

# Marketing Claims for Cannabis and CBD Products

August 08, 2019



By Paula Jill Krasny

*This article was originally published in Cannabis Business Executive.*

The CBD market is exploding, prompting companies to use bold and creative marketing moves to differentiate themselves in the sea of products beginning to flood the market. But what happens when a company's eagerness to convey the supposed revolutionary effectiveness of its CBD products leads it to make cure-all, but scientifically unsubstantiated, claims? Curaleaf, a leading cannabis company, just found out.

The Food & Drug Administration's July 22, 2019 warning letter to Curaleaf about its health-related marketing claims for its CBD products is garnering widespread attention for several reasons. First, Curaleaf is a well-established growth company. As it wins new licenses and acquires companies, Curaleaf is rapidly transforming itself into a national cannabis and CBD brand. While the FDA has sent warning letters to other manufacturers of CBD products, it clearly sent a message to the marketplace by selecting Curaleaf. In fact,

the company's stock dipped after receiving the warning letter.

Second, hemp-derived CBD products are supposed to be "legal." The 2018 Farm Bill removed hemp and hemp-derived products having no more than 0.3% THC from the list of controlled substances under the CSA. However, hemp-derived CBD products still are not FDA-approved drugs or dietary supplements. It therefore is illegal to label and market these products as drugs and dietary supplements.

Third, the medical claims on Curaleaf's website, Facebook page and Twitter feed were aggressive. The products claimed to relieve chronic pain, anxiety and depression. More egregious medical claims stated that CBD is:

- "shown to be effective in treating Parkinson's disease"
- "link[ed] to the effective treatment of Alzheimer's disease"
- "a natural alternative to pharmaceutical-grade treatments for depression and anxiety"
- able "in fact [to] reduce the severity of opioid-related withdrawal"
- "demonstrated to have properties that counteract the growth of spread of cancer"
- "effective in killing human breast

cancer cells"

Curaleaf also was promoting a line of CBD products to alleviate various pet ailments with similar marketing claims.

The FDA took the position that the various Curaleaf CBD products and devices, such as disposable vape pens and patches, are "new drugs" under the Food Drug & Cosmetic (FD&C) Act because they are "intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease and/or are intended to affect the structure or any function of the body." The FDA warning letter made similar allegations for the CBD pet products. The letter alleged that Curaleaf's failure to obtain FDA approval before marketing, labeling and selling the products violates the FD&C Act.

The warning letter required Curaleaf to promptly correct the violations, or otherwise face legal action, that could include seizure of the products and an injunction. Since receiving the letter, Curaleaf has removed unsubstantiated medical claims from its website and social media pages. Some of the products also have been removed from the website.

### **FDA Position on CBD Products**

The FDA believes there needs to be more

studies about the long-term effect of CBD on the body. While there is great consumer interest in the products as well as anecdotal evidence and non-FDA approved studies showing the benefits of CBD, the FDA does not want consumers to rely on unsubstantiated medical claims about unregulated products and potentially forgo medical treatment. The FDA also is concerned about false labeling, as some products do not have the levels of CBD they claim to have. The CBD marketing craze following the 2018 Farm Bill, not surprisingly, has led to some unscrupulous marketers to sell the equivalent of "snake oil," or even worse, products unsafe for human consumption.

The FDA regularly publishes on its website agency developments on CBD. The Agency's Q&A's about cannabis and CBD products can be found [here](#). Its recent July 17, 2019 communication update and call for research on CBD products can be found [here](#).

### **Practical Steps for Marketing CBD Products**

Because the FDA has not approved CBD products to be marketed for medical use, and the legalization of medical and recreational

cannabis varies from state-to-state, there is a lot of confusion and uncertainty on how to market CBD products. But there does not have to be. The basic tenants of truthful, lawful and ethical advertising practices still apply. Here are three guidelines marketers can follow:

**- Avoid Medical Claims/Use Disclaimers**

In light of the Curaleaf and other warning letters the FDA has issued, as well as the recent FDA statements about the marketing of CBD products, marketers are going to want to steer clear of making health or medical claims about their products. They also should consider including the appropriate disclaimers about the lack of FDA evaluation of the product and that the product is not intended to diagnose, treat, cure or prevent any disease.

**- Substantiate Product Claims**

A basic principle of advertising law is that marketing claims must be supported by a reasonable basis and substantiated before they are disseminated. Otherwise, the advertising is at risk of being "unfair" or "deceptive" in violation of the Federal Trade Commission (FTC) Act. Posts on Instagram, Facebook, Twitter and other social media platforms constitute advertising. Because

cannabis and CBD products potentially affect consumers' health and safety, we can expect more regulatory enforcement activity from the FTC as well.

In April, the FTC and the FDA sent joint warning letters to sellers of CBD products about false and unsubstantiated marketing claims. More information about these letters can be found [here](#). In June, they sent joint warning letters to manufacturers and marketers of e-liquids (flavored liquids for vaping) for inadequate nicotine warnings. More information about the e-liquid letters can be found [here](#). The e-liquid warning letters could be a harbinger for potential warning letters about marketing claims relating to the various ways of administering CBD products.

In the meantime, marketers should avoid making claims about their products that are false, misleading, deceptive and/or cannot be substantiated.

### **- Know State and Local Cannabis Labelling Laws and Regulations**

The sale of medical and recreational marijuana is regulated on a state-by-state basis. There also may be relevant municipal regulations that apply to the sale of products at dispensaries and other venues like lounges. Until cannabis and CBD products

are federally regulated, marketers must be aware of the patchwork of state and local laws and regulations relating to the marketing, advertising, labelling, distribution and sale of products.

Caution is certainly in order for all companies in the CBD supply chain, particularly as FDA and FTC enforcement increases. Simply pointing to similar marketing claims from other CBD companies (the classic "everyone's doing it defense") will not appease regulators. Companies can minimize risk by exercising caution, adhering to basic sound marketing principles and knowing state and local regulations and laws. CBD may, in fact, have numerous health benefits, but until FDA-approved scientific research supports its effectiveness in treating certain conditions and diseases, tread lightly in your marketing and advertising claims.

*This article is not offered as, and should not be relied on as, legal advice. You should consult an attorney for advice in specific situations.*

*For more information please visit [Cannabis Business Executive](#)*

