

Navigating Canadian Cannabis Promotion Restrictions - The SWAG Exception

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Since the legalization of cannabis and the coming into force of the laws and regulations that govern the use, possession and sale of cannabis on October 17, 2018, there has been a lot of uncertainty surrounding the promotion of cannabis.



The *Cannabis Act* (Canada) (the “Act”) provides a general restriction prohibiting the promotion of cannabis. But it also provides some exceptions. One such exception is the “SWAG” exception which provides that:

Subject to the regulations, a person may promote cannabis, a cannabis accessory or a service related to cannabis by displaying a brand element of cannabis, of a cannabis accessory or of a service related to cannabis on a thing that is not cannabis or a cannabis accessory, other than (a) a thing that is associated with young persons; (b) a thing that there are reasonable grounds to believe could be appealing to young persons; or (c) a thing that is associated with a way of life such as one that includes glamour, recreation, excitement, vitality, risk or daring.

This means that licence holders can promote cannabis by placing their brand element (as defined in the Act) on a thing that is not cannabis or a cannabis accessory. For example, coffee mugs and T-shirts. However, note that under the Act, licence holders cannot use this exception to sell matchbooks, lighters or any other thing that is commonly used in the consumption of cannabis with their brand element on it.

Before selling any SWAG displaying a cannabis brand element, organizations should seek legal advice to help them navigate the promotion prohibitions imposed by the Act, including the somewhat unclear prohibitions related to “glamour”, “appealing to young persons” and “daring.” Specifically, the Act prohibits licence holders from promoting cannabis, cannabis accessories or services related to cannabis by displaying a brand element on “a thing that is associated with young persons; a thing that there are reasonable grounds to believe could be appealing to young persons; or a thing that is associated with a way of life such as one that includes glamour, recreation, excitement, vitality, risk or daring.”

If you require more information on this matter, please contact us.

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Co-author Danielle Grzybowski has left TDS to pursue a new opportunity, effective May 26, 2023. Anyone wishing to contact Danielle should contact Marilyn Chubaty at marilync@tdslaw.com or by phone at (204) 934-2591 and she will be delighted to assist you.

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