Cannabis

Cannabis Law

Canada has become the first G7 country to legalize nationwide the purchase and use of recreational cannabis. On June 19, 2018, the Canadian Senate passed the final version of An Act respecting cannabis and to amend the Controlled Drugs and Substances Act, the Criminal Code and other Acts (the “Cannabis Act”), also known as Bill C-45, by a vote of 52 to 29, ending Canada's 95-year prohibition on cannabis. The law came into force on October 17, 2018. Regulations under the Act were published on July 11, 2018.

When Canada announced the proposed legalization of recreational cannabis the number of licensed producers grew exponentially and the market continued to rise at a significant pace. Despite the capitalization setbacks experienced last year, analysts predict that, following a period of consolidation, the market will stabilize. Regardless of the ups and downs in this dynamic and exciting market, Bereskin & Parr has the breadth of experience to help growers, retailers and marketers protect their intellectual property. We have been keeping our clients abreast of regulations as they are released. The following are some of the ways our team has assisted clients.

PATENTS: In Canada, while plants themselves cannot be patented, patents can be obtained for: (i) a new plant cell or gene, which effectively provides patent protection for the plant itself; (ii) new and non-obvious uses of old plants; (iii) novel methods of making the active ingredients in cannabis, as well as formulations relating to same; and (iv) novel methods of producing cannabis in plants and other organisms.

Patents can also be obtained for inventive machines and methods for growing or processing cannabis to produce consumable products such as dry flower, compressed leaf and concentrates. Innovative vaporizers, controlled dose systems and other delivery devices can also be protected with patents.

PLANT BREEDERS’ RIGHTS (also known as Plant Variety Rights): These rights can be obtained instead of, or in addition to, patent protection. Plant Breeders’ Rights confer an exclusive right to sell, produce and reproduce, import and export propagating material of a new plant variety.

INDUSTRIAL DESIGNS: Industrial designs protect novel and non-functional, esthetic aspects of products or their packaging. Industrial designs can protect the shaping of products, such as a novel shape of foods or other edible products, novel packaging, or ancillary products for adult and medical use of cannabis such as delivery devices.

TRADEMARKS: Between January 2016 and January 2018, the number of annual filings to protect cannabis quadrupled. The Cannabis Act restricts certain types of marks. For example, prohibited under the Act are marks for cannabis products that consist of a person, character or animal, whether fictional or real, and marks that appeal to minors. Our trademark specialists can provide opinions on the availability of marks on an increasingly crowded Register and can advise of potential issues before filing.

PLAIN PACKAGING: Both the Cannabis Act and Regulations address packaging limitations, which include restrictions on brand selection, as well as brand name font, size and colour. Our team is familiar with these restrictions and can assist with packaging design.

REGULATORY, ADVERTISING & MARKETING: The constitutional division of powers means that both federal and provincial governments regulate the labelling, advertising and sale of cannabis products. Our team can advise on the prohibited and permitted activities under both federal and provincial laws.

IN-SOURCING AGREEMENTS: Our team has experience drafting agreements for various players in the cannabis industry including licensed producers and cannabis suppliers, device manufacturers and retail vendors.
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