

Product Responsibility Best Practices	SUBJECT	Emerging Regulatory Challenges: Promotional Products in the Cannabis Marketplace	LAST UPDATE	July 2019
	APPLIES TO	<ul style="list-style-type: none"> • Suppliers • Distributors 	FOCUS ON	Packaging Requirements for Cannabis Products
	QUICK LINKS	<ul style="list-style-type: none"> • PPAI Corporate Responsibility: http://ppai.org/corporate-responsibility • UL: ul.com/consumer-retail-services/en/industries/premium-promotional-and-licensed-goods/ • Consumer Product Safety Commission: www.cpsc.gov 		

Italic grey text indicates a hyperlink listed in the Online Resources section of this document.

Packaging Regulations For Cannabis Products Vary

The sale of medical and recreational marijuana products has been legalized in one form or another in at least 33 states plus the District of Columbia, as well as Canada. Each state, and Canada, has different regulations for the sale, advertising and promotion of cannabis products in their jurisdiction, so it's very important for all producers, retailers, and marketers and promotional products companies to first consult with their legal counsel for specific advice on the rules and regulations before selling and marketing cannabis products, including packaging, in each intended place of sale and distribution.

The Purpose Of This Best Practice Guide: Describe Some Basic Issues In Packaging Of Cannabis Products

As states have legalized cannabis products, the promotional products industry has been asked by cannabis retailers and medical dispensaries to help them promote their brands. Many industry distributors have been asked to create and provide packaging for these products, whether they be flower products, pre-roll flower, inhaled products such a vape cartridges, edibles such as food and candy, or topicals such as ointments and creams. Regardless of what form these cannabis products are sold in, virtually every state that has legalized these products, has packaging and labeling regulations that must be followed in their state. Therefore, suppliers and distributors, as well as their end-buyer customers, must be extremely cautious in producing packaging for cannabis products.

Federal Law: Poison Prevention Packaging Act

Although many states have legalized marijuana for recreational and/or medical use, the U.S. Federal Government still does not recognize marijuana products as a legal product. In fact, marijuana is considered to be a Schedule 1 controlled substance under the Controlled Substances Act of 1970, which means it is still unlawful to prescribe it as a legal drug. Therefore, we will not receive any specific guidance on packaging and labeling of cannabis products from the U.S. Federal Government in the near future.

Poison Prevention Packaging Act. There is, however, a federal regulation that is intended to protect children from accidental poisoning and overdose from drugs and other substances called the Poison Prevention Packaging Act ("PPPA") codified in 16 CFR §1700.1 et seq. Many of you who have attended PPAI's Product Responsibility Summit or webinars will be familiar with the PPPA and know that it is governed by the U.S. Consumer Product Safety Commission ("CPSC") and falls under the umbrella of the Consumer Product Safety Improvement Act of 2008 ("CPSIA").

Child Resistant Packaging. The packaging required by the PPPA must be designed and constructed to be significantly difficult for children under five years of age to open within a reasonable time. This rule applies to substances that can be found around the home like cleaning chemicals and over the counter and prescription medications and drugs. Cannabis products fall into the realm of drugs that can poison children, so virtually all cannabis-legal states have requirements that cannabis products must be properly sold to consumers in child resistant packaging ("CRP"). Although the CPSC has not officially opined that the PPPA does in fact apply to cannabis products, it's fair to assume that it would apply to all cannabis products because of its potential to cause harm to children.

Testing Required for CRP Compliance. Please check each state your company will be making cannabis packaging products for distribution to ensure that your packaging will meet local and federal requirements. Most states follow the federally-accepted standard and testing procedure for CRP and those are found in 16 CFR §1700.15 – Poison Prevention Packaging standards, and in 16 CFR §1700.20 – Testing procedure for special packaging. There are special test labs that are certified to test CRP under these standards. When ordering CRP from your suppliers, always ask for CRP testing from a certified test lab to verify compliance.

Additional Examples Of Common State Requirements For Cannabis Packaging

- **Tamper Evident:** The packaging must be made so that it is clearly evident that it has been opened or tampered with before the owner first uses it.
- **Contamination Proof:** Packaging must protect product from contamination and exposure to toxic or harmful substances.
- **Resealable:** For products intended for multiple uses, the packaging must be closed and resealable after each use. A lid, adhesive closure, box top closure, or a zip-loc type closure must be present.
- **Information on Packaging:** Information that is required on a label must be in English and the label must be easy to read.
- **Universal Symbol:** Most states have a requirement that cannabis products, especially those containing THC, have affixed on the packaging a Universal Symbol that indicates that the contents are marijuana products. Each state has its own Universal Symbol so check the destinations of each order to ensure that the Universal Symbol for each state is properly used on the packaging.
- **Opaque Packaging:** For edible products, most states require that the packaging must be opaque so children cannot see the contents (such as cookies and candy) that may be attractive to them. Also, there must be no artwork or pictures of the food on the outside of such packaging.
- **Do Not Imitate Kids Packaging:** Packaging should never imitate products that are typically marketed to children.
- **Do Not Imitate Non-Cannabis Food Products:** Packaging that is normally associated with non-cannabis food items should not be used to prevent confusion and accidental ingestion (e.g., artwork on tins that resemble popular retail brands of mints and candies).

Advertising, Marketing And Promotion Of Cannabis Products

A careful review and understanding of the various states' marketing and promotional regulations is required of every supplier and distributor that makes or sells promotional products in the cannabis states. Again, every state has its own regulations for packaging and labeling cannabis products, so if you or your client is seeking to ship and distribute promotional products to any state or Canada, you should consult with an expert in cannabis marketing and promotional law first before you agree to produce packaging for cannabis products.

Key Advertising, Marketing And Promotional Prohibitions

Although this Best Practice is focused on packaging of cannabis products, it is important to be aware of other common state prohibitions on advertising, marketing and promotion cannabis products as those regulations may also apply to packaging. The following acts are the most common state prohibitions against promoting cannabis or a cannabis accessory or any service related to cannabis (check your destination state's regulations for applicability to your product and order):

- Activities or promotional products that could be appealing to young persons; some states have requirements that a certain percentage (e.g., 80%) of the intended audience must be of the age of 21 years or older;
- Any sponsorship of a person, entity, event, activity or facility using or displaying a brand element of cannabis;
- Depicting a person, character or animal, whether real or fictional;
- Presenting the product or brand elements in a manner that evokes a positive or negative emotion about a way of life such as those that includes glamour, vitality, recreation, or excitement; or
- False or misleading claims that the cannabis product is "safe", "natural", "organic" or has "therapeutic effects" unless such claims are supported by substantial evidence;

Cannabidiol ("CBD") And Hemp Products

The U.S. Food and Drug Administration and some states have been making rule changes and declared some limited exceptions for regulating CBD and hemp products. There are some different rules regarding packaging of these products so you should check with your legal expert on the latest developments regarding the packaging of CBD and hemp products.

California Proposition 65

For suppliers and distributors who will be selling and shipping promotional products and packaging for cannabis to California, please note that the state's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Prop 65") requires the Office of Environmental Health Hazard Assessment ("OEHHA") to publish a list of chemicals and substances known to cause cancer, birth defects or other types of reproductive harm to humans. The OEHHA Prop 65 list now has more than 1,000 substances and since 2009, marijuana smoke was added to the Prop 65 list because the smoke causes cancer and, if marijuana flower is used, smoking it will obviously produce "marijuana smoke".

Other Chemicals in Cannabis. More recently, several Prop 65 cases have been filed against marijuana growers, distributors, dispensaries and retailers for failing to warn consumers about exposures to pesticides and herbicides used in the production of cannabis products. These substances are on the Prop 65 list for causing cancer and/or reproductive harm. Other cannabis products such as oils, vape cartridges, and edibles will likely contain at least one of the other already listed Prop 65 chemicals so it's highly advisable that companies simply apply an appropriate Prop 65 Warning Label to the item's packaging to avoid a violation in California. Please refer to PPAI's additional resources on Prop 65 compliance and visit the OEHHA website for more guidance.

Best Practices And Conclusion

1. Always ask your customer where the products will be distributed; be very direct in your questions since every state that has legalized cannabis has different regulations and restrictions for packaging cannabis products in their state;
2. Check the artwork to ensure that no cartoons, animals, characters or persons are depicted in the art and that the packaging does not appeal to children;
3. Ensure that the packaging has child-resistant features and meets the Federal requirements for CRP and you are able to verify this through testing;
4. Examine the packaging for resistance to tampering and contamination of the contents, and that it is resealable for multiple uses (if intended for such purpose);
5. Make sure that the packaging is opaque if the contents are food and can be attractive to children, and no artwork should depict the food contents on the outside;
6. Use the appropriate cannabis Universal Symbol for the intended state of destination; and
7. When in doubt, check with local laws and regulations or consult legal experts in the area of cannabis packaging law.

Online Resources:

PPAI California Prop 65 Resources

- California Proposition 65: New warning Requirements
<https://www.ppai.org/media/1814/pr-bp-proposition-65.pdf>
- Distributor's Guide to California Proposition 65
https://www.ppai.org/media/3274/pr-guide-prop-65_distributor.pdf
- Supplier's Guide to California Proposition 65
https://www.ppai.org/media/3273/pr-guide_prop-65_supplier.pdf

Emerging Regulatory Challenges & Considerations for Cannabis Promotional Products:

California Bureau of Cannabis Control (BCC): <https://bcc.ca.gov/>

California Cannabis Portal: <https://cannabis.ca.gov/>

California Dept. of Public Health Cannabis Resources: <https://www.cdph.ca.gov/Programs/CEH/DFDCS/MCSB/Pages/ResourcesforLicensees.aspx>

Washington State Liquor and Cannabis Board: <https://lcb.wa.gov/>

Washington State Packaging and Labeling Resources:
<https://lcb.wa.gov/laws/labeling-resources>

FDA Regulation Of Cannabis And Cannabis-Derived Products

Q&A: <https://www.fda.gov/news-events/public-health-focus/fda-regulation-cannabis-and-cannabis-derived-products-questions-and-answers>

Colorado Marijuana Portal: <https://www.colorado.gov/marijuana>

Colorado Marijuana Packaging: <https://www.colorado.gov/pacific/marijuana/news/new-colorado-rules-make-marijuana-packaging-safer-adults-less-appealing-children>

Canada Cannabis Laws and Regulations; Health Canada:

<https://www.canada.ca/en/health-canada/services/drugs-medication/cannabis/laws-regulations.html>

<https://www.canada.ca/en/health-canada/services/drugs-medication/cannabis/laws-regulations/regulations-support-cannabis-act.html>

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