Program Description

As of 2018, 33 states plus D.C. and our neighbor to the north, Canada, now regulate recreational cannabis use. Coupled with emerging research regarding the positive health benefits of cannabis and CBD products, the cannabis industry now more than ever significantly impacts the entertainment and sports industry. This panel will discuss various legal issues, including regulatory restrictions affecting the sale of cannabis and CBD as well as sponsorship and endorsement related concerns given the CSA (Controlled Substance Act), and how those in the entertainment and sports industry are handling and overcoming these legal hurdles.

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Program Materials

The Intersection of Cannabis/CBD and the Entertainment and Sports Industries by Alicia R. Ashcraft
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The Intersection of Cannabis/CBD and the Entertainment and Sports Industries

By Alicia R. Ashcraft

Public support for cannabis law reform is increasing. Approximately 62% of Americans favor legalization of cannabis and cannabis products, which exhibits a significant increase over the past decade. This increase in public support is demonstrated by the number of states that have recently legalized the drug for medical or recreational purposes. Eleven states and Washington, D.C., have now legalized marijuana for recreational use for adults over 21, and 33 states have legalized medical marijuana. Additionally, just a year ago, Canada legalized cannabis federally, becoming the first G7 country to do so.

Prohibition began 80 years ago when the federal government banned the sale, cultivation and use of cannabis under the Control Substances Act of 1970 (CSA). It is still illegal at the federal level.

The widespread support for overturning prohibition, coupled with emerging research regarding the positive health benefits of cannabis and CBD products, has elevated the cannabis industry now, more than ever, and significantly impacts the entertainment and sports industry.

Today, there is an ever-growing group of celebrities and public figures joining the cannabis and CBD industry. As the public recognizes the benefits of these products, entertainers and celebrities, as well as their managers and representatives, are realizing the potential of the industry.
Whether through leadership roles on corporate boards, legal or political advisory positions, celebrity endorsements, or brand-name recognition, affiliation and participation in the cannabis space has become more mainstream and accepted. The industry is no longer marked by the “stoner-culture” emblem.

**Cannabis - The Difference Between CBD and THC**

There are currently over a hundred known cannabinoids found in the cannabis plant, the plant genus that includes both hemp and marijuana. A cannabinoid is a compound that interacts with the body’s endocannabinoid system (ECS), which is a network of receptors that interact with cannabinoids and maintain vital functions throughout the body. Plant-based cannabinoids, such as those found in the cannabis plant, are similar to the body’s own cannabinoids, which allows them to interact with the body’s ECS.

Tetrahydrocannabinol (THC) and cannabidiol (CBD) are the two most abundant of the cannabinoids found in cannabis. While there are a multitude of cannabinoids found in cannabis, THC and CBD are by far the most well-known and studied

Surprisingly, CBD and THC have the exact same chemical makeup (21 carbon atoms, 30 hydrogen atoms, and 2 oxygen atoms). But despite their similarities, CBD and THC have differences in chemical structure that affect how they interact with and affect the human body.
In 1988, the first cannabinoid receptor was discovered by scientists, and by 1995 the first receptors were classified as CB1 and CB2 receptors. CB1 receptors are primarily found in regions of the brain, affecting such processes as memory, high cognition, emotion and coordination. CB2 receptors are found typically in the central nervous and immune systems.

The interaction between CBD and THC with the CB1 and CB2 receptors reportedly results in claimed health benefits such as pain relief, anxiety relief, appetite stimulation, and mood management. However, as noted above, because CBD and THC have different structures, they do not interact with CB1 and CB2 receptors in the same way. THC is able to bind directly with CB1 and CB2 receptors, and when that bond is formed, the psychoactive effect of “getting high” results. However, CBD has little attraction to these cannabinoid receptors, and actually acts as antagonist to suppress the CB1 and CB2 receptors.
CBD and THC are found throughout both marijuana and hemp plants – seeds, stalks, and flowers. CBD is most abundant in hemp, which is generally the source for commercially available CBD oil and products. THC, in varying quantities, is typically found in marijuana plants, which are usually cultivated and cloned to specifically increase the THC concentration. By definition, hemp’s THC content is less than 0.3 percent.

**Legality of CBD and THC in the United States**

The Controlled Substances Act (CSA), Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970 is the federal statute that regulates the manufacture, importation, possession, use and distribution of certain drugs and chemicals such as hallucinogens, narcotics, depressants, and stimulants. Within the CSA, there are five schedules used to classify drugs based upon their potential for abuse, accepted medical applications in the US, and potential for addition. Substances listed on Schedule I are deemed to have a high potential for abuse, no currently accepted medical use in treatment in the US, and a lack of accepted safety for use of the drug under medical supervision.

Marijuana and THC are both specifically currently listed on Schedule 1 of the CSA, along with Heroin, LSD, Mescaline, and Ecstasy, and therefore, are prohibited under federal law.
Penalties for violations of the CSA are severe:

- **Simple possession of marijuana:**
  - Misdemeanor, punishable by up to one year in prison and a
    minimum fine of $1,000.

- **Manufacture, distribution or possession with intent to distribute marijuana:**
  - Felony, punishable by up to five years in prison and fines up
to $250,000 for individuals and $1 million for entities.

*(Repeat offenders face more severe penalties)*

Also, note that whoever assists or aids in the commission of a federal offense is punishable as a principal.

CBD is not listed on the CSA but is still in the gray area due to unclear laws and its close relationship with THC. Nonetheless, the manufacture, importation, possession, use and distribution of CBD appears much safer from a legal perspective.

The US Farm Bill of 2014 (2014 Farm Bill) took a small step toward changing hemp policy, and permitted state-regulated hemp pilot programs. But the 2014 Farm Bill focused on generating hemp research and cultivation, and did not address manufacturing and distribution of hemp products, such as CBD. States could enact their own laws regarding CBD. This state-to-state variance, coupled with the unclear or indistinguishable difference, for some, between hemp and marijuana, leads to treacherous legal waters.
The 2018 Farm Bill is more expansive and fills in some of the gaps of the 2014 Farm Bill, explicitly clarifying that hemp and hemp products are legal, so long as the THC concentration does not exceed 0.3 percent. It permits hemp cultivation, not just pilot programs, and it specifically allows for the transfer of hemp-derived products across state lines for commercial or other purposes. However, the CBD world is not “out of the weeds yet,” as each state must develop a regulatory plan including a practice for maintaining information regarding where hemp is grown, a procedure for testing THC concentration, a process for disposing of plants and products produced in violation of the law, and a procedure for ensuring the state will take appropriate action for violation of federal hemp laws – and then the US Department of Agriculture (USDA) must approve such state’s plan.

On the same day that the law became effective, the US Food and Drug Administration (FDA) issued a statement as a reminder that it continues to have the authority to regulate products containing cannabis or cannabis-derived compounds under the Federal Food, Drug and Cosmetic Act. The FDA continues to consider those products as it does any other FDA-regulated substance.

The FDA has warned that marketing CBD or THC products as “dietary supplements” is unlawful, but has also indicated that it is only likely to initiate enforcement action if CBD products are marketed with therapeutic claims or if they threaten public health.
Other Industry Regulatory Considerations

While there is an ever-growing public acceptance of cannabis, several industries and regulatory agencies are not so quick to unite in the effort.

For example, at the International Conference on Gambling & Risk Taking in Las Vegas, Nevada in May of this year, panel members expressed a continuing concern over any relationship of gaming operators and the marijuana industry. The Nevada Gaming Control Board continues to enforce a policy of strict regulation, and the legal issues still surrounding cannabis impact how the Board views any involvement of licensees with the cannabis industry.

Moreover, the World Anti-Doping Agency (WADA) still establishes marijuana and cannabinoids (except CBD) as substances that are prohibited in-competition at some levels, in order to harmonize anti-doping efforts around the world across all sports. While WADA may consider a Therapeutic Use Exemption (TUE) for the application of medical marijuana in certain circumstances, those remain strictly regulated.

However, just this year, the National Football League and the NFL Players Association agreed, for the first time, to cooperate in studying the potential use of marijuana as a pain management tool for players. This signals a potential major shift in the NFL’s prior policies. The NFL and the Players Association have agreed to form two joint medical committees that are to provide recommendations and suggestions on key medical issues faced by the league and the players.
The Future of the Cannabis Industry – Celebrity Endorsement and Branding

As legalization in the cannabis industry took hold, rapper Snoop Dogg was one of the first to jump in with a line of products under the brand “Leafs by Snoop,” followed quickly by Willie Nelson and his line “Willie's Reserve.” At the same time, “Marley Natural,” associated with Bob Marley and his family, and “Chong’s Choice” launched by Tommy Chong, hit the market.

Whoopi Goldberg founded medicinal marijuana brand “Whoopi & Maya,” with infusion specialist Maya Elisabeth. This signature line of non-smoking products was designed specifically for women for relief from menstrual discomfort. And former TV talk-show host, Montel Williams, started “Montel by Select,” a line of hemp-extract products.

Sports figures were also eager to launch brands and lines. NFL player Ricky Williams now has his own line of CBD tonics and salves, “RW/Real Wellness,” after several suspensions for failing drug tests during his career. Also, former NBA player Al Harrington founded concentrates company “Viola Extracts,” with the mission of “promoting social equity by increasing minority participation in the cannabis industry.” And former boxing giant Mike Tyson started a 40-acre cannabis resort, including twenty acres of cultivation, and edibles factory and an amphitheater.
Participation in the cannabis industry is not limited to singers, actors, comedians, and sports stars. Ex-house speaker John Boehner, who opposed marijuana legalization for years, joined the advisory board of Acreage Holdings, a company that cultivates, processes and dispenses cannabis in eleven states in the US.

While these celebrity and public figure associations and endorsements signal that marijuana has gone mainstream, there are still limitations to traditional marketing and advertising. Social media platforms are often inconsistent with treatment of cannabis company accounts and groups. Moreover, states’ laws regulating licensed cannabis companies often restrict the time, place, manner, and even content, of advertising. For example, several state laws prohibit the use of cartoons, animals, toys, or anything that may be appealing to children.

There is a definite increase in cannabis product manufacturing companies seeking celebrity endorsements and sponsorships, as well as notable public figures for board positions and advisory members, so that companies and brands can distinguish themselves among the ever-growing selection of product offerings. But influencer marketing may not be the only reason these companies are seeking partnerships with the stars.

Traditional sources of capital and loans, and even standard business banking systems, are limited or non-existent for cannabis businesses.
Celebrity partnerships may provide a much-needed source for these capital-intensive businesses to allow the companies to pull ahead.

Legal cannabis business sales hit $10.3 billion across the country last year and could reach $25.7 billion by 2025, according to Washington, D.C. cannabis research firm New Frontier Data. Estimates show that the majority of consumers buying marijuana and hemp-based products have not yet developed the expertise that affects purchasing decisions. Accordingly, manufacturers are moving away from marketing focused on the experienced consumer that knows the difference between strains – Blue Dream, Sour Diesel, Purple Haze, etc., and instead aiming to describe the effect, such as California-based PlusProducts whose CBD gummies display names such as Balance, Uplift, and Sleep.

So as social acceptance and normalization of the cannabis industry grows each day, so does the desire to have celebrity and product offerings as diverse as the new consumer base. The crafting of product aesthetics, marketing, and advertising is rapidly becoming as strategic and important as any lifestyle brand in traditional industries, and celebrity endorsements are essential.

However, in a highly regulated industry, with the backdrop of federal illegality and varying state laws with which a cannabis business must be compliant, there are significant considerations for before associating with a company or brand.
Considerations for Celebrity Endorsements and Sponsorships:

- Licensing and compliance of company/brand with state laws and regulations where manufactured and distributed.

- Enforceability of licensing or endorsement contract and choice of law governing such contracts.

- Potential limitations on ownership or revenue participation under state laws and regulations.

- Advertising or marketing restrictions.

- Capital needs of company/brand and availability of funds – ability to “scale-up” to meet demand on successful branding/endorsement.

- Limitations or restrictions affecting celebrity in his/her primary industry or sport.

- Banking restrictions or limitations and cash-intensive nature of operations.