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To: MMCP Registrants
From: Director Erik Gundersen, Office of Cannabis Policy
Date: May 31, 2022
Subject: Guidance regarding the prohibition on the use of packaging and labeling that violates trademarks or appeals to individuals under the age of 21

Background

This guidance is provided by the Office of Cannabis Policy (OCP) to registered caregivers and registered dispensaries engaged in the Maine Medical Use of Cannabis Program (MMCP) to ensure that program registrants are not transferring, purchasing, or selling to one another or qualifying patients illicit cannabis products. The focus of this guidance are those edible cannabis products that are packaged and/or labeled in a manner that causes confusion regarding whether a product contains a trademarked product, including trademarked products that are marketed and sold to individuals under the age of 21. As a result of routine compliance activities, OCP has identified an increasing number of violations of the prohibitions of 22 MRS § 2429-A(2), as well as strong evidence that program registrants are purchasing cannabis products from the illicit cannabis market.

OCP strongly supports the many small businesses that comprise the regulated medical cannabis industry, and we are deeply concerned about the health and safety impacts of illicit cannabis products being sold to patients in the market.

Guidance

22 MRS § 2429-A(2) prohibits the retail sale of harvested cannabis that is “[l]abeled or packaged in violation of a federal trademark law or regulation or in a manner that would cause a reasonable consumer confusion as to whether the harvested [cannabis] was a trademarked product”; and further prohibits the retail sale of harvested cannabis that is “[l]abeled or packaged in a manner that is specifically designed to appeal particularly to a person under 21 years of age.”

Through routine inspections and investigations in response to complaints received by OCP, the office has identified an increasing number of noncompliant products being offered for sale at retail locations and online product menus maintained by MMCP registrants. Many of these products are manufactured and packaged in a manner that closely mimics, and in some cases, explicitly counterfeits trademarked products such as candies, cookies, and snack chips.

Additionally, some of these identified edible cannabis products violate not only the packaging and labeling prohibitions of 22 MRS § 2429-A(2), but also the health and safety requirements specific to edible cannabis products included in 22 MRS § 2429-C(3) and (5), which prohibits the sale of edible cannabis products that are “...manufactured in the distinct shape of a human, animal or fruit...” or “...involve the addition of harvested [cannabis] to a trademarked food or drink product, except when the trademarked product is used as a component of or ingredient in the edible [cannabis] product and the edible [cannabis] product is not advertised or described for sale as containing the trademarked product.”

Furthermore, some of the edible cannabis products that are packaged, labeled, and manufactured in violation of § 2429-A and 2429-C also include universal symbols from other regulated jurisdictions (i.e. California), which suggests that these products are being transferred across state lines in violation of state and federal law.

OCP considers these violations to be serious and significant risks to public health and safety, as well as a substantial threat to the integrity of the MMCP. The sale of illicit cannabis products imported from out of state jeopardizes the livelihoods of Maine cultivators and manufacturers. Furthermore, it puts patients at risk of ingesting products with no clear origin. OCP has serious concerns that edible cannabis products that are packaged and labeled in a manner to mimic trademarked products can lead to confusion by children who are unable to distinguish these cannabis products from the non-cannabis products they are designed to imitate.

For these reasons, OCP continues to strictly enforce the packaging and labeling requirements of 22 MRS § 2429-A and 2429-C. Any registrant in possession of edible cannabis products labeled or packaged in violation of these laws will be subject to revocation of their registry identification card and/or registration certificate. Registrants are advised to destroy any such illicit products and immediately cease the purchase and sale of these items.

Below are some examples of prohibited edible cannabis products found by OCP on store shelves – all these examples include packaging and labeling violations related to the use of trademarks, or including labels “... that would cause a reasonable consumer confusion as to whether the harvested [cannabis] was a trademarked product”:



ABOVE: Examples of cannabis products for sale by registrants that are in the shape of a human or animal.



ABOVE: Examples of cannabis products for sale by registrants that are described as including trademarked products.



ABOVE: *Examples of cannabis products for sale by registrants in Maine with the California universal symbol.*

Conclusion

OCP is aware that increasing numbers of MMCP registrants are offering for sale edible cannabis products that are packaged and labeled in a manner that suggests that the products are or contain trademarked products. Some packaging also suggests that these edible cannabis products were manufactured and packaged out of state which is also a violation of state and federal law. These illicit products are strictly prohibited from the MMCP and threaten not only public health and safety, but the livelihoods of MMCP registrants operating lawfully within the medical program. OCP takes these violations very seriously and will revoke the registry identification card and/or registration certificate of any registrant in possession of these prohibited items.