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ARTICLE

Weeding Out Compliance Issues: The Do's and Don'ts of Marketing Cannabis and Cannabis Products under Canada's New Cannabis Act

On October 17, 2018, new legislation and regulation will come into force making cannabis use legal in Canada. Under this new legislation, both the adult-use and medical cannabis industries, along with the industrial hemp industry, will be primarily regulated under one act, *Bill C-45: An Act respecting cannabis and to amend the Controlled Drugs and Substances Act, the Criminal Code and other Acts* (the *Cannabis Act*).

Industry brand developers and cannabis companies will be looking for ways to differentiate their products through marketing and branding in a tightly regulated but valuable market. However, the *Cannabis Act* prescribes certain regulations regarding the marketing and promotion of cannabis products.

The following is a brief overview of some of the "Dos and Don'ts" when engaging in the promotion of cannabis and cannabis products.

- Do tailor communications to potential customers (but don't market to youth): Under the *Cannabis Act*, it is prohibited to market cannabis or cannabis products to young persons (defined as persons under the age of 18, but can be varied by provincial statute). However, it is compliant to promote cannabis or branded cannabis products in situations where the communication is addressed and sent to an individual who is 18 years of age or older, and is identified by name. In addition, companies can utilize websites to promote their products, as long as the website is age-gated. As such, it is important that if a cannabis company wishes to engage in promoting their brand via targeted marketing, that they are aware of the age of their customers.
- Don't utilize celebrity endorsements (and this includes cartoons!): Under the *Cannabis Act*, it is prohibited to promote cannabis or cannabis accessories by means of a testimony or endorsement, or by means of depicting a person, character or animal, whether real or fictional. This means that celebrity endorsements of cannabis brands, or even the use of cartoon characters are prohibited under the *Cannabis Act*.
- Do engage in branding: Under the *Cannabis Act*, it is permissible to promote cannabis, cannabis products, or services related to cannabis by displaying a brand element of cannabis on an item that is not cannabis or a cannabis accessory. This means that so-called branded 'swag' such as t-shirts and hats are permissible under the *Cannabis Act*. The *Cannabis Act* also allows for signage. However, any such swag or signage that could be reasonably associated with young persons is not permitted under the *Cannabis Act*.
- Don't engage in sponsorship of events: Under the *Cannabis Act*, it is prohibited to display, refer to, or otherwise use a brand element of cannabis or cannabis products in the sponsorship of a person, entity, event, activity or facility. Moreover, it is prohibited to display a brand element of cannabis on a facility, where the facility is used for sports or cultural events. As such, the display of a brand element in association with sponsorship by cannabis companies of music festivals, sporting events or athletes is prohibited under the *Cannabis Act*.
- Do retain copies of promotions: As noted in the *Cannabis Regulations* (SOR/2018-44), under the *Cannabis Act*, samples or copies of any promotional materials of a product must be retained for two years after the last day on which the promotion took place. As such, cannabis marketers will want to keep a detailed record of the promotions they engage in.
- Don't forget that promotion by foreign media is encompassed in the legislation: Foreign companies looking to enter the Canadian market must consider that promotions targeted to Canadians that are communicated, broadcasted or published outside of Canada still come under the purview of the *Cannabis Act*. As such, it is important for all cannabis companies — whether Canadian or foreign — to be aware of the rules surrounding the marketing of cannabis or cannabis products in Canada.

BLG is committed to helping its clients effectively and responsibly navigate Canada's move from prohibition to regulation of cannabis. Our multi-disciplinary [Cannabis industry focus group](#) is at the forefront of Canadian legal service providers and is continuously involved in corporate transactions and advisory services across all cannabis industry subsections.

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