



CANNABIS TRADEMARK PROSECUTION

Ryan Gile // November 12, 2020

The Basics

How did we get here?

- 2018 Farm Bill legalizes some industrial production of hemp, removes its Schedule I controlled substance designation:
 - “hemp” = from cannabis, but less than 0.3% THC [the active ingredient that gets people high]
 - “hemp” ≠ marijuana
- Opens the door to cannabidiol (CBD) trademark applications, which had traditionally been precluded by the Controlled Substances Act (CSA).
- Effective December 20, 2018



The USPTO's Response

Examination Guide 1-19 (May 2, 2019)

- “Examination of Marks for Cannabis and Cannabis-Related Goods and Services after Enactment of the 2018 Farm Bill”
- “If an applicant’s goods are derived from ‘hemp’ as defined in the 2018 Farm Bill, the identification of goods must specify that they contain less than 0.3% THC.”
- Separate issue: Federal Food Drug and Cosmetic Act (FDCA), which prohibits using “substance undergoing clinical investigations” (*e.g.*, CBD) in food or supplements
- Applications filed before December 20, 2018 get to amend to December 20, 2018
- Applicants cultivating cannabis “will be required to provide additional statements for the record to confirm that their activities meet the requirements of the 2018 Farm Bill.”

And since then?

Thousands of new CBD applications!

- Over 6,700 apps since December 2018
 - but only 470 registrations issued as of October 30, 2020—and some of those would have already been legal
 - rate: about 50 applications per successful registration!
 - (overall USPTO rate is about 2 apps per successful registration)
- So despite the 2018 Farm Bill, registering CBD trademarks remains very difficult.

Start List At: OR Jump to record: **6722 Records(s) found
(This page: 1 ~ 100)**

Refine Search ("CBD" or "cannabidiol" or THC)[gs] not ("none c

Current Search: S1: ("CBD" or "cannabidiol" or THC)[gs] not ("none of the foregoing")[gs] and `FD > "20181219" docs: 6722 occ: 32557

	Serial Number	Reg. Number	Word Mark	Check Status	Live/Dead
1	90279148		CANAM CBD	TSDR	LIVE
2	90279055		TOP SHELF	TSDR	LIVE
3	90279033		TOP SHELF	TSDR	LIVE
4	90279015		CBD BARN	TSDR	LIVE
5	90278663		DVNTY	TSDR	LIVE
6	90278001		BUYLEGALMEDS.COM CBD DISPENSARY	TSDR	LIVE
7	90278000		CBDOIL.COM	TSDR	LIVE
8	90197644		OCLO	TSDR	LIVE
9	90197637		TONGUE TREATS	TSDR	LIVE
10	90197560			TSDR	LIVE
11	90197470		MYKLYN	TSDR	LIVE
12	90196829		CANNAEDUCATEU	TSDR	LIVE
13	90196726		PURE CBD EXPERIENCE	TSDR	LIVE
14	90196719		PURE CBD EXPERIENCE YOUR TRUSTED CBD SOURCE USA	TSDR	LIVE
15	90196531		KANEH BOSM FOR CHRIST MINISTRIES	TSDR	LIVE
16	90193643		SOY CANNA BELLA	TSDR	LIVE
17	90191985		PLEASURE REINVENTED	TSDR	LIVE
18	90191815		HEMP SMOKES PERFECTED	TSDR	LIVE
19	90191459		YOUR SMOKE REINVENTED	TSDR	LIVE
20	90160628		DOULEURX	TSDR	LIVE
21	90114477		ANTONIA LABS	TSDR	LIVE
22	90059277		PBROSIN	TSDR	LIVE

What's getting through?

United States of America

United States Patent and Trademark Office

EasyBoy

The first!

Reg. No. 5,849,729

Registered Sep. 03, 2019

Int. Cl.: 5

Trademark

Principal Register

Earnest Minds LLC (ILLINOIS LIMITED LIABILITY COMPANY), DBA EasyBoy
2831 N Burling St Apt Gs
Chicago, ILLINOIS 60657

CLASS 5: Dietary pet supplements in the form of pet treats with a delta-9 tetrahydrocannabinol (THC) concentration of no more than 0.3 percent on a dry weight basis

FIRST USE 1-9-2019; IN COMMERCE 1-9-2019

The mark consists of the phrase "EasyBoy", stylized in a font resembling casual handwriting, containing no space between the words and with both "E" and "B" capitalized, and without a space between the two words. The capitalized "B" contains a depiction of the profile of a dog within the inner portion of the letter. The dog is sitting with hind leg bent and front leg straight, facing right, with a downward hanging ear, an eye, and a collar with a small circle at the front. The dog's nose and chest mimic the curvature of the interior negative space found in a standard capital letter "B".

SER. NO. 88-281,791, FILED 01-30-2019

United States of America

United States Patent and Trademark Office

KING OF HEMP

Reg. No. 5,882,067

Registered Oct. 15, 2019

Int. Cl.: 34

Trademark

Principal Register

Perlowin, Bruce (UNITED STATES INDIVIDUAL)
6758 Nc 39 Hwy.
Zebulon, NORTH CAROLINA 27597

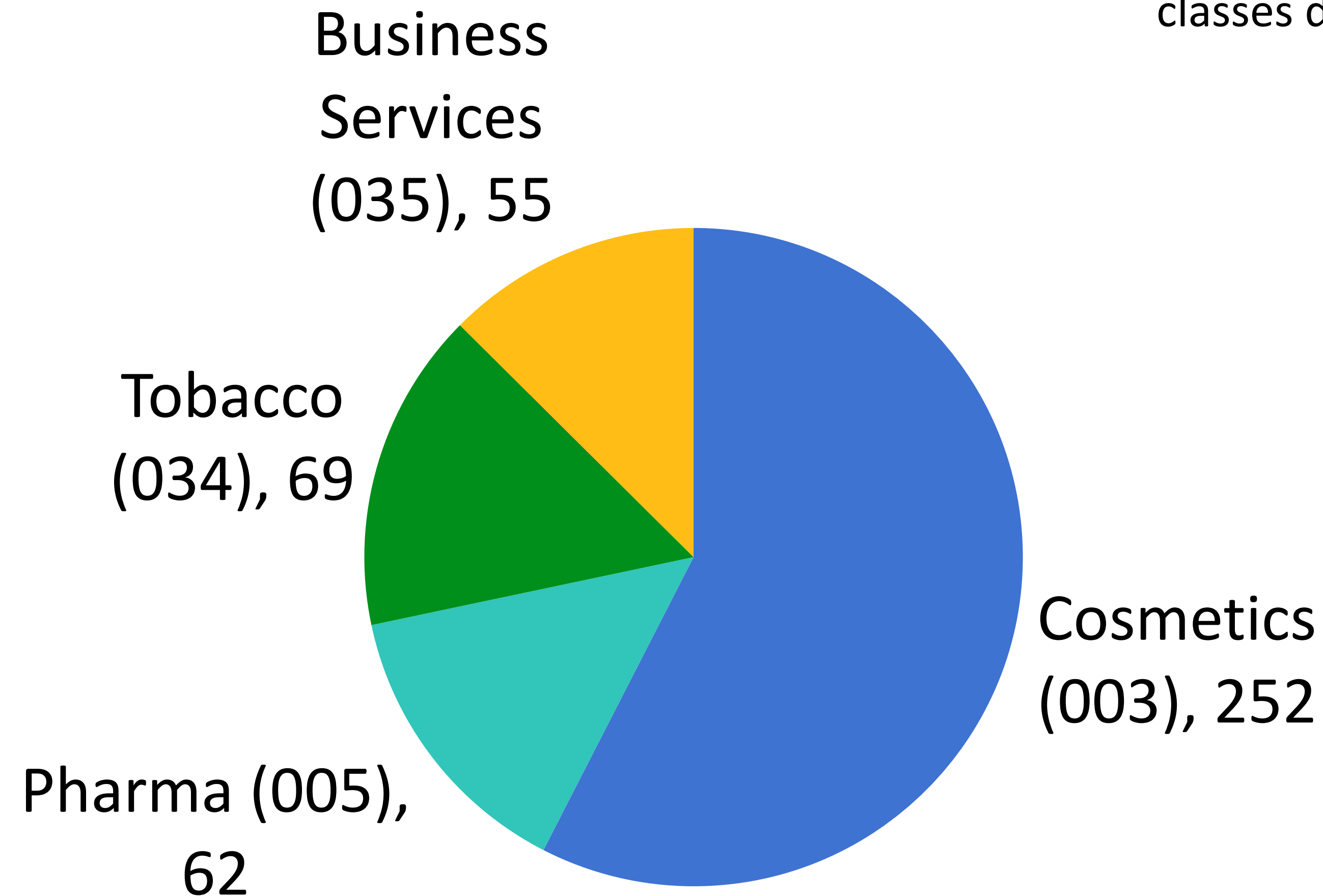
CLASS 34: Hemp cigarettes comprised of industrial hemp with a delta-9 tetrahydrocannabinol (THC) concentration of not greater than 0.3 percent on a dry weight basis

FIRST USE 12-20-2018; IN COMMERCE 12-20-2018

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT STYLE, SIZE OR COLOR

(This is the first
one I worked on)

Classes 1, 4, 9, 11, 16, 20, 21, 22, 24, 25, 26, 29, 30, 31, 32, 36, 37, 39, 40, 41, 42, 43 and 44 each have between one and twenty registrations. The other classes don't have any (yet).



**470 total registrations
as of October 30, 2020**

United States of America

United States Patent and Trademark Office



Reg. No. 6,128,475

Registered Aug. 18, 2020

Int. Cl.: 3

Trademark

Principal Register

TSANG, MOON FUNG (CHINA INDIVIDUAL)

Flat 2023, 20/f, Shin King House,
Fu Shin Estate, Taipo, New Territories,
Hongkong, CHINA 999077

CLASS 3: Facial masks; Non-medicated lip care preparations; Non-medicated skin care preparations, namely, creams, lotions, gels, toners, cleaners, moisturizers, oils and masks; Non-medicated sun care preparations; Shampoos; Hair conditioners; Hair masks; Non-medicated bath soaps in liquid, solid or gel form; all of the foregoing containing ingredients derived solely from cannabis (or hemp) with a delta-9 THC concentration of not more than .3% on a dry weight basis

United States of America

United States Patent and Trademark Office



Reg. No. 6,115,924

Registered Aug. 04, 2020

Int. Cl.: 5

Trademark

Intouch International (TEXAS LIMITED LIABILITY COMPANY)

#36-202

101 S Coit Rd

Richardson, TEXAS 75080

CLASS 5: Nutritional supplements containing hemp with a delta-9 THC concentration of not more than 0.3% on a dry weight basis and not more than trace amounts of naturally occurring CBD

United States of America

United States Patent and Trademark Office



Reg. No. 6,157,220

Registered Sep. 22, 2020

Int. Cl.: 34

Trademark

Principal Register

Tater Patch Farm, Inc. (NORTH CAROLINA CORPORATION)
113 Wagon Trail Road
Maggie Valley, NORTH CAROLINA 28751

CLASS 34: Herbs for smoking; herbs for smoking, namely, hemp having less than 0.3% THC on a dry-weight basis; pre-packaged dried hemp flower cigarettes for smoking having less than 0.3% THC on a dry-weight basis; loose dried hemp flower having less than 0.3% THC on a dry-weight basis and being a tobacco substitute for use in pipes, vaporizers and rolled cigarettes

FIRST USE 12-7-2019; IN COMMERCE 12-7-2019

The mark consists of bird with leaf wings.

SER. NO. 88-797,746, FILED 02-14-2020

United States of America

United States Patent and Trademark Office

ASATRE

Reg. No. 6,170,388

Registered Oct. 06, 2020

Int. Cl.: 35

Service Mark

Principal Register

Ethan Smith (UNITED STATES INDIVIDUAL)
2944 Los Altos Way
Antioch, CALIFORNIA 94509

CLASS 35: On-line retail store services featuring t-shirts, backpacks, dog collars, dog leashes, dog harness, dog rope toys, cat rope toys, bathing suits, hats, belts, wallets, socks, sweatshirts, shirts, bags; On-line retail store services featuring non-medicated shampoo, conditioner, soap, lotion, bath bombs, salve, with all of the featured goods containing hemp ingredients with a delta-9 tetrahydrocannabinol THC concentration of not more than 0.3 percent on a dry weight basis

How long does this take?

At least 6 months, but generally 12+

- Some successful registrations move through at normal speed w/o issues:
 - *e.g.*, Class 3 app for UNICORN CBD (6141980): applied in March, published in June, registered in September
- But many others end up stuck for a long time without explanation —>
- Trademark office recently claimed typical processing time is 12 months

Wonderland

Serial No. 88366632

Mar. 06, 2020	Offc Action Outgoing
Mar. 06, 2020	XSearch Search Summary
Mar. 06, 2020	XSearch Search Summary
Apr. 01, 2019	Drawing
Apr. 01, 2019	TEAS RF New Application

How exactly do we identify CBD-related goods?

- USPTO (May 2019 Examination Guide): “the applicant will also be required to amend the identification of goods to specify that the CBD or cannabis products contain less than 0.3% THC”
- Sample IDs from recent registrations: “{ X } containing . . .”
 - “CBD oil derived from cannabis with a delta-9 THC concentration of not more than 0.3% on a dry weight basis”
 - “CBD solely derived from hemp containing no more than .3% THC on a dry weight basis”
 - “cannabidiol derived from industrial hemp containing no more than a delta-9 THC concentration of more than .3% on a dry weight basis”
 - “CBD derived from hemp with 0.3% or less THC content on a dry weight basis”
- Office has said there are standardized IDs coming, but we haven’t seen those yet.

United States of America

United States Patent and Trademark Office

KING OF HEMP

Reg. No. 5,882,067

Registered Oct. 15, 2019

Int. Cl.: 34

Trademark

Principal Register

Perlowin, Bruce (UNITED STATES INDIVIDUAL)
6758 Nc 39 Hwy.
Zebulon, NORTH CAROLINA 27597

CLASS 34: Hemp cigarettes comprised of industrial hemp with a delta-9 tetrahydrocannabinol (THC) concentration of not greater than 0.3 percent on a dry weight basis

FIRST USE 12-20-2018; IN COMMERCE 12-20-2018

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT STYLE, SIZE OR COLOR

United States of America

United States Patent and Trademark Office

Zebra CBD

Reg. No. 6,122,773

Pacific Distributors, LLC (DELAWARE LIMITED LIABILITY COMPANY)

7590 Fay Ave

Registered Aug. 11, 2020

#202

La Jolla, CALIFORNIA 92037

Int. Cl.: 3

CLASS 3: Skin and body topical lotions, creams and oils for cosmetic use; all of the foregoing containing hemp-derived CBD

Trademark

FIRST USE 1-18-2019; IN COMMERCE 2-7-2020

Principal Register

anomalous for this to register?

...a few apps still make it through w/o that language.

What about “only naturally occurring CBD”?

- Back before the 2018 Farm Bill, the Drug Enforcement Administration (DEA) attempted to define “marihuana” in its new Drug Code 7350.
- This caused some confusion, and the DEA later issued a clarification saying that certain products with only “trace amounts of cannabinoids” might be ok.
- Applicants started using the “trace amounts” or “only naturally occurring” language around that time to try to navigate around Controlled Substances Act (CSA) refusals.
 - Could that work for Food, Drug, and Cosmetic Act (FDCA) refusals too?
- Less common now, but still appears in registrations periodically:

Reg. No. 6,143,889

Registered Sep. 01, 2020

Int. Cl.: 3

Altus Labs LLC (COLORADO LIMITED LIABILITY COMPANY)
1800 Wazee Street, Suite 300
Denver, COLORADO 80202

CLASS 3: Cosmetic skin care preparations containing naturally occurring trace amounts of
CBD derived from hemp

United States of America

United States Patent and Trademark Office

Green Garden Gold

Reg. No. 6,031,777

Registered Apr. 14, 2020

Int. Cl.: 3, 5, 35

Service Mark

Trademark

Principal Register

Green Garden Gold II, LP (TEXAS LIMITED PARTNERSHIP)
12400 Coit Road, Suite 100
Dallas, TEXAS 75251

CLASS 3: Body oils, beauty serums, body lotions, massage lotions, and non-medicated herbal body care salves containing hemp extracts; all of the foregoing are comprised of hemp containing less than 0.3 percent delta-9 tetrahydrocannabinol (THC) on a dry weight basis and have only naturally occurring trace amounts of CBD with no added CBD

FIRST USE 12-20-2018; IN COMMERCE 12-20-2018

CLASS 5: Dietary supplements; dietary supplements for dogs; hemp oil extracts for use as dietary supplements; all of the foregoing are comprised of hemp containing less than 0.3 percent delta-9 tetrahydrocannabinol (THC) on a dry weight basis and have only naturally occurring trace amounts of CBD with no added CBD

FIRST USE 12-20-2018; IN COMMERCE 12-20-2018

CLASS 35: Online retail store services featuring body oils, beauty serums, body lotions, salves, hemp oil extracts, dietary supplements, dietary supplements for dogs, dog treats, and gummies; all of the foregoing are comprised of hemp containing less than 0.3 percent delta-9 tetrahydrocannabinol (THC) on a dry weight basis and have only naturally occurring trace amounts of CBD with no added CBD

FIRST USE 12-20-2018; IN COMMERCE 12-20-2018

United States of America

United States Patent and Trademark Office

TRU INFUSION CBD

Reg. No. 6,056,915

Registered May 19, 2020

Int. Cl.: 3

Trademark

Principal Register

AFG, Inc. (ARIZONA CORPORATION)
Suite C200670
10645 N. Tatum Blvd.
Phoenix, ARIZONA 85028

CLASS 3: Skin care preparations, namely, salves, lotions and gels containing hemp-derived CBD without any THC; bath salts not for medical purposes, the foregoing containing hemp-derived CBD without any THC

FIRST USE 7-13-2018; IN COMMERCE 12-20-2018

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT STYLE, SIZE OR COLOR

No claim is made to the exclusive right to use the following apart from the mark as shown:
"INFUSION CBD"

SER. NO. 88-470,392, FILED 06-12-2019

United States of America

United States Patent and Trademark Office

CANNACCINO

Reg. No. 6,021,451

Registered Mar. 31, 2020

Int. Cl.: 30

Trademark

Principal Register

Founding Fathers Hemp Co., Inc. (DELAWARE CORPORATION)
6815 Biscayne Blvd., Ste. 103
Miami, FLORIDA 33138

CLASS 30: Coffee based beverages containing hemp derived only from mature stalks and sterilized seeds, only trace amounts of naturally occurring CBD, and none of the foregoing containing added CBD

FIRST USE 3-2-2018; IN COMMERCE 3-2-2018

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT STYLE, SIZE OR COLOR

SER. NO. 87-835,930, FILED 03-15-2018

Side note: how does priority work?

- 729 CBD apps “filed on” December 20, 2018
 - (most were filed earlier, then amended after the 2018 Farm Bill passed)
- If those filing dates are all the same, who has priority for likelihood of confusion purposes?
 - Per USPTO, it’s the lowest serial number.
- So earlier filers like ANANDA HEMP (87561059) from August 2017 have the upper-hand on priority. They’ve stayed plenty busy with other issues, though —>

Aug. 13, 2020	Offc Action Outgoing
Aug. 13, 2020	XSearch Search Summary
Aug. 06, 2020	Offc Action Outgoing
Aug. 06, 2020	Offc Action Outgoing
Jun. 13, 2020	Amendment and Mail Process Complete
Jun. 11, 2020	TEAS Request Reconsideration after FOA
Jun. 11, 2020	Request to Divide
May 11, 2020	Change Address or Representation Form
Dec. 12, 2019	Offc Action Outgoing
Nov. 14, 2019	Amendment and Mail Process Complete
Nov. 12, 2019	Response to Office Action
May 17, 2019	Offc Action Outgoing
Mar. 06, 2019	Amendment and Mail Process Complete
Mar. 05, 2019	Response to Office Action
Sep. 05, 2018	Offc Action Outgoing

What's not getting through?

Edible/Ingestible Products

Very difficult, given the FDCA

- Federal Food Drug and Cosmetic Act (FDCA) requires rejection of food/beverage/drugs apps
- The USPTO issues these rejections even when the THC content of the product is below 0.3%



Here's language from a standard FDCA rejection:

The Federal Food, Drug, and Cosmetic Act prohibits the introduction or delivery for introduction into interstate commerce of a food to which has been added a drug or a biological product for which substantial clinical investigations have been instituted and for which the existence of such investigations has been made public. 21 U.S.C. §331(ll); *see also* 21 U.S.C. §321(ff) (indicating that a dietary supplement is deemed to be a food within the meaning of the Federal Food, Drug and Cosmetic Act).

Cannabidiol (CBD) is an active ingredient in an FDA-approved drug, Epidiolex®, (*see* <https://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm611046.htm> *copy attached*) and is the subject of substantial clinical investigations before it was marketed in foods or as dietary supplements. *See FDA Regulation of Cannabis and Cannabis-derived Products: Questions and Answers* <https://www.fda.gov/NewsEvents/PublicHealthFocus/ucm421168.htm> *copy attached*. The Drug Enforcement Administration (DEA) placed Epidiolex® on schedule V of the CSA on September 27, 2018. Nevertheless, marijuana and CBD derived from marijuana remain unlawful. No other cannabis-derived drug products have been approved by the FDA. Under the Food, Drug and Cosmetics Act (FDCA), any product intended to have a therapeutic or medical use, and any product (other than a food) that is intended to affect the structure or function of the body of humans or animals, is a drug. 21 U.S.C. § 321(g)(1)

The specimen of record plainly indicates that applicant's supplements may contain CBD and that such goods are currently being marketed, promoted or offered for sale to consumers. It is unlawful to introduce food containing added CBD into interstate commerce or to market CBD as, or in, dietary supplements, regardless of whether the substances are hemp-derived. *See Statement from FDA Commissioner Scott Gottlieb, M.D., on signing of the Agriculture Improvement Act and the agency's regulation of products containing cannabis and cannabis-derived compounds.* <https://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm628988.htm> *copy attached*.

...any potential exceptions?

In re Stanley Brothers LLC

- Recent Trademark Trial and Appeal Board rejection of FDCA counterarguments
- Serial No. 86568478 (TTAB June 16, 2020) (precedential)
- Filed as an application to register **CW** (word mark) in Class 1 for “plant extracts, namely, essential hemp oils, used in the manufacture of nutritional supplements.” USPTO pushes for reclassification into Class 5 and refuses registration based on the FDCA.
- TTAB affirms refusal, dismissing arguments for registration: “First, Applicant asserts that the 2014 Farm Bill’s Industrial Hemp Provision exempts it from this portion of the FDCA. Second, Applicant argues that its goods do not fall within the cited prohibition because they are ‘dietary supplements’ rather than food. Finally, Applicant argues that CBD falls within an FDCA exception for drugs or biological products “marketed in food . . . before any substantial clinical investigations involving the drug or the biological product have been instituted.” 21 U.S.C. § 331(II)(1). Applicant’s arguments are not well taken.”

In re NL LLC (“New Leaf”)

- Another recent Trademark Trial and Appeal Board rejection of FDCA counterarguments
- Serial No. 87864999 (TTAB Sept. 25, 2020) (not precedential)
- Application to register mark pictured below in Class 5 for “dietary and nutritional supplements infused with CBD hemp oil extracts derived from industrial hemp with a delta-9 tetrahydrocannabinol (THC) concentration of not more than 0.3 percent on a dry weight basis; all the foregoing made in whole or in substantial part of natural ingredients.”
- Applicant attempts to argue that its use is “lawful” because it complies with Colorado law.
- TTAB: “We affirm the refusal to register because Applicant’s use of its mark on its identified goods is a per se violation of the federal FDCA and thus the mark is not eligible for federal registration.”



Seeking FDA approval is an option

...but that's very expensive and time-intensive

EPIDIOLEX

Reg. No. 4,484,943

Registered Feb. 18, 2014

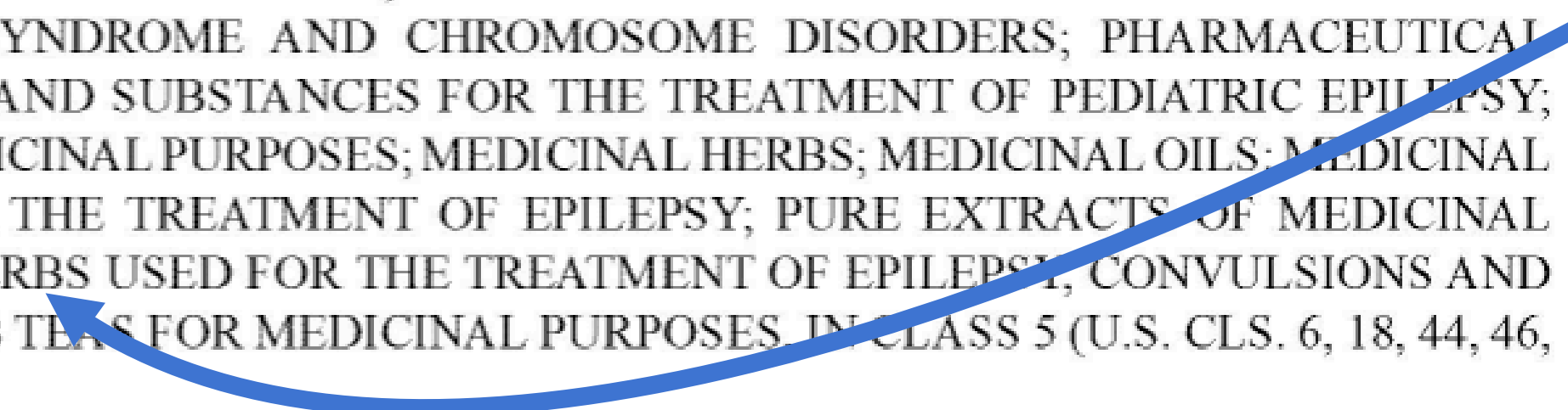
Int. Cl.: 5

TRADEMARK

PRINCIPAL REGISTER

GW PHARMA LIMITED (UNITED KINGDOM CORPORATION)
PORTON DOWN SCIENCE PARK
SALISBURY, UNITED KINGDOM SP40JR

FOR: PHARMACEUTICAL AND VETERINARY PREPARATIONS AND SUBSTANCES FOR THE TREATMENT OF EPILEPSY, CONVULSIONS, SEIZURES, DRAVET SYNDROME, LENNOX-GASTAUT SYNDROME, INTRACTABLE CHILDHOOD EPILEPSY WITH GENERALIZED TONIC-CLONIC SEIZURES, GENERALIZED EPILEPSY WITH FEBRILE SEIZURES PLUS, DOOSE SYNDROME AND CHROMOSOME DISORDERS; PHARMACEUTICAL PREPARATIONS AND SUBSTANCES FOR THE TREATMENT OF PEDIATRIC EPILEPSY; HERBS FOR MEDICINAL PURPOSES; MEDICINAL HERBS; MEDICINAL OILS; MEDICINAL INFUSIONS FOR THE TREATMENT OF EPILEPSY; PURE EXTRACTS OF MEDICINAL PLANTS AND HERBS USED FOR THE TREATMENT OF EPILEPSY, CONVULSIONS AND SEIZURES; HERB TEAS FOR MEDICINAL PURPOSES. IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).



- GW Pharma's Epidiolex was the first FDA-approved drug containing CBD.
- Used to be a Schedule V drug until the DEA removed it from that list in April 2020
- Trademark registered way back in February 2014 without issue. ID refers to "medicinal plants & herbs."

Another Typical Refusal for Class 5 Goods

SATIVEX

SERIAL NUMBER: 79266020

FILING DATE: 07/17/2019

REGISTRATION REFUSED – SECTIONS 1 AND 45 – PHARMACEUTICALS – BASED ON EVIDENCE

Here, the pharmaceuticals to which the proposed mark are to be applied were unlawful under the federal Food, Drug and Cosmetic Act (FDCA), 21 U.S.C. §321(g)(1). Applicant's goods include items that are intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease and/or intended to affect the structure of or any function of the body and are broad enough to include products that include cannabis derived ingredients.

In the event applicant is currently seeking FDA approval of the marketing of its goods, applicant may submit a copy of its marketing application to establish its intent to lawfully use the applied-for mark. Alternatively, applicant may respond to the stated refusal by submitting evidence and arguments against the refusal.

So what else has worked?

Note that these are exceptions rather than the norm.
Remember, only ~400 applications have actually registered!

United States of America

United States Patent and Trademark Office

hitbit

Interestingly, no “0.3%” or “dry-weight basis” language!

Reg. No. 6,122,736

Registered Aug. 11, 2020

Int. Cl.: 34

Trademark

Third Generation Ventures LLC (DELAWARE LIMITED LIABILITY COMPANY)
125 Baker Street, Unit 150
Costa Mesa, CALIFORNIA 92626

CLASS 34: Oral vaporizers for smoking purposes; oral vaporizers for smokers; electronic vaporizer liquid containing CBD for use in electronic oral vaporizers for smoking purposes

FIRST USE 5-1-2019; IN COMMERCE 5-1-2019

but..

FDA Regulation of Electronic Nicotine Delivery Systems

In 2016, FDA finalized a rule extending CTP's regulatory authority to cover all tobacco products, including electronic nicotine delivery systems (ENDS) that meet the definition of a tobacco product. FDA regulates the manufacture, import, packaging, labeling, advertising, promotion, sale, and distribution of ENDS, including components and parts of ENDS but excluding accessories. Examples of components and parts of ENDS include:

Aug. 11, 2020	Registration Certificate
May 26, 2020	OG Publication Confirmation
May 06, 2020	Notice of Publication
May 06, 2020	Notification Of Notice of Publication
Apr. 17, 2020	TRAM Snapshot of App at Pub for Oppostn
Apr. 08, 2020	Amendment and Mail Process Complete
Apr. 07, 2020	Examiners Amendment
Apr. 07, 2020	Notation to File
Apr. 03, 2020	XSearch Search Summary
Aug. 21, 2019	Drawing
Aug. 21, 2019	Specimen
Aug. 21, 2019	TEAS RF New Application

Sep. 01, 2020	Registration Certificate
Jun. 16, 2020	OG Publication Confirmation
May 27, 2020	Notice of Publication
May 27, 2020	Notification Of Notice of Publication
May 07, 2020	TRAM Snapshot of App at Pub for Oppostn
May 06, 2020	Notation to File
May 01, 2020	Amendment and Mail Process Complete
Apr. 30, 2020	Examiners Amendment
Apr. 30, 2020	Notation to File
Apr. 29, 2020	XSearch Search Summary
Feb. 15, 2020	Design Search Code Corr Project
Feb. 10, 2020	Drawing
Feb. 10, 2020	Specimen
Feb. 10, 2020	TEAS RF New Application

United States of America
United States Patent and Trademark Office



Reg. No. 6,140,883

Registered Sep. 01, 2020

Int. Cl.: 3

Trademark

Principal Register

DRJ Ventures LLC (FLORIDA LIMITED LIABILITY COMPANY)
1680 Michigan Avenue, Suite 920
Miami Beach, FLORIDA 33139

CLASS 3: massage oils; cosmetic creams for skin care; cosmetic preparations for skin care; body oils; lotions for cosmetic purposes; all of the foregoing containing cannabidiol derived from industrial hemp containing no more than a delta-9 THC concentration of more than .3% on a dry weight basis

FIRST USE 12-23-2018; IN COMMERCE 12-23-2018

Cosmetics without health claims?

United States of America

United States Patent and Trademark Office

HEMP+CONNECT

Reg. No. 6,088,282

Registered Jun. 30, 2020

Int. Cl.: 5

Trademark

Principal Register

Adkins, Summer N (TENNESSEE PARTNERSHIP), DBA Hemp Connect
506 Lovell Road
Knoxville, TENNESSEE 37932

Brown, Diaz S (TENNESSEE PARTNERSHIP), DBA Hemp Connect
506 Lovell Road
Knoxville, TENNESSEE 37932

CLASS 5: topically applied hemp cbd oil for supplemental purposes, not for consumption

FIRST USE 1-27-2019; IN COMMERCE 1-27-2019

Jun. 30, 2020	Registration Certificate
Apr. 14, 2020	OG Publication Confirmation
Mar. 25, 2020	Notice of Publication
Mar. 25, 2020	Notification Of Notice of Publication
Mar. 10, 2020	TRAM Snapshot of App at Pub for Oppostn
Mar. 10, 2020	Amendment and Mail Process Complete
Mar. 09, 2020	Examiners Amendment
Feb. 15, 2020	Amendment and Mail Process Complete
Feb. 13, 2020	Response to Office Action
Sep. 26, 2019	Offc Action Outgoing
Sep. 26, 2019	XSearch Search Summary
Mar. 21, 2019	Design Search Code Corr Project
Feb. 25, 2019	Drawing Original Restored
Jan. 27, 2019	Application
Jan. 27, 2019	Drawing
Jan. 27, 2019	Specimen

Topical ointments?

Medicated patches?

United States of America

United States Patent and Trademark Office

PERIODPATCH

Reg. No. 6,092,767

Registered Jun. 30, 2020

Int. Cl.: 5

Trademark

Supplemental Register

NX Brands Inc. (UNITED STATES CORPORATION)
Suite 210
1069 Main Street
Holbrook, NEW YORK 11741

CLASS 5: Medicated transdermal patches for mood elevation containing cannabidiol (CBD)
derived solely from industrial hemp with a delta-9 THC concentration of not more than 0.3%
on a dry weight basis

FIRST USE 5-5-2020; IN COMMERCE 5-5-2020

Trademark Act §§1, 45 Refusal – No Bona Fide Intent to Lawfully Use in Commerce as of
Filing Date – CSA Refusal

In the August 20, 2019 Office Action, the Examining Attorney made a partial refusal of the application because it is asserted that applicant does not have a bona fide intent to lawfully use the applied-for mark as it pertains to “medical foodstuffs.”

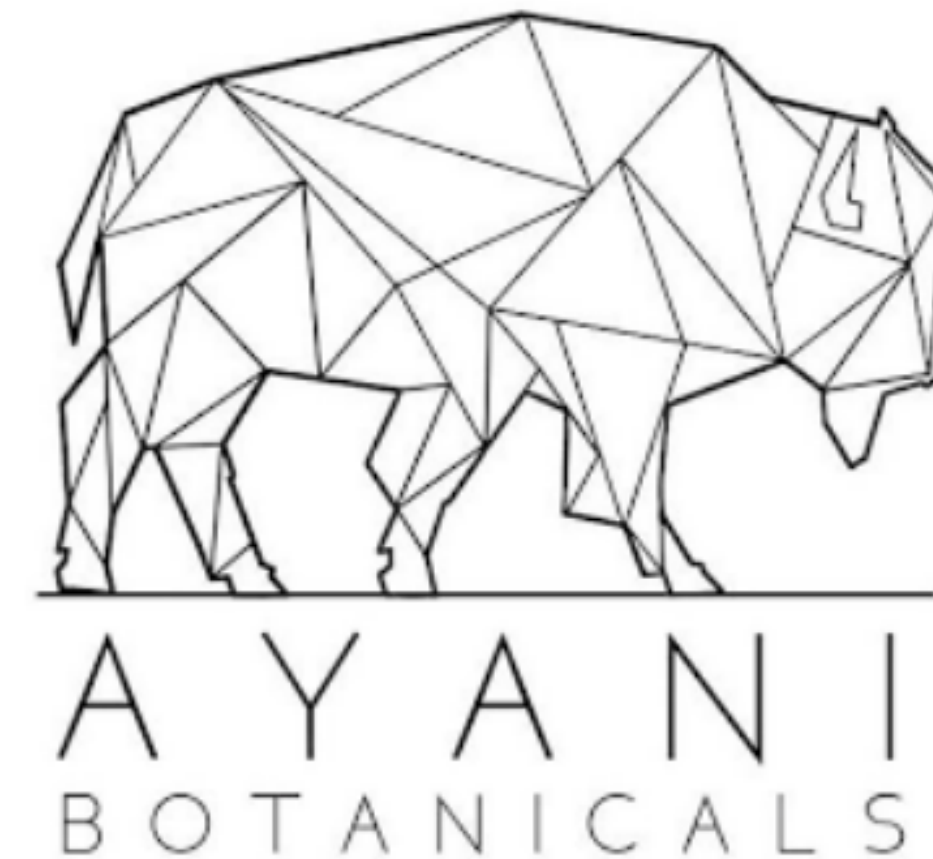
However, Applicant has removed this good from the instant application as part of this response. Accordingly, withdrawal of this rejection is respectfully requested.

Tinctures?

- Tinctures are cannabis-infused alcohol drops usually taken under the tongue (“sublingually”).
- So arguably, they are not “ingested.”
- Like other forms of CBD, these can be medicated or non-medicated.
- What about sublingual tablets?
- Probably anomalous for these to register



United States of America
United States Patent and Trademark Office



Reg. No. 6,061,628

Registered May 26, 2020

Int. Cl.: 3

Trademark

Principal Register

Ayani Botanicals (COLORADO LIMITED LIABILITY COMPANY)
30074 Road S.6
Dolores, COLORADO 81323

CLASS 3: Cosmetic preparations, namely, hemp salve, hemp balms, hemp lotions, hemp cosmetics, hemp oils, hemp massage oil, and hemp tinctures; non-medicated herbal body care products, namely, body oils, salves and lip balms; all of the foregoing containing or derived solely from cannabis with delta-9 THC concentration of not more than .03% on a dry weight basis

Hemp Seed Oil?

- Hemp seed oil contains no CBD, so it should generally not pose a problem—even in Class 005.
- Pre-Farm Bill, Applicants referred to the “sterilized seeds and mature stalks of the plant.”
- Still, only a few applications have registered in that class.

9 Records(s)
found (This
page: 1 ~ 9)

Start List At: OR Jump to record:

Refine Search ("CBD" or "cannabidiol" or THC)[gs] not ("none c

Current Search: S10: ("CBD" or "cannabidiol" or THC)[gs] not ("none of the foregoing") [gs] and `FD > "20181219" and `RN > "0" and seed[gs] and 005[ic] docs: 9 occ: 68

	Serial Number	Reg. Number	Word Mark	Check Status	Live/Dead
1	88735168	6128756	HEMPTOPIA	TSDR	LIVE
2	88425716	6127525	CHAMPLAIN	TSDR	LIVE
3	88312768	6131171	CANAGELMD	TSDR	LIVE
4	88448372	6083217	PEDICINE	TSDR	LIVE
	66315		BINWEED	TSDR	LIVE
	66244		GRAMRIGHT	TSDR	LIVE
	66394		MUZ MUZ	TSDR	LIVE
	00044		PAWSTOPIA	TSDR	LIVE
	09967		ALPHAWORLD	TSDR	LIVE

PAWSTOPIA

Reg. No. 6,000,044

Registered Mar. 03, 2020

Int. Cl.: 5

Trademark

Principal Register

MAKSYM PIVEN (UKRAINE INDIVIDUAL)
8805 75th Ave
Glenade, NEW YORK 11385

CLASS 5: Flea collars; Flea powders; Dietary pet supplements in the form of pet treats; Dietary supplements for pets; Dietary supplements for dogs, pets, livestock; Insecticidal dog washes; Medicated dog washes; Nutritional supplements for dogs, pets, livestock; Nutritional supplements in capsule form for dogs; Vitamin and mineral supplements for mixing with food for dogs, pets, livestock; all the foregoing goods containing hemp seed oil but not containing CBD as an ingredient

United States of America

United States Patent and Trademark Office

Canna Bistro

Reg. No. 6,103,847

Registered Jul. 14, 2020

Int. Cl.: 43

Service Mark

The Dominance Agency (GEORGIA CORPORATION)
760 Mount Vernon Hwy
Atlanta, GEORGIA 30328

CLASS 43: Restaurant services featuring food and drink with a delta-9 tetrahydrocannabinol (THC) concentration of not more than 0.3 percent on a dry weight basis; none of the foregoing services involving or featuring food or drink containing cannabidiol (CBD)

Interesting combination of qualifiers



Restaurant Services?

Despite these difficulties,

many people still file...

- Why? Even an unsuccessful application potentially lets you:
 - stake a claim & put common-law rightsholders on notice;
 - keep a place in line by refiling and hoping for the law to change; and
 - point to something in a cease & desist letter.



Specimen Issues

MUZ MUZ

Reg. No. 6,016,394

Registered Mar. 24, 2020

Int. Cl.: 5, 29

Trademark

Principal Register

Full Spec, LLC (NEW YORK LIMITED LIABILITY COMPANY)

Apt. 405

342 Eldert Street

Brooklyn, NEW YORK 11237

CLASS 5: Herbal tinctures for medical purposes; dietary supplements for humans; medicated oils containing full spectrum hemp oil; dietary beverage supplements for human consumption for therapeutic purposes; herbal bitters as a dietary supplement; herbal tonic supplements, all of the aforementioned goods containing hemp solely with a delta-9 tetrahydrocannabinol THC concentration of not more than 0.3 percent on a dry weight basis, and also containing only trace amounts of naturally occurring CBD

Who is Muz?

Here at Muz Muz we're not like the other Monkeys. We are a company built on transparency, from soil to oil. We grow and sustainably source all of our ingredients from small organic farms- from Hawaii to New York. We work directly with American Hemp farmers and certified processing facilities to ensure our product is organic and sustainable. We are on a mission to empower growers and regenerate the earth by producing the tastiest, most earth-forward CBD infused snacks and self care products.

website

Does this have CBD
in it or not?



CANNASSEURBIS

Reg. No. 6,086,065

Registered Jun. 23, 2020

Int. Cl.: 30

Trademark

CANNASSEURBIS LLC (CALIFORNIA LIMITED LIABILITY COMPANY)
29665 Big Dipper Way
Murrieta, CALIFORNIA 92563

CLASS 30: Bakery goods, namely, cakes, cookies, brownies, and pastries; Candy; Bakery desserts; all of the foregoing containing or derived solely from cannabis with a delta-9 THC concentration of not more than 0.3% on a dry weight basis and not containing CBD

So... is this just a plain
Rice Krispies treat?



Instagram



cannasseurbis

Follow



154 posts

2,652 followers

2,391 following

CANNASSEURBIS™

Lifestyle Brand Centered Around "All Things Cannabis™ For Those That Like To Enjoy Cannabis With Class And Style. [#cannasseurs](#)🚫only

www.cannasseurbis.com

United States of America

United States Patent and Trademark Office

LUCKY EDIBLES

Reg. No. 5,997,284

FRANKLIN BIOSCIENCE, LLC (COLORADO LIMITED LIABILITY COMPANY)

25 South Clermont Street

Denver, COLORADO 80246

Registered Feb. 25, 2020

CLASS 30: Candy mints not containing THC or cannabis

Int. Cl.: 30

FIRST USE 10-00-2015; IN COMMERCE 10-00-2015

Trademark

What do you think that says?



What's going to happen when renewal filings come due?

Registered marks could potentially be vulnerable if they submit renewal filings showing unlawful use. USPTO is “aware of” this issue.

United States of America

United States Patent and Trademark Office

KANNABIOTIC

Reg. No. 4,928,089

Registered Mar. 29, 2016

Int. Cl.: 5

TRADEMARK

PRINCIPAL REGISTER

HDDC HOLDINGS, LLC (NEVADA LIMITED LIABILITY COMPANY)
550 WEST "C" STREET, SUITE 2040
SAN DIEGO, CA 92101

FOR: DIETARY AND NUTRITIONAL SUPPLEMENTS IN DROP FORM, CAPSULE FORM, PILL FORM, LIQUID FORM; PROTEIN POWDERS AND PROTEIN BARS FOR USE AS DIETARY AND NUTRITIONAL SUPPLEMENTS; NUTRACEUTICALS FOR USE AS A DIETARY SUPPLEMENT; DRINK MIXES FOR NUTRITIONAL SUPPLEMENT PURPOSES; MEDICATED TOPICAL CREAMS, GELS, SALVES, SPRAYS, BALMS, POULTICE, AND OINTMENTS; EDIBLE OIL FOR USE AS A NUTRITIONAL SUPPLEMENT; ALL THE AFOREMENTIONED GOODS CONTAINING CANNABIDIOL, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).



Questions?

Thank you!

Please feel free to reach out with any questions

Ryan Gile
GILE LAW GROUP
1180 S Town Center Dr #100
Las Vegas, NV 89144
rg@gilelawgroup.com
(702) 703-7288





Cannabis & IP Law Transactions/Prosecution

Dale Hunt / November 12, 2020

Why is the USPTO Hostile to Cannabis Trademarks and Friendly to Cannabis Patents?

- Trademark registration requires (LEGAL) use in commerce.
- Patentability doesn't require any use at all (legal or not):
 - New
 - Non-obvious
 - Adequately described
 - Within 'patentable subject matter'

<https://plantlaw.com/2019/02/11/friendly-hostile/>

What can you protect?

Compositions

Combinations

Machines

Methods

**Genetics (in order
of controversy...)**

- new varieties
- use of “markers”
for breeding
- chemotypes
- GMOs

What can you protect?

Refine Search

ttl/cannabis

PAT. NO.

Title

- 1 [10,821,240](#) **T** [Methods and drug delivery devices using cannabis](#)
- 2 [10,806,707](#) **T** [Cannabis oil compositions and methods for preparation thereof](#)
- 3 [10,806,098](#) **T** [Cannabis growth methods and systems](#)
- 4 [PP32,318](#) **T** [Cannabis plant named 'MR2017002'](#)
- 5 [10,792,830](#) **T** [Apparatus and related methods for trimming dried cannabis flowers](#)
- 6 [10,780,442](#) **T** [Cannabis trichome separation using chilled water](#)
- 7 [10,780,075](#) **T** [Water soluble cannabis composition](#)
- 8 [10,779,557](#) **T** [Method for conducting concentrated cannabis oil to be stable, emulsifiable and flavo](#)
- 9 [10,773,184](#) **T** [Extraction of compounds from cannabis](#)
- 10 [10,766,674](#) **T** [Cannabis storage assembly](#)
- 11 [10,765,713](#) **T** [Cannabis compositions and methods](#)
- 12 [10,758,940](#) **T** [Mobile sieving apparatus and method for harvesting cannabis pollen and trichomes](#)
- 13 [10,758,481](#) **T** [Single serve beverage pod containing cannabis](#)

Patent Validity Problem in Cannabis

Issued Patents are Presumed Valid by the Courts

Based on assumption that USPTO did its job in examining the claims

- find closest prior art
- issue rejections based on closest prior art
- applicant overcomes, creating written record
- biotech, chemistry, (really any tech field)
 - rich body of patent and academic literature for prior art searches

Unique problem of Cannabis industry

- abundance of prior commercial activity
- almost no corresponding publications
- patent examiner's prior art search not representative of real public knowledge

Cannabis & IP Law Transactions/Prosecution

2 Federal Agencies – 3 Forms of Protection (USA)

United States Department of Agriculture (USDA)

1. Plant Variety Protection (PVP) Certificate



United States Patent & Trademark Office (USPTO)

2. Plant Patent
3. Utility Patent



Rest of World

UPOV System – like USDA PVP

Plant IP	THC Level	Seed Deposit	Doesn't cover
USDA PVP	Below 0.3% THC	Yes	Breeding Saving seed for replanting
USPTO Plant Patent	N/A	No	Seeds Breeding Non-clonal similars
USPTO Utility Patent	N/A	Yes (or other biological deposit)	(Flexible coverage)

When plants are the key, unique genetics are the secret sauce.

Scalability in Plant-Based Businesses:

Buy land

Hire and manage people

OR

Create and out-license IP

Collect royalties

Proven Plant Licensing Model: Applied to Cannabis for the First Time

2010: Family Farm, Breeding & Plant Production
~\$10M annual revenues

Commitment to scalability through IP and global licensing

2020: Breeding & Plant Production + IP Licensing
~\$200M annual revenues
licensing \$\$ > production \$\$

Keys for good licensing

1. Don't get stuck in a document too soon
importance of term sheets
2. Negotiate the intent and the goals, *then* the wording
3. Plant-specific – address:
 - test-growing & data sharing
 - propagation
 - breeding
 - ownership of new developments
 - destruction or return of all living material upon termination
4. What about where there's no IP available?

Ethical issues

Is it wrong to patent a plant?

What about landraces?

Does patent plants limit access to plant medicines?



THANK YOU

Dale C. Hunt, PhD, JD
dhunt@pnplf.com



PLANT & PLANET
— LAW FIRM —