

4 Things Hemp Lawyers Want You to Know Before You Sell CBD Products

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You've probably heard this by now, but hemp and hemp-derived cannabidiol ("CBD") were previously classified as Schedule I controlled substances under the Controlled Substances Act of 1972.

That changed with the passage of the Agriculture Improvement Act of 2018 (the "2018 Farm Bill") which, among other things, decriminalized hemp and hemp-derived CBD. Now, consumer demand for products containing hemp-derived CBD is at an all-time high, and retailers of all types and sizes are rushing to incorporate CBD products in their consumer good offerings. But before you offer and sell CBD products in your store, keep these thoughts in mind.

Hemp-Derived CBD is Legal, but That's Not the End of the Story.

The 2018 Farm Bill ushered in a new era for the domestic production, transportation, and sale of hemp and CBD products. But, it did not fully resolve all legal and regulatory questions for the industry. On the contrary, CBD and CBD products are now subject to a host of new laws and regulations. The Food and Drug Administration ("FDA") has clearly stated its position that it is unlawful to introduce food containing added CBD or THC into interstate commerce or to market CBD or THC products as, or in, dietary supplements, regardless of whether the substances are hemp-derived. Both the FDA and the Federal Trade Commission have issued warning letters to producers and sellers of CBD retail products. And, many state-level regulators have decided to follow the FDA's lead on this issue.

It's Important to Know the Law.

The CBD industry is new. We've had less than one year of growth and development under the current regulatory regime. The laws and regulations are evolving, and it is extremely important that you have an understanding of those laws and how they impact your operations. It is not just federal law that matters. Individual states across the U.S. are adopting and implementing state-level hemp laws and regulations to govern the industry and the production and sale of CBD products within their borders. If you are not familiar with the legal requirements for the industry, and you're not willing to invest the time to stay abreast of changes and updates, it may be best to stay out of the market.

Don't Sell CBD Products to Minors.

Your state may not yet have adopted a legal age for the sale, possession, or use of CBD products. But, the industry as a whole needs to self-regulate in this regard. Nothing good can come from the sale of CBD to minors, so just don't do it.

Don't Sell Bad Products.

Doing so will hurt your business, your customers, and the industry as a whole. There are all kinds of bad products on the market. Make sure you are producing, buying, and re-selling legally compliant, safe products that have been tested for more than just the delta-9 THC content. Products – especially those intended for human use – should also be tested for heavy metals, mold, mycotoxins, pesticides, and a number of other potentially harmful substances. Your wholesaler should be able to produce full panel lab results on request. If they cannot or will not share those results with you, you should probably avoid selling those products and doing business with that company.

CBD product retailers must be thoughtful and careful in the decisions they make. When in doubt, it's always best to contact an experienced attorney and trusted advisor to ensure that your business stays in-step with state and federal laws. From seed to seller, our interdisciplinary team of Hemp Law attorneys is ready and willing to help you navigate this complex regulatory environment.

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