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Intellectual property protection for cannabis

From: Canadian Intellectual Property Office

On June 19, 2018, Canada became the second country to legalize nationwide purchase and use of recreational cannabis by virtue of the Cannabis Act, which came into force on October 17, 2018. The recreational cannabis market in



Canada is estimated to be worth as much as \$6.2 billion a year which is roughly comparable to the \$7 billion Canadian wine market. This emerging market is poised for entrepreneurial activity and businesses should ensure that their investments in this field are adequately protected through intellectual property (IP) rights. As such, businesses that are looking to delve into developing cannabis products/services should consider acquiring plant breeder rights, trademark, patent or trade secret protection.

Plant Breeder Rights

Plant breeders' rights (PBR) are a form of IP protection that allows businesses to protect new plant varieties, including new varieties of cannabis, somewhat similar to the way an invention can be protected with a patent. When a PBR certificate is granted for a new cannabis variety, the holder has the right to seek compensation if the protected variety is used without authorization. The holder also has exclusive rights

over the sale, production, reproduction, import, export, stocking, and conditioning of the propagating material (e.g. seeds or cuttings) of their variety. Protection for a species of a cannabis plant, such as **cannabis sativa**, is typically 20 years.

Trademarks



Goods and services related to recreational cannabis use, such as "cannabis", "dried cannabis", "live cannabis plants" or "medicinal marijuana for the relief of nerve pain" can be

registered as trademarks. Such registrations would entitle the owner to the exclusive use of the mark in connection with the registered category of goods or services and the owner can enforce their rights to prevent competitors from using a confusingly similar mark.

Non-traditional marks, such as holograms, scents, tastes and textures, will be allowed to be registered in association with cannabis goods and services in late 2019. This presents a timely opportunity for those involved in the cannabis industry, since scent and taste are often the primary distinguishing features of cannabis products. Businesses entering the cannabis industry may want to position their products in the marketplace to seize this opportunity to establish a unique brand.

When considering a logo or a brand name for your cannabis product, one may wish to review the Health Canada regulations related to advertisement of cannabis related products. For example, the regulations will limit the frequency of the mark on the packaging, the size of the logo text, the colour scheme of the brand, and the potential influence of the mark to minors.

Patents

Since "higher life forms" are unpatentable in Canada, patent protection cannot be obtained for cannabis plants **per se**. However, other aspects of a cannabis plant, such as genetically modified plant cells and cell lines, isolated and genetically modified genes



involved in the production of cannabis active agents, and extracts obtained from cannabis plant tissue, are eligible for patent protection. Pharmaceutical compositions comprising novel combinations of cannabis active agents (ie. cannabinoids) and the therapeutic/medicinal use of cannabis and cannabis-derived components are also considered patentable subject matter.

Additionally, new products and machines related to cannabis, such as vaporisers, arm patches, and controlled dose dispensers, as well as processes and methods related to the production of genetically modified cannabis plants, cannabinoid extraction, and the production of cannabis edibles and dry-leaf concentrates, could be patent protected.

Trade-secret

Trade secrets can be described as any valuable business information that derives its value from being kept secret. In Canada, there is no formal process for protecting a trade secret, but rather a business must take all possible measures to ensure that the business information remains a secret. Recipes for making cannabis edibles and commercially desirable methods of creating cannabis edibles and cultivating new cannabis strains, are well positioned to be protected as trade secrets. For example,

if valuable information related to the process of cultivating a new cannabis strain is kept confidential, it may be protectable as a trade secret.

Additionally, important business information, such as client lists, supplier contacts, and cutting-edge market research, are also protectable as a trade secret. This valuable information can be licensed for use to other businesses. However, one should take caution to protect the transaction thorough confidentiality agreements to maintain the privacy of the information.

Industrial Design

Industrial designs protect the esthetically pleasing, visual aspects of products, such as their packaging. Industrial designs can protect the packaging of dry or edible cannabis products, and accessories designed to be used with cannabis, such as smoking pipes.

However, as mentioned earlier, the packaging of cannabis products is regulated by Health Canada and as such, businesses should familiarize themselves with those regulations prior to investing in any packaging designs. More information about the [packaging requirements](#) can be found.

Caution

Canada is the first G7 country to legalize recreational use of marijuana and businesses should be aware that other countries may not allow the same IP protections for the cannabis industry.

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