



March 8, 2019

TO LICENCE HOLDERS

SUBJECT: PROMOTION PROHIBITIONS AND PROHIBITIONS RELATING TO PACKAGING AND LABELLING UNDER THE *CANNABIS ACT*

Disclaimer:

The information contained in this letter only provides an overview of requirements associated with the Cannabis Act and the Food and Drugs Act. The Cannabis Act and the Food and Drugs Act should be read carefully and in their entirety, along with the applicable regulations. In the event of any discrepancy between the legislation and the content of this communication, the legislation shall prevail. Licence holders are also encouraged to consult any other legislation that may apply to them or their activities, such as any applicable federal, provincial or territorial legislation.

Please note that in certain circumstances, the prohibitions of the Act related to promotion, packaging or labelling will not apply with respect to certain cannabis products, including industrial hemp and the substances listed under Schedule 2 of the Cannabis Act. The Act and its associated regulations should be read carefully to identify the applicable exceptions.

Dear Licence holder,

Following the coming into force of the *Cannabis Act* (the Act) on October 17, 2018, Health Canada has noted some promotional activities, including online content, that may not be compliant with the promotion prohibitions prescribed in the Act. This letter is to remind licence holders of their obligation to comply with the Act, including the prohibitions relating to the promotion of cannabis, cannabis accessories and services related to cannabis, as well as prohibitions relating to the packaging and labelling of cannabis and cannabis accessories.

As you are aware, in September 2018, Health Canada published a fact sheet and held a webinar session for all licence holders to raise awareness about the promotion prohibitions. The prohibitions support the government's objective to protect public health and safety, including protecting young persons and others from inducements to use cannabis as set out in the purpose section of the Act.

The *Cannabis Act* generally prohibits the promotion of cannabis, cannabis accessories and services related to cannabis, except in very limited circumstances. It also establishes prohibitions related to the packaging and labelling of cannabis and cannabis accessories. It contains specific prohibitions on several types of promotional activities or packaging or labelling, such as in relation to promotion, packaging or labelling:

- that there are reasonable grounds to believe could be appealing to young persons;
 - that sets out a testimonial or endorsement, however displayed or communicated;
 - that sets out a depiction of a person, character or animal, whether real or fictional;
 - that associates the cannabis, cannabis accessory or service related to cannabis or any of its brand elements, 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;
- or



- for cannabis and cannabis accessories, that is done in a manner, or contains information, that is false, misleading, or deceptive or that is likely to create an erroneous impression about certain elements.

In addition, the *Cannabis Act* sets out promotions prohibitions related to sponsorship, the displaying of brand elements or names on certain facilities, and promotion using foreign media. The *Cannabis Act* also prohibits the sale of cannabis or accessories that could be appealing to young persons, among other additional prohibitions set out in the Act and its associated regulations.

The *Cannabis Act* includes these provisions in support of its objectives, including but not limited to protecting young persons and others from inducements to use cannabis. Promotion can have a significant impact on the appeal, social acceptance and “normalization” of a particular product, and in turn its level of use, particularly around youth. Promotion by means of a testimonial or an endorsement, by means of a depiction of a person, character or animal, or by means of a lifestyle promotion is used to attract new users (in particular youth and young adults) and encourage increased use without providing any useful information to consumers. In addition, the Act aims to prevent the public from being deceived or misled through promotion or information on a package or label that is false or misleading.

Since the Act has come into force, Health Canada has observed the following activities which may contravene the prohibitions relating to promotion, packaging and labelling:

- promotions and product packaging and labelling that contain references to product names which could be appealing to young persons, or that depict, through the use of written words or pictures, a person, character, or animal; and,
- promotions and product packaging and labeling that contain associations with, or that evoke 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.

Persons authorized to produce, sell or distribute cannabis and persons promoting cannabis accessories or services related to cannabis should be aware that the limited authorizations that allow informational promotion or brand-preference promotion of cannabis under subsection 17(2) or of a cannabis accessory or a service related to cannabis under subsection 17(3) are subject to a number of conditions. For example, if the informational promotion or brand-preference promotion is communicated by means of a telecommunication, such as online, the person responsible for the content of the promotion must, subject to the regulations, take reasonable steps to ensure that the promotion cannot be accessed by a young person. This condition applies to any person authorized to produce, sell or distribute cannabis, including provincially or territorially authorized sellers and federally licensed sellers of cannabis for medical purposes, and any person promoting a cannabis accessory or a service related to cannabis.

In that regard, Health Canada has noted that online promotional content on websites and social media sites is being made available by some licence holders without any steps being taken to ensure that the promotion cannot be accessed by a young person. In other cases, the steps taken (e.g., simple self-attestation of age) may be easily circumvented by youth. All licence holders should immediately assess their online promotional content, and where necessary, implement additional steps to ensure youth cannot access promotional content.

Health Canada has also observed promotions, and product packaging and labelling, which may contain claims referred to in paragraphs 1(a) or (b) of the *Cannabis Exemption (Food and Drugs Act) Regulations*, for example claims that cannabis provides a health benefit. Cannabis marketed with such claims is, in addition to the *Cannabis Act*, also regulated under the *Food and Drugs Act* (FDA), usually as a prescription drug. Any cannabis marketed with such claims must therefore also comply with the pre-market approval requirements of the FDA. This system requires the submission of scientific evidence to support the safety, efficacy, and quality of a product in relation to the claims, and for marketing authorization to be granted by Health Canada. These products must also comply with the advertising prohibitions in the FDA and regulations. For more information, please see Health Canada's guidance document [Health Products Containing Cannabis or for Use with Cannabis](#).

Those selling, producing, or distributing cannabis or cannabis accessories or providing services related to cannabis, are strongly advised to assess all of their activities against the prohibitions of the Act and its regulations relating to promotion, packaging and labelling, and other applicable statutes, such as the FDA. This includes but is not limited to reviewing online content, such as websites and social media platforms, as well as the packaging and labelling of cannabis, including product names and descriptions.

Please note that, depending on the circumstances, there is a range of compliance and enforcement measures that could be considered in response to non-compliance with the Act. For the purposes of non-compliance with the provisions of the Act related to promotion, packaging or labelling (the relevant provisions of Division 2 of Part 1 of the Act), these could include the issuance of warning letters, licence suspensions and revocations, ministerial orders, and administrative monetary penalties of up to \$1,000,000 or the maximum amount fixed by the regulations. It is also worth noting that a contravention of these prohibitions is an offence that is subject to the penalty set out in section 44 of the Act. Under section 44, the maximum penalty for a person found guilty of an indictable offence is a fine of up to \$5,000,000 or imprisonment for a term of up to three years or both, and the maximum penalty for a person found guilty of an offence punishable on summary conviction is a fine of up to \$250,000 or imprisonment for a term of up to 6 months or both (for a first offence) or a fine of up to \$500,000 or imprisonment for a term of not more than 18 months or both (for a subsequent offence).

Should you have any further questions or concerns, please do not hesitate to send an email to cannabis@canada.ca. In the interim, we request that you confirm receipt of this letter within the next 10 business days.

Regards,



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