

# The True Value of Cannabis Trademarks: Beyond Bag Appeal

## Trademark Challenges in the Cannabis Industry: Why Federal Trademark Restrictions Are Creating an Identity Crisis for Cannabis Brands

In states with legalized and regulated cannabis markets, a confusing and often problematic trend has emerged: similar or even identical trademarks are being used to market cannabis products across the United States. Due to federal restrictions on trademark protections for cannabis, businesses in the industry face an ongoing struggle to establish and secure brand identities, a crucial element for any consumer-facing business. With marijuana still classified as a Schedule 1 drug, cannabis companies cannot access federal trademark protections, and this legal grey area is fueling brand confusion and prompting legal battles across state lines.

### Federal Restrictions and Trademark Limitations

The U.S. Patent and Trademark Office (USPTO) currently bars trademark protection for products involving cannabis, leaving these businesses without access to the federal legal mechanisms that protect intellectual property. Trademarks are a key tool in business for establishing brand identity and ensuring that consumers can differentiate between products from different companies. However, without federal trademark protections, cannabis companies are unable to fully enforce their brand identity against other businesses operating in different states. This limitation often leads to similar names, packaging, or logos appearing in distinct markets, creating confusion among consumers and complicating brand building efforts for cannabis companies.

### Why Trademarks Matter in the Cannabis Industry

The primary purpose of trademark law is to help consumers avoid confusion by identifying the origin of goods and services. In other industries, a company can register its trademark at the federal level, ensuring nationwide protection. However, because cannabis remains federally illegal, cannabis businesses cannot secure a federal trademark for plant-touching products. This has led to an unusual problem in the cannabis sector: consumers are left asking, “Is this edible from Brand A or Brand B?” when branding and packaging closely resemble each other. This confusion poses serious risks for the industry, including lost sales, compromised brand loyalty, and potential health risks if consumers mistakenly purchase unfamiliar products.

In each state that legalizes cannabis, new brands emerge, further increasing the potential for consumer confusion. Without a unique and protected trademark, companies may find it difficult to set themselves apart in a rapidly expanding market, especially with the growing number of brands across the United States.

### Common Misconceptions about Trademark Ownership in Cannabis

Many cannabis companies believe they have established trademark rights simply by using a name, registering the company with the secretary of state, or creating social media handles. While these steps are necessary for

brand establishment, they do not provide the same level of protection as a federally registered trademark. This misconception can result in costly legal issues, as companies may find that a similar brand name or logo is already in use, or that another entity is using a nearly identical mark in a neighboring state.

The cannabis industry is also rife with commonly used terms associated with the plant, such as “420,” “Canna,” “Emerald,” and “Dank.” Many businesses attempt to trademark such terms, only to find that they are either too generic to be distinctive or are already used by other businesses in other states. This lack of distinctiveness weakens the brand and leaves businesses vulnerable to infringement from others who can legally use the same or similar terms in states where they are also unregistered.

### **Alternative Strategies for Trademark Protection**

Until federal cannabis laws change, business owners in the cannabis industry are left to explore alternative ways to protect their intellectual property. While direct protection for cannabis products is unavailable at the federal level, trademarks can still be obtained for related goods and services that do not involve the plant directly. For example, companies can apply for trademarks for websites, social media accounts, smoking accessories, non-infused goods, and some hemp products.

In addition, state-level trademark protections provide limited safeguards within each specific state’s jurisdiction, offering localized rights for retail and cultivation services, as well as specific cannabis products. Although state trademarks can provide valuable protection within a single state, they do not offer the nationwide coverage that federal trademarks do, posing challenges for companies operating in multiple states.

Beyond trademarks, other intellectual property protections can strengthen a cannabis company’s brand defenses. Copyright protection for packaging design and marketing materials, patent protection for unique product formulations, and trade-secret protection for proprietary processes are all additional methods to safeguard intellectual property. These strategies allow cannabis businesses to add layers of protection to their brand, even without federal trademark rights.

### **The Growing Risk of Infringement and Litigation**

As the cannabis industry continues to expand, some businesses operate under the assumption that they are unlikely to face trademark litigation because they are not competing directly with federally legal businesses. However, the reality is that trademark enforcement is on the rise, and larger cannabis companies are increasingly willing to protect their brands through legal action.

For smaller cannabis companies, the risk of infringement lawsuits from larger, well-funded businesses is real. These companies often have substantial resources to enforce their trademarks in state courts, where they can take action against businesses using similar names, logos, or branding. When these enforcement actions occur, the affected company typically has two options: rebrand or face costly litigation, both of which can be financially devastating for small businesses.

### **How to Select a Strong, Defensible Trademark**

Choosing a strong and distinctive trademark is crucial for cannabis companies, especially given the industry’s current legal limitations. A strong trademark is one that is not overly descriptive but rather emphasizes the unique identity, values, or story behind the brand. Business owners are often tempted to select a trademark that directly references cannabis, but such names are typically generic and offer little legal protection.

Instead, companies are encouraged to choose names that reflect their brand ethos, mission, or the unique qualities they bring to the industry. A distinctive trademark is more defensible in legal disputes, reducing the likelihood of confusion with other brands and allowing the business to build a recognizable identity in a crowded marketplace. Investing in a thorough clearance search before adopting a trademark can prevent costly legal disputes and protect a company's brand as it grows.

## **The Future of Trademark Protection in Cannabis**

With the possibility of federal reclassification of marijuana to Schedule 3, there is hope within the industry that federal trademark protections for cannabis products may soon become available. If the U.S. government reschedules cannabis, the USPTO would likely begin accepting applications for trademarks related to cannabis products, creating a more stable foundation for brand protection. This would provide cannabis companies with the legal recourse to enforce their trademarks in federal court, an option currently unavailable to them.

However, federal reclassification may also bring a rush of trademark applications, creating competition for brand names and intensifying the need for distinctive and unique trademarks. Cannabis businesses that have established strong brand identities early may have an advantage in securing federal protections when the opportunity arises.

## **Ignoring Trademark Protection: A Risky Path**

For cannabis businesses, ignoring trademark protection is a costly gamble. The cannabis market is rapidly evolving, and with new entrepreneurs and brands entering the space, a strong and legally secure brand identity is essential. Brands that fail to prioritize trademark protection risk not only losing their identity but also facing potential lawsuits and rebranding costs.

In the competitive world of cannabis, a trademark serves as more than just a name—it is a shield that protects a company's reputation, investments, and consumer trust. As the industry awaits potential federal reforms, now is the time for cannabis businesses to start building the strongest, most unique brands possible. With proper planning and proactive trademark strategies, companies can avoid the pitfalls of brand confusion and secure a foothold in the evolving marketplace.

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