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## **Trademark Registration Sees a New High: Registration for trademarks for goods derived from “hemp” now allowed under USPTO rules**



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Following the enactment of the 2018 Farm Bill [see [related article](#)!], the United States Patent and Trademark Office (USPTO) just this morning released a new [Trademark Examination Guide](#) for marks covering cannabis and cannabis-related goods and services. Specifically, the Examination Guide addresses the availability of federal registration for products containing hemp-derived CBD, which were recently removed from the list of controlled substances under the Controlled Substances Act.

Some key takeaways are set forth below, and we recommend reading the full Examination Guide for more context.

### **Goods/Services Now Registrable:**

- Products derived from hemp, i.e., contains less than 0.3% THC (except as indicated below\*); and
- Services involving cannabis derived from hemp, i.e., contains less than 0.3% THC.

The new trademark regulations apply to applications **filed on or after December 20, 2018** for goods that include cannabis or cannabidiol (CBD) that are *derived from hemp* and do not violate the Federal Food Drug and Cosmetic Act (FDCA). When filing an application for these goods, applicants should specify that the goods are derived from hemp and contain less than 0.3% THC.

Any trademark applications for these goods/services filed prior to December 20, 2018 will be initially refused registration, because applicants did not have a valid basis for registration at the time of filing. *However*, the USPTO will provide applicants with the option to amend the filing date to December 20, 2018.

### **Goods/Services Still Not Registrable:**

- Products containing cannabis and CBD derived from marijuana (i.e., Cannabis sativa L. with more than 0.3% THC on a dry-weight basis);
- \*Foods, beverages, dietary supplements, or pet treats containing CBD – even if derived from hemp; and
- Services that include cultivation or production of cannabis that is hemp within the meaning of the 2018 Farm Bill will be investigated further through inquiries issued by the PTO.

As Cannabis and CBD derived from marijuana (i.e., Cannabis sativa L. with more than 0.3% THC on a dry-weight basis) still violate federal law, any trademark applications including these goods will be refused registration regardless of the filing date.

Additionally, as the 2018 Farm Bill explicitly preserves the U.S. Food and Drug Administration's (FDA) authority to regulate products containing cannabis or cannabis-derived compounds under the FDCA, not all CBD or hemp-derived goods are lawful (see [related article](#)). Products undergoing clinical investigation with the FDA, that contain cannabis or cannabis derived-compounds, and are not approved by the FDA, violate the FDCA. Thus, even if derived from hemp, any applications for registration of marks for foods, beverages, dietary supplements, or pet treats containing CBD that cannot legally travel in interstate commerce will be refused registration under the FDCA.

For further updates on this topic, as well as analysis on other trademark and brand protection news, we invite you to subscribe to our MarkIt to Market® newsletter by clicking [here](#).

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[1] [Are Cosmetic Products Containing Hemp-Derived CBD On a Faster Tract To Being Lawful?](#)

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