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INTELLECTUAL PROPERTY

CANNABIS REMAINS ABUZZ

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An adult may possess and use cannabis in private for personal consumption in South Africa. This is according to the South African Constitutional Court ruling in September 2018 wherein it found that certain provisions of the Drugs and Drug Trafficking Act and the Medicines and Related Substances Act infringe upon the right to Privacy.

While the commercial sale of cannabis remains illegal in South Africa this playing field appears to be changing fast. Earlier this year the City of Cape Town announced that it will be releasing vacant land for the production of medical cannabis and further research is a bold step, anticipating an initial capital investment of over R600 million for the construction of phase one with over a further R1 billion anticipated by phase two, projected within the next four years.

Recent press releases state that a company, which will produce cannabis on a farm near Stellenbosch in the Western Cape has been granted a licence by the South African Health Products Regulatory Authority having applied in 2017.

And brand owners are taking note. The opportunities to create new brands for cannabis-based products appear endless and so too should the requisite protection of intellectual property protection be in place in the territories and, in respect of trade marks, classes of relevance.

Canada is the first G-7 country allowing the legal consumption of recreational cannabis having passed the Cannabis Act on 21 June 2018 regulating the growth, distribution and sale of recreational cannabis in Canada.

The Canadian Trade Mark Office is also handling a few thousand trade marks covering cannabis. In June 2019, Canada's requirement to prove "use" to register a trade mark was removed and it is likely that the office is experiencing a flurry.

Although the USA still regards the use and sale of cannabis as illegal under Federal Law, with nine states and Washington DC permitting the recreational use of cannabis, absolute prohibition in those states has effectively stopped. Benefits shown by the use of medical marijuana is a large contributor to this change.

Regardless of the Territory, two principles should be kept in mind when choosing a trade mark:

- The trade mark should not be contrary to public policy (*contra bonos mores*) or likely to give offence to any class of persons; and
- A trade mark should not be descriptive of the kind of quality or other characteristics of the product.



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