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INTELLECTUAL PROPERTY

Trade mark your cannabis concept

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Brand owners take note, the movement to legalise the possession and consumption of cannabis is real. With the growing global trend to recognise cannabis as legal, it can only be a matter of time until various other cannabis products will be legalised too.

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.

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.

In September 2018, the South African Constitutional Court ruled that certain provisions of the Drugs and Drug Trafficking Act and the Medicines and Related Substances Act are unconstitutional as they infringe upon the right to Privacy in terms of Section 14 of the Constitution. An adult may now possess and use cannabis in private for personal consumption in South Africa.

The opportunities to create new brands for cannabis-based products are 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.

Earlier this year, nearly 1,700 trade mark applications and registrations could be found on the Canadian Trade Mark Database covering cannabis. In June 2019, it is anticipated that the requirement for “use” to secure trade mark registration will be removed from the Canadian Trade Mark Law encouraging even more trade mark filings.

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.

Anyone looking to diversify into cannabis products would be well advised to identify their consumer, create their brand and file their trade marks before others do.



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