

CANNABIS-BASED COSMETIC AND BEAUTY PRODUCTS: LESS ROUGE, MORE GREEN

THC VS. CBD - MORE THAN JUST COSMETIC CHANGE

With the boom in cannabis-based cosmetic products available on the market we dig deeper into what any company operating within the market needs to know.

As reported in the first two instalments of our "Green Rush" series (**Cannabis based food products: Got the munchies?**, and **Cannabis-Based Vaping and Smoking Products: setting a budding industry ablaze**), the commercialisation of cannabis in consumer products across Europe has grown significantly in recent years. This can be attributed to the growing popularity among consumers to use products that contain cannabidiol (e.g. CBD) extracted from cannabis plants as part of new health and lifestyle trends. In this article, we turn our attention to the use of cannabis in cosmetic and beauty products.

Following reports of CBD's anti-inflammatory and anti-aging properties, a number of companies are already exploring how CBD can be used in cosmetic products. For instance, cosmetics company Origins, part of the Estée Lauder group, launched a new celadon green face mask that contains cannabis sativa seed oil from hemp. In addition, Brazilian cosmetics company, Allume Cosméticos, has recently partnered with the Greater Cannabis Company for the provision of customised formulations for pharmaceutical-grade CBD to be used in Allume Cosméticos' new line of CBD cosmetic products.

These two examples are a small subset of the boom in cannabis-based cosmetic products available on the market which has grown rapidly in recent years. However, companies operating within the market will need to ensure that their activities and the products they market comply with the relevant laws and regulations to avoid sanctions and damage to their brand and reputation.

Legal Background

Controlled Substances: THC vs. CBD

As mentioned in our previous article, 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 those products fall within specific exemptions or licensing regimes.

Key issues

- Legal Background
- Is it lawful to market cannabis-based cosmetic products in the UK?

In contrast, CBD (as an isolate in pure form) is not classed as a "controlled substance". Accordingly, it will generally be lawful to market products containing pure CBD. Any CBD products which contain THC levels not exceeding 0.2% may also be lawful assuming that they meet product specific regulations and are manufactured and imported according to the necessary licences or authorisations.

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

Cosmetic Products Regulations

The **Cosmetic Products Regulation (No. 1223/2009)** provides the main regulatory framework for finished cosmetic products within the EU market. The Regulation is aimed at protecting the health and safety of EU consumers and therefore regulates multiple aspects related to the manufacturing and labelling of products that are considered to be a "cosmetic product".

Under the Regulation, a "cosmetic product" is defined as:

"any substance or mixture intended to be placed in contact with the external parts of the human body (epidermis, hair system, nails, lips and external genital organs) or with the teeth and the mucous membranes of the oral cavity with a view exclusively or mainly to cleaning them, perfuming them, changing their appearance, protecting them, keeping them in good condition or correcting body odours."

A product intended to be ingested, inhaled, injected or implanted into the human body is unlikely to fall within the definition of "cosmetic product" but will likely be considered either a "food" or "medicinal product" depending on its claims and intended use. Such products will not be subject to the Cosmetics Regime but will be regulated by the Food or Medicines Regimes.

The Regulation is enforced by Trading Standards in the UK pursuant to the **Cosmetic Products Enforcement Regulations 2013**. The UK Regulations largely mirror the provisions of the EU Regulations and sets out enforcement powers, offences and penalties for breaches by businesses.

Requirements for Market Entry

Before a cosmetic product can be placed on the EU market, the designated "Responsible Person" must ensure that certain criteria have been met. For example, all cosmetic products must be compliant with Good Manufacturing Practice (GMP). In addition, the Responsible Person is required to compile and maintain a product information file (PIF) containing, among other things, a description of the cosmetic product and safety information (e.g. side effects; labelled warnings).

The Responsible Person is also responsible for submitting specific information regarding the cosmetic product to the European Commission. Such information includes the product's category, country of origin, the original labelling and packaging, contact information and the names of any toxic substances used in the cosmetic product.

Is it lawful to market cannabis-based cosmetic products in the UK?

In the UK, use of cannabis derived components in cosmetic products may be lawful depending on what components are used, whether they offend the controlled substance regime and provided that the product is compliant with the Regulation. Any cosmetic product must:

- comply with the "controlled substance" regime (e.g. using non-controlled parts of the cannabis plant having THC content not exceeding 0.2%);
- not be prohibited under the Regulation; and
- be manufactured, imported and sold in accordance with any required licences and authorisations from the competent authorities (e.g. Domestic Controlled Drugs Licence from the Home Office).

Under the UK law, care needs to be taken with regard to the use of specific Cannabis varieties, and ensuring the CBD component is manufactured from permitted parts of the plant. The rules are strict and it is important for businesses to ensure that the CBD component is lawful before importing or manufacturing products containing the same.

Businesses should also be aware of the strict labelling requirements under the Regulation regarding cosmetics. Businesses should avoid using medical or health claims (e.g. "*for the treatment of joint pain*") on product labels in order to lower the risk of their cannabis-based cosmetic product being regulated under the stricter Medical Regulations Regime. Finally, claims as to the benefits of the cosmetic product, must also comply with consumer protection laws and therefore care must be given to claims as to the benefit of CBD unless there is valid data to support such claims.

In light of the above, businesses should obtain specialist legal advice before taking steps to manufacture and bring a cannabis-based cosmetic product to UK market.

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