

Submission by the Canadian Marketing Association on:

Taking Stock of Progress: Cannabis Legalization and Regulation in Canada

November 2022

Introduction

The Canadian Marketing Association (CMA) welcomes the opportunity to respond to the Government of Canada's consultation: *Taking Stock of Progress: Cannabis Legalization and Regulation in Canada*.

The CMA membership is comprised of large to small organizations across all sectors of the economy that support the marketing profession, including Canada's biggest brands, public organizations, not for profits, and marketing agencies. CMA members recognize their obligation to maintain the highest standards of honesty, transparency, truth, accuracy, fairness and professionalism.

We help our members achieve high standards of professional conduct through our <u>Canadian Marketing Code of Ethics & Standards</u>, and a series of compliance and best practices guides, including a guide on cannabis marketing rules and best practices.

Our guidance to members on topics including cannabis marketing for those involved in that sector, is updated when necessary to reflect changes to legal requirements, evolving best practices, and information received through ongoing discussions with Health Canada.

The CMA supports consumers through our online Consumer Centre, which provides information about their rights and obligations, and by responding to inquiries and addressing consumer complaints.

Achieving the purpose of the Cannabis Act

The purpose of the *Cannabis Act* and regulations, set out in section 7 of the Act, is to "protect public health and public safety and, in particular, to:

- a) protect the health of young persons by restricting their access to cannabis;
- b) protect young persons and others from inducements to use cannabis;
- c) provide for the licit production of cannabis to reduce illicit activities in relation to cannabis:
- d) deter illicit activities in relation to cannabis through appropriate sanctions and enforcement measures;
- e) reduce the burden on the criminal justice system in relation to cannabis;
- f) provide access to a quality-controlled supply of cannabis; and
- g) enhance public awareness of the health risks associated with cannabis use."

The CMA supports this purpose statement to protect young people and eliminate illegal market activities.

Responsible organizations have made considerable efforts and invested significant amounts of money to ensure they are meeting public policy objectives. The current review of the Act provides the opportunity to consider how regulators can increasingly support the provision of legal, safe products to adults, and diminish the illegal market.

Recommendations

CMA members involved in the cannabis sector are committed to compliance to fulfill the purpose of the Act. They are also committed to helping consumers understand the safety considerations involved in purchasing cannabis and to helping them distinguish between legal and illegal products and brands so they can make informed decisions about which products meet their needs.

To support these efforts, we recommend:

- 1. That the government introduce a compliance logo to serve as a visual cue to consumers that a retailer is licensed to operate legally.
- That public education campaigns be expanded and that clearer branding be used to inform
 the public about the legal cannabis market, including the types of products available, where
 they can be purchased legally, the importance of buying from the legal market, and dangers
 of the illegal market.
- 3. That a third-party reviewer be established for cannabis advertising, similar to beveragealcohol and non-prescription drugs, to ensure that brands comply with the letter and intent of the law.

The rationale for these recommendations is provided in the following sections.

Rationale for Recommendation 1: The introduction of a compliance logo

It is recommended that the government introduce a compliance logo to serve as a visual cue to consumers that a retailer is licensed to operate legally.

Currently, there is greater consumer recognition of illegal brands than legal ones, because brands in the illegal market do not abide by any packaging and labelling standards. Consequently, consumers desiring predictability tend to return to the illegal market to re-purchase products that they recognize. This gives an undue and unintended advantage to products sold on the illegal market because they do not have the same rigorous quality controls as the legal market.

The illegal market is likely larger than what is reported publicly because many people will not admit to purchasing cannabis from the illegal market and may not even know that they are purchasing from the illegal market.

In many U.S. states where cannabis has been legalized, there are less restrictions on packaging and labelling. As a result, U.S.-based brands have become popular in Canada because consumers are better able to recall and repurchase items that look familiar.¹

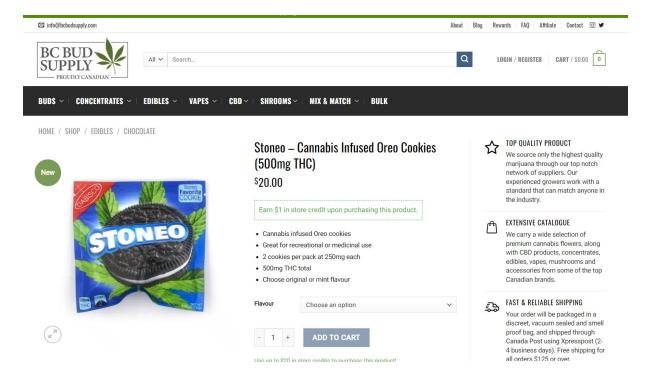
Since many consumers do not realize they are purchasing cannabis products from an illegal retailer (online or at a physical location), many illegal retailers continue to operate. A quick online search demonstrates that illegal online retailers continue to thrive and that they circumvent regulatory authorities. For example, in March 2020, the Edmonton police seized several domain names belonging to illegal online retailers.² The homepages of the seized domains displayed the following notice:



In response to the seizure of their sites, many illegal operators quickly relaunched under a new domain, as shown from the following screen capture taken soon after the earlier site was taken down. Many of these products, including the one in the image below, flagrantly infringe the trademarks and trade dress belonging to food companies, including companies that sell food that is popular among children, thereby posing a serious threat to the health and safety of young people.

¹ ADCANN. <u>American Cannabis Brands in Canada</u>.

² CTV News



Consumers are not the only group harmed by these activities. Licensed cannabis producers, who work diligently to comply with the rules, are adversely impacted by the illegal market where players do not operate under the same branding constraints or the same restrictions on communicating with consumers.

Consumers must have an easy way to recognize which cannabis brands are legal, and to distinguish between legal and illegal brands.

A compliance logo would serve as a visual cue to consumers that a retailer is licensed to operate legally.

Only cannabis producers with a license would be entitled to display the compliance logo. A logo would have optimum effect if Health Canada worked with the provinces to create a universal logo that applied to both federally and provincially regulated retailers.

The compliance logo could be linked to a government website. If an unregistered or illegal cannabis retailer used the logo, the regulator should have the power to levy significant fines and shut the retailer down.

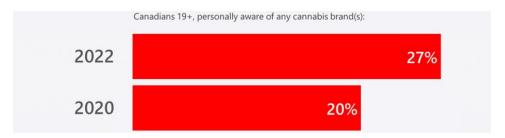
Enforcement would be a vital component of this process to deter illegal market operators and to encourage consumers to shift to the legal market.

Rationale for Recommendation 2: More Public Education and Clearer Branding

It is recommended that public education campaigns be expanded and that clearer branding be used to inform the public about the legal cannabis market, including the types of products available, where they can be purchased legally, the importance of buying from the legal market, and dangers of the illegal market.

Research indicates a need to accelerate awareness and education among consumers.

Only about 27% of Canadians over the age of 19 in 2022 are aware of any cannabis brands.³



If consumers are not familiar with brands, they are unable to distinguish between legal and illegal cannabis sellers.

The federal government has done important work educating consumers about harm reduction. These government-led public education initiatives should continue, and the content should be expanded to inform the public about the types of products available, the importance of buying from the legal market, and where products can be legally purchased.

If consumers do not have access to information about the legal market from reputable sources, illegal market operators fill the information void and continue to thrive.

The Ontario Cannabis Store has made some important strides through their 'Buy Legal' public education campaign. This campaign focuses on the benefits of purchasing legal cannabis from Ontario's authorized retailers versus unregulated products from the illegal market.

It is also incumbent on licensed producers/operators to inform the public. Consumers expect it. More than 70% of Canadians agree that it's important for cannabis brands to educate people on the effects and use of their products.⁴

Licensed producers play an important role in education and awareness. Better and more accessible information would improve safety. The regulatory approaches of product categories such as alcohol and pharmaceuticals are useful models for developing solutions to enhance education and awareness of legitimate brands and products. For example, the CRTC's code for broadcast advertising of alcoholic beverages is an effective tool.

³ Vividata SCC | Cannabis Study Fall 2022.

⁴ Ibid.

The two permitted types of promotions are "brand preference" and "informational promotions", which are only legal if they are communicated in prescribed ways. The current limited means of communicating with the public have made it difficult to educate consumers and combat the illicit market. To illustrate, research shows that over a third of consumers do not know the difference between CBD and THC.⁵

Restrictions on packaging and labelling and promotions should not interfere with the education of consumers about cannabis products and brands they can trust. One way to strengthen the legal market and meet the stated purposes of the Act is to allow licensed participants in the Canadian cannabis industry to communicate more effectively with consumers so consumers can make informed decisions about cannabis products and brands that meet legal requirements and are suited to their needs.

Improvements should be made to the current packaging and labelling rules to help consumers distinguish between online and in-store brands. The current rules make it extremely difficult for people to recall which brands worked well for them in the past and therefore to make informed choices based on their personal experiences. In the absence of brand awareness, consumers are making purchase decisions based largely on price or THC content. Approximately 40% of Canadians agree that, when consuming cannabis/cannabis-infused products, they are not sure what dosage is safe or legal. Increased awareness and education will help consumers identify the products that suit their needs, so they are using cannabis products responsibly. This would support the Act's purpose of protecting public health.

Given the challenges consumers face in recalling products that they have used previously, they rely heavily on sales associates in retail stores. While many sales associates are knowledgeable about a range of brands and products available for sale in retail locations, they cannot help an individual identify their personal history with a particular brand or product. Moreover, sales associates are not present in the online retail environment, where many consumers feel more comfortable purchasing cannabis products.⁶

Giving licensed producers greater ability to establish brand recognition by easing some restrictions concerning brand elements on packaging and labelling would also help consumers recognize legal brands, and would support the migration from the illegal to the legal market.

Rationale for Recommendation 3: Third-party review of advertisements

It is recommended that a third-party reviewer be established for cannabis advertisements, similar to beverage-alcohol and non-prescription drugs, to ensure that brands are complying with the letter and intent of the law.

Creating a third-party reviewer process to review cannabis ads would help legal brands comply with laws, regulations and industry standards and enhance the legal market. This would also create additional barriers/challenges for the illegal market and provide a vehicle for consumer complaints.

⁵ Ibid.

⁶ Ibid.

The goal is to educate consumers and enable them to make informed choices about cannabis products.

Closing

Thank you for the opportunity to provide our comments.

For any questions regarding CMA or its response to this consultation please contact:

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About the Canadian Marketing Association

The CMA's purpose is to embolden Canadian marketers to make a powerful impact on business in Canada. We provide opportunities for our members from coast to coast to develop professionally, to contribute to marketing thought leadership, to build strong networks, and to strengthen the regulatory climate for business success. Our Chartered Marketer (CM) designation signifies that recipients are highly qualified and up to date with best practices, as reflected in the Canadian Marketing Code of Ethics and Standards. We represent virtually all of Canada's major business sectors, and all marketing disciplines, channels and technologies. Our Consumer Centre helps Canadians better understand their rights and obligations.