
Kluwer Trademark Blog

Psychedelics – Tips on entering the New Trademark Frontier in Canada

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By Janice Bereskin, Toba Cooper and Luca Manfredi.

Barely five years after Canada’s “green rush”, interest in psychedelics for both medical and recreational use has increased dramatically. According to current estimates, the industry will grow at double-digit annual rates between now and 2027. Trademark practitioners expect a repeat of the cannabis trademark rush, but this time in association with medical and recreational psychedelic goods and services such as therapy, mushrooms and psilocybin-infused foods and beverages: GROOVY.

The following tips are important in Canada and abroad.

Achieving Brand Success in an Emerging Market

When it comes to getting ahead in an emerging market there is no time like the present, particularly in relation to filing a trademark application. A timely filed trademark application provides the most cost-effective and efficient tool for defending a brand. Early filers come out ahead of the competition as they are met with a less crowded register and therefore increased chances of securing rights. The lesson, particularly in Canada where use is not required to secure registration – don’t delay – file away!

Setting your application up for success

Skilled local counsel with knowledge of the industry can help devise a tactful and thoughtful filing strategy to avoid objections, opposition, or an expungement proceeding once registration is achieved.

Will my Application for a Psychedelic-Related Mark Pass Muster?

In Canada, trademark applications face technical and/or substantive objections from the Trademarks Office at least 65% of the time. Applicants in the psychedelic field should expect and prepare and expect this eventuality on at least the following fronts:

1. Distinctiveness – beware the use of a common industry term rather than a unique, suggestive, or ideally, a coined brand. Many cannabis applications fell into this pitfall.
2. Confusion – The more trademarks that are in use and on the register the harder it is to avoid a

confusion objection. Execution of a proper trademark search can help limit this likelihood (as can early filing).

3. Labelling – It is prudent to check that marks of interest can pass muster both at CIPO and with a potential regulator, likely Health Canada.

Avoiding Opposition

Once an application has passed examination and been advertised an interested third party could interfere with registration by opposing it. Oppositions are often costly to defend and can delay or block registration of a trademark. Remember that while not entirely avoidable a comprehensive search of the Register and of the marketplace prior to filing can reduce the risk of an opposition.

Takeaways

Proactivity in filing trademarks related to psychedelic goods and services has very few downsides, especially in Canada where registration may take years. Early filers are more likely to obtain broader protection and meet legalization with a full suite of IP enforcement tools at their disposal to fend off imitators and competitors joining the rush. Opposition of course remains a threat to all psychedelics-related applications and registrations, owing to the current illegality of most relevant goods and services. The key lesson here? Get strategic advice by retaining expert IP counsel.

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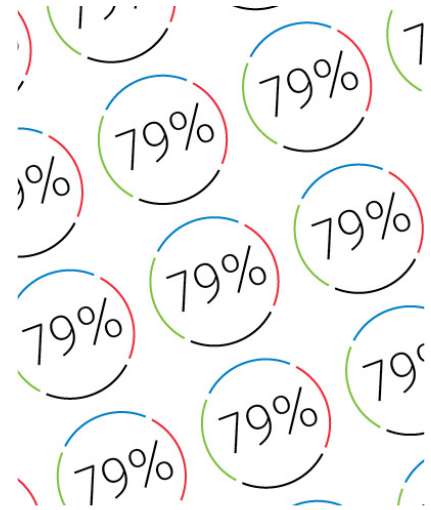
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