



Licensing International

Webinar: A Status Report on Cannabis and Branding in the U.S.

Bryan Bergman and David
Schnider

Partners, Nolan Heimann LLP
April 22,
2020

WWW.MEDICALMARIJUANA.COM

WWW.MEDICALMARIJUANA.COM


APOLOGIES TO M.C. ESCHER

REISS

Current Regulatory Makeup


- Federal
- State
- Local





Cannabis Under Federal Law

- Cannabis is still a Schedule I drug
 - 33 States: Medical Cannabis Program
 - 11 States: Adult Use Cannabis Program
 - 14 States: Access to CBD (limited THC content)
- MORE Act
 - Would decriminalize & deschedule cannabis
 - Passed House Judiciary Committee Nov. 20, 2019



Cannabis Under Federal Law

- Congress enacted the Comprehensive Drug Abuse Prevention and Control Act of 1970
 - 21 U.S.C.A section 801 et seq.
- The act classified controlled substances according to their potential for abuse
- The Act defines offenses involving the manufacture, sale, distribution, and possession with intent to distribute these substances.
- Provision is made for registered practitioners to dispense controlled substances for approved purposes

	Schedule I	Schedule II	Schedule III	Schedule IV	Schedule V
Potential for abuse	The drug or other substance has a high potential for abuse	The drug or other substance has a high potential for abuse	The drug or other substance has a potential for abuse less than the drugs or other substances in schedules I and II	The drug or other substance has a low potential for abuse relative to the drugs or other substances in schedule III	The drug or other substance has a low potential for abuse relative to the drugs or other substances in schedule IV
Medical use	The drug or other substance has no currently accepted medical use in treatment in the United States	The drug or other substance has a currently accepted medical use in treatment in the United States or a currently accepted medical use with severe restrictions	The drug or other substance has a currently accepted medical use in treatment in the United States	The drug or other substance has a currently accepted medical use in treatment in the United States	The drug or other substance has a currently accepted medical use in treatment in the United States
Consequences of abuse	There is a lack of accepted safety for use of the drug or other substance under medical supervision	Abuse of the drug or other substance may lead to severe psychological or physical dependence	Abuse of the drug or other substance may lead to moderate or low physical dependence or high psychological dependence	Abuse of the drug or other substance may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in schedule III	Abuse of the drug or other substance may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in schedule IV

Cannabis is Still a Schedule I Substance



Federal Updates

- 2013 Cole Memorandum
- Rohrabacher Farr Amendment (aka Rohrabacher Blumenauer Amendment)
- COVID 19 and Cannabis
 - CARES Act
 - Coronavirus Aid, Relief, and Economic Security Act
 - Paycheck Protection Program
 - Disaster Loans
 - Different for Hemp and Cannabis businesses
 - Stimulus won't help cannabis businesses due to Schedule I status/280-e
 - Families First Coronavirus Response Act
 - Department of Labor Q&A [[link](#)]



Federal Updates

- Safe Banking Act
 - H.R. 1595; full title Secure and Fair Enforcement (SAFE)
 - Prohibits federal regulators from punishing financial institutions for the sole reason that they choose to provide such services to cannabis companies, their owners and their employees.
 - A depository institution shall not, under federal law, be liable or subject to forfeiture for providing a loan or other financial services to a legitimate marijuana-related business.



California Disclosures

- Definition of Owner:
 - Aggregate ownership interest of 20% or more in the applicant, unless the interest is solely a security, lien, or encumbrance,
 - The chief executive officer of a nonprofit or other entity (may be expanded);
 - A member of the board of directors for a nonprofit; or
 - An individual participating in the direction, control, or management of the applicant.
- All “owners” must go through rigorous background check
 - Identifying information (name, title, date, and place of birth; Social Security number or individual taxpayer identification number; government issued identification;



California Disclosures

- When an entity has a financial interest in a commercial cannabis business, then all individuals who are owners of that entity shall be considered financial interest holders of the commercial cannabis business.
- All other financial interests and source of funds in applicant must be disclosed on license application
 - Name of source, amount, and location of all funds available to business even if amount not enough to meet “Owner” definition threshold
 - Investments
 - Gifts
 - Loans
- All other financial interests and source of funds in applicant must be disclosed on license application
- Depending on licensing agency applying to, identifying information such as name, birthdate, driver’s license, social security number or EIN may need to be disclosed



The Importance of Branding

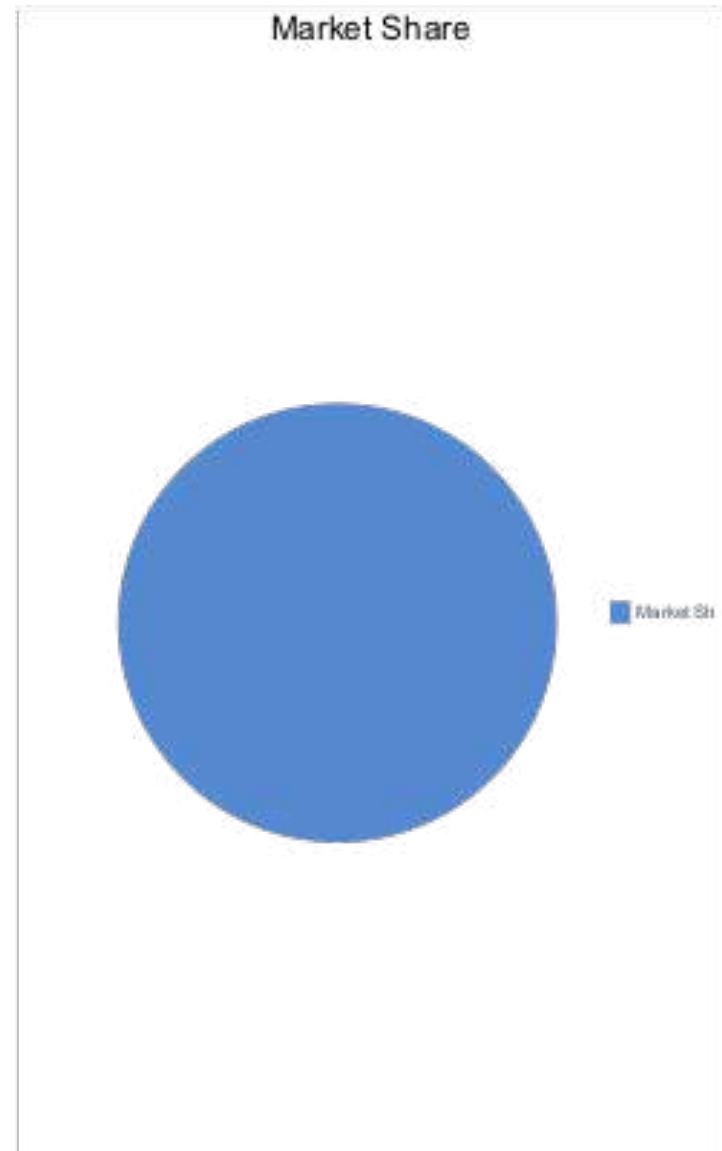
"Branding will be the difference between success and failure in the emerging legal cannabis business."

Evan Horowitz, Co-Founder and CEO of WeedClub.com



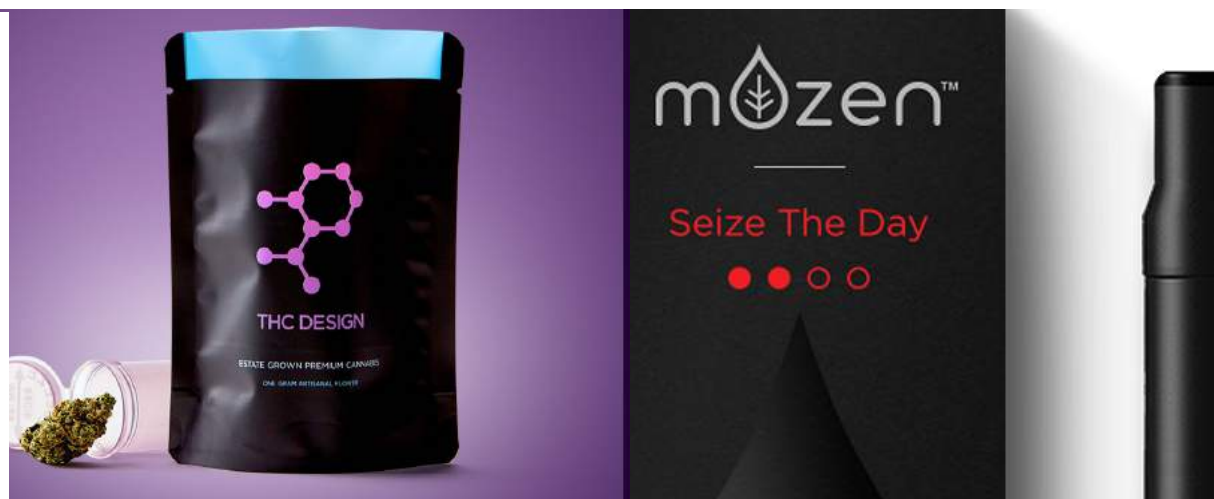
Demographics

- In 2018, first time cannabis users increased by 140%
- Baby Boomers were the fastest growing segment increasing by over 25%
- Market remains predominantly male, but women are entering the market at a faster rate
- CBD use is growing quickly





Cannabis Brands





weedmaps®



Federal Registration

- Cannabis Prohibited
- CBD Topicals Allowed
- Related Services Allowed
- Related Goods Allowed
- Ancillary Goods Allowed

State Registration

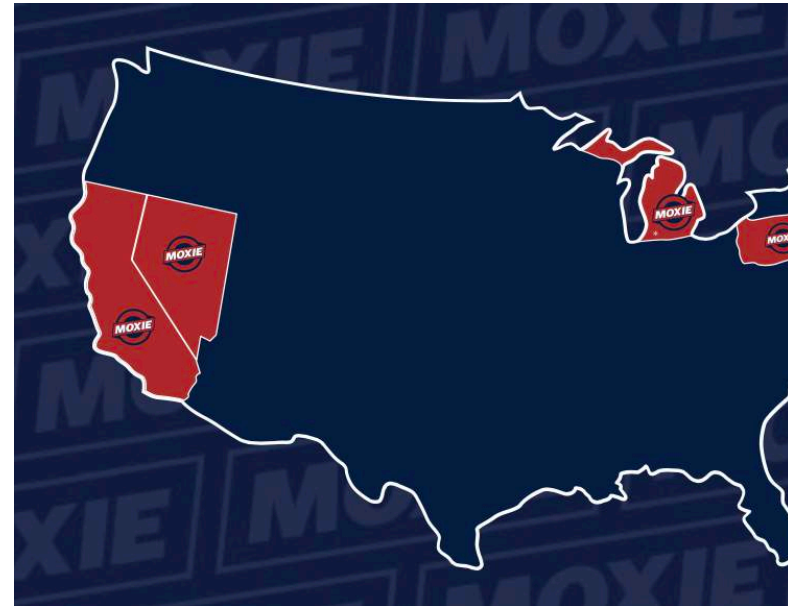
- Most states allow registration
- Must show use in commerce
- Rights limited to within the state





Licensing

- Lack of rights within licensee's state
- Ownership disclosure requirements
- Unique deal terms



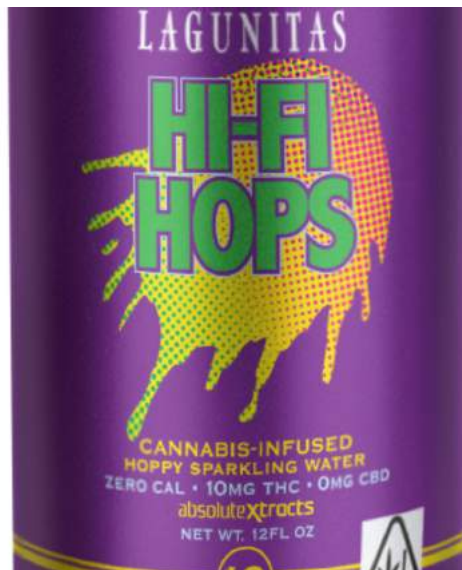
Celebrity Licensing





Celebrity Licensing Challenges

- No Product Consistency
- No Marketing
- No Banking
- Limited Distribution
- Limited Revenue
- Higher Retail Price



Co-Branding

Consumer Brand Licensing

- Tilray reportedly paid over \$100 million up front to distribute consumer cannabis products in ABG's brand portfolio.





Outbound Licensing and Promotional Partnerships

Beanstalk is the exclusive agent of Future State Brands' portfolio including Hempathy and Ceeby Dee's.



Grenko Science is building its brand through lifestyle partnerships sympathetic brands



Takeaways

David Schnider

dschnider@nolanheimann.com

Bryan Bergman

bbergman@nolanheimann.com