

# Frequently asked questions regarding cannabis promotional materials

OCT 25, 2018 6 MIN READ

## Related Expertise

- [Advertising and Marketing](#)
- [Cannabis](#)
- [Capital Markets](#)
- [Corporate and Commercial Disputes](#)
- [Corporate Governance](#)
- [Financial Services](#)
- [Health](#)
- [Indigenous](#)
- [Mergers and Acquisitions](#)
- [Private Equity and Investment Fund Disputes](#)
- [Product Liability](#)
- [Retail and Consumer Products](#)

Authors: [Michael Watts](#), [Susan Newell](#), [Marty Putyra](#)

Many licensed producers are curious about how they can promote their product and their brand now that the *Cannabis Act* is in force. When preparing any materials that will be provided to registered clients, potential consumers or health care practitioners, we suggest licensed producers ensure they are familiar with the legislative environment applicable to promotional materials.

The *Cannabis Act* sets out broad prohibitions on the promotion of cannabis at a federal level. In addition, provincial legislation may add another layer of regulation, such as the prohibition on inducements to increase the sale of a particular type of cannabis or the restrictions on the promotion of vapour products more generally.

## What does the term “promote” mean?

The *Cannabis Act* defines the term “promote” very broadly and it means, in respect of a thing or service, to make, for the purpose of selling the thing or service, a representation — other than a representation on a package or label — about the thing or service by any means, whether directly or indirectly, that is likely to influence and shape attitudes, beliefs and behaviours about the thing or service.

Subject to certain limited exceptions, it is prohibited to promote cannabis or a cannabis accessory or any service related to cannabis **including by:**

- communicating information about price or distribution;
- doing so in a manner that there are reasonable grounds to believe could be appealing to young persons;
- means of a testimonial or endorsement, however displayed or communicated;
- depiction of a person, character or animal, whether real or fictional; or
- presenting it or any of its brand elements in a manner that associates it or the brand element with, or evokes a positive or negative emotion about or image of, a way of life such as one that includes glamour, recreation, excitement, vitality, risk or daring.

## What else is prohibited?

The following activities are also prohibited under the *Cannabis Act*:

- promotion using foreign media;
- sponsorship of a person, entity, event, activity or facility using or displaying a brand element of cannabis or the name of a licensed producer or a person that sells or distributes a cannabis accessory or provides a service related to cannabis; and
- displaying, on a facility used for a sports or cultural event or activity, a brand element of cannabis, or the name of a licensed producer, or a person that sells or distributes a cannabis accessory or provides a service related to cannabis.

## Who do the prohibitions regarding promotion apply to?

In general, the prohibitions apply to:

- persons who produce, sell or distribute cannabis;
- persons who sell cannabis accessories;
- persons who provide cannabis-related services; and
- persons who provide services to persons who produce, sell or distribute cannabis, cannabis accessories or cannabis-related services (e.g., media organizations).

## What are the exceptions to the general prohibition?

### A. Informational promotion or brand-preference promotion

The exceptions to these restrictions are limited to informational promotion or brand preference promotion if the promotion is:

- in a communication that is addressed and sent to an individual who is 18 years of age or older and identified by name;
- in a place where young persons are not permitted by law;
- communicated by means of telecommunication, where the person responsible for the content of the promotion has taken reasonable steps to ensure that the promotion cannot be accessed by a young person; or
- in a prescribed place or in a prescribed manner.

An “informational promotion” means a promotion by which factual information is provided to the consumer about:

- cannabis or its characteristics;

- a cannabis accessory or its characteristics;
- a service related to cannabis; or
- the availability or price of cannabis, a cannabis accessory or a service related to cannabis.

A “brand-preference promotion” means promotion of cannabis by means of its brand characteristics or promotion of a service related to cannabis by means of the brand characteristics of the service.

## B. Point of sale

Further, a person that is authorized to sell cannabis may promote it at the point of sale, if that promotion indicates only the availability of cannabis, the price or the availability and price. For a licensed producer, the place of sale would seem to be its website to registered clients or, subject to reasonable gating measures to ensure entrants are over 18 years of age, members of the public.

## C. Brand element

A brand element may be displayed on a thing that is not cannabis or a cannabis accessory, other than a thing: (i) that is associated with young persons; (ii) that there are reasonable grounds to believe could be appealing to young persons; or (iii) that is associated with a way of life such as one that includes glamour, recreation, excitement, vitality, risk or daring.

## D. General exceptions

The promotional prohibitions do not apply to:

- a literary, dramatic, musical, cinematographic, scientific, educational or artistic work, production or performance that uses or depicts cannabis, a cannabis accessory or a service related to cannabis, or a brand element of any of those things, whatever the mode or form of its expression, if no consideration is given, directly or indirectly, for that use or depiction in the work, production or performance;
- a report, commentary or opinion in respect of cannabis, a cannabis accessory or a service related to cannabis or a brand element of any of those things, if no consideration is given, directly or indirectly, for the reference to the cannabis, cannabis accessory, service or brand element in that report, commentary or opinion; or
- to specific categories of intra-industry promotion, provided that the promotion is not directed, either directly or indirectly, at consumers.

## How can information be disseminated to young persons who are medical users?

A holder of a licence for sale is authorized to display a cannabis product, or a package or label of a cannabis product, in a manner that may result in the cannabis product, package or label being seen by a young person if the holder takes reasonable steps to ensure that such

young person is authorized to possess medical cannabis. A similar exception applies to informational promotion that is communicated by means of telecommunication, if the licence holder has taken reasonable steps to ensure that the promotion cannot be accessed by a young person other than a young person authorized to possess medical cannabis.

## Can promotional or other materials include health claims?

No health claims, treatment claims, prevention claims or other drug type claims may be included in any materials, unless the promotional materials relate to a prescription drug containing cannabis that has been approved by Health Canada.

## What should materials disclose?

Even where an exception permits promotion, it is prohibited to promote cannabis in a manner that is false, misleading or deceptive or that is likely to create an erroneous impression regarding its characteristics, value, quantity, composition, strength, concentration, potency, purity, quality, merit, safety, health effects or health risks. In order to comply with the foregoing requirements, all permitted materials must present the facts regarding the product in an objective and balanced manner.

## What are the penalties for non-compliance?

Failing to comply with the prohibitions on promotion can lead to strict penalties. For example, for a first offence resulting in summary conviction, punishment can be a fine of up to \$250,000 and/or up to six months imprisonment. For subsequent instances of such offences, this fine can be increased up to \$500,000 and/or imprisonment of up to 18 months.

An indictable offence contravening the *Cannabis Act*, punishment can be a maximum penalty of up to \$5,000,000 and/or imprisonment for up to three years. Corporate directors and officers who are found to be party to an offence may be found personally liable and subject to the same penalties even if the company is not prosecuted for the offence.