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COUNTERFEITING: DISRUPTIONS IN THE VERTICAL SUPPLY CHAIN

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Committee**

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OVERVIEW

The purpose of this information series is to highlight the problem of counterfeiting in the cannabis industry, and illustrate how each sector, from manufacturers, testing labs, and distributors to the end user, is affected by this very real problem. By the end of this series, the CCIA IP committee hopes to have provided some best practices to help legitimate businesses protect themselves from “counterfeiters and brand pirates.”

WHAT IS COUNTERFEITING?

Counterfeiting is the intentional and calculated reproduction of a genuine article (such as products, e.g., money, handbags, vape cartridges, etc., or trademark/logo/brand) for the purpose of misleading the recipient or buyer into believing he or she is receiving or buying the genuine article itself. This is essentially the theft of one’s intellectual property. But it has more far-reaching ramifications. Counterfeiting not only takes money away from your company, but it also puts your brand and reputation in danger by bringing potential harm to your company in the form of consumer distrust, and legal liability if the counterfeited item causes harm to the end user.

DOES COUNTERFEITING HAPPEN IN THE CANNABIS INDUSTRY?

Unfortunately, yes. A number of recognized brands in the industry have been the victim of counterfeiting, and the range of victims affected runs through all facets of the industry; from testing labs to manufacturers and distributors with exclusive distribution agreements for specific brands. Take, for instance, personal testimony from IP Committee co-chair and CCIA board member Reggie Gaudino. His company Steep Hill, a cannabis testing laboratory, is currently investigating the misuse of its certificates of analysis (CoAs) and logo in states where they currently do not offer testing services. Steep Hill found identical references to their CoAs in a Facebook post. When they followed up, they found that a dispensary in Florida had posted fraudulent CoA’s for CBD products, for both human and animal consumption, that had never been tested by Steep Hill. Further, the ID numbers on the products were clearly falsified and did not follow Steep Hill’s sample ID assignment conventions and so was easily identified as a fake.

But, therein lies the problem: consumers who know and trust the Steep Hill name and brand, ASSUMED that the CoA’s were legitimate. These same people have no way of telling if the sample ID numbers were legitimate. The people purchasing those products had no clue that Steep Hill had never tested them, and were thus unknowingly consuming untested products.

What if someone had been harmed by a product with the Steep Hill name on it? Would that liability come to roost with Steep Hill? As one can imagine, Steep Hill immediately issued Cease and Desist letters, but the products had already been purchased AND consumed, as was made evident by the Facebook post.

We wish this was the ONLY example, but slightly before this instance, Reggie was made aware by a California-based distributor that products bearing Steep Hill's logo and stickers with falsified were being sold through "secret sesh's" and delivery services. The distributor showed Steep Hill a picture of the product with their logo as well as a YouTube channel review posted in December 2018, using the CoA for a product we tested in October 2017. Further investigation made them aware that fake "results stickers" can be purchased on Alibaba, along with a number of other labs and even manufacturer and distributor logos. Thus, end users consume products that are falsely labeled as tested, and therefore unwittingly believe they are safe.

There are many other examples of counterfeiting that occur in the Cannabis Industry. In some cases, the counterfeit product is made from batches of that failed testing due to contamination from pesticides or microbial contamination. Instead of getting rid of the product, they are diverted to the black market. Another example is where "bad actor A" can't sell his large harvest of Cannabis, and then changes the name to a more popular strain and watches dispensaries buy it up. While this seems far-fetched, it is actually closer to the truth than many realize, and there is scientific evidence in the form of laboratory tested chemical profiles to lend support that this does in fact happen.

The reality, then, of counterfeiting within the cannabis industry has been made clear.

This is a rather chilling realization, with potentially serious ramifications for the health, reputation, and success of the cannabis industry.

In future IP committee white papers, we will begin to detail what steps you can take as a cannabis business to mitigate counterfeiting:

- How can companies avoid falling prey to counterfeiters?
- What are some best practices regarding protecting intellectual property through trademarks, copyrights, patents, and trade secrets, and perhaps as importantly, developing enforcement policies for both companies and regulators, that would mitigate or prevent the consequences of counterfeiting and brand piracy?

Future installments of the CCIA Intellectual Property Committee will explore other types of counterfeiting and best practices to protect your company

CONTRIBUTORS

Dr. Reggie Gaudino¹ serves as Chair of the California Cannabis Industry Association's Intellectual Property Committee, which is responsible for this publication and its content. Other contributing members include Tom Zuber², Nicole Syzdek³, and Nicole Aaronson⁴.

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