# Cannabis Industry Insight – CBD Derived from Hemp Is Legal in the U.S.

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CBD brands are now entitled to U.S. trademark protection.

**CBD vs. THC**

CBD (cannabidiol) and THC (tetrahydrocannabinol) are both components that occur naturally in the Cannabis sativa plant. CBD is non-psychoactive; THC is psychoactive. CBD can be extracted from Hemp plants or Cannabis plants, both of which fall under the *scientific* definition of Cannabis sativa.

**The New Law**

Until recently, the Controlled Substance Act ("CSA") placed all Cannabis sativa plants, whether Hemp plants or Cannabis plants, under the *legal* definition of "marijuana," and thus prohibited all goods that contained CBD or THC derived from Cannabis sativa. That all changed on December 20, 2018, when the 2018 Farm Bill amended the legal definition of marijuana to exclude Hemp containing no more than 0.3% THC on a dry-weight basis, and thus lifted the ban on CBD derived from Hemp.

**CBD Trademark Protection**

The U.S. Patent and Trademark Office ("USPTO") had been refusing to register all marks for any Cannabis sativa-derived products or services (so-called plant-touching goods and services) because all Cannabis sativa plants were considered marijuana, and therefore such goods and services were not lawful. The USPTO now recognizes that the federal law has changed with regard to Hemp, and it has

issued an Examination Guide that provides for the registration of marks in connection with products and services related to CBD derived from Hemp. Examination Guide 1-19.

**The New USPTO Procedures**

If an application was filed *before* December 20, 2018 (the effective date of the new Hemp law) there are steps you can take to modify that application to comply with the new law and the new USPTO procedure. Or, you can file a new application. Either way, the identification of goods or services must specify that the CBD or cannabis products at issue contain less than 0.3% THC.

According to the new USPTO Examination Guide, the USPTO will still refuse to register marks for:

1. Foods, beverages, dietary supplements, or pet treats containing Hemp-derived CBD, because such products have not yet been approved by the U.S. Food and Drug Administration.

2. The commercial production of "Hemp" unless it has been licensed or authorized by a state, territory or tribal government in accordance with a plan approved by the U.S. Department of Agriculture, which has not yet issued such regulations.

**Conclusion**

The new USPTO policy is good news for the CBD and Hemp industries, although some hurdles and pitfalls remain. But what about the Marijuana and THC industries? There are several strategies for registering marks for THC-related and Marijuana-related goods or services even if they do not qualify for the "Hemp" exception. Here is an article explaining those strategies.

For further information, contact Kieran G. Doyle or your CLL attorney.