

## The U.S. Trademark Office Opens The Door to Registering Certain Cannabis Trademarks

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Monday, June 3, 2019

On May 2, 2019, the United States Trademark Office issued new Examination Guidelines for goods and services associated with cannabis and cannabis-derived products and services legalized under the 2018 Farm Bill.<sup>[1]</sup> This crack in the federal armor against the cannabis economy opens the door for the federal registration of trademark rights and is an important step toward normalizing the nation's laws governing cannabis and cannabis-related business activities in states where such products are legal.

Prior to the issuance of the new Examination Guidelines, the U.S. Trademark Office rigidly rejected any registration of trademarks associated with cannabis or cannabis-related goods or services. Businesses were thus forced to seek protection for ancillary goods or rely on state trademark registrations and rights to protect consumers from infringing goods or services, and misleading claims or counterfeit products.

Under the new Examination Guidelines, trademarks associated with non-ingestible cannabis and cannabis-related products having a tetrahydrocannabinol ("THC") content of no more than 0.3% on a dry weight basis are eligible for federal registration on the Principal Register maintained by the United States Trademark Office. Similarly, trademarks for services relating to non-ingestible cannabis and cannabis-related products (e.g., growing, cultivating, processing and/or dispensing services) having a THC content of 0.3% or below on a dry weight basis are likewise eligible for federal registration on the Principal Register. For services involving cultivation or production of cannabis or cannabis-related products, the applicant must also certify that the activity was conducted under license or authorization of a state, territory or Native American tribe. The applicable cannabis and cannabis-related products are currently limited to products that conform with the Federal Food Drug and Cosmetic Act ("FDCA"). Thus trademarks used for foods, beverages, dietary supplements or pet treats containing cannabidiol ("CBD") are not registerable even if the products are produced from cannabis having a THC content of 0.3% or below on a dry weight basis.

Applicants with pending applications will need to amend those applications to limit the goods or services to cannabis or cannabis-related products or services as outlined above (e.g., to products having a THC content not more than 0.3% on a dry weight basis) and amend the application to reflect a filing date or date of first use not earlier than December 20, 2018, the date the Farm Bill became law. Permitting registration of these cannabis related trademarks will allow for businesses to both seek the advantages of federal trademark registration as well as seek enforcement of their trademark rights in U.S. Federal Courts across the country.

[1] The Agriculture Improvement Act of 2018, Pub. L. 115-334 (the "2018 Farm Bill"), discussed in further detail [here](#).

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