

CMA Guide:

Cannabis Marketing

This document provides general information. It does not constitute legal advice.

Those with specific questions about the legislation and regulations should seek independent legal advice.

As this is an evolving area, this Guide will be updated to reflect regulatory developments, further clarity from regulators and precedent that is established over time.

This Guide is current as of November 25, 2019.

A recognized leader in industry self-regulation, the Canadian Marketing Association has a Code of Ethics and Standards of Practice, and series of guides, that establish best practices for marketers in Canada and assist members with understanding and navigating regulatory frameworks.

Table of Contents

PURPOSE AND BACKGROUND.....	3
INTRODUCTION.....	4
PROMOTION ACTIVITIES.....	6
Physical Mail / Direct Mail.....	6
Website.....	6
Digital Advertising.....	6
Promotional Items.....	7
Brand Element Advertising.....	7
Out of Home Advertising in Minors Prohibited Locations.....	8
Event Marketing.....	8
Print Media.....	8
Cannabis Industry Trade Shows	8
Non-Promotional Corporate Marketing and Communications	9
Printed Collateral.....	9
Point of Sale Materials / Graphics in Cannabis Stores.....	9
E-mail Marketing.....	9
UNCLEAR PROMOTION ACTIVITIES	9
Social Media Platforms	10
Reasonable Steps in Telecommunications	10
NON-PERMISSIBLE ACTIVITIES	10
Appeal to Young Persons	10
Lifestyle Advertising	10
RELEVANT DEFINITIONS	10
ADDITIONAL CONSIDERATIONS	11
Data Privacy	11
Documentation of Marketing Practices	11
RESOURCES	12

PURPOSE AND BACKGROUND

This Cannabis Marketing Guide provides an overview of permissible and prohibited marketing activities contained in the federal [Cannabis Act and regulations](#), effective October 17, 2018, and the amended regulations effective October 17, 2019. As well, it identifies aspects of the legislation that are unclear, and lists relevant policies to be considered as marketers endeavour to promote cannabis and cannabis-related products in a compliant manner.

This Guide is not intended to take the place of legal advice. Rather, it is intended to provide marketers with information and insights to facilitate compliance with the legislation and best practices in relation to this relatively new business sector. It is relevant not only for licensed producers but also manufacturers of cannabis accessories, providers of services related to the cannabis industry and suppliers, as it covers activities such as signage/billboards, packaging, and the sale of non-cannabis items such as promotional items. Whenever the Act is not clear, we encourage our members to seek legal advice.

Marketing restrictions on cannabis are **similar but not identical to** those faced by other product categories, particularly tobacco. It is important for marketers to understand these differences.

The CMA and its members recognize that maintaining high standards of practice is a fundamental responsibility to the public and the foundation for a successful and strong business community in Canada.

The CMA is the leader in providing legislative and regulatory guidelines and articulating best practices for the marketing profession in Canada. As the self-regulatory body for the marketing profession in Canada, we provide educational resources to maintain and strengthen the professionalism and integrity of the marketing community. Our [Code of Ethics and Standards of Practice](#), which is widely recognized as a benchmark for effective self-regulation, is mandatory for members and regularly updated.

As this is an evolving area, this Guide is frequently updated to reflect regulatory developments, further clarity from regulators and precedent that is established over time. For more information, contact the [Public Affairs team](#) at CMA.

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Those with specific questions about the legislation and regulations should seek independent legal advice.

INTRODUCTION

The *Cannabis Act* was crafted to achieve specific stated purposes, centered around the protection of public health and public safety. These purposes can be summarized as:

- ❑ Protecting young persons' health by restricting their access to cannabis and exposure to promotional messaging.
- ❑ Protect young persons and others from inducements to use cannabis.
- ❑ Displacing the illicit market by offering adult consumers legal access to products that are regulated and quality controlled.
- ❑ Enhance public awareness of the health risks associated with cannabis use.

As such, the Act: “prohibits any promotion, packaging and labelling of cannabis that could be appealing to young persons or encourage its consumption, while allowing consumers to have access to information with which they can make informed decisions about the consumption of cannabis.”

Promotion of cannabis is regulated by sections 16 to 24 of the [Cannabis Act](#). These sections govern the “promotion” for cannabis and cannabis related accessories and services in Canada. The word “promote” is broadly defined in the Cannabis Act as follows: “In respect of a thing or service, means 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.”

The promotion section of the [Cannabis Act](#) is modelled after the [Tobacco and Vaping Products Act](#) in that it begins by prohibiting all promotion activities, and then provides exceptions to the blanket prohibition. **All activities of marketers in Canada must work within an exception provided in the Act.**

General prohibitions include:

- ❑ Communicating information about its price or distribution.
- ❑ Appealing to young persons.
- ❑ Testimonial or endorsement.
- ❑ Depiction of a person, character, or animal, whether real or fictional.
- ❑ Evokes a positive or negative emotion or ‘way of life’ such as one that includes glamour, recreation, excitement, vitality, risk or daring.
- ❑ Promotion that is false, misleading or deceptive or that is likely to create an erroneous impression about its characteristics, value, quantity, composition, construction, design, etc.
- ❑ Publish, broadcast or otherwise disseminate prohibited promotions.
- ❑ Promote using foreign media.
- ❑ Display brand elements or names on a facility used for a sports or cultural event or activity.
- ❑ Engage in inducements (example: buy one get one free).

Even permitted promotional activities must meet certain conditions, as indicated in the next section.

Health Canada does not review or pre-approve any communications, materials and activities before they are published, distributed or launched, nor does Health Canada provide advice on legal matters. To date, the federal government has not issued additional guidance; however, the CMA meets frequently with Health Canada officials and where possible, our Guide reflects additional insights from these conversations.

When enforcing the prohibitions on promotion in the [Cannabis Act](#), Health Canada considers whether activities are in compliance on a case-by-case basis based on a range of factors including, but not limited to, the purpose of any promotion, its content, its context, and its intended audience. Therefore, it is recommended that companies consult with a lawyer before proceeding with activities where conditions apply. Health Canada is expected to publish its final draft guidance on the “Distinction Between Promotional and Non-promotional Messages and Activities for Health Products” in 2020.

Note that additional provincial and municipal restrictions may apply. A list of provincial regulators is provided in the Resources section of this Guide.

NON-APPLICATION OF THE PROMOTION SECTIONS OF THE ACT

Section 16 of the *Cannabis Act* lists certain activities that are not subject to the promotion restrictions set out in Sections 17 to 24. Such activities include: scientific, educational or artistic work and/or 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, provided that no consideration is given, directly or indirectly, for the use/reference to cannabis, a cannabis accessory, service or brand element. In this context, “consideration” does not necessarily mean financial payment.

The key is clearly whether any consideration is given for the use/reference to cannabis, a cannabis accessory, service or brand element, as if it is then it will be considered promotional and fall under the restrictions set out in Sections 17 to 24. If there is no consideration given for the use/reference to cannabis, a cannabis accessory, service or brand element, an assessment needs to be made as to whether it falls under one of the activities set out in Section 16, in which case it will not be subject to the promotion restrictions set out in Sections 17 to 24.

In conversation, Health Canada has suggested that the intent of the party participating in the activity will likely be a key consideration in determining whether it falls under one of the exempt categories in Section 16. For example, was the intent for an article to educate the reader or was it intended to be an opportunity to promote the brand of the author? If the Chief Medical Officer of a licensed producer of cannabis was quoted extensively in a published article about the medical benefits of CBD, but no consideration was given to the publication, this article would fall under Section 16, even though the licensed producer's brand element has been used in the article.

It is important to note that section 16 sets out exceptions to sections 17 and 24 for intra-industry promotions i.e. promotions between licensed producers.

PROMOTION ACTIVITIES

Two of the permitted means of promotion are “Brand Preference Promotions” and “Informational Promotions”, defined below. In short, these are promotions that convey factual information to a consumer. They are legal only if they are disseminated in prescribed ways including:

- The communication is addressed and sent to an individual who is 18 years of age or older and is identified by name;
- Delivered in a place where young persons are not permitted by law (provided the promotion is not audible or visible from outside the place – section 104.17 of the Amended Regulations); and
- Communicated by means of a 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.

Only those persons authorized to produce, sell and distribute cannabis may undertake Brand Preference and Informational Promotions, in respect of “cannabis”.

Physical Mail / Direct Mail

Printed direct mail marketing activities are permitted where the mailer is addressed by name to an adult within an envelope if the content of the mailer includes Brand Preference or Informational Promotion.

Examples: Post-card type mailer, printed brochure or collateral sent by mail or courier
Cannabis Act References: 17(2)(a), 17(3)(a), 17(6)

Website

It is permissible to communicate on websites, provided “reasonable steps” have been taken to ensure the website cannot be accessed by a young person. It is unclear what constitutes “reasonable steps” and therefore marketers should proceed with caution and consult legal counsel.

The content of the website may include Brand Elements, Brand Preference and Informational Promotion. Private e-commerce websites are presently only permitted in the provinces of Saskatchewan and Manitoba.

Examples: Corporate website, retailer website or cannabis brand website
Cannabis Act References: 17(2)(c), 17(3)(c)

Digital Advertising

Digital display and text advertising is permissible provided “reasonable steps” have been taken to ensure the content cannot be accessed by a young person. It is unclear what constitutes “reasonable steps” and therefore marketers should proceed with caution and consult legal counsel. It should be noted that many digital advertising platforms do not accept advertising from the cannabis industry. Others, such as Twitter, do accept such advertising and have specific policies regarding use of their respective platforms.

Examples: Display ads on websites, native content advertising
Cannabis Act Reference: 17(2)(c)

Promotional Items on “things” (i.e., merchandising)

Promotion activities on “things” that are not cannabis or cannabis accessories are limited to Brand Elements. The promotional item must not be associated with or appealing to young people (e.g., a plush toy) and must not associate with a way of life (e.g., a snowboard).

On a “thing”:

- The surface area of the brand element must be smaller than or equal to 300 cm² (approx. 17 cm x 17 cm);
- The height of any letter, character or number in the brand element must be smaller than or equal to 4 cm;
- The same brand element cannot be displayed more than once; and
- You cannot display more than one brand element.

The “thing” cannot be in a school, public playground, a daycare facility or any other public place frequented mainly by young persons or that is visible from such a place.

The Brand Element limitations do not apply in places where young persons are not permitted by law.

Examples: T-Shirts, hats, water bottles, keychain

Cannabis Act Reference: 17(6) and sections 104.18, 104.2 and 104.19 of the “Amended Regulations”

Brand Element Advertising

A plain reading of the Cannabis Act indicates that advertising solely with a Brand Element that does not depict a way of life and cannot be particularly associated with or appealing to young people may be a permissible activity. However, marketers should proceed with caution and consult legal counsel, especially since the Amended Regulations appear to reinforce that the Brand Element can only be on “things” and, if on signage, then only of a certain size and not near, or visible from, any location where young persons frequent. On “things”:

- The surface area of the brand element must be smaller than or equal to 300 cm² (approx. 17 cm x 17 cm);
- The height of any letter, character or number in the brand element must be smaller than or equal to 4 cm;
- The same brand element cannot be displayed more than once; and
- You cannot display more than one brand element.

The “thing” cannot be in a school, public playground, a daycare facility or any other public place frequented mainly by or visible mainly to young persons.

The above Brand Element limitations do not apply in places where young persons are not permitted by law.

Cannabis Act Reference: 17(6) and sections 104.18, 104.2 and 104.19 of the “Amended

Regulations”

Out of Home Advertising in Minors-Prohibited Locations

Places where minors are prohibited by law are primarily administered through provincial liquor licenses. Within areas where minors are prohibited, Brand Elements, Brand Preference and Information Promotion is permitted provided promotion is not audible or visible from outside the place where young persons are not permitted by law.

Example: Posters in minors prohibited bars, and other adult only venues

Cannabis Act References: 17(2)(b), 17(3)(b) and Section 104.17 of the Amended Regulations

Event Marketing

Marketing at events is allowed provided the event marketing takes place in a venue where young persons are prohibited by law, which are typically licensed venues administered through provincial liquor licenses. Brand Preference or Informational Promotion may not be viewable or audible from outside of these venues.

It is important to consider that event marketing should be structured as a services contract for space at an event and not in conjunction with the promotion or sponsorship of an event.

Example: Experiential marketing activation in a minors-prohibited beer garden at a music festival provided minors cannot see or hear the activation.

Cannabis Act Reference: 17(2)(b), 17(3)(b), 17(6), 21, 22 and section 104.17 of the Amended Regulations;

Print Media

A generally distributed magazine may only include advertisements that display Brand Elements. The magazine must not be particularly appealing to or widely read by young persons (e.g., ads in Teen Vogue would not be permitted). As with all promotions, marketers should proceed with caution and consult legal counsel.

However, it would be permissible for a magazine circulated through subscriptions where all subscribers are confirmed adults, and where the magazine is mailed directly to subscribers only, to include advertisements with Brand Preference and Informational Promotion.

Examples: Esquire Magazine, Today's Parent, Cannabis Industry Magazines

Cannabis Act Reference: 17(6), 17(2)(a)

Cannabis Industry Trade Shows

Intra-industry promotion activities may be permitted (i.e., industry trade shows and events), provided the promotion is between a person or company that sells or distributes cannabis or cannabis accessories. This exemption does not extend to direct or indirect promotion to consumers.

Examples: Lift&Co Trade Show, MJBiz Trade Show

Cannabis Act Reference: 16(c), 16(d)

Non-Promotional Corporate Marketing and Communications

The Cannabis Act applies to “promotions”. Those communications activities that are not directed at consumers and not made for the purpose of selling cannabis or cannabis accessories or cannabis related services or shaping attitudes, beliefs and behaviors about cannabis or cannabis accessories are included in these types of activities.

Examples: Recruitment advertising and promotions, shareholder reports, news releases
Cannabis Act Reference: 2(1) – definition of “promote”

Printed Collateral

Brochures and handouts may include Brand Elements, Informational Promotion and Brand Preference Promotion but these materials must be distributed in one of the prescribed means (i.e. provided directly to an adult by mail or in a venue where there is a law prohibiting access by young persons, such as a licensed cannabis shop or behind an age-gated website).

Examples: Brochure about a cannabis product, brochure about consumption methods
Cannabis Act References: 17(2)(a), 17(3)(a)

Point of Sale Materials / Graphics in Cannabis Stores

These materials must be located within a provincially licensed cannabis retail store (or online stores where permitted) and may include availability, price, Informational Promotion and Brand Preference Promotion. In limited circumstances, where cannabis retail stores are not minors-prohibited locations (eg: Nova Scotia), then only the promotion of availability and price is allowed. Local provincial and municipal laws may be even more restrictive than the federal Cannabis Act (e.g., Quebec).

Examples: Product-talker cards, cannabis accessory discount promotion at a register, posters within a cannabis store
Cannabis Act References: 17(4), 17(5), 17(2)(b), 17(3)(b)

E-Mail Marketing

Provided “reasonable steps” have been taken to ensure that the e-mail is not received by a minor, and that it is addressed by name and sent to an individual who is 18 years of age or older, e-mail marketing may include Brand Elements, Informational Promotion and Brand Preference Promotion.

Example: New Product Announcement E-Mail
Cannabis Act Reference: 17(2)(a), 17(2)(c), 17(3)(a) and 17(3)(c), 17(6)

UNCLEAR PROMOTION ACTIVITIES

Social Media Platforms

It is unclear whether the convention of a description on a social media page only requesting followers that are adults is a “reasonable step” to ensure the promotion cannot be accessed by an individual who is a young person. If reasonable steps are taken, then Brand Elements,

Informational Promotion and Brand Preference Promotion is allowable. If “reasonable steps” are not taken, then the promotion must be limited to a Brand Element and not associate with a way of life or young persons.

Examples: Facebook Page, Instagram Page, Twitter Page
Cannabis Act References: 17(2)(c), 17(6)

Reasonable Steps in Telecommunications

Promotions through telecommunications (online or over the phone) requires a marketer to have taken “reasonable steps to ensure the promotion cannot be accessed by a young person”. The Cannabis Act does not specifically define “reasonable steps” and marketers should rely on the advice of their legal counsel on this matter.

Cannabis Act Reference: 17(2)(c) and 17(3)(c)

NON-PERMISSIBLE ACTIVITIES

Non-permissible activities include marketing tactics where no exception is provided in the *Cannabis Act* or the activity is expressly prohibited. These include:

- ❑ Television advertising
- ❑ Radio advertising
- ❑ Promotion of a sponsorship to gain publicity
- ❑ Sports marketing associated with a way of life
- ❑ Naming of a sports or cultural facility, not including other facilities

Cannabis Act References: 17(1), 21, 22, 23

Appeal to Young Persons

With respect to the *Tobacco Act*, the Supreme Court of Canada clarified that “appealing to young persons” means that an advertisement is “particularly attractive and of interest to young persons, as distinguished from the general population.”

Reference: Canada (Attorney General) v. JTI-Macdonald Corp., [2007] 2 S.C.R. 610, 2007 SCC 30 [JTI-Macdonald], para 89.

Lifestyle Advertising

The Supreme Court of Canada stated that the prohibition on lifestyle advertising with respect to tobacco that evokes a positive or negative emotion or image, includes advertising that “must catch not only clear associations, but subtle subliminal evocations.”

Reference: Canada (Attorney General) v. JTI-Macdonald Corp., [2007] 2 S.C.R. 610, 2007 SCC 30 [JTI-Macdonald], paras 115.

RELEVANT DEFINITIONS

Brand Element – “includes a brand name, trademark, tradename, distinguishing guise, logo, graphic arrangement, design or slogan that is reasonably associated with,

or that evokes, (a) cannabis, a cannabis accessory or a service related to cannabis; or (b) a brand of any cannabis, cannabis accessory or service related to cannabis.”

Brand Preference Promotion – “means promotion of cannabis by means of its brand characteristics, promotion of a cannabis accessory by means of its brand characteristics or promotion of a service related to cannabis by means of the brand characteristics of the service.”

Informational Promotion – “means a promotion by which factual information is provided to the consumer about (a) cannabis or its characteristics; (b) a cannabis accessory or its characteristics; (c) a service related to cannabis; or (d) the availability or price of cannabis, a cannabis accessory or a service related to cannabis.”

Promotion – means “in respect of a thing or service, means 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.”

ADDITIONAL CONSIDERATIONS

Data Privacy and Protection

While all industry sectors face online security challenges, privacy and security implications around cannabis carry an added layer of sensitivity. Therefore, marketers in the cannabis sector should exercise particular caution in their practices around the collection, use, storage and sharing of personal information.

Canadian privacy law requires organizations to comply with the [Personal Information Protection and Electronic Documents Act](#) (PIPEDA) and its 10 principles, including consent. The CMA's [Privacy Compliance Guide](#) reviews the legislation in detail and provides commentary and recommended member action.

The Office of the Privacy Commissioner of Canada (OPC) has published [guidance](#) on the obligations of cannabis retailers and customers' rights under PIPEDA. The OPC advises minimizing the amount of data collected by retailers or provided by purchasers and emphasizes the need to ensure safeguards are in place to protect personal information.

The British Columbia Privacy Commissioner has issued [guidance](#) for cannabis retailers and purchasers that outlines rights and obligations under the British Columbia's [Personal Information and Protection Act](#). This is relevant across Canada as British Columbia's privacy law is substantially similar to PIPEDA.

The CMA recommends that marketers engaged in the cannabis category carefully consider the location of the storage of customer data outside of Canada, including the implications of third-party sharing by partners. Consumers should be aware of where their personal information is stored when making cannabis or cannabis related purchases.

Documentation of Marketing Practices

The CMA recommends that marketers create documentation for all marketing activities that include the type of promotion (Brand Element, Brand Preference or Informational Promotion) and the Cannabis Act exemption that allows for the marketing activity. The CMA further recommends

that marketers have their activities reviewed by legal counsel to ensure compliance with all applicable laws.

RESOURCES

An Act respecting cannabis and to amend the Controlled Drugs and Substances Act, the Criminal Code and other Acts ("[Cannabis Act](#)")

[Cannabis Regulations: SOR/2018-144](#)

[Regulations Amending the Cannabis Regulations \(New Classes of Cannabis\) \("Amended Regulations"\)](#)

[Health Canada - Cannabis in Canada](#)

[Fact Sheet: The Cannabis Act – Promotion Prohibitions \(EN\)](#)

[Promotions Prohibitions under the Cannabis Act \(EN\)](#)

[Provincial and Territorial Regulators](#)

Digital Advertising Platforms - Drug Policies		
Facebook	Google	Twitter
Instagram	Amazon	

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CMA would like to acknowledge and thank the members of the [Working Group on Cannabis Marketing](#) for their help in creating this Guide.

This Guide is current as of November 25, 2019.