

NATIONAL CONFECTIONERS ASSOCIATION PRINCIPLES ON CANNABIS-CONTAINING EDIBLES

August 2, 2021

The Concerns

According to [a recent survey by the Pew Research Center](#), an overwhelming share of U.S. adults (91%) say that marijuana should be legal for medical and recreational use (60%) or that it should be legal for medical use only (31%). Reflecting this broad appeal, thirty-six states allow medical marijuana, and eighteen states and the District of Columbia allow adult recreational use, with many more states expected to open pathways to marijuana use, even though marijuana remains illegal under federal law.¹

As a state legalizes marijuana, whether for medical or for medical and recreational use, two things also rapidly occur:

- Children accidentally ingest marijuana-containing edibles because they look like candy. [Edible Cannabis Exposures Among Children: 2017-2019, J. Whitehill, et al., Pediatrics Apr 2021, 147 \(4\) e2020019893; DOI: 10.1542/peds.2020-019893.](#)
- Cannabis marketers introduce edibles that copy trademarks and trade dress of well-established consumer brands. See, e.g., [‘Medicated Skittles’? Candy giant sues weed sellers for trademark infringement; Marijuana edibles disguised as popular candy, snacks popping up in Florida schools.](#)

Marijuana legalization, therefore, poses two related concerns for chocolate, confectionery and snack companies. Marijuana products that look like delicious candy treats and snacks flood the marketplace upon legalization. Edibles may deliberately mimic the trade dress of beloved consumer brands. It is often very difficult to distinguish these edibles from conventional foods and beverages, resulting in confusion and injury to consumers, including children, and reputational damage to food companies. Additionally, it can be very difficult and costly for companies to protect their brands from infringement – they must conduct state-by-state surveillance and initiate burdensome legal action in every jurisdiction where infringing edibles are found to protect their valued customers and stop infringement of their intellectual property.

Proposed Solution

States should, **very early in marijuana legalization**, enact laws or promulgate regulations that clearly distinguish marijuana-containing edibles² from conventional foods, protect consumers (especially children) from harm and prohibit abuse of the intellectual property of other companies. Many states have enacted such requirements, and as more states move toward legalization, these protective measures should be in place immediately following legalization so that children do not end up in emergency rooms and companies do not have to expend resources to protect their brands from obvious infringement. These measures should also be part of any comprehensive federal cannabis legislation, such as the Cannabis Administration and Opportunity Act.

¹ See <https://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx> (accessed July 7, 2021).

² For purposes of these principles, an “edible” is any food or beverage that contains tetrahydrocannabinol (THC) and does not meet the definition of “hemp” in the Agricultural Improvement Act of 2018, H.R. 2; Pub. L. 115-534.

Basic Regulatory Principles For Marijuana-Containing Edibles To Safeguard Children And Consumers, Prevent Confusion And Protect Brands

- If a state elects to permit edibles, it should immediately enact robust requirements to protect consumers and children and assure that edibles are not confused with candy, snacks and other conventional foods and beverages.³
- Edibles should have their own standard of identity, such as “cannabis edible” or “cannabis product” and be clearly labeled as such. To avoid confusion, no edible should be permitted to use words associated with conventional foods and beverages, such as, “drink,” “beverage,” “juice,” “candy,” “candies,” “snack,” “treat,” “gummy,” “gummies” or “lollipop.”⁴
- An edible may not be presented in any format, shape, flavor or manner that is appealing to children. For example, edible gummies may not be brightly colored and should not be in flavors associated with confectionery, such as bubble gum and cotton candy. Edibles should only be in geometric shapes (circles, squares, triangles) and not be in any fanciful shapes such as animals, people, characters, fruits, insects or worms.⁵
- Packaging should not be attractive to children. Products should be packaged in opaque, plain sealed packages that are odor-proof, tamper-evident and made from material sufficiently robust to support protective and tamperproof design. Packaging should not use bright colors, fanciful shapes, cartoons or animation. Packaging should meet federal standards for child-resistance.⁶
- To prevent issues with delayed onset and reduce overall exposures, there should be restrictions on the amount of THC both per serving and in the entire package as consumed. A common state limit is no more than 10 mg of THC per serving and no more than a total of 100 mg of THC in the total package.⁷
- There should be clear, legible warning labels on all edibles. Front of pack labels should plainly disclose in large, bold font in contrasting color that the product is a marijuana edible for adult use that it contains THC, and how much THC is contained in the package and per serving. Additional warnings should include: how long it may take for the edible product to take effect; that the product is not FDA-approved; that the product should not be used by pregnant or breast-feeding women; that the product should be kept out of reach of children; that the product contains cannabis which may impair concentration, coordination, and judgment so users should not drive or operate machinery; and that the product is for adults. Federal allergen disclosure standards also should apply.⁸

³ Some states currently prohibit edibles altogether, e.g., N.D. Cent. Code § 19-24.1-01(24), 35 Pa. Stat. Ann. § 10231.304, or otherwise limit the formats for marijuana-containing products, such as only permitting inhaled products, gels, pills, and oils, e.g., Minn. Rev. Stat. § 152.22, Subp. 6, N.Y. Comp. Codes R. & Regs. Tit. 10 § 1004.11(a)(3).

⁴ See, e.g., 1 Colo. Code Regs. § 212-3:3-1010(B)(8), Ohio Admin. Code 3796: 8-2-03, Fla. Stat. Ann. § 381.986.

⁵ See, e.g., 1 Colo. Code Regs. § 212-3:6-110(M), Cal. Code Regs. tit. 16, § 5413(c), Code Del. Regs. 4470-10.0, Code Ark. R. 006.02.7-19.

⁶ See, e.g., 1 Colo. Code Regs. § 212-3:3-1010(b)(8), (9), Cal. Code Regs. tit. 16, § 5303(a), Code Del. Regs. 4470-10.0; 410 Ill. Comp. Stat. Ann. 705/55-21.

⁷ See, e.g., Cal. Code Regs. tit. 16 § 42-5724, 1 Colo. Code Regs. § 212-3:3-335D(4)(a), 18-691 ME. Code R. § 3.8.2(D).

⁸ See, e.g., Alaska Admin. Code tit. 3, § 306.770(g), 16 Del. Code Regs. § 4470-10.3.

- Edibles should be manufactured to comply with the applicable state laws for food processing facilities⁹ and in compliance with applicable good manufacturing practices.
- Edibles should not be manufactured in the same facility as conventional food.
- If conventional food is manufactured in the same facility as edibles, this should be plainly disclosed on the label of the conventional food. This statement should be clear, unambiguous and similar to allergen disclosures, such as “Manufactured in same facility as cannabis products” or “Manufactured on the same equipment as cannabis products.”
- No non-marijuana-containing foods or beverages already in the marketplace should be remanufactured into marijuana-containing foods or beverages.¹⁰
- No edible should be labeled so as to cause consumer confusion as to whether the edible is a trademarked product; an edible should not be labeled in a manner that violates any federal trademark law or regulation.¹¹
- The state marijuana regulation department should have sufficient resources and staffing to receive and respond to complaints about products being retailed in violation of state labeling requirements and that pose risks to consumer health. Procedures for making complaints, including the emails and phone numbers of responsible personnel, should be clearly described on the state website and be easy to locate. States should annually publish metrics on the number and nature of product complaints received and their resolution.
- The state should facilitate the easy identification of marketers of edibles.¹² Product labels should all include the company name, street address, email address, telephone number and website. Edible marketers and their contact information should also be identified in a publicly available in an easily searchable directory or database.

⁹ See, e.g., Alaska Admin. Code tit. 3, § 306.545, Fla. Stat. § 381.986(8)(e)(8), NH. Code Admin. R. Ann. He-C 402.16(e).

¹⁰ See, e.g., 1 Colo. Code. Regs. § 3-335 E.

¹¹ See, e.g., 1 Colo. Code Regs. § 3-1010 B.4.

¹² See, e.g., OR. Admin. R. 845-025-1000.