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CLIENT ALERT

Cannabis Trademarks Not Stoned by PTO

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In new guidelines issued this past Thursday, May 2, 2019, the United States Patent & Trademark Office clarified the procedure for examining trademarks for cannabis-derived goods, services involving cannabis, and cannabis production. These guidelines explain that the 2018 Farm Bill exempts hemp (defined as cannabis plants and derivatives such as CBD that contain no more than 0.3 percent THC on a dry-weight basis) from the definition of *marijuana* in the Controlled Substances Act (21 U.S.C. § 801 *et seq*.)(CSA).

Thus, for applications that identify goods and/or related services encompassing cannabis or CBD, the 2018 Farm Bill potentially removes the CSA as a ground for refusal of registration under the following conditions:

1. The goods and/or related services are derived from hemp.
2. The identification of goods and/or services specify that the hemp products contain less than 0.3 percent THC.
3. The application was filed on or after December 20, 2018, except that for applications filed before December 20, 2018, applicants have the option of amending the filing date and filing basis of the application to overcome the CSA as a ground of refusal.

Despite these guidelines, applicants should be aware that hemp related goods and/or services may still raise lawful-use issues under other laws, including the Federal Food Drug and Cosmetic Act (FDCA).

A link to the guidelines may be accessed here: USPTO Examination Guide 1-19.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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