

Advertising & Marketing Cannabis in Canada

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The Federal *Cannabis Act* (the “Act”) establishes restrictions and exceptions for those looking to advertise and market Cannabis in Canada.

Prohibitions on Promotion

Section 17(1) of the Act broadly restricts the promotion¹ of cannabis and services related to cannabis unless authorized under the Act. Sections 17, 18, 21 and 22 of the Act further prohibit promotion that:

- communicates information about the price or distribution of cannabis;
- could reasonably be appealing to young persons under the age of 18;
- constitutes a testimonial or endorsement, or the depiction of a person, character or animal;
- presents cannabis or the brand in a manner that evokes emotions (both positive and negative) about a way of life (e.g. glamour, recreation, excitement, vitality, risk or daring);
- constitutes the sponsorship of a person, entity, event, activity or facility;
- includes a brand element or name of a cannabis company on a facility and/or
- through a manner that is false, misleading, or deceptive.

Similarly, it is prohibited to display cannabis “or any package or label” of cannabis in a manner that may result in the cannabis, package or label, being seen by a young person as per Section 29 of the Act.

The Act, under section 19 and 139(1)(z.1), allows for the government to specify in the regulations, terms, expressions, logos, symbols or illustrations that are prohibited to use in the promotion of cannabis, cannabis accessories or services related to cannabis. Currently, the Cannabis Regulations do not provide any such terms but this will likely change. For example, proposed amendments to the Cannabis Regulations to address edible products included prohibited terms and expressions.

The Act, under section 24, also prohibits using inducements (such as free giveaways, types of contests or games or offering other services) to promote cannabis or a cannabis accessory.

Exceptions to the Prohibitions

Section 17 of the Act does provide limited exceptions to some of the prohibitions on promotion. Specifically,

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it allows persons authorized to sell and produce cannabis (and accessories) to conduct informational promotion (i.e. factual information about the cannabis and the accessories, such as pricing) and brand-preference promotion (i.e. brand-characteristics tied to the products) as long as a young person under the age of 18 will not reasonably be privy to the advertisements. The exception, however, does not apply to, among other things, the sponsorship, facility or inducement prohibitions.

When Prohibitions do not Apply

Section 16 of the Act provides that the prohibitions on promotion do not apply to a report, commentary, opinion piece, or any literary, dramatic, musical, cinematographic, scientific, educational or artistic work, production or performances, if no consideration is given for that use or depiction. Further, the prohibitions do not apply to specific categories of intra-industry promotion, provided that the promotion is not directed, either directly or indirectly, at consumers.

Penalties

As per Section 111 of the Act, every person that contravenes the aforementioned provisions, commits a violation and is liable to a penalty of not more than \$1,000,000.

We Can Help

For more information on how Cassels can assist with your cannabis and advertising & marketing needs, please contact Alison Hayman, Chandimal Nicholas or another member of our firm's Cannabis Group.

¹ Section 2 of the Act defines "promote" as: in respect of a thing or service, means to make, for the purpose of selling the thing or service, a representation — other than a representation on a package or label — about the thing or service by any means, whether directly or indirectly, that is likely to influence and shape attitudes, beliefs and behaviours about the thing or service.
