
December 2020 CBD Legal Update

The Agriculture Improvement Act of 2018 (the “2018 Farm Bill”) lifted many of the federal legal barriers to producing and selling cannabidiol (“CBD”) by removing “hemp” from the definition of “marijuana” under the Controlled Substances Act. The hemp plant, a cousin of the marijuana plant, is a significant source of CBD but contains very little of the tetrahydrocannabinol (“THC”) compound responsible for marijuana’s psychoactive effects. However, while the 2018 Farm Bill paved the way for the manufacture and sale of legal CBD products by removing the threat of potential criminal drug enforcement efforts, various federal agencies, including the Food and Drug Administration and Federal Trade Commission (“FTC”), continue to strictly regulate the sale and marketing of CBD.

On December 17, 2020, the FTC announced a self-proclaimed law enforcement crackdown, known as “Operation CBDceit,” involving settlements with six sellers using deceptive claims in the marketing of their CBD products. The FTC intervened in and imposed monetary fines for the marketing of gummies, lozenges, oils, balms, and other CBD products with unsubstantiated claims about their ability to treat cancer, heart disease, hypertension, Alzheimer’s disease, and other serious health conditions. The FTC imposed fines on five targeted sellers and otherwise required all such sellers to stop making prevention, treatment or safety claims about their CBD products without human clinical testing to substantiate the claims and to notify consumers about the settlements.

Sellers of CBD products should note the FTC’s crackdown as a sign of heightened attention on the CBD market. In several of the settlements, corporate officers, not just business entities, were named as respondents. More settlements are likely forthcoming, and careless advertising can land a business and its principals in hot water.

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The above alert was written by Partner [Jeffrey Johnson](#) and Vedad Tabich. Jeffrey leads the firm’s Cannabis practice and is a member of Pryor Cashman’s Intellectual Property, Corporate, and Technology Groups. Vedad is a member of Pryor Cashman’s Corporate Group.