

CANNABIS-BASED VAPING AND SMOKING PRODUCTS: SETTING A BUDDING INDUSTRY ABLAZE

THE GREEN RUSH

As touched upon in previous instalments of our “Green Rush” series (click [here](#)), there is a growing demand among consumers for natural or alternative products with purported health benefits. Following recent changes in the law concerning the legal status of cannabis, innovative businesses are exploring new ways to disrupt a number of markets with the introduction of cannabis-based products as an alternative for consumers.

In recent years, we have seen the rise of vaping and e-cigarette products being marketed as healthier alternatives to traditional tobacco smoking. It therefore comes as no surprise that businesses are now marketing cannabis-based vaping and smoking products (e.g. CBD vaping oil), as businesses seek to establish new revenue streams. Many online retailers, including Amazon, already offer a range of CBD vaping oils from specialist manufacturers, with claims that such products can be used for the cessation of smoking, medicinal purposes and to improve athletic performance.

With so many products available, companies operating within the market will need to ensure that their activities and the products they market, comply with the relevant laws and regulations in order to avoid criminal and civil sanctions as well as long-lasting damage to their brand and reputation.

LEGAL BACKGROUND

The regulatory and legal landscape for cannabis-based products is extremely complex. There are a number of different regulations working in parallel that each place a number of different obligations on businesses dealing with cannabis-based products. We have set out some of the key regulations below in the context of cannabis-based smoking and vaping products.

Controlled Substances: THC vs. CBD

As mentioned in our previous articles, the general position across Europe is that Tetrahydrocannabinol (THC) is classed as a “controlled substance”. Accordingly, products containing THC levels in excess of 0.2% are generally prohibited throughout Europe unless they fall within specific exemptions or licensing regimes.

In contrast, cannabidiol (CBD), as an isolate in pure form, is not classed as a “controlled substance”. Accordingly, it will generally not be unlawful to market products containing CBD in the absence of THC or subject to THC levels not exceeding 0.2% and the product meeting certain specific other regulations and necessary licences or authorisations.

Key issues

- The Green Rush
- Legal Background
- Is it lawful to market cannabis-based vaping and smoking products in the UK?

An additional layer of complexity is that certain parts of the cannabis plant, from which CBD is extracted, are considered to be controlled (i.e. flower; leaves) and are therefore subject to a general prohibition on their use, cultivation and processing. In contrast, non-controlled parts (i.e. seeds; stem) are not subject to the general prohibition (again, subject to maximum THC levels not exceeding 0.2%). Consequently, different restrictions may apply depending on what parts and strains or variety of the cannabis plant are used in the manufacture of the vaping or smoking product.

Tobacco Products Directive

The Tobacco Products Directive 2014/40/EU (the “TPD”) governs the manufacture, presentation and sale of tobacco and related products in the EU. Such products include nicotine-containing electronic cigarettes, refill containers for e-cigarettes and herbal products to the extent that they are being inhaled via a combustion process. The provisions of the TPD have been implemented in the UK under the Tobacco and Related Products Regulations 2016.

Under the TPD, manufacturers and importers of tobacco and related products are required to comply with various criteria in order to market such products in the EU. For example, placing prescribed labelling (e.g. health warnings) on the packaging of the product and reporting a list of ingredients to the competent authorities in the relevant Member State. Manufacturers are also prohibited from using certain ingredients in the tobacco products (e.g. taurine, colourings and caffeine).

Product Safety

Certain “consumer” products (e.g. vaping devices) may not be able to be placed on the market within the EEA unless they have undergone the required conformity procedure and a CE mark has been affixed. A CE mark is an indicator that the product conforms with the essential requirements of the relevant directive or regulations concerning safety, health and environment in respect of certain products.

In addition to CE marking, businesses will need to ensure that their vaping or smoking products comply with the relevant provisions of a number of other regulations. In particular, identifying any hazardous chemicals contained in the products and ensuring the product labelling and packaging complies with those regulations.

IS IT LAWFUL TO MARKET CANNABIS-BASED VAPING AND SMOKING PRODUCTS IN THE UK?

Whether or not a business can lawfully market a cannabis-based vaping or smoking product in the UK will depend on the characteristics of the product and its intended use (e.g. THC content; nicotine content and part of plant used for manufacture). Indeed, if the product is intended to be used for medicinal purposes (e.g. cessation of smoking) then stringent obligations under the medical and medical devices regime are likely to apply. Ultimately, specialist legal advice should be taken before entering the UK market in order to assess whether a product is permissible in the UK, and if so, what regulatory requirements must be met.

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