

4th Annual HBCU Tech Law Summit
&
19th Annual IP and Social Justice CLE Seminar

Cannabis and the Law: A Look at Trademark Law and Social Justice Implications



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Laury Lucien

Laury C. Lucien is a Boston business attorney with experience in healthcare and life sciences matters as well as business licensing, corporate services, and mergers and acquisitions. She obtained her Juris Doctorate degree from Suffolk University Law School and a Bachelor's Degree from the University of Massachusetts.

Laury is a partner in, and advisor to, a marijuana-infused products manufacturing company in California. She is also an adjunct professor at Suffolk University Law School, where she teaches Cannabis Law.

Laury has advised pharmacies regarding the healthcare regulatory and licensing components of multi-billion dollar acquisitions of privately held pharmacies. She has helped clients apply for, and renew, the following licenses in all 50 states: pharmacy, third-party administrator, utilization review, and collection agency. She is also experienced in helping international businesses obtain licenses necessary to operate in the United States.

Laury is passionate about giving back to underserved communities. While attending law school, Laury participated in Suffolk University Law School's Intellectual Property and Entrepreneurship Clinic, where she represented clients, on a pro bono basis, in a wide range of business disputes and intellectual property matters. She also worked with the Housing Unit of Greater Boston Legal Services, where she advocated for clients facing foreclosure. Laury currently provides pro bono services to emerging entrepreneurs by helping them draft their business formation documents and filings.

William J. Thomashower

William Thomashower is a member of Pryor Cashman's Intellectual Property Group. With more than 40 years of experience litigating complex IP cases, he represents clients in state and federal courts, before arbitration panels and in matters before the U.S. Patent and Trademark Office (USPTO).

Bill counsels global brands, consumer goods companies, luxury goods manufacturers, digital media companies, web-based businesses, entertainment and publishing companies and B2B industrial entities on all aspects of trademark law, including selection, prosecution, policing and litigation. He has extensive experience handling cases involving infringement, dilution, trade dress and false advertising claims.

Bill is a registered patent attorney with the USPTO and advises on utility and design patent validity and infringement matters and has litigated such cases. He also advises on copyright issues, including registration, licensing and infringement.

Additionally, he counsels clients on and has litigated defamation and constitutional issues, antitrust claims and the regulations governing physicians and healthcare providers, including the National Practitioner Data Bank. He has argued cases before New York's highest court, the N.Y. Court of Appeals in Albany, NY.

His recent experience includes:

- Obtaining summary judgment of non-infringement of a design patent for packaging after completing all discovery and expert reports for trial;
- Successfully defending, through appeal, a national internet retailer against a brand owner's trademark and copyright infringement claims;
- Litigating a healthcare federal antitrust case by a radiology practice against a radiology benefit management company formed by competitors;
- Successfully defending a Fortune 500 electronic banking company in numerous patent infringement litigations brought by patent assertion entities;
- Obtaining a jury verdict of non-infringement for a client using a trademark to describe genuine merchandise in a case involving disputed ownership with former partners;
- Successfully halting the attempted misappropriation of a famous New York nightclub's name through an emergency motion for preliminary injunction.

Cannabis and the Law

A Look at Trademark Law and Social Justice Implications

Intellectual Property & Social Justice CLE
Howard Law School

March 4, 2022



Cannabis and the Law

A Look at Trademark Law and Social Justice Implications

presented to

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References in this paper to male or female pronouns of unidentified persons are for convenience intended to be gender-neutral



Background on Registrability of U.S. Trademark for Cannabis Products

Current federal law, the Controlled Substances Act (“CSA”), passed in 1970, lists marijuana as a Class 1 substance, for which production, possession, use and sale are illegal under federal law. 21 U.S.C. §§ 841 et seq. However, there has been a trend among some of the 50 states to legalize marijuana for medical or recreational use. In 2012, the states of Washington and Colorado became the first to legalize recreational use, with certain limitations, such as a minimum 21 years of age restriction. By a published count in February 2022, 37 states have legalized medical use of cannabis and 18 state have legalized both medical and adult (e.g., recreational) use. States enacting such changes range from those governed by Democrats or Republicans and geographically dispersed from Alaska, to Hawaii, California to New York and many states in between.

The trend has been moving toward more states legalizing use in some form, or “decriminalizing” individual use. Only four states continue with cannabis illegality (Idaho, Wyoming, Kansas and South Carolina).¹

1. Sources: Schumer, et al., Senate Sponsors’ Letter re Cannabis Administration and Opportunity Act, (CAOA), Feb. 10, 2022; and DISA Global Solutions at <https://disa.com/map-of-marijuana-legality-by-state>.



■ Effects of Inconsistent Marijuana Laws

Crucially, this inconsistency of legality between the individual state laws and illegality under the federal CSA presents a wide range of legal and social problems. These range from:

- Personal criminal exposure
- Law enforcement priorities
- States' legislative freedom to enact laws for its citizens
- Public health and safety
- Economic development

■ Impact on U.S. Trademark Registrability

Unlike copyright and patent law, U.S. Trademark law, the Lanham Act, requires use in U.S. commerce to obtain federal registration.

Prior to the enactment of the Agriculture Improvement Act of 2018 (the 2018 Farm Bill), effective December 20, 2018, marijuana fell within the CSA's definition of a Controlled Substance. Therefore, its production, possession, use and sale are illegal under federal law. Thus, if the goods in the trademark application were marijuana, the goods could not be lawfully "used" in commerce under federal law (the CSA) and the mark could not be registered.

■ USPTO Regulation and Practice before the 2018 Farm Bill

The Lanham Act requires a lawful use in commerce. 15 U.S.C. §§ 1051, 1127. As explained in the Trademark Manual of Examining Procedure (“TMEP”) §907, “Use of a mark in commerce must be lawful use to be the basis for federal registration of the mark. [citing cases]” (TMEP § 907 (July 2021)). 37 C.F.R. §2.69 entitled “Compliance with other laws” allows the USPTO to “make appropriate inquiry” as to compliance with federal laws regulating the sale or transportation of any product for which trademark registration is sought, “for the sole purpose of determining the lawfulness of the commerce recited in the application.” The cited TMEP section has been in effect for many years, and despite revisions, still refers expressly to the CSA including that “regardless of state law, marijuana . . . and the psychoactive component THC remain Schedule I controlled substances . . . subject to CSA’s prohibitions.”



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■ USPTO Examination Guide 1-19 Changes USPTO Practice

Examination Guide 1-19 Examination of Marks for Cannabis and Cannabis-Related Goods and Services after Enactment of the 2018 Farm Bill May 2, 2019 (copy annexed at the end of this PPT).

- The 2018 Farm Bill, effective December 20, 2018, amended the CSA to remove “hemp” (certain parts of the plant and having less than 0.3 % THC) from the definition of marijuana. The impact at the USPTO is that trademarks for “hemp” goods or services are no longer illegal under federal law and thus can be “lawfully used in commerce” to obtain a trademark registration. The Exam Guide details how that process will be administered at the USPTO trademark examination section.



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Important Definitions per Exam Guide 1-19

“Hemp” is now defined as “the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol [THC] concentration of not more than 0.3 percent on a dry weight basis.” Section 297A.

“ These changes include removing “hemp” from the CSA’s definition of marijuana, which means that cannabis plants and derivatives such as CBD **that contain no more than 0.3% THC on a dry-weight basis are no longer controlled substances under the CSA.**” (Emphasis added.)



Examination Procedure under Exam Guide 1-19

“For applications filed on or after December 20, 2018 that identify goods encompassing cannabis or CBD, the 2018 Farm Bill potentially removes the CSA as a ground for refusal of registration, but only if the goods are derived from “hemp.”

Cannabis and CBD derived from marijuana (i.e., *Cannabis sativa* L. with more than 0.3% THC on a dry-weight basis) still violate federal law, and applications encompassing **such goods will be refused registration regardless of the filing date.**

If an applicant’s goods are derived from “hemp” as defined in the 2018 Farm Bill, the **identification of goods must specify that they contain less than 0.3% THC. Thus, the scope of the resulting registration will be limited to goods compliant with federal law.**” (Emphasis added.)



Final Examination Caution under Exam Guide 1-19

“Applicants should be aware that even if the identified goods are legal under the CSA, not all goods for CBD or hemp-derived products are lawful following the 2018 Farm Bill. **Such goods may also raise lawful-use issues under the Federal Food Drug and Cosmetic Act (FDCA).** The use in foods or dietary supplements of a drug or substance undergoing clinical investigations without approval of the U.S. Food and Drug Administration (FDA) violates the FDCA. 21 U.S.C. §331(II); see also 21 U.S.C. §321(ff).”

Therefore, registration of marks for foods, beverages, dietary supplements, or pet treats containing CBD will still be refused as unlawful under the FDCA, even if derived from hemp, as such goods may not be introduced lawfully into interstate commerce. 21 U.S.C. §331(II).” (Emphasis added.)



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■ USPTO Regulation and Practice Before and After the 2018 Farm Bill

Prior to the 2018 Farm Bill amendments, applications for trademarks that even suggested marijuana was an element of the specified goods would be rejected.

The 2018 Farm Bill amendments regarding the percentage of THC were not incorporated in TMEP § 907, but the Examination Guide and the Farm Bill amendments would seem to be controlling. Applications for products with THC with a concentration of not more than 0.3% **are being applied for and approved.**



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Sample USPTO Trademark Application for THC Product Registered

[TSDR](#) [ASSIGN Status](#) [TTAB Status](#) (Use the "Back" button of the Internet Browser to return to TESS)

KHMSYOG

Word Mark KHMSYOG

Translations The wording "KHMSYOG" has no meaning in a foreign language.

Goods and Services IC 034. US 002 008 009 017. G & S: Cigar pouches; Cigar tubes; Cigarette boxes; Cigarette holders; Electronic cigarette refill cartridges sold empty; Filter tips; Tobacco grinders; Tobacco jars;all the aforementioned for use limited to tobacco or goods with **CBD** solely derived from hemp with a delta-9 tetrahydrocannabinol (THC) concentration of not more than 0.3 percent on a dry weight basis. FIRST USE: 20200911. FIRST USE IN COMMERCE: 20200911

Standard Characters Claimed

Mark Drawing Code (4) STANDARD CHARACTER MARK

Serial Number 90314319



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Owner and Attorney Information for KHMSYOG Mark

Published for Opposition October 12, 2021

Registration Number 6600643

Registration Date December 28, 2021

Owner (REGISTRANT) Xiao, Jin INDIVIDUAL CHINA No. 65, Xiaowu Group, Zhangjun Village, Zishan Town, Yudu

<https://tmsearch.uspto.gov/bin/showfield?f=doc&state=4802:ta0egg.5.3>

1/2

2/25/22, 12:56 PM

Trademark Electronic Search System (TESS)

County, Ganzhou, Jiangxi CHINA 341000

Attorney of Record Zhang, Weibo

Type of Mark TRADEMARK

Register PRINCIPAL

Live/Dead Indicator LIVE



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This KHMSYOG Filing and Registration Exposes Another Current Issue at the USPTO

Large scale filings are being made of allegedly use-based USPTO applications for “nonsense” word marks (to avoid Section 2(d) conflicts with real English words or formatives), and submitting purported “internet sales” images as specimens of use. Many of these applications are from China-based applicants. The USPTO thought they could stem this tide by requiring foreign-based applicants to retain a U.S. licensed attorney.

The KHMSYOG application was filed in the name of attorney Weibo Zhang. In addition to the KHMSYOG mark, a USPTO TESS search of filings by attorney Weibo Zhang **found a total 18,151 filings as of Feb. 25, 2022.**



2/25/22, 1:00 PM Record List Display

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Serial Number	Reg. Number	Word Mark	Check Status	Live/Dead	Class(es)
1	97081323	FOENLINTENSO	TSDR	LIVE	
2	97079784	BHLOUNPLO	TSDR	LIVE	
3	97079197	HODAWEISOLP	TSDR	LIVE	
4	97079158	WIHNSINOP	TSDR	LIVE	
5	97039428	W WAVIAR	TSDR	LIVE	
6	97128879	JUWIHUARI	TSDR	LIVE	
7	97021140	WULEEN	TSDR	LIVE	
8	97014755	FTKINGDER	TSDR	LIVE	
9	97109268	BEBEP	TSDR	LIVE	
10	97109030	MLI MOCY	TSDR	LIVE	
11	97067092	6653851 LUVRUITAKY	TSDR	LIVE	
12	97066173	CANOTWAIT	TSDR	LIVE	



■ Consequences of “Nonsense” Word Trademark Filings with Purported “Internet” Based “ Proof” of Sales

- USPTO application volumes hugely increased
- Overwhelming the trademark examination group
- Pendency for review and first action now far exceeds the traditional 3 month wait and is up over 6 months
- Examination of applications from applicants with “nonsense” word marks that are arbitrary or suggestive are delayed, adversely impacting business decisions waiting for review of ITU applications and delaying protection for marks which should be registered
- The Principal Register is cluttered with “nonsense” word marks which could inadvertently cause a Section 2(d) objection by the USPTO to a later filed bona fide word mark with meritorious and understandable sight, sound and meaning.



What is the impact of trending Marijuana Legalization or Decriminalization,
(a) by state law amendments;
(b) in part as removed from the CSA under the 2018 Farm Bill
(c) if pending federal legislation the CAOA is passed

The trend due to the above state law changes and proposed federal law is to move generally toward legalizing or decriminalizing marijuana use, with appropriate limitations for public safety, such as age restrictions.

Thus, it is not surprising the U.S. Trademark law has also moved in that direction, at least to the extent of allowing registration of trademarks for products with the lower concentrations of THC as defined in the 2018 Farm Bill amendments.

■ Social Justice Impacts of Changes in Marijuana Laws and the new USPTO Registration Policy

An organization called the Minority Cannabis Business Association ("MCBA") states that it is the first national trade association dedicated to serving the needs of minority cannabis businesses and their communities. Their stated mission is to empower and support minority entrepreneurs and their communities by creating an equitable and sustainable cannabis industry.

See: <https://minoritycannabis.org/>

■ For educational and policy purposes, it may be useful to consider the Minority Cannabis Business Association definition of "Social Equity."

"What is Social Equity?"

"Equity" is defined as the quality of being fair and impartial: equity of treatment. MCBA defines "social equity" in the cannabis industry using four pillars that encompass the breadth of the restorative policies necessary to adequately address the harms of cannabis prohibition on impacted communities and create an equitable and just cannabis industry.

- Equitable industry promotes the inclusion and success of minorities in the cannabis industry through equal access to opportunities and resources
- Equitable communities empower and support the communities most impacted by the War on Drugs through community reinvestment, corporate responsibility initiatives, and social programing.

(Continued on next slide →→)

■ **Minority Cannabis Business Association: Definition of Social Equity**

- Equitable justice reduces arrests and imprisonment for non-violent cannabis offenses and restores basic rights of citizenship to individuals with non-violent cannabis offenses.
- Equitable access ensures safe legal cannabis products are available to immigrants, veterans, seniors, and disabled persons without risk of loss of benefits or immigration status.”

Credit: MCBA National Cannabis Equity Report 2022, page 2; accessed 2 -10-2022:
<https://www.law360.com/articles/1464047/pot-license-caps-thwart-social-equity-goals-report-says>

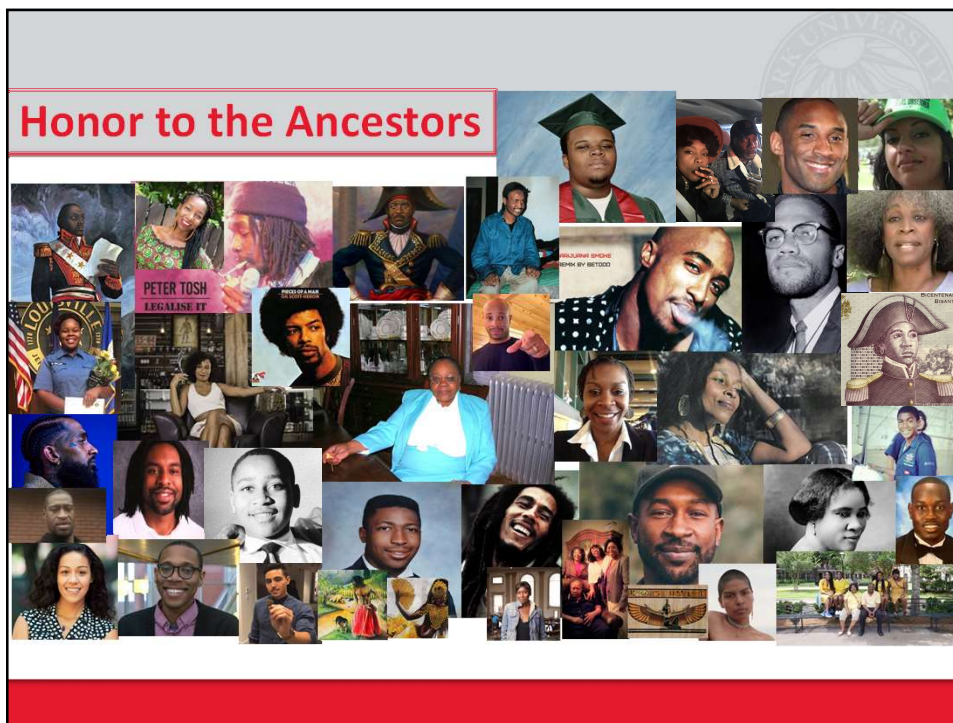
Links for Attachments

- Schumer February 10, 2022 Letter on CAOA:

<https://www.democrats.senate.gov/imo/media/doc/CAOA%20Dear%20Colleague%202.10.22.pdf>

- USPTO Examination Guide 1 -19:

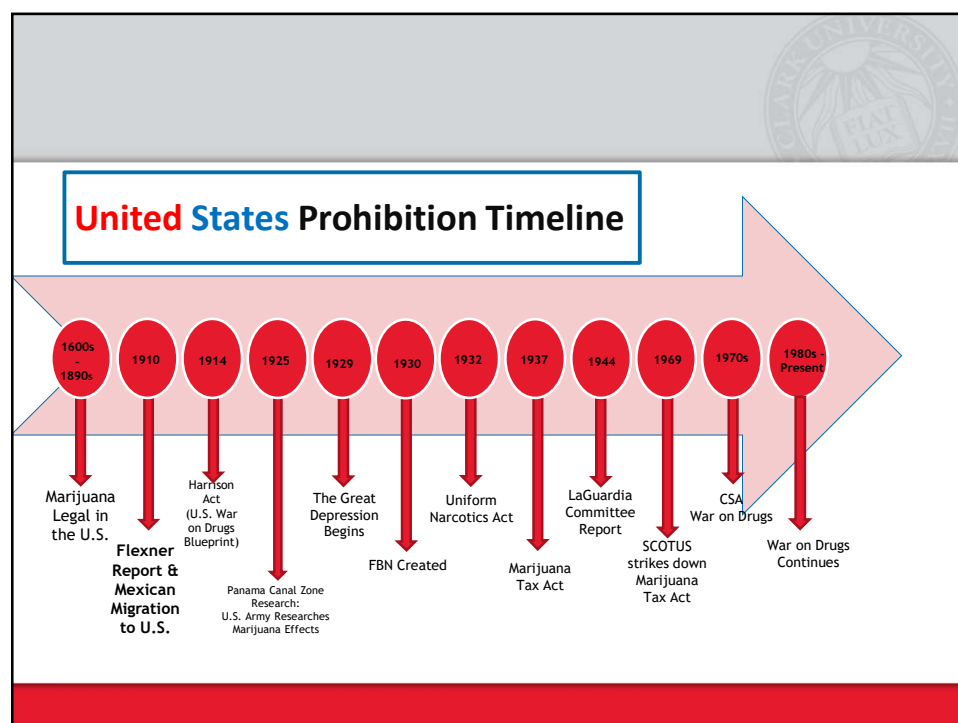
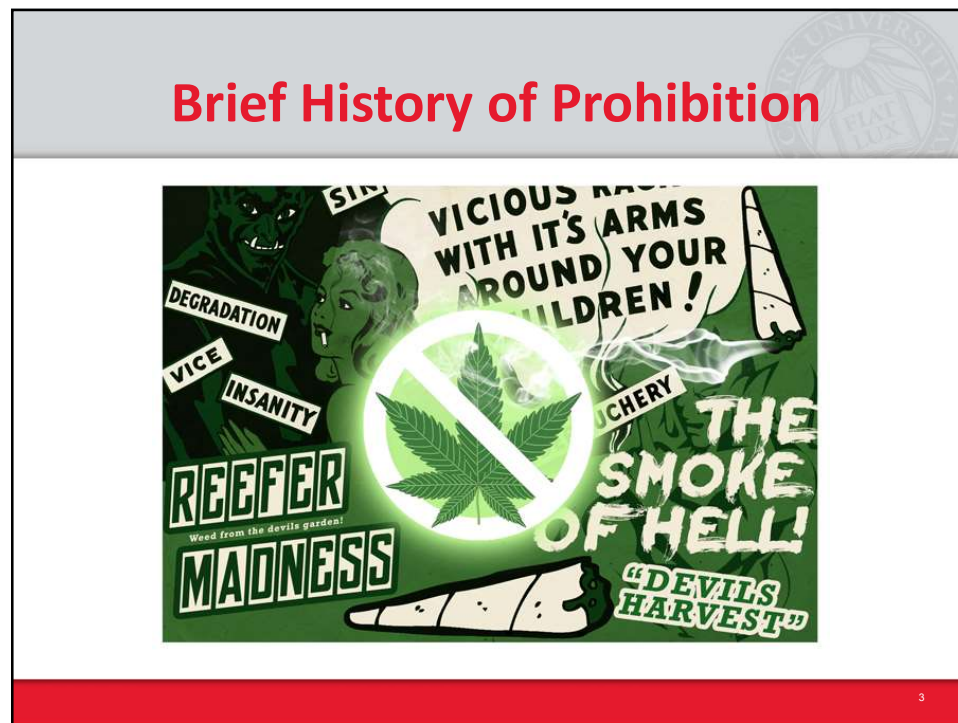
<https://www.uspto.gov/sites/default/files/documents/Exam%20Guide%201-19.pdf>



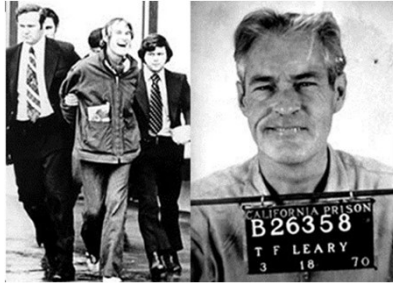
Cannabis and Social Equity: Challenges and Opportunities

Agenda

- Brief History of Prohibition
- MA Timeline of Marijuana Policy Reform
- MA Equity Programs
- Medical Marijuana vs. Adult Use Marijuana
- National Status of Marijuana
- Where Are We Now?
- Ownership/Control & Franchising
- Advertising



Leary v. United States, 395 U.S. 6 (1969)



- In 1966, **Timothy Leary** was arrested in Texas for possession of marijuana in violation of the Marijuana Tax Act of 1937.
 - ❖ It was also illegal in the state of Texas to possess marijuana. Compliance under federal law would have provided self-incriminating evidence.
- He argued that the Act violated his **5th Amendment right against self-incrimination** because abiding by the law would require him to register to obtain a marijuana tax stamp, thereby announcing his intention to commit a crime.
- On **May 19, 1969**, SCOTUS held that the Marijuana Act was unconstitutional.



President Nixon **said, "Not so fast!"**

1970 Act – Controlled Substances Act

- **The CSA established five drug regulation schedules** based on their medical values and potentials for addiction.
- **Schedule I was reserved for the most serious drugs** with purported:
 - ❖ high potential for abuse,
 - ❖ lack of any accepted medical use, and
 - ❖ absence of any accepted use or benefits in medically supervised treatment.
- **Congress temporarily placed marijuana in Schedule I**, noting a lack of scientific study on marijuana and claimed that further research was necessary to determine its health effect.,



1970 Act - National Commission on Marijuana and Drug Abuse

- The 1970 Act established the **National Commission on Marijuana and Drug Abuse** to assess the medical and addictive effects of marijuana.
- The Commission's **First Report to Congress, *Marihuana: A Signal of Misunderstanding***:
 - ❖ recommended that **marijuana no longer be classified as a narcotic**, since that definition associated marijuana with more addictive drugs such as heroin and misled the public by **exaggerating marijuana's harms**.
 - ❖ The report further **recommended decriminalization of marijuana** in small amounts for personal use.
- A **second report** the following year, *Drug Use in America: Problem in Perspective*, **reaffirmed the findings** of the first report and again recommended decriminalization.

Nixon Ignores National Commission on Marijuana and Drug Abuse's Recommendations



- While the reports and their recommendation to decriminalize marijuana had gained widespread support, **the Nixon administration ignored the Commission's findings.**
- Nonetheless, even after Nixon initiated the War on Drugs by declaring drugs "public enemy number one" in 1971, his administration maintained a strong focus on rehabilitation and treatment.
- The majority of government funding at the time was dedicated to rehabilitation programs aimed at eradicating heroin use.

President Ronald Reagan

Presidential Term: January 20, 1981 – January 20, 1989

- Reagan cast aside the focus on harm reduction and public health in the 1980s.
- With the help of Congress, he set the war on drugs into full blaze.
- Initially, the feds focused their law enforcement resources on cocaine, because it fueled the lucrative and expansive Columbian drug trade.



Reagan Era: Media Used to Raise Public Alarm

Public alarm over drugs escalated in 1984 with the rise of crack cocaine and the use of media.

Just Say No Campaign:

- Nancy Reagan, launched the “Just Say No” campaign, which encouraged children to reject experimenting with or using drugs by simply saying the word “no.”
- The movement started in the early 1980s and continued for more than a decade.
- Nancy Reagan traveled the country to endorse the campaign, appearing on television news programs, talk shows and public service announcements. The first lady also visited drug rehabilitation centers to promote Just Say No.
- Surveys suggest the campaign may have led to a spike in public concern over the country’s drug problem.
 - In 1985, the proportion of Americans who saw drug abuse as the nation’s “number one problem,” was between 2 percent and 6 percent.
 - In 1989, that number jumped to 64 percent.



Reagan Era: Anti-Drug Abuse Act of 1986

Reagan responded by signing the Anti-Drug Abuse Act, which:

- Budgeted an additional **\$1.7 billion** to the drug war
- Imposed **mandatory minimum sentences** for drug offenses
- Instituted **100-to-1 disparity** between powder and crack cocaine

Reagan Era: Anti-Drug Abuse Act of 1986

Mandatory Minimum Sentences

- The Act **stripped judges of discretion** to impose **fair sentences** tailored to the facts and circumstances of individual cases and the characteristics of individual defendants.
- The Act **required judges to sentence** individuals convicted of certain drug offenses to a **minimum number of years**, or more.
- These mandatory minimums were triggered **NOT** by a person's **ACTUAL role** in a drug offense or operation, but by **drug type and quantity** instead.
- The **United States Sentencing Commission** linked its Sentencing Guidelines to these draconian mandatory minimum sentences.
- Although these harsh sentences were intended for masterminds and managers of large drug operations, as a result of these sentencing structures, **the vast majority of people who have received such severe sentences have been low-level offenders.**



Reagan Era: Anti-Drug Abuse Act of 1986

100-to-1 Cocaine Disparity

- The Act created the infamous **100-to-1 disparity** between **powder** and **crack cocaine**.
- It imposed the same mandatory minimum sentence upon someone possessing **one one-hundredth the amount** of crack cocaine as powder cocaine.
 - ❖ **Example: 5 grams** of **crack cocaine** received the same five-year minimum term as someone convicted of possessing with intent to distribute **500 grams of powder cocaine**

President George H.W. Bush

Presidential term: January 20, 1989 – January 20, 1993

- President George H. W. Bush continued to fight the drug war aggressively.
- The **Anti-Drug Abuse Act of 1988** created the Office of National Drug Control Policy to:
 - ❖ advise the President on drug-control issues,
 - ❖ coordinate drug-control activities and related funding across the federal government, and
 - ❖ produce an annual National Drug Control Strategy,
 - The first strategy report made clear that a central component of its approach to illegal drugs was arresting more people in **targeted communities**:
 - “Effective street-level enforcement means dramatically increasing the number of drug offenders arrested.



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President Bill Clinton

Presidential term: January 20, 1993 – January 20, 2001

- Bill Clinton continued the legacy of Presidents Reagan and Bush.
- He signed the Violent Crime Control and Law Enforcement Act of 1994 (“Crime Bill”), which provided for
 - ❖ **Three Strikes: Mandatory life imprisonment** without possibility of parole for Federal offenders with three or more convictions for serious violent felonies or drug trafficking crimes.
 - ❖ 100,000 new police officers
 - ❖ \$9.7 billion in funding for prisons
 - ❖ \$6.1 billion in funding for prevention programs, designed with significant input from experienced police officers
 - ❖ \$2.6 billion additional funding for the FBI, DEA, INS, United States Attorneys, and other Justice Department components, as well as the Federal courts and the Treasury Department.
- During Clinton’s presidency,
 - ❖ drug arrests rose 46% and
 - ❖ more Blacks were imprisoned than ever before in American history.



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Tools Used to sustain the War on Drugs



1. Broken Windows Model
2. COMPSTAT
3. Byrne Justice Assistance Grant
4. Summary of Forces of Oppression

Use of Broken Windows Model Leads to Increased Rates of Arrest



- The central premise of broken windows is that the appearance of disorder begets actual disorder.
 - ❖ By addressing minor indicators of neighborhood decay and disorder and
 - ❖ cracking down on petty offenses,
 - ❖ police will reduce serious crime attracted and fueled by such disorder.
- Broken windows reframed visual cues traditionally associated with economic and social disadvantage as signs of crime and disorder.

Use of Broken Windows Model Leads to Increased Rates of Arrest

- Beginning in the 1990s, police departments began cracking down on minor offenses under the theory that such tactics would increase public safety and reduce violent crime.
- They implemented **order-maintenance policing strategies** that focused on the enforcement of **low-level and “quality of-life” offenses**

Stop-and-frisk in NY

- In 1991, the NYPD made 44,209 stops
- by 2010, the number of stops rose to 601,285
- Of the 685,724 people stopped by the NYPD in 2011, 605,328 — or about 88% — were innocent of any crime.
- **87%** of the people stopped were Black or Latino, even though whites stopped were twice more likely to be found with a weapon.

COMPSTAT

- **COMPSTAT** is a **technological and management system** combining:
 1. police department crime data and
 2. geographic information
 3. with police accountability,
- Its purpose is to enable police departments to identify and address specific crime problems quickly and efficiently.
- COMPSTAT monitors crime patterns by location, resulting in the deployment of police resources to specific areas and neighborhoods.
- COMPSTAT's accountability system requires precinct commanders to answer for crime rates in their jurisdictions at twice-weekly “Crime-Control Strategy Meetings” with department heads.

COMPSTAT: Use of Arrest Numbers as Performance Metric

- One significant data point by which a police department measures precinct performance is arrest numbers.
- Using the number of arrests as a performance metric necessarily creates pressure, and incentives, for police to generate high numbers of arrests.
- Higher arrest numbers are easier to obtain by focusing on nonviolent, low-level offenses, which require far less time and resources (including less experienced officers) than the longer, intensive investigations required to make arrests for many serious offenses.

COMPSTAT: Use with broken windows model

- **COMPSTAT** itself does not call for the aggressive enforcement of low-level offenses.
- **When used by police departments employing a form of broken windows**, it can encourage the aggressive and frequent enforcement of low-level offenses and minor infractions by calling for heavy police resources in areas designated as crime hot spots.

Justice Assistance Grant Program



- One financial mechanism funding the drug war and its accompanying policing strategies is a federal funding program called the **Byrne Justice Assistance Grant (JAG) program**.
- Established in 1988, the Program provides states and local units of government with funding to improve the functioning of their criminal justice system and to enforce drug laws.

Justice Assistance Grant Program



- Under the JAG Program, each state is required to develop a statewide strategy for their criminal justice systems, focusing specifically on:
 1. drug trafficking,
 2. violent crime, and
 3. serious offenders.
- There are **seven general program areas** for which funding can be used:
 1. law enforcement;
 2. prosecution and courts;
 3. crime prevention and education;
 4. corrections and community corrections;
 5. drug treatment and enforcement;
 6. planning, evaluation, and technology improvement; and
 7. crime victim and witness.
- Of the **500 million dollars** spent every year on average in jurisdictions across the country through the Byrne JAG Program, over 50% is used to fund law enforcement activities.

Justice Assistance Grant Program

- Law enforcement agencies must set forth their project goals, objectives, and performance measures.
- Along with reporting the number of investigations and prosecutions, agencies receiving funds for law enforcement purposes are required to report the total number of arrests as part of their “performance measures.”
- JAG does not restrict the categories of arrests in its performance measures to felonies or serious drug cases.
- Rather, all drug arrests, including misdemeanors (such as for marijuana possession), must be reported to the BJA as a condition of receiving federal funds.

MA Timeline of Marijuana Policy Reform

- **Nov. 2008: Decriminalization**
 - ❖ Marijuana Decriminalized through **Sensible Marijuana Policy Initiative** (“Massachusetts Ballot Question 2”),
 - ❖ Question 2 made the **possession of less than one ounce of marijuana**
 - punishable by a **fine of \$100**
 - without the possessor being reported to the **state’s criminal history board**.
 - ❖ Question 2 required Minors caught with marijuana to:
 - notify their parents,
 - take a drug awareness program, and
 - complete 10 hours of community service.
 - ❖ Before decriminalization, people charged faced up to six months in jail and a \$500 fine
- **Nov. 2012: Medical marijuana**
 - ❖ Voters approve a ballot initiative legalizing medical marijuana for patients suffering from serious health issues
- **Nov. 2016: Recreational marijuana**
 - ❖ Voters approve a ballot initiative legalizing marijuana for recreational use.

MA Equity Programs

- **Priority Review:**
 - Economic Empowerment &
 - Medical Treatment Centers (formerly Registered Marijuana Dispensaries)
- **Social Equity Program**
- **Expedited Review:**
 - Minority-Owned, Women-Owned, and Veteran-Owned Businesses
- **36-Month Exclusivity Period**
 - For Social Consumption and Delivery Licenses
 - Exclusive to EE and SE applicants

Medical Marijuana vs. Adult-Use Marijuana

MA's Medical Marijuana Program allows:

- Qualifying Patients
 - To obtain medical use marijuana from:
 - ❖ medical marijuana treatment centers,
 - ❖ Personal Caregivers &
 - ❖ Hardship Cultivation

MA's Adult-Use Marijuana Program allows:

- Persons who are 21 years of age or older
 - ❖ To purchase marijuana from marijuana retailers
 - ❖ Cultivate up to 12 plants per household

*Note: There are no genotypic or phenotypic differences between medical marijuana and adult-use marijuana.

Medical Marijuana Treatment Centers: Overview

1. MTC Defined

- MTC refers to site(s) where marijuana for medical use is
 - ❖ cultivated,
 - ❖ prepared, and
 - ❖ dispensed.

2. Vertical Integration Requirement

- MTC Licensee must **cultivate, manufacture, and dispense** its own marijuana and marijuana products.

935 CMR 501.050(1),.002

Mass. Gen. Laws ch. 94 §

6

Marijuana Establishment (“ME”): Defined

License Type	Max. # of Licenses	Ownership/Control Restrictions	Residency Requirement
Marijuana Cultivator (11 Tiers)	3	Max. 100K ft canopy cap No fin. interest in lab	None
Marijuana Product Manufacturer (PM)	3	No fin. interest in lab	None
Craft Marijuana Cooperative	1 (unlimited cultivation locations + 3 PM locations)	Cannot be a PEHDIC in Cultivator, PM, Delivery, & lab	All Members MA residents @ least 1 year before app
Marijuana Microbusiness	1	Cannot be a PEHDIC in any other ME except Social Consumption & Delivery Endorsement	Majority Members MA residents @ least 1 year before app
Marijuana Retailer	3	No fin. interest in lab & not a PEHDIC in microbusiness	None
Marijuana Research Facility	3	No fin. interest in lab & not a PEHDIC in microbusiness	None
Marijuana Transporter: • Existing • Third Party	3	No fin. interest in lab & not a PEHDIC in microbusiness	None
Laboratories (“Lab”) • Independent Testing Lab • Standards Lab	3	No financial interest in any other ME.	None
Marijuana Courier Marijuana Delivery Operator	2	For 36 months, license exclusive to businesses owned/controlled by: • Economic Empowerment Priority (“EE”) Applicants • Social Equity Program (“SE”) Participants	None
Marijuana Social Consumption – Pilot Program	TBD	Same as Delivery-Only Retailer	None

Challenges: State & Local Licensing Components



MUNICIPAL REQUIREMENTS

1. Real Estate
2. Community Outreach Meeting
3. Host Community Agreement
4. Plan to comply with local zoning code, ordinance, or bylaws

STATE

1. Application of Intent
2. Background Check
3. Management and Operations Profile

Marijuana Legalization Nationally



Medical Marijuana Programs

State	Year	How Passed	Possession Limit
California	1996	Proposition 215 (56%)	8 oz usable; 6 mature or 12 immature plants
Alaska	1998	Ballot Measure 8 (58%)	1 oz usable; 6 plants (3 mature, 3 immature)
Oregon	1998	Ballot Measure 67 (55%)	24 oz usable; 24 plants (6 mature, 18 immature)
Washington	1998	Initiative 692 (59%)	8 oz usable; 6 plants
Maine	1999	Senate Bill 611	2.5 ounces usable; 6 plants
Colorado	2000	Ballot Amendment 20 (54%)	2 oz usable; 6 plants (3 mature, 3 immature)
Hawaii	2000	Senate Bill 862 (32-18 H; 13-12 S)	4 oz usable; 10 plants
Nevada	2000	Ballot Question 9 (65%)	2.5 oz usable; 12 plants
Montana	2004	Initiative 148 (62%)	1 oz usable; 4 plants (mature); 12 seedlings
Vermont	2004	Senate Bill 76 (22-7) HB 645 (82-59)	2 oz usable; 9 plants (2 mature, 7 immature)
Rhode Island	2006	Senate Bill 0710 (52-10 H; 33-1 S)	2.5 oz usable; 12 plants
New Mexico	2007	Senate Bill 523 (36-31 H; 32-3 S)	6 oz usable; 16 plants (4 mature, 12 immature)
Michigan	2008	Proposal 1 (63%)	2.5 oz usable; 12 plants
Arizona	2010	Proposition 203 (50.13%)	2.5 oz usable per 14-day period; 12 plants
District of Columbia	2010	Amendment Act 818-622 (13-0 vote)	2 oz dried
New Jersey	2010	Senate Bill 119 (48-14 H; 25-13 S)	3 oz usable
Delaware	2011	Senate Bill 17 (27-14 H; 17-4 S)	6 oz usable
Connecticut	2012	House Bill 5389 (96-51 H; 21-13 S)	2.5 oz usable
Massachusetts	2012	Ballot Question 3 (63%)	60-day supply for personal medical use (10 oz)
Illinois	2013	House Bill 1 (61-57 H; 35-21 S)	2.5 ounces of usable cannabis during a period of 14 days
New Hampshire	2013	House Bill 573 (284-66 H; 18-6 S)	2 oz of usable cannabis during a 10-day period
Maryland	2014	House Bill 881 (125-11 H; 44-2 S)	30-day supply, determined by physician
Minnesota	2014	Senate Bill 2470 (46-16 S; 89-40 H)	30-day supply of non-smokable marijuana
New York	2014	Assembly Bill 6357 (117-13 A; 49-10 S)	30-day supply non-smokable marijuana
Arkansas	2016	Ballot Measure Issue 6 (53.2%)	2.5 oz usable per 14-day period
Florida	2016	Ballot Amendment 2 (71.3%)	35-day supply
Louisiana	2016	Senate Bill 271 (62-32 H; 22-14 S)	1-month supply; amount to be determined
North Dakota	2016	Ballot Measure 5 (63.7%)	3 oz per 14-day period
Ohio	2016	House Bill 523 (71-26 H; 18-15 S)	Maximum 90-day supply; amount to be determined
Pennsylvania	2016	Senate Bill 3 (149-46 H; 42-7 S)	30-day supply
West Virginia	2017	Senate Bill 386 (74-24 H; 28-6 S)	30-day supply (amount TBD)
Missouri	2018	Ballot Amendment 2 (66%)	4 oz dried marijuana per 30-day period; 6 plants
Oklahoma	2018	Ballot Question 788 (56.8%)	3 oz usable; 12 plants (6 mature, 6 immature)
Utah	2018	House Bill 3001 (60-13 H; 22-4 S)	113 grams of unprocessed cannabis
Mississippi	2020	Initiative 65	2.5 oz usable
South Dakota	2020	Initiated Measure 26	3 oz usable; 3 plants
Virginia	2020	Senate Bill 1015	90 day supply of cannabis extracts

Adult Use Programs

State	Year	How Passed	Possession Limits
Alaska	2014	Ballot Measure 2 (53%)	1 oz usable; 6 plants (no more than 3 mature)
Arizona	2020	Smart and Safe Arizona Act (Prop 207) (59.95%)	1 oz usable; 6 plants
California	2016	Proposition 64 (57%)	1 oz usable; 6 plants; 8 g hash/concentrates
Colorado	2012	Amendment 64 (55%)	1 oz usable; 6 plants (no more than 3 mature); 1 oz hash/concentrates
District of Columbia	2014	Initiative 71 (65%)	2 oz usable; 6 plants (no more than 3 mature)
Illinois	2019	House Bill 1438	1 oz usable; 5 g hash/concentrates
Maine	2016	Question 1 (50%)	2.5 oz usable; up to 15 plants (no more than 3 mature); 5 g hash/concentrates
Massachusetts	2016	Question 4 (54%)	1 oz usable; 6 plants; 5 g concentrates
Michigan	2018	Proposal 1 (56%)	2.5 oz usable; 12 plants; 15 g concentrates
Montana	2020	Initiative I-190 (56.89%) and C1-118 (57.82%)	1 oz usable; 4 mature plants; 8 g hash/concentrates
Nevada	2016	Question 2 (54%)	1 oz usable; 6 plants; 3.5 g hash/concentrates
New Jersey	2020	New Jersey Marijuana Legalization Amendment to be determined (66.88%)	
Oregon	2014	Measure 91 (56%)	1 oz usable in public; 8 oz homegrown usable at home; 4 plants; 16 oz solid marijuana-infused, 72 oz liquid infused, and 1 oz extract at home of hash/concentrates
South Dakota	2020	Constitutional Amendment A (54.18%)	1 oz usable; 3 plants; 8 g hash/concentrates
Vermont	2018	Legislative Bill H. 511	1 oz usable; 6 plants (no more than 2 mature); 5 g hash
Washington	2012	Initiative 502 (56%)	1 oz usable; 16 oz solid marijuana-infused, 72 oz liquid infused, and 7 g of concentrates



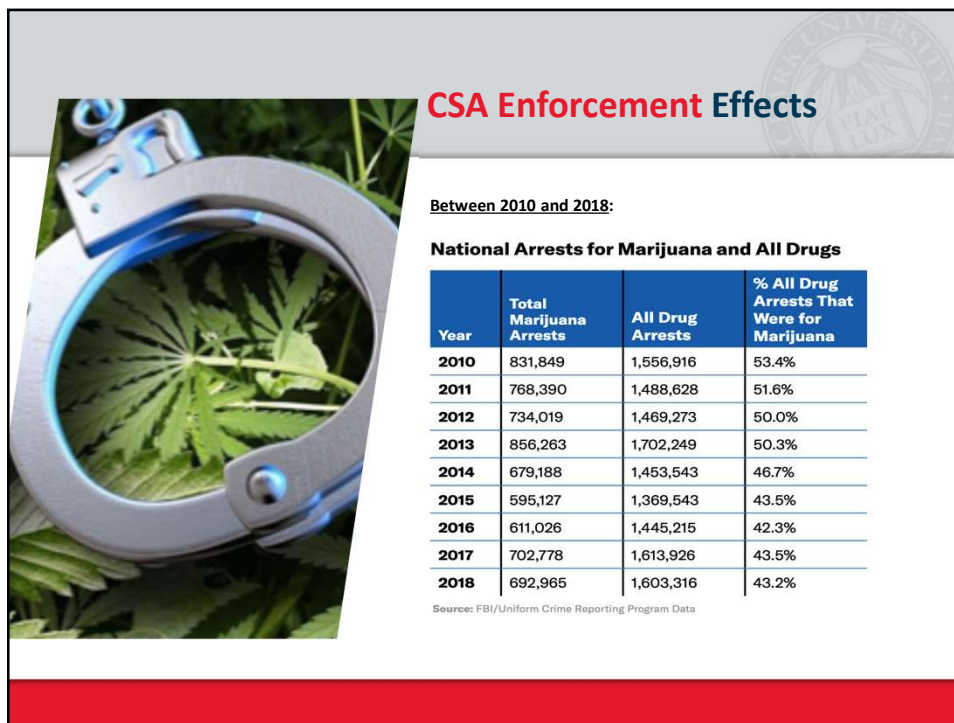

CSA Enforcement



CSA Enforcement Effects

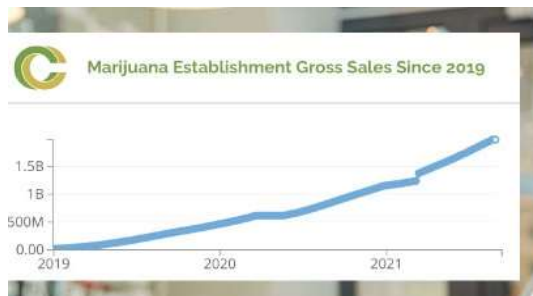


- **Between 2001 and 2010:**
 - ❖ 8,244,943 marijuana arrests
 - ❖ 7,295,880, or 88%, were for marijuana possession.
- **2010:**
 - ❖ more than **20,000** people incarcerated on the sole charge of **marijuana possession**.
 - ❖ 889,133 marijuana arrests
 - 300,000 more than arrests for all violent crimes combined — or one every 37 seconds.
 - ❖ There were 140,000 more marijuana arrests in 2010 than in 2001, and 784,021 of them, or 88%, were for possession.



Massachusetts Recreational Market

Massachusetts Marijuana Establishments Surpass \$2 Billion in Gross Sales as of Sept. 1st, 2021



ME & MTC: Ownership & Control

Adult-Use

- ▶ No Person or Entity Having Direct or Indirect Control ("PEHDIC") can be granted, or hold, **more than three** Licenses in a particular class.

Medical Marijuana:

- No PEHDIC can be granted, or hold, **more than three MTC Licenses**.
- **Note:** Each MTC license includes the right to:
 - ❖ Retail
 - ❖ Cultivate
 - ❖ Extract & Infuse
 - ❖ Dispense (including Home Deliveries) &
 - ❖ Transport to other MTCs & MEs
- **Maximum 2 Locations per License**
 - ❖ MTCs limited to **2 max locations**
 - ❖ MTCs typically apportion lines of business as follows:
 - **Location 1:** Cultivation + MIP Preparation
 - **Location 2:** Dispensing

What Is a PEHDIC?



Person or Entity Having Direct or Indirect Control over a Licensee

Person or Entities Having DIRECT Control

Any person/entity having **DIRECT control over the operations** of a ME/MTC, satisfying 1 or more of the following criteria:

1. **Owner**, financial interest in the form of **10% equity or greater**.
2. **Voting Rights**.
 - a. voting interest of 10% or greater ME/MTC or
 - b. right to veto significant events.
3. **Close Associate**. Holding a relevant **managerial, operational or financial interest** in licensee, which enables the exercise of significant influence over business's **management, operations or finances**.
4. **Contractual or Other Authority to Control**, having **right to control, or authority through contract**, or otherwise including:
 - 1) **Making decisions re: operations and strategic planning, capital allocations, acquisitions and divestments;**
 - 2) **Appointing more than 50% of directors (or equivalents);**
 - 3) **Appointing or removing Corporate-level officers (or equivalents);**
 - 4) **Making major marketing, production, and financial decisions;**
 - 5) **Executing significant** (in aggregate of \$10,000 or greater) **or exclusive contracts;** or
 - 6) **Earning 10% or more of the profits** or collect **more than 10% of the dividends.**
 - 7) Court Appointee or assignee pursuant to an agreement for a general assignment or Assignment for the Benefit of Creditors; or Third-party Technology Platform Provider that possesses any financial interest in a Delivery Licensee including, but not limited to, a Delivery Agreement or other agreement for services.

935 CMR
500.050(1)

Person or Entities Having INDIRECT Control



Any person/entity **having indirect control** over operations of the licensee, specifically including:

1. person with **controlling interest** in an **indirect holding or parent company** of licensee
2. **CEO and Executive Director** of those companies, or
3. person or entity in a position **indirectly to control the decision-making** of licensee.

935 CMR 500.002
935 CMR 501.002

Franchising Cannabis Businesses

- CCC disapproves of Franchises due to the ownership and control restrictions.
- MSOs
 - * Often operate under multiple brands to avoid 3 license max cap and
 - * Operate as both medical and adult use businesses



Advertising Permitted Practices: Brand Name

- A ME/MTC may develop a Brand Name to be used in **labeling, signage, and other materials.**
- **Brand Name** means a **brand name** (alone or in conjunction with any other word), **registered trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other identifiable marker** associated with a ME/MTC.
- **Brand Name** cannot include use of the following:
 1. Medical Symbols
 2. Images of Marijuana or Marijuana Products, or related Paraphernalia images
 3. Images that are appealing to persons younger than 21 years old, and
 - colloquial references to Marijuana and Cannabis prohibited

935 CMR 500.105(4)
935 CMR 501.105(4)
935 CMR 500.002, 935
CMR 501.002

Advertising Permitted Practices: Brand Name Sponsorships



Brand Name Sponsorship means the payment by a ME/MTC

- to sponsor an athletic, musical, artistic, or other social or cultural event;

OR

- to identify, advertise, or promote such event, or an entrant, or participant of such an event.

935 CMR 500.105(4)
935 CMR 501.105(4)

Advertising Permitted Practices: Sample Displays



- A ME/MTC may display, in secure, locked cases, samples of each product offered for sale.
- Display cases may be transparent.
- An authorized ME/ MTC agent may remove a sample of marijuana from the case and provide it to the consumer for inspection, provided the consumer may not consume or otherwise use the sample.

935 CMR 500.105(4)
935 CMR 501.105(4)

Advertising Permitted Practices: Pricing

- The ME/MTC may post prices in the store and may respond to questions about pricing on the phone.
- The ME/MTC must provide a catalogue or a printed list of the prices and strains of marijuana available at the ME/MTC to consumers and may post them on its website and in the retail store.

935 CMR 500.105(4)
935 CMR 501.105(4)

Advertising Permitted Practices: Reasonable Advertising Practices

- A ME/MTC may engage in reasonable, advertising practices that:
 - are not otherwise prohibited
 - do not jeopardize the public health, welfare or safety of the general public
 - do not promote the diversion of marijuana or marijuana use in individuals younger than 21 years old.
- Any such advertising must include:
 - the statement *"Please Consume Responsibly,"* in a conspicuous manner on the face of the advertisement and
 - a minimum of 2 of the following warnings in their entirety in a conspicuous manner on the face of the advertisement:
 1. "This product may cause impairment and may be habit forming."
 2. "Marijuana can impair concentration, coordination and judgment. Do not operate a vehicle or machinery under the influence of this drug."
 3. "There may be health risks associated with consumption of this product."
 4. "For use only by adults 21 years of age or older. Keep out of the reach of children."
 5. "Marijuana should not be used by women who are pregnant or breastfeeding."

935 CMR 500.105(4)
935 CMR 501.105(4)

Advertising Permitted Practices: Required Warning Statement



[This Provision only Applies to ME; it does not apply to MTCs]

All Advertising produced by or on behalf of a **Marijuana Establishment** for Marijuana or Marijuana Products must include the following warning, including capitalization, in accordance with M.G.L. c. 94G, § 4(a)(xvii):

"This product has not been analyzed or approved by the Food and Drug Administration (FDA). There is limited information on the side effects of using this product, and there may be associated health risks. Marijuana use during pregnancy and breast-feeding may pose potential harms. It is against the law to drive or operate machinery when under the influence of this product. KEEP THIS PRODUCT AWAY FROM CHILDREN. There may be health risks associated with consumption of this product. Marijuana can impair concentration, coordination, and judgment. The impairment effects of Edibles may be delayed by two hours or more. In case of accidental ingestion, contact poison control hotline 1-800-222-1222 or 9-1-1. This product may be illegal outside of MA."

835 CMR 500.105(4)

Advertising Permitted Practices: Employee Discounts



[This Provision only Applies to ME; it does not apply to MTCs]

- A Licensee may utilize employee discounts as part of the Marijuana Establishment's operating policy and procedure for prevention of diversion.
- Institution of an employee discount program is not considered a prohibited practice.

835 CMR 500.105(4)

Advertising Prohibited Practices: Deceptive, False, and Misleading Statements



❖ Deceptive.

Advertising deemed to be **deceptive, false, misleading, or fraudulent**, or **tends to deceive** or create a misleading impression, whether directly, or by ambiguity or omission

❖ False or Misleading.

Advertising that makes any **false or misleading statements** concerning **other licensees** and **products** of such other licensees (includes statements by a licensee)

❖ Safety or Curative Statements.

Advertising that asserts that its products are safe, or represent that its products have curative or therapeutic effects, other than labeling required by law, unless supported by substantial evidence or substantial clinical data with reasonable scientific rigor as determined by the CCC

935 CMR 500.105(4)(b)
935 CMR 501.105(4)(b)

Advertising Prohibited Practices: Prohibitions regarding those under 21 Y.O.



- Advertising by means of television, radio, internet, mobile applications, social media, or other electronic communication, billboard or other outdoor advertising, or print publication, unless at least 85% of the audience is reasonably expected to:
 - ❖ MEs: be 21 years of age or older or
 - ❖ MTCs: comprised of individuals with debilitating conditions
- Operation of any website that fails to verify that:
 - ❖ MEs: Entrant is 21 years of age or older
 - ❖ MTCs: Entrant is either 21 years of age, a Qualifying Patient, or Personal Caregiver

The following only apply to ME; they do not apply to MTCs

- Advertising that utilizes statements, designs, representations, pictures or illustrations that portray anyone younger than 21 years old
- Advertising including, but not limited to, mascots, cartoons, and celebrity endorsements, that is deemed to appeal to a person younger than 21 years old
- Brand sponsorship including, but not limited to, mascots, cartoons, and celebrity endorsements, that is deemed to appeal to a person younger than 21 years old

935 CMR 500.105(4)(b)
935 CMR 501.105(4)(b)

Advertising Prohibited Practices: Methods of Advertising



- No use of vehicles equipped with radio or loud speakers for the advertising of marijuana/marijuana products
- No use of radio or loud speaker equipment in any ME/MTC for the purpose of advertising or attracting attention to the sale of marijuana or marijuana products
- No Advertising, including the use of Brand Names, of an improper or objectionable nature including, but not limited to, the use of language or images offensive or disparaging to certain groups
- No Advertising on or in public or private vehicles and at bus stops, taxi stands, transportation waiting areas, train stations, airports, or other similar transportation venues including, but not limited to, vinyl-wrapped vehicles or signs or logos on transportation vehicles not owned by the ME/MTC
- No advertising, marketing, and branding through certain identified promotional items including, but not limited to, gifts, giveaways, **discounts, points-based reward systems, customer loyalty programs**, coupons, or "free" or "donated" marijuana
- No Advertising, solely for the promotion of Marijuana or Marijuana Products on ME/MTC Branded Goods including, but not limited to, clothing, cups, drink holders, apparel accessories, electronic equipment or accessories, sporting equipment, novelty items and similar portable promotional items;

935 CMR 500.105(4)(b)
935 CMR 501.105(4)(b)

Advertising Prohibited Practices: Methods of Advertising



- No Advertising, solely for the promotion of Marijuana or Marijuana Products on ME/MTC Branded Goods including, but not limited to, clothing, cups, drink holders, apparel accessories, electronic equipment or accessories, sporting equipment, novelty items and similar portable promotional items;
- Advertising, marketing or branding including any statement, design, representation, picture, or illustration that encourages or represents the use of Marijuana for any purpose other than to treat a Debilitating Medical Condition or related symptoms; **[only applies to MTCs; they do not apply to ME];**
- No Brand Name Sponsorship of a charitable, sporting or similar event, unless such Advertising is targeted to entrants or participants reasonably expected to be 21 years of age or older, as determined by reliable, current audience composition data, and reasonable safeguards have been employed to prohibit Advertising from targeting or otherwise reaching entrants or participants reasonably expected to be under 21 years of age, as determined by reliable, current audience composition data **[only applies to MEs; they do not apply to MTCs];**
- No advertising through the marketing of free promotional items including, but not limited to, gifts, giveaways, discounts, points-based reward systems, customer loyalty programs, coupons, and "free" or "donated" Marijuana, except as otherwise permitted by 935 CMR 500.105(4)(a)9 (employee gifting), and except for the provision of Brand Name take-away bags by a Marijuana Establishment for the benefit of customers after a retail purchase is completed.; **[only applies to MEs; they do not apply to MTCs];**

935 CMR 500.105(4)(b)
935 CMR 501.105(4)(b)

Advertising Prohibited Practices: Methods of Advertising

- External Signage:
 - External signage can only be illuminated for a period of 30 minutes before sundown until closing.
 - Advertising on any billboards, or any other public signage that violate local ordinances and requirements.
- Exterior of Facility:
 - Marijuana or Marijuana Products cannot be displayed in a manner that makes them clearly visible to a person from the exterior of an ME/MTC.
 - Cannot display signs or other printed material advertising of any brand or kind of Marijuana or Marijuana Products on the exterior of any ME/MTC.
- Pricing:
 - Cannot advertise or market the price of marijuana, except that it can provide a catalogue or a printed list of the prices and strains of marijuana available at the retail store.
 - The catalogue may be posted on the establishment's website and the retail store.

935 CMR 500.105(4)(b)
935 CMR 501.105(4)(b)

QUESTIONS

- Thank you!