance of the anticipated legalization of cannabis late this summer, Health Canada has released further guidance on the proposed regulatory scheme for cannabis through their March 19, 2018 report, *Proposed Approach to the Regulation of Cannabis: Summary of Comments Received during the Public Consultation*^[2] (the "**Report**").

The Report provides a summary of feedback received during Health Canada's 60-day public consultation period on its proposed regulatory approach,^[3] and also provides clear guidance on packaging and labeling, among other concerns. While the regulations have not yet been released, Health Canada has provided considerable detail on its proposed approach in this area in order to provide the cannabis industry with enough advance notice to have appropriate packaging and labeling in place prior to the legalization of cannabis. Current licensed medical producers will have a six month grace period during which they can adjust to the new packaging and labeling requirements; however, no such transition period will be extended to participants in the recreational space. Industry members should ensure that their branding and marketing strategies align with these requirements.

While industry players had been pushing for a less restrictive approach to the promotion of cannabis and cannabis related products and services in Canada more aligned with the approach towards alcohol,^[4] Health Canada has taken a scientific evidence-based, public health approach with cannabis packaging and labeling to achieve its aim to minimize appeal to youth, minimize the risk of accidental consumption, and allow consumers to make informed decisions. General labeling requirements will be the same between medical and recreational cannabis, although medical cannabis labels will also have to convey patient-specific information, consistent with what is already required under the Access to Cannabis for Medical Purposes Regulations^[5] (the "**ACMPR**").

Highlights of the Report's packaging and labeling requirements include:

Proposed Mandatory Label Content and Display Requirements

- Inclusion of a standardized cannabis symbol that would need to appear on every label, and whose size, placement, and appearance would have to meet particular guidelines
- Standardized rotating health warnings, which would need to appear on every label in a yellow box along with the statement “keep out of reach of children”
- Inclusion of information specifying the THC and CBD content of the product
- 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, recommended storage conditions must be included
- For cannabis oils, information on the type of carrier oil and the name of any allergens must also be listed

Proposed Restrictions on Branding, Logos and Use of Colours

- The brand name can be in any font style and any size, so long as it is equal to or smaller than the health warning message, and the font must be in one uniform colour (but not metallic or fluorescent colours)
- In addition to the brand name, only one other brand element can be displayed. This brand element can be a slogan or a logo. 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, and if it is a graphic, image or logo, it can be no larger than the standardized cannabis symbol
- The label and package backgrounds would need to be a single uniform colour in both the inside and the outside of the package
- Packaging can neither be fluorescent nor metallic in colour, and the colour adopted must contrast with the standardized cannabis symbol in the background of the health warning message
- All over wraps must be clear, and all labels and packaging cannot have any coding, embossing, texture, foil, cut outs or peel away labels

Proposed Packaging Requirements

- Containers must be tamper proof, child-resistant, prevent contamination and keep the cannabis dry, which is consistent with the requirements currently set out in the ACMPR
- Containers can be either opaque or translucent (but not a mix of both)
- Uniformly coloured packaging that is not shiny, metallic or embossed
- No images or graphics
- No embossing, coatings, cut-outs or peel-aways on the packaging, and no inserts in packaging

Appendices to the Report outline in more detail the proposed label content requirements, label display requirements, and health warning messages for cannabis products.

As we previously discussed in [Cannabis-related Trade-marks: Take Care in Choosing Correctly](#), the proposed Cannabis Act also sets out overarching principles for the promotion of cannabis, cannabis accessories and related services that industry players must adhere to, including: not appealing to youth; not using endorsements or testimonials; not depicting a person, character or animal (whether real or fictional) in promotions; not using certain lifestyle associations; and not using false, misleading or deceptive information.

Conclusion

With Bill C-45 having just passed the second reading in the Senate, the proposed Bill will make its way to the Committee for study and then to the third reading. The proposed regulations have not yet been released, but it is anticipated that they will be published immediately following the receipt of Royal Assent for Bill C-45.

While some argue that this plain packaging approach may inhibit the ability of consumers to distinguish between brands and make it more difficult for industry players to differentiate themselves and combat competition from the black market, Health Canada's focus on protecting public health has remained consistent since the Task Force on Cannabis Legalization and Regulation first released its recommendations on the promotion of recreational cannabis in late 2016^[6] (refer to our [bulletin](#)).

With cannabis legalization just around the corner, industry players should ensure that their marketing strategies comply with the proposed restrictions on packaging and labeling.

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by Don Mainland, Lindsay Dykstra and Christie Bates

[1] 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 Parl, 2017 (as passed by the House of Commons 27 November 2017).^[ps2id id='1' target='']

[2] Health Canada, *Proposed Approach to the Regulation of Cannabis: Summary of Comments Received during the Public Consultation* (Ottawa: Health Canada, 2018), available online [here](#).^[ps2id id='2' target='']

[3] Health Canada, *Proposed Approach to the Regulation of Cannabis*, (Ottawa: Health Canada, 2017), available

online [here](#).^[ps2id id='3' target='']

[4] In November, a coalition of industry players along with Cannabis Canada Association and the Canadian Medical Cannabis Association released a set of recommendations for the promotion of cannabis similar in nature to that in place for alcohol. See: Cannabis Canada, “Adult Use Cannabis Advertising and Marketing Self-Regulatory Guidelines for Licensed Producers” (November 2017), available online [here](#).^[ps2id id='4' target='']

[5] Access to Cannabis for Medical Purposes Regulations, SOR/2016-230 (“ACMPR”).^[ps2id id='5' target='']

[6] Health Canada, *A Framework for the Legalization and Regulation of Cannabis in Canada: The Final Report of Task Force on Cannabis Legalization Regulation* (Ottawa: Health Canada, December 2016).^[ps2id id='6' target='']

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.

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