

Cannabis Regulatory Confusion and Its Impact on Consumer Adoption

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The regulation of cannabis in the United States is inconsistent and contradictory, to put it mildly. While marijuana remains classified as a Schedule I substance under the federal Controlled Substance Act—in the same category as heroin and morphine, with accompanying criminal penalties up to and including life imprisonment for its production, distribution, and possession—eleven states and the District of Columbia have legalized recreational marijuana use and twenty states and the District of Columbia have decriminalized the use of marijuana for medical purposes. Although President Obama’s Justice Department generally took a hands-off approach to state marijuana legalization efforts (prosecuting only, for example, sales to minors or drug-related violence), President Trump’s Justice Department, at least under former Attorney General Jeff Sessions, reversed that policy. This has created substantial uncertainty over what otherwise-legal activities participants in the marijuana business can engage in—state banks have only recently begun to accept deposits from marijuana businesses; the USPTO will not approve marijuana-related trademarks; and a split is developing within federal courts as to whether marijuana-related contracts are enforceable.

Complicating this regulatory landscape, Congress removed hemp from the list of “controlled substances” in the 2018 Farm Bill. As a result, there has been an explosion of products containing cannabidiol (CBD), which can be derived from the hemp plant. Now there is a flurry of regulatory activity by the FDA, FTC, and USPTO with respect to CBD products, not to mention a growing list of non-uniform state regulations. CBD businesses face a growing threat of civil liability from consumers claiming mislabeled products and their repercussions, from illness to job loss. Meanwhile, marijuana- and CBD-based businesses are trying to make their products mainstream.

The process by which stigmatized or controversial products become accepted by consumers has recently gained the attention of marketing scholars. Stigmatized products are those towards which a significant portion of consumers hold negative attitudes and beliefs. As a result, the purchaser and/or user of such goods may experience negative emotions engaging in their consumption—particularly while purchasing or using these goods in the public domain. The concept of legitimacy is defined as a generalized perception or assumption that the actions of an entity are desirable, proper or appropriate within some socially constructed system of norms, values, beliefs and definitions. To date, researchers have identified three types of legitimacy: cognitive, normative and regulatory. Cognitive legitimacy refers to the degree to which consumers understand and classify an industry or product category within their cultural frameworks. Normative legitimacy describes the extent that an industry, product, or practice aligns with existing societal goals, norms, or social values. In other words, it refers to the degree to which a product or industry is socially acceptable. Last, but not least, regulatory legitimacy refers to the degree to which an industry follows existing laws, rules, or regulations as defined by government institutions. However, previous research on legitimacy has failed to investigate the relationship between regulatory legitimacy and normative legitimacy. This paper, after exploring the regulatory framework of marijuana and CBD products, will address how current legislation and regulations influence consumer perceptions of a product category, and how conflicting regulations (or the lack of regulations) influence the adoption of a stigmatized product such as cannabis (i.e., marijuana and CBD products).