

Updated Draft of California's Cannabis Regulations Could Stifle IP Licensing

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As the U.S. cannabis market continues to grow at an extraordinary pace, a number of celebrities and companies have extended their names or brands to cannabis products via partnerships

with licensed growers and dispensaries. On the celebrity side, these partnerships include Willie's Reserve (Willie Nelson), Bob Marley (Marley Natural), Whoopi Goldberg (Whoopi & Maya) and Snoop Dogg (Leafs by Snoop).

But recent modifications to draft regulations in California threaten to restrict the ability of celebrities or companies to lend their names or brands to cannabis products sold in those states where adult or medicinal cannabis use is legal via intellectual property licensing arrangements to licensed sellers. The proposed new rules, from the three state licensing authorities that regulate medicinal and recreational cannabis in California—the Bureau of Cannabis Control (“BCC”), the California Department of Public Health (“CDPH”) and the California Department of Food and Agriculture (“CDFA”)—came out in October as an update to the draft regulations that had been previously published in July.

Among the updates contained in these proposed new rules is one that stands out for its potentially restrictive impact on brand and other types of IP licensing in the cannabis space. While the regulations already require all commercial cannabis activity (other than authorized retail activity) to be conducted between licensed operators, the BCC's updates to the draft regulations go further to provide that cannabis license holders cannot *conduct commercial cannabis activities on behalf of, at the request of, or pursuant to a contract with any person that is not licensed under the Act*. The listed prohibited commercial cannabis activities are now defined to include the manufacturing or packaging of cannabis goods according to the specifications of a non-licensee, as well

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as packaging and labeling cannabis goods under a non-licensee's brand.

These updates are most likely intended to seek to curb the ability of unlicensed cannabis businesses to conduct regular business through licensed businesses by selling white-labeled products to such licensed businesses or otherwise. However, the proposed changes could potentially have far-reaching implications for any authorized cannabis operators and IP licensors engaging with these companies who have an existing license deal or are considering entering into an operating relationship. With the requirements for obtaining a cannabis license so arduous, a licensing deal seemed to be an easy option for non-licensees to get their brand into the cannabis industry. But with the new restrictions, non-licensees may not have a direct licensing option to get their brand onto cannabis goods. While authorized cannabis operators and non-licensees may be able to turn to more complex contractual structures in order to continue to do business together, parties will need to tread carefully.

The deadline for public comment on the BCC's changes was on November 5th. It remains to be seen whether the BCC's proposed changes will ultimately be incorporated into the proposed rules and, eventually, continue through the formal rule making process until they are adopted as non-emergency regulations.