

How Cannabis Companies Guard Their Brands Pre Federal Reform

How Cannabis Brands Are Protecting Their IP Pre Legalization

As the United States inches closer to potential federal cannabis reform, the implications for intellectual property (IP) in the marijuana industry are moving to center stage. Cannabis operators have long faced challenges in safeguarding their innovations and brand identities, and federal legalization or even rescheduling could dramatically reshape the IP landscape. Yet with opportunity comes complexity, and companies are taking a variety of approaches to protect their assets before the rules change.

The Limits of IP Protection Under Federal Prohibition

Cannabis remains a Schedule 1 substance under federal law, which bars companies from registering federal trademarks for marijuana-related products. The workaround has been to seek protection for ancillary goods, such as apparel, or to secure state-level trademarks. But this patchwork system has drawbacks.

State trademarks only extend within individual borders, leaving multi-state operators vulnerable. Companies such as Cookies have explored hemp-based protections, with federal applications tied to smokable hemp products. Others, like Denver-born Sun Theory—maker of the Dialed In gummy line—must trademark in each state they operate. For Sun Theory, which maintains cultivation and retail in Colorado while expanding its headquarters to Austin, Texas, this approach is both costly and resource-intensive.

Understanding the Intellectual Property Toolbox

Protecting cannabis IP requires a mix of legal instruments, each serving a different purpose:

- **Patents:** Protect plant strains, cultivation methods, and manufacturing processes. Patents give inventors exclusive rights and encourage innovation. Cannabis cannot be trademarked at the federal level, but it can be patented.
- **Trademarks:** Safeguard brand names, logos, and symbols. Because federal protection applies only to lawful products, cannabis operators often trademark non-cannabis goods or seek state-level coverage.
- **Trade Secrets:** Guard proprietary knowledge such as cultivation recipes, formulations, or business strategies. These protections require strict internal controls to maintain confidentiality.
- **Copyrights:** Cover creative works such as packaging, logos, and digital media. Unlike trademarks, copyrights are unaffected by federal cannabis illegality, making them a reliable tool for brand identity.

Each type of protection addresses a specific vulnerability. No single avenue can fully protect a cannabis company's assets, making layered strategies essential.

Federal Trademarks: A Potential Game-Changer

If cannabis is legalized federally, one of the biggest changes will be access to nationwide trademark protection. This would allow brands to defend their names and logos across all markets—an advantage currently reserved for ancillary goods.

Corey Keller, owner of Bonanza Cannabis Co. in Colorado, highlights the difficulty of the current system. “You can't federally trademark anything cannabis-related,” Keller said. To protect his brand, Keller created separate business lines for CBD products and branded apparel. These offshoots allowed him to register federal trademarks but required setting up independent operations, from bank accounts to websites.

Such strategies can work, but they also divert time and resources. Federal reform would streamline protection efforts and eliminate the need for costly workarounds.

Rescheduling and the Lawfulness Hurdle

Even if cannabis is rescheduled, IP challenges may persist. The U.S. Patent and Trademark Office (USPTO) has historically rejected applications explicitly referencing cannabis, citing the lawfulness requirement. Without explicit recognition of cannabis-related goods in the USPTO's identification manual, securing trademarks may remain an uphill battle.

IP attorney Mary Shapiro, who has represented operators like Harborside in Oakland, notes that companies often need to prioritize protecting what is possible today. For Harborside, this meant focusing on educational materials and advocacy services rather than the retail brand itself. “You really want registration for selling cannabis, but you can't get that because it's unlawful,” Shapiro said. Instead, securing ancillary marks can still offer tangible benefits.

Beyond Trademarks: Patents and Trade Secrets

While trademarks are often the most visible form of IP, patents and trade secrets may carry equal or greater value. In agriculture, patenting plants and cultivation processes is commonplace. Applying these protections to cannabis can prevent competitors from growing or producing similar products without authorization.

“Patents are expensive, but they encourage innovation,” said attorney Jabari Shaw. “As the industry goes global, protecting these innovations will be crucial.”

For companies less focused on patents, trade secrets offer another protective layer. Proprietary formulations, extraction techniques, or cultivation practices can serve as a competitive moat—provided businesses maintain strict confidentiality measures such as NDAs and restricted access.

Preparing for the Future

As the possibility of federal legalization draws closer, cannabis brands are treating IP readiness as a form of competitive advantage. The strategies vary—from registering in every state to creating parallel hemp-based businesses—but the underlying goal is the same: to enter the post-legalization era with strong brand defenses already in place.

“Planning for federal legalization is like preparing for a race,” Shaw explained. “You want to be ready when the starting gun goes off.”

For Sun Theory’s Melander, that means methodically securing state-level protections, even if it is slow and costly. For others, it means investing in patents, copyrights, or ancillary businesses. Regardless of the approach, the companies that build IP strength now will be best positioned to thrive in a fully legal market.

As the cannabis industry awaits the outcome of federal reform, IP protection remains a critical battleground one that could determine not only who survives, but who leads, in the years ahead.

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