



ASA Defends Industry Trademarks in Court Filing

Americans for Safe Access is taking steps to defend the intellectual property rights of the cannabis industry. Last month, ASA and the International Cannabis Bar Association (INCBA) filed an Amicus Brief arguing that cannabis and hemp products should be eligible for trademarks.

The brief from ASA and the INCBA was filed in the case of Joy Tea, Inc., a company that was denied a trademark for its CBD tea. The brief argues that USPTO interpretation of trademark regulations deprives both consumers and hemp and cannabis companies basic protections available to other product sectors.

Cannabis and hemp brands are currently unable to obtain trademarks on their products in the U.S. because the United States Patent Trademark Office (USPTO) says they violate a "lawful use requirement."

"Lack of trademark protection hurts patients, consumers, and companies," said Debbie Churgai, ASA's executive director. "Patients rely on branding to identify product sources, safety, and consistency. Businesses rely on trademarks to curtail counterfeited products and ensure that customers know exactly what they are buying."

The USPTO can grant a trademark registration in advance of a product being brought to mar-

ket, based on an intent-to-use application that requires the applicant to use the mark in lawful commerce within 36 months. Because federal law still prohibits cannabis and certain hemp products, the USPTO says those products cannot be trademarked.

"Effecting change at the USPTO to protect cannabis and hemp brands is critical to achieving consumer protection across the country," said Mary Shapiro, INCBA advisory board member and ASA board member.

The USPTO has applied a per se interpretation of trademark rules, meaning that any product derived from cannabis is considered inherently out of bounds. That includes food, beverage, and other ingestible products containing CBD derived from hemp, even when the product is legal under the federal 2018 Farm Bill, which created a path for the manufacture and sale of legal hemp products everywhere in the U.S.

"We believe that it is time to allow the cannabis industry and our patients the same rights and protections as 'traditional' industries," said James Gourley, appellate counsel for ASA and INCBA.

ASA and INCBA contend that Congress has made clear its intent to allow the regulation of at least some cannabis products. In addition to the 2018 Farm Bill, Congress has continuously

reauthorized budget measures that prevent the Department of Justice from interfering with state-authorized medical marijuana laws.

Medical cannabis is state regulated in 38 states and adult use is lawful in 18 states and DC, and hemp products (except infused foods and beverages and supplements) are lawful throughout the country.

For more information, see ASA's press release at www.safeaccessnow.org/press_releases.

New ASA Podcasts

New **Cannabis Enigma** podcasts are available, featuring expert discussions about medicinal cannabis and segments from Abbey Roudebush discussing ASA's State of the States Report and William Dolphin talking about mental health aspects of cannabis use.

Move the Stairs. On this episode of Move the Stairs, Churgai talks about how businesses can acquire the tools for strong advocacy and prepare partners for changing regulations, as well as how certification creates product transparency for consumers that differentiates businesses.

Montel's Let's Be Blunt. Churgai joined Montel Williams on the latest episode of his Let's Be Blunt podcast to discuss highlights from ASA's recently released 2021 State of the States Report: An Analysis of Medical Cannabis Access in the United States. https://www.safeaccessnow.org/montel_podcast_sos21

The Vine #62. On the latest podcast from Plant Media Project, Churgai talks about the 2021 State of the State report, why states received such poor scores, and what can be done to bring greater access to patients and consumers everywhere.

Natural Awakenings. On the Natural Awakenings podcast, Churgai talks about what the 2021 State of the States report says about how the PA Medical Cannabis Program can improve safe access for patients.

All these podcast episodes and more are available at safeaccessnow.org/podcasts.

PFC Holds Webinar on Vape Recalls

PFC Director Heather Despres held a free webinar last month on cannabis vape product safety and regulatory compliance.

These popular devices heat cannabis oil extracts to a temperature that releases active ingredients in a vapor without the smoke byproducts, but contaminants and the presence of other potentially harmful substances have led to health problems and product recalls.

Most recently, on February 4, 2022 the Pennsylvania Office of Medical Marijuana issued a recalled over 500 different cannabis vape products because they contain substances not suitable for inhalation.

Pennsylvania is not the only state to conduct recalls of vaping products. In 2020,

Oregon asked retailers to voluntarily recall vape products containing squalene and squalane, and Michigan issued a recall of almost 10,000 vape products because they might contain Vitamin E acetate.

Vitamin E acetate and other chemicals were identified as a serious health risk a few years ago. The chemicals are more likely to be found in illicit market vape products, as state regulations now prohibit their use.

"State regulations and accurate testing of cannabis vape products protect users, but that doesn't stop unscrupulous manufacturers in the illicit market from using these substances," said Despres. "Anyone using cannabis vape products should rely on the legal cannabis market, where these products are tested and labeled."

Activist Profile: Carla Basante, New Jersey

Carla Basante began using cannabis about 15 years ago to manage chronic pain from a severe back injury and symptoms of multiple sclerosis. A breast cancer survivor, Carla has had two back surgeries to treat the damage caused by a bad car crash when she was in her early 40s, as well as a nerve ablation and other procedures.



When her doctors could not explain all her symptoms after the accident, an MRI revealed the trauma of the back injury had “activated” her lurking MS, leading to seizures and other debilitating problems. What followed was a medicine cabinet full of powerful pharmaceutical drugs.

“Oxy, Percocet, valium – they’d prescribe anything, even steroids,” Carla remembers. The unpleasant side effects of the medications she was initially prescribed for her conditions led her to investigate alternatives.

“My son was a factor. I wanted to be a mother, but I didn’t recognize myself,” Carla says.

She found that cannabis provided relief without the many side effects of other medica-

tions. Once she found a cannabis regimen that worked, she was able to go off 10 other drugs.

“It’s horrible to live with chronic illness and chronic pain, but it’s been years since I’ve had to take steroids, and I haven’t had MS episodes,” Carla says. “If I wasn’t medicating with cannabis, I couldn’t function.”

Her research on medical cannabis also led her to Americans for Safe Access. She has attended ASA’s annual unity conference three times, first in 2017.

“That ASA conference changed my life,” Carla says. “I met patients from all walks of life – lawyers, doctors, parents of children with Dravet Syndrome.”

Carla’s direct advocacy work began when she had to go in for another back surgery and was told she couldn’t use cannabis at the hospital. When she was sent to the rehabilitation center that weekend, they asked her if she was using any medications. When she told them, yes, she used cannabis, the staff said they were sorry, but this was a “no flame” facility.

“No problem,” Carla said. “I’ve got a vape pen, so no flame.” Stumped by that, the nurse set up a medication schedule with her for her cannabis use. When the administrative folks returned to work on Monday, they told Carla she’d have to stop.

“I told them, no, we’ve already got a schedule,

and it’s not causing anyone any problems,” Carla recalls. They said she would have to switch to dronabinol, the FDA-approved synthetic THC medicine. Instead, Carla opted for cannabis oils and medicated baked goods.

Carla would like to see cannabis be more available to those in need, and for medical facilities to provide cannabis lounges for patients.

Carla was back at that rehab center a year ago because her mother was receiving care there and was surprised the staff remembered her. Carla’s self-advocacy had made an impression.

Because of her son, Carla has had to deal with the anti-cannabis messages common to schools. He was 7 years old when she started using cannabis, and she worked to educate him about “mom’s medicine,” but things changed when he got to middle school and



was exposed to strident anti-cannabis messages. Carla had been showing him ASA materials and her collection of books about the medical uses of cannabis, but the conflicting messages led to arguments. He wanted her to stop.

“I’m more engaged, more active – don’t you see the difference?” Carla remembers asking him. “It’s not taking away all the pain, not curing MS, but now I’m functional. Isn’t that what we want? I wouldn’t be able to hold a job without it.”

When her son told her about a poster in his guidance counselor’s office that said cannabis use leads to cocaine and other hard drugs, she went to the school, much to her son’s embarrassment. She remembers her son’s complaints about how she was bringing attention to her cannabis use.

It was a hard three years, but by the time her son got to high school, he saw the stigma was wrong. When he got to college, he discovered his university has a cannabis curriculum and took a couple of courses.

“I’ll always remember the smile on his face when he said, ‘Look what they offer!’” Carla says. “That’s the best thing ever.”

From that experience, Carla has learned that we have to do cannabis education one on one, whether that is with children or medical professionals. She makes use of expert resources, but she also knows her own story makes a powerful case.

“I’m the healthiest unhealthy person, thanks to cannabis use,” Carla says.

Action Alert: Show Your Support!

As a grassroots organization, ASA relies on individual members to spread the word and provide the support needed to defend safe access. Join ASA today or renew your membership to be part of the only national organization committed to fighting for patients and improving laws to better serve them. You can also make a tax-deductible donation to Americans for Safe Access Foundation, a 501(c)3 nonprofit (Federal ID 51-0579227).

Please help spread the word. Tell your family and friends why safe access matters and what ASA is doing to protect patients and promote better laws and regulations. Share this newsletter, the latest State of the States Report, and ASA’s podcasts, YouTube and website links. Your support makes a difference. www.safeaccessnow.org/donate

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