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A Budding Opportunity for Federal Marijuana Trademark Registrations

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by Evan Everist



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State-licensed medical marijuana operators may now have a path to federal trademark registration due to recent changes in federal marijuana policy.

For years, marijuana businesses have faced a significant obstacle when seeking federal trademark protection: marijuana was illegal under federal law, even when lawful under state law. Because federal trademark registration generally requires lawful use in commerce, the USPTO refused registration for marks covering marijuana and marijuana-related goods and services that could violate the federal Controlled Substances Act. The principal exception came with the 2018 Farm Bill, which opened the door to registration for certain hemp-derived goods, although other federal laws (including the Food, Drug, and Cosmetic Act), continued to present obstacles.

The landscape started to shift in April 2026, when the Department of Justice reclassified

marijuana products subject to qualifying state medical-marijuana licenses and FDA-approved marijuana products from Schedule I to Schedule III. That distinction is significant. Schedule I substances generally cannot be lawfully manufactured, distributed, or dispensed for any reason, while Schedule III substances may have accepted medical uses and lawfully handled by federally registered entities. The new federal framework also established a process for qualifying state-licensed marijuana businesses to obtain DEA registrations permitting federally lawful manufacture, distribution, or dispensing of medical marijuana.

On October 30, the Department of Justice announced that the DEA was moving forward with the first 900-plus federal registrations for medical-marijuana dispensaries in seven states, with additional registrations to follow. The DEA is also reviewing applications from medical-marijuana manufacturers and distributors.

The trademark implications could be significant for medical-marijuana businesses operating under these federal registrations. The principal barrier to federal registration of marijuana trademarks has been the USPTO's "lawful use" requirement. Because the underlying manufacture, distribution, and dispensing of medical marijuana is now federally lawful pursuant to a DEA registration, the historical basis for refusing trademark registration on federal-illegality grounds should be substantially weakened, if not eliminated, for goods and services within the scope of that authorization.

This does not mean that recreational marijuana trademarks are suddenly federally registrable. Non-medical marijuana remains outside the new federal framework. Nor does a DEA registration necessarily resolve every potential basis for refusal. But for medical-marijuana businesses operating under a DEA registration, there is now a meaningful argument that the lawful-use barrier that has historically foreclosed federal trademark protection no longer applies.

We will be watching the USPTO register for developments in this space.