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### **USPTO Guidelines on Trademarks and Patents for Cannabis**

On May 2, 2019, the United States Patent and Trademark Office (“USPTO”) issued an Examination Guide on how trademarks for cannabis and cannabis-related goods and services will be examined in view of the recently enacted 2018 Farm Bill.

Federal law still prohibits use of cannabis, while some states allow certain activities associated with it. The Controlled Substances Act (“CSA”) defines “marijuana” as “all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin” (subject to certain exceptions). 21 U.S.C. §802(16).

The Examination Guide explains how the USPTO will examine marks for cannabis and cannabis-derived goods, such as cannabidiol. Cannabidiol (“CBD”) is a chemical constituent of the cannabis plant that is encompassed within the CSA’s definition of marijuana. The USPTO will refuse a registration for a mark with goods/services encompassing CBD or other extracts of marijuana, because any such use is unlawful under the federal law and will not provide a valid “use” of the mark in commerce, as required by the law.

However, the 2018 Farm Bill removed “hemp” from the CSA’s definition of marijuana, subsequently removing cannabis plants and derivatives such as CBD that contain no more than 0.3% THC on a dry-weight basis from the controlled substances under the CSA.

Since December 20, 2018 (when the 2018 Farm Bill became law), the USPTO may allow trademarks for goods derived from “hemp,” while still refusing registrations for cannabis and CBD derived from marijuana. However, not all trademarks for “hemp” will be allowed; the applicants must still comply with the Federal Food, Drug, and Cosmetic Act.

Finally, it is still lawful to obtain a patent for marijuana and CBD, because the federal law does not require “use” of the invention, contrary to trademarks, where use in commerce is required.

Please contact us if you wish to trademark or patent Cannabis or CBD good/services. We know how to, and have experience in, successfully navigating these rules.