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## SELECTING A CANNABIS TRADEMARK YOU CAN ACTUALLY USE

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The burgeoning cannabis industry has undoubtedly created new opportunities for businesses to innovate and prosper but it has also presented challenges in selecting brands. Truth to be told, choosing a trademark for any market is usually not an easy task. There are various common barriers found in the *Trademarks Act* such as not selecting a trademark which is confusing with some one else's trademark (registered or not). However, the cannabis industry is faced with additional legislative restrictions rooted in the *Cannabis Act* and its related *Regulations*.

These restrictions must be taken into consideration when choosing your cannabis trademark be it for cannabis itself (some exclusions apply) or a cannabis accessory which includes rolling papers, pipes, bongs and vaporizers represented to be used in the consumption of cannabis.

Top of mind concerns should be prohibitions which prevent the display on a package or label or in the promotion of cannabis, a cannabis accessory or any service related to cannabis, of an element that:

- provides reasonable grounds to believe that it could be appealing to young persons;
- sets out a testimonial or endorsement, however displayed or communicated;
- sets out a depiction of a person, character or animal, whether real or fictional;
- associates the cannabis or one of its brand elements with, or evokes a positive or negative emotion about or image of, a way of life such as one that includes glamour, recreation, excitement, vitality, risk or daring.

Further restrictions apply to cannabis packaging in that this standardized cannabis symbol must appear on every label:



This obligation is relevant to trademark owners because no illustration, sign, mark, symbol or design, that so closely resembles the standardized cannabis symbol that it is likely to be mistaken for that symbol, is allowed to appear on any container in which a cannabis product is packaged.

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Worth noting is that only one brand element, *other than* the brand name, may be displayed and can only appear once on the principal display panel of the packaging. Moreover, if that brand element is an image (for instance the company logo) it must be smaller than or equal to the standardized cannabis symbol. If the brand element is text only, its type size must be smaller than or equal to the health warning message. Notably, no other images are permitted on the packaging.

The push for maximum blandness will also extend to the brand element which can be displayed in any font style provided the font appears in a single, uniform colour which is not fluorescent nor has the lustre or metal nor has fluorescent or metallic properties in the ink. Also on the list of restrictions are textures, any raised features, embossing, decorative ridges, bulges as well as features such as heat activated ink, fold-out panels and cut-out windows.

As with a trademark associated with goods and services in any industry, the prudent approach (preferably before commencing any use) is to verify its availability from the purview of the *Trademarks Act* to safeguard against legal actions. However, for a cannabis related trademark, it may not be enough given the numerous restrictions specifically imposed in the cannabis industry. Consulting a professional before adopting your cannabis brand is strongly recommended because multiple layers of branding prohibitions will impact the kind of trademarks and related marketing/promotional campaigns that can be used in Canada.

For more information, please contact [ROBIC's Cannabis Group](#).