

CMA Guide:

Permitted Cannabis Marketing Activities

This document provides general information. It does not constitute legal advice.

Those with specific questions about the legislation and regulations should seek independent legal advice.

As this is an evolving area, this Guide will be updated to reflect regulatory developments, further clarity from regulators and precedent that is established over time.

This Guide is current as of October 24, 2018.

CMA Permitted Cannabis Marketing Activities Guide

A recognized leader in industry self-regulation, the Canadian Marketing Association has a Code of Ethics and Standards of Practice, and series of guides, that establish best practices for marketers in Canada and assist members with understanding and navigating regulatory frameworks.

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PURPOSE AND BACKGROUND

This Cannabis Marketing Activities Guide provides an overview of permissible and prohibited marketing activities contained in the federal [Cannabis Act](#), effective October 17, 2018. As well, it identifies aspects of the legislation that are unclear, and lists relevant policies to be considered as marketers prepare to promote cannabis and cannabis-related products.

The purpose of the Guide is to provide marketers with information and insights to facilitate compliance with the legislation and best practices in relation to this newly legalized sector. It is relevant not only for front-line marketers in the cannabis sector, but also for their suppliers, as it covers activities such as signage/billboards, packaging, and the sale of non-cannabis items such as promotional items.

Marketing restrictions on cannabis are **similar but not identical to** those faced by other product categories, particularly tobacco. It is important for marketers to understand these differences.

The CMA and its members recognize that maintaining high standards of practice is a fundamental responsibility to the public and the foundation for a successful and strong business community in Canada.

The CMA is the leader in providing legislative and regulatory guidelines and articulating best practices for the marketing profession in Canada. As the self-regulatory body for the marketing profession in Canada, we provide educational resources to maintain and strengthen the professionalism and integrity of the marketing community. Our Code of Ethics and Standards of Practice, which is widely recognized as a benchmark for effective self-regulation, is mandatory for members and regularly updated. Our next update will reflect key aspects of this Cannabis Marketing Activities Guide.

As this is an evolving area, this guide will be updated to reflect regulatory developments, further clarity from regulators and precedent that is established over time. For more information, contact the [Public Affairs team](#) at CMA.

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INTRODUCTION

The objectives of the *Cannabis Act* are to protect public health and public safety, including:

- Protecting health of young persons by restricting their access to cannabis
- Protecting young persons and others from inducements to use cannabis

As such, the Act “prohibits any promotion, packaging and labelling of cannabis that could be appealing to young persons or encourage its consumption, while allowing consumers to have

access to information with which they can make informed decisions about the consumption of cannabis.”

Promotion of cannabis is regulated by sections 16 to 24 of the *Cannabis Act*. These sections govern marketing activities for cannabis and cannabis related accessories and services in Canada.

The promotion section of the *Cannabis Act* is modelled after the *Tobacco Act* in that it begins by prohibiting all promotion activities, and then provides exceptions to the blanket prohibition. **All activities of marketers in Canada must work within an exception provided in the Act.**

General prohibitions include:

- Communicating information about its price or distribution.
- Appealing to young persons.
- Testimonial or endorsement.
- Depiction of a person, character, or animal, whether real or fictional.
- Evokes a positive or negative emotion or ‘way of life’ such as one that includes glamour, recreation, excitement, vitality, risk or daring.

Most permitted activities must meet certain conditions, as indicated in the next section. In these instances, it is recommended that companies consult with a lawyer.

PERMITTED PROMOTION ACTIVITIES

Physical Mail / Direct Mail

Includes printed direct mail marketing activities where the mailer is addressed to an adult within an envelope if the content of the mailer includes Brand Preference or Informational Promotion. If the mailer only contains Brand Elements, then it may be sent by unaddressed mail.

Examples: Post-card type mailer, printed brochure or collateral sent by mail or courier

Cannabis Act References: 17(2)(a), 17(3)(a), 17(6)



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Website

It is permissible to communicate on websites, provided “reasonable steps” have been taken to ensure the website cannot be accessed by a minor. It is unclear what constitutes “reasonable steps” and therefore marketers should proceed with caution and consult legal counsel. The content of the website may include Brand Elements, Brand Preference and Informational Promotion. Private e-commerce websites are presently only permitted in the province of Saskatchewan.

Examples: Corporate website, retailer website or cannabis brand website

Cannabis Act References: 17(2)(c), 17(3)(c)

Digital Advertising

Digital display and text advertising is permissible provided “reasonable steps” have been taken to ensure the content cannot be accessed by a minor. It is unclear what constitutes “reasonable steps” and therefore marketers should proceed with caution and consult legal counsel. It should be noted that many digital advertising platforms do not accept advertising from the cannabis industry.

Examples: Display ads on websites, native content advertising

Cannabis Act Reference: 17(2)(c)

Promotional Items

Promotion activities on things that are not cannabis or cannabis accessories are limited to Brand Elements. The promotional item must not be associated or appealing to young people (e.g.: a plush toy) and may not associate with a way of life (e.g.: a snowboard).

Examples: T-Shirts, hats, water bottles, keychain

Cannabis Act Reference: 17(6)

Brand Element Advertising

A plain reading of the Cannabis Act indicates that advertising solely with a Brand Element that does not depict a way of life or be particularly appealing to young people may be a permissible activity; however, marketers should proceed with caution and consult legal counsel.

Cannabis Act Reference: 17(6)

Out of Home Advertising in Minors Prohibited Locations

Places where minors are prohibited by law are primarily administered through provincial liquor licenses. Within areas where minors are prohibited, Brand Elements, Brand Preference and Information Promotion is permitted. Depictions of a way of life are not permitted within out of home advertising in minors prohibited locations.



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Example: Posters in minors prohibited bars, and other adult only venues
Cannabis Act References: 17(2)(b), 17(3)(b)

Event Marketing

Marketing at events is allowed, provided the event marketing is in a minors prohibited by law location administered through provincial liquor licenses. Only Brand Elements may be visible from outside of the minors prohibited location. Brand Preference or Informational Promotion may not be viewable from outside of the event.

It is important to consider that event marketing should be structured as a services contract for space at an event and not in conjunction with the promotion or sponsorship of an event.

Example: Experiential marketing activation in a minors prohibited beer garden at a music festival

Cannabis Act Reference: 17(2)(b), 17(3)(b), 17(6), 21, 22

Magazines & Newspapers

A generally distributed magazine may only include advertisements which display Brand Elements and may not include a depiction of a way of life. The magazine must not be particularly appealing to young persons (e.g., ads in Teen Vogue would not be permitted). The CMA recommends a detailed review of the audited circulation of the magazine to ensure it is not read by minors. Marketers should proceed with caution and consult legal counsel.

It would, however, be permissible for a magazine circulated through subscriptions where all subscribers are confirmed adults, and where the magazine is mailed directly to subscribers only, to include advertisements with Brand Preference and Informational Promotion.

Examples: Esquire Magazine, Today's Parent, Cannabis Industry Magazines

Cannabis Act Reference: 17(6), 17(2)(a)

Cannabis Industry Trade Shows

All promotion activities are allowed within industry trade shows and events, provided the promotion is to a person or company that sells or distributes cannabis. This exemption does not extend to direct or indirect promotion to consumers.

Examples: Lift&Co Trade Show, MJBiz Trade Show

Cannabis Act Reference: 16(c), 16(d)



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Non-Promotional Corporate Marketing and Communications

Communications activities that are not directed at consumers and not made for the purpose of selling cannabis or cannabis related services or shaping attitudes, beliefs and behaviors about cannabis or cannabis accessories are included in these types of activities.

Examples: Recruitment advertising and promotions, shareholder reports, news releases
Cannabis Act Reference: 2(1) – definition of “promote”

Printed Collateral

Brochures and handouts may include Brand Elements, Informational Promotion and Brand Preference Promotion but these items must be provided directly to an adult (by mail, provided in a minors prohibited location or within a licensed cannabis shop).

Examples: Brochure about a cannabis product, brochure about consumption methods
Cannabis Act References: 17(2)(a), 17(3)(a)

Point of Sale Materials / Graphics in Cannabis Stores

These materials must be located within a provincially-licensed cannabis retail store and may include availability, price, Informational Promotion and Brand Preference Promotion. In limited circumstances where cannabis retail stores are not minors prohibited locations (eg: Nova Scotia), then only the promotion of availability and price is allowable.

Examples: Product-talker cards, cannabis accessory discount promotion at a register, posters within a cannabis store
Cannabis Act References: 17(4), 17(5), 17(2)(b), 17(3)(b)

E-Mail Marketing

Provided “reasonable steps” have been taken to ensure that the e-mail is not received by a minor, e-mail marketing may include Brand Elements, Informational Promotion and Brand Preference Promotion.

Example: New Product Announcement E-Mail
Cannabis Act Reference: 17(2)(c)

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UNCLEAR PROMOTION ACTIVITIES

Social Media Platforms

It is unclear whether the convention of a description on a social media page only requesting followers that are adults is a “reasonable step” to ensure the promotion cannot be accessed by a minor. If reasonable steps are taken, then Brand Elements, Informational Promotion and Brand Preference Promotion is allowable. If “reasonable steps” are not taken, then the promotion must be limited to a Brand Element and not associate with a way of life or young persons.

Examples: Facebook Page, Instagram Page, Twitter Page
Cannabis Act References: 17(2)(c), 17(6)

Reasonable Steps in Telecommunications

Promotions through telecommunications (online or over the phone) requires a marketer to have taken “reasonable steps to ensure the promotion cannot be accessed by a young person”. The Cannabis Act does not specifically define “reasonable steps” and marketers should rely on the advice of their legal counsel on this matter.

Cannabis Act Reference: 17(2)(c)

NON-PERMISSIBLE ACTIVITIES

Non-permissible activities include marketing tactics where no exception is provided in the *Cannabis Act* or the activity is expressly prohibited. These include:

- Television advertising
- Radio advertising
- Promotion of a sponsorship to gain publicity
- Sports marketing associated with a way of life
- Naming of a sports or cultural facility, not including other facilities

Cannabis Act References: 17(1), 21, 22, 23

Appeal to Young Persons

With respect to the *Tobacco Act*, the Supreme Court of Canada clarified that “appealing to young persons” means that an advertisement is “particularly attractive and of interest to young persons, as distinguished from the general population.”

Reference: Canada (Attorney General) v. JTI-Macdonald Corp., [2007] 2 S.C.R. 610, 2007 SCC 30 [JTI-Macdonald], para 89.

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Lifestyle Advertising

The Supreme Court of Canada stated that the prohibition on lifestyle advertising with respect to tobacco that evokes a positive or negative emotion or image, includes advertising that "must catch not only clear associations, but subtle subliminal evocations."

Reference: Canada (Attorney General) v. JTI-Macdonald Corp., [2007] 2 S.C.R. 610, 2007 SCC 30 [JTI-Macdonald], paras 115.

RELEVANT DEFINITIONS

Brand Element – "includes a brand name, trademark, tradename, distinguishing guise, logo, graphic arrangement, design or slogan that is reasonably associated with, or that evokes, (a) cannabis, a cannabis accessory or a service related to cannabis; or (b) a brand of any cannabis, cannabis accessory or service related to cannabis."

Brand Preference Promotion – "means promotion of cannabis by means of its brand characteristics, promotion of a cannabis accessory by means of its brand characteristics or promotion of a service related to cannabis by means of the brand characteristics of the service."

Informational Promotion – "means a promotion by which factual information is provided to the consumer about (a) cannabis or its characteristics; (b) a cannabis accessory or its characteristics; (c) a service related to cannabis; or (d) the availability or price of cannabis, a cannabis accessory or a service related to cannabis."

Promotion – means "in respect of a thing or service, means to make, for the purpose of selling the thing or service, a representation — other than a representation on a package or label — about the thing or service by any means, whether directly or indirectly, that is likely to influence and shape attitudes, beliefs and behaviours about the thing or service."

ADDITIONAL CONSIDERATIONS

Data Privacy

The CMA recommends that marketers engaged in the cannabis category carefully consider the location of the storage of customer data outside of Canada. Consumers should be aware of where their personal information is stored when making cannabis or cannabis related purchases.

Documentation of Marketing Practices

The CMA recommends that marketers create documentation for all marketing activities that include the type of promotion (Brand Element, Brand Preference or Informational Promotion) and the Cannabis Act exemption that allows for the marketing activity. The CMA further recommends that marketers have their activities reviewed by legal counsel to ensure compliance with all applicable laws.



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RESOURCES

[Cannabis Act](#)

[Health Canada - Cannabis in Canada](#)

[Fact Sheet: The Cannabis Act – Promotion Prohibitions \(EN\)](#)

[Promotions Prohibitions under the Cannabis Act \(EN\)](#)

Digital Advertising Platforms - Drug Policies		
Facebook	Google	Twitter
Instagram	Amazon	

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CMA would like to acknowledge and thank the members of the Working Group on Cannabis for their help in creating this Guide: Fire and Flower| Fogler, Rubinoff LLP | BBDO Canada | Kantar | Pattison Outdoor | Sussex Strategy Group | TorStar.

This Guide is current as of October 24, 2018.

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