COMMERCIAL CANNABIS:

CURRENT LEGAL LANDSCAPE

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In 2020, adult-use or recreational cannabis became legal for commercial sale in Illinois. Illinois is the 11th state to legalize cannabis for adult-use, joining Alaska, California, Colorado, Maine, Massachusetts, Michigan, Nevada, Oregon, Vermont, Washington and the District of Columbia. More states likely will soon follow. To operate in this rapidly growing market, or engage with those operating in this space, there is a strong need to proactively consider and navigate a number of complex commercial legal issues.

To help, we've surveyed the legal landscape and summarized some of those key legal issues in this article. They fall under contract law, insurance coverage, antitrust and black market competition, consumer product claims, trade secret protection and other intellectual property issues. Any player in this growing commercial space should consider experienced counsel to help navigate this legal landscape.

I. COMMERCIAL CANNABIS AND CONTRACT LAW

Contract law has always been a cornerstone of commercial relationships and transactions. Operators in the commercial cannabis space must rely on contracts just like any other business, but they must also be mindful of the implication of continued federal illegality of cannabis when seeking to enter into or enforce contractual agreements.

It is well known that even as state cannabis laws have liberalized, the federal government has doggedly maintained the illegality of cannabis under the Federal Controlled Substances Act (CSA). Though the emerging trend is for courts to enforce cannabis-related contracts, two federal courts in one district have refused to enforce cannabis business contracts where plaintiffs sought specific performance due to the CSA. It's our hope and expectation that those cases are and remain outliers, and that the trend continues to support enforcement of lawful contracts in the commercial cannabis industry. Otherwise cannabis businesses will continue to face unique challenges to operating their business, including for example, obtaining enforceable insurance coverage.

A. The Enforceability of Commercial Contracts in Courts

A few recent cases illustrate a concern about the enforceability of commercial cannabis contracts in federal court if you land before a judge not in line with the trend to enforce. In August 2019, in *Polk v. Gontmakher*,[1] a federal court in the Western District of Washington refused to enforce an oral agreement

[1] No. CV 18-01434, 2019 WL 4058970 (W.D. Wash. Aug. 28, 2019).

between two business partners to share equity in a cannabis-growing operation. The plaintiff, whose criminal history prevented him from legally participating in the business, sued his former business partner alleging he was entitled to an ownership interest in the cannabis business they launched together. The court found that the agreement was illegal and unenforceable under federal law because cannabis remains illegal under the CSA and that "awarding [plaintiff] an ownership interest in, or profits from [the cannabis business], contravenes federal law." The court also found that the agreement was illegal under state law as it was "intentionally forged outside the bounds of the state regulatory system" because the plaintiff knew he was prohibited from obtaining a cannabis license under Washington law.

In *Left Coast Ventures Inc. v. Bill's Nursery Inc.*,[2] another court in the Western District of Washington refused to enforce contract rights. This case involves a contract dispute between two parties over a license to distribute medical cannabis in Florida. The parties entered into a contract to prepare applications for one of five available licenses in Florida. The contract included an option for the plaintiff to purchase all of defendant's stock if a license was issued. After initially being denied, the defendant reapplied three years later and was awarded a license. The plaintiff sought to purchase the stock, but the defendant refused to sell it pursuant to the terms of the agreement.

The plaintiff filed a complaint for declaratory judgment and breach of contract, seeking specific performance, arguing the new license entitled plaintiff to exercise its purchase option under the contract. The district court issued an order to show cause asking the parties to explain why the court should not dismiss the case as seeking to enforce an ownership interest in a cannabis distribution business that is illegal under the CSA.

On December 6, 2019, in a significant turn of events, instead of dismissing the case outright under the CSA, the court remanded the case to state court, finding remand rather than dismissal to be the appropriate result.[3] The court was wary of sending a signal to the cannabis industry "that federal jurisdiction operates as an absolute defense to private contract claims" and found the exercise of federal review "would be disruptive of state efforts to establish a coherent policy with respect to a matter of substantial public concern."

[2] No. CV 19-01297 (W.D. Wash. Oct. 31, 2019).

[3] No. CV 19-01297 (W.D. Wash. Dec. 6, 2019) (applying abstention doctrine where "difficult questions of state law bear[] on policy problems of substantial public import").

Coincidentally, another decision relevant to this discussion was issued on that same day by a district court in the Southern District of New York. In *Ricatto v. M3 Innovations Unlimited, Inc.*,[4] the case involved a dispute concerning a potential business relationship to buy and develop property in California for the cultivation of legal cannabis under California law. The federal court dismissed the plaintiff's breach of contract and related claims, finding that the plaintiff's pleadings failed to support his claims. The court also noted in a lengthy footnote that even if plaintiff had stated a breach of contract claim, "it is not readily apparent to the court that it could enforce such a contract." The court noted that "[a]s the Second Circuit has unequivocally stated, [m]arijuana remains illegal under federal law" and "[a]s a general rule, New York courts will not enforce illegal contracts." The future of this case is uncertain; on January 3, 2020, the plaintiff filed a motion for reconsideration of the court's dismissal of his claims.

As these cases demonstrate, federal enforcement of contracts in the commercial cannabis industry is far from a settled issue for all federal courts. Notably, in the *Polk* and *Left Coast Ventures* cases, the plaintiffs had sought equitable remedies. And in *Left Coast Ventures* the court explicitly left open the possibility that a suit for money damages might avoid this pitfall, but the court in *Ricatto* did not seem convinced that the difference matters.

Significantly, other federal courts have found enforceability so long as the enforcement of the cannabis contract does not specifically require any party to engage in the cultivation, distribution or possession of cannabis. For example, a federal court in Texas found that a loan agreement for a cannabis business was enforceable because it was "possible for the court to enforce the [loan agreement] in a way that does not require any party to engage in illegal conduct."[5] Similarly, a federal court in California found it was possible to enforce a stock agreement for a cannabis business in a manner that did not require illegal conduct.[6] In another signal towards federal acceptance, in September 2019, the US Court of Appeals for the Tenth Circuit held that the Fair Labor Standards Act applies to workers in the cannabis industry.[7]

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[4] No. 18 Civ. 8404 (S.D.N.Y. Dec. 6, 2019).
[5] *Ginsburg v. ICC Holdings, LLC* No. 3:16-cv-2311, 2017 WL 5467688 (N.D. Tex. Nov. 13, 2017).
[6] *Mann v. Gullickson*, No. 15-CV-03630-MEJ, 2016 WL 6473215 (N.D. Cal. Nov. 2, 2016).
[7] *Kenney v. Helix TCS, Inc.*, No. 18-1105 (10th Cir. 2019).

State courts in states where cannabis is legal are more likely to apply established legal principles to cannabis operations without being detoured by continued illegality under the CSA, as long as the activity is lawful under the applicable state laws.[8] And while state court enforcement of cannabis contracts has not been totally uniform, the trend seems to be toward contract enforcement.[9]

These cases highlight important considerations in drafting contracts—including selecting possible remedies and forums —and thereafter, if litigating them. Notably, they demonstrate the importance of strongly considering arbitration clauses in agreements until there is more certainty in the courts when seeking to enforce contracts, as private arbitration can be an effective way to reduce uncertainty.

B. Insurance Coverage Contracts for Cannabis Businesses

To date, finding insurance coverage for a cannabis business operation has been difficult, however, proposed federal legislation seeks to change that dilemma. The Clarifying Law Around Insurance of Marijuana Act (CLAIM act), would prevent the federal government from penalizing an insurer for insuring a cannabis-industry policy holder.[10] By removing this threat from insurers, the hope is that more providers would enter the space. The CLAIM act has flown somewhat under the radar, and its passage is not certain.

In the meantime, including for the same reasons discussed above, uncertainty exists in the federal courts regarding the enforceability of insurance contracts. For example, in 2012, in *Tracy v. USAA*, a federal district court in Hawaii found that an insurance contract that would have covered cannabis plants stolen from the plaintiff was not enforceable because cannabis is illegal under federal law.[11]

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[8] *See*, *e.g.*, *Vincent Hager v. M&K Construction*, Case No. A-0102-18T3 (N.J. App. Div. Jan. 13 2020) (CSA did not prevent compensation for medical cannabis purchases under workers compensation claim); *Mission Penn., LLC v. McKelvey*, 212 A.3d 119 (Pa. Cmwlth. 2019) (security exception to "right-to-know" law shielded cannabis producers from publishing copies of permit applications).

[9] *Compare Hammer v. Today's Health Care II*, WL 12874349 (Sup. Ct. Az. 2012) (loan to cannabis retailer could not be enforced) *with Green Cross Med., Inc. v. Gally*, 395 P.3d 302 (Ariz. App. 2017) (enforcing contract after balancing federal government's interest in enforcing the CSA against inequitable outcome to contractors).

[10] S.2201 – Claim Act, 116th Congress (2019-2020) (available at https://www.congress.gov/bill/116th-congress/senate-bill/2201/text).

[11] *Tracy v. USAA Cas. Ins. Co.*, No. 11-00487LEK-KSC, 2012 WL 928186 (D. Haw. Mar. 16, 2012).

On the other hand, in 2016, in *Green Earth Wellness Center, LLC v. Atain Specialty Insurance Co*., a federal district court in Colorado found that an insurance contract for a cannabis operation was enforceable.[12] In *Green Earth*, the plaintiff sought to recover under an insurance policy for damage caused to its cannabis plants by a wildfire. The Colorado district court rejected the insurance company's argument at summary judgment that coverage was excluded under a "contraband" exception, noting that the federal government's position on cannabis since 2009 has reflected "an ambivalence towards enforcement of the [CSA] in circumstances where a person or entity's possession and distribution of marijuana was consistent with well-regulated state law." We believe this is the correct result and should be followed.

Regardless of how or whether the federal government acts, now is an excellent time to address insurance policies in the cannabis space, and consult with counsel about insurance and other risk management possibilities.

II. ANTITRUST AND BLACK MARKET COMPETITION

Because the body of law in the cannabis space is limited to only a few years, cannabis companies face uncertainties when it comes to the application of antitrust law. Additionally, legitimate cannabis industry participants must compete with operations that don't just flirt with the grey areas of anticompetitive practice, but operate entirely outside the bounds of legality—no other US industry currently faces such an entrenched, domestic black market competition.

A. Antitrust Concerns

There are a number of practices used frequently by legitimate cannabis companies which may nevertheless raise antitrust concerns. As one example, consider vertical integration. It often makes business sense for a cannabis operator to control both the cultivation and the retail distribution of its product. In fact, some licensing regimes, such as Massachusetts' and New Mexico's medical markets, require cannabis operators to vertically integrate. But in other states, such as Washington, California and Illinois, vertical integration is curtailed or prohibited.

For example, under Illinois law, dispensaries are prohibited from obtaining more than 40 percent of their inventory from a single cultivator. In January 2020, within two weeks of legalization in Illinois, the Illinois

[12] *Green Earth Wellness Ctr., LLC v. Atain Specialty Ins. Co.*, 163 F. Supp. 3d 821 (D. Colo. 2016).

department overseeing cannabis regulation issued a warning to dispensaries that it had knowledge that certain dispensaries were violating the 40-percent limit and ordered any dispensary in violation of the rule to immediately rectify the problem or face discipline. The department further warned the dispensaries that it is investigating the violations and that discipline may result even if the dispensaries rectify the situation.[13] And over the last year, the federal government too, through the DOJ, has begun taking a closer look at proposed mergers of cannabis companies, including mergers that would result in increased vertical integration.[14] The DOJ and FTC are currently seeking comment on proposed new vertical merger guidelines, further emphasizing their focus on vertical integration.[15]

Another example is slotting fees—where a retailer charges brands a fee for shelf space. The practice is standard in the grocery industry. But many states, Illinois included,[16] prevent the practice for alcohol sales. And the FTC has identified antitrust concerns with the practice generally.[17] Yet in legal cannabis markets, this practice has become commonplace.[18]

Cannabis operators should be cognizant of potential for legislation curtailing cannabis slotting fee arrangements and to otherwise address antitrust concerns.

B. Black Market Competition

As long as states view recreational cannabis as a tax revenue generator, with state and local taxes as high as 40 percent in cities like Chicago and Seattle, legal retailers will be unable to compete with the black market on price alone. In every state with a legal recreational market, legitimate sellers have had to go toe-to-toe with a black market that operates without taxes or regulatory costs. Black market cannabis not only eats into the

[13] https://capitolfax.com/2020/01/13/state-warns-vertically-integrated-cannabis-companies-about-inventory-limits

[14] For example, the DOJ issued a second request for information on April 18 regarding the proposed merger between cannabis cultivator Cannex and retailer 4Front.

[15] https://www.ftc.gov/news-events/press-releases/2020/01/ftc-doj-announce-draft-vertical-merger-guidelines-public-comment.

[16] 11 IL ADC 100.500.

[17] "Slotting Allowances and the Antitrust Laws," *Testimony to the Federal Trade Commission before the Committee on the Judiciary* (Oct. 20, 1999) (available: https://www.ftc.gov/sites/default/files/documents/public_statements/prepared-statement-federal-trade-commission-slotting-allowances/slotting1020.pdf).

[18] https://cannabistraininguniversity.com/how-to-get-shelf-space-in-california-cannabis-dispensaries/.

revenue of legitimate retailors, but has the potential of damaging public confidence in cannabis products when lax controls in the black market expose consumers to inconsistent—or even unsafe—cannabis products.

While cannabis industry participants may not be able to eliminate the black market entirely, industry members aren't powerless in the fight against its existence. For example, publicly available "directory" websites help funnel potential customers to black market vendors by listing illegal sellers alongside legal retailers. Preventing these websites from advertising illicit sellers is one approach to curtailing the black market.

Of course, these websites have an obvious profit motive to keep listing illegal vendors—by making the comings and goings of the black market available to the casual Googler, they drive traffic (and ad dollars) to their sites. But these websites have also indicated a willingness to back down in the face of legal pressure: this summer, prominent directory site Weedmaps agreed to stop listing unlicensed distributors amid rumors of a brewing class-action complaint sponsored by licensed cannabis retailers.[19]

Monitoring and potentially taking action against the channels that drive customers to the black market should be a consideration of any astute cannabis operator.

III. CONSUMER CLAIMS

For any company that sells a product, there is a threat that unhappy customers might seek damages through consumer claims. Where these customers are allowed to group together in a class action, companies can face existential threats. Defending consumer claims, whether potentially as part of a class action or not, is a staple of corporate litigation practice. And these claims are bound to begin appearing frequently against cannabis industry participants.

The cannabis industry presents a large array of untested consumer claims that a savvy plaintiffs' lawyer could use to target cannabis companies. Similar to lawsuits in the food industry alleging misrepresentations on the food labels of the terms "organic" and "all natural," a cottage industry has sprung up alongside legal cannabis markets, where potential plaintiffs purchase CBD products, lab test them for CBD concentrations, and then file putative class actions against any retailer or manufacturer they find selling products with actual concentrations

[19] Jarvis, Sarah, "Pot Site to Halt Unlicensed Retailers' Ads, Warding Off Suit," *Law360*, (Aug. 23, 2019) (available: https://www.law360.com/articles/1191768/pot-site-to-halt-unlicensed-retailers-ads-warding-off-suit).

different than advertised.[20] We've seen and have experience addressing—in the food and agriculture context—lawsuits challenging the genetics of a product. Here, advertising a particular "strain" of cannabis without the ability to verify a plant's pedigree could give rise to similar legal issues. And the FDA has indicated a willingness to involve itself in enforcing health-related advertising claims made by cannabis companies.[21]

As another example in 2019, the media began to describe a series of illnesses seemingly related to vape pens as a "vaping crisis," putting a concern about health risks of cannabis products into the mainstream discourse. With early reports indicating that the culpable products came from unregulated black market products containing vitamin E acetate,[22] companies should be adopting and reviewing robust internal controls to make sure that their products remain pure and safe. As research on the health effects of cannabis matures, companies must continuously monitor their exposure to consumer claims alleging that they sold an unsafe product.

Even with the strictest quality controls, off-spec product might enter the retail stream. And cannabis products—particularly CBD products—are often advertised with suggestions of health effects. Whether or not an advertisement makes an unsupported health claim is a fact-based issue seldom amenable to quick resolution. So formulating a defense strategy for a potential consumer class action is an essential step. Another possible step? Where enforceable, utilize agreements providing for binding arbitration and relinquishing the ability to bring class action lawsuits.[23]

At bottom, this is another area of the law that requires attention and consideration of experienced legal counsel.

IV. IP PROTECTION AND TRADE SECRETS

Like antitrust law, discussed above, intellectual property is a technical body of law requiring extensive experience to apply. While large companies whose business model depends on intellectual property may have

[20] "Cannabis Consumer Class Actions: The Implicit and Indispensable Ascertainability Requirement," *JDSupra*, (Oct 14, 2019) (available at: https://www.jdsupra.com/legalnews/cannabis-consumer-class-actions-the-63216/).
[21] "What You Need to Know (And What We're Working to Find Out) About Products Containing Cannabis or Cannabis-derived Compounds, Including CBD," FDA (available at: https://www.fda.gov/consumers/consumer-updates/what-you-need-know-and-what-were-working-find-out-about-products-containing-cannabis-or-cannabis?mod=article_inline).
[22] "Outbreak of Lung Injury Associated with the Use of E-Cigarette, or Vaping, Products," CDC (available at https://www.cdc.gov/tobacco/basic_information/e-cigarettes/severe-lung-disease.html).
[23] *See AT&T Mobility LLC v. Concepcion*, 563 U.S. 333 (2011).

robust internal groups dedicated to protecting intellectual property, most companies rely on their skilled outside counsel to address these issues. Given the unique challenges of protecting cannabis-related intellectual property, cannabis operators have even more incentive to consult with legal counsel experienced in these areas.

A. Trademark Law

Trademark protection currently is unavailable for cannabis-THC products because US trademark law prohibits the registration of trademarks for products that cannot legally be sold in interstate commerce. Despite this prohibition, cannabis companies looking to protect their brand aren't entirely out of luck. Cannabis companies can work to identify and implement strategies by creating strong trademarks on related, non-cannabis product lines to protect their brand, such as legal smoking supplies, apparel and non-cannabis food products. Further, states offer their own trademark protections that are not contingent on federal legality.[24] And common law protection exists for even unregistered marks.

Aside from protecting their own brands, cannabis companies must be diligent in respecting the trademarks of others. In particular, trademark infringement cases against cannabis companies for strain names are on the rise. A prominent example is the lawsuit filed by The Gorilla Glue Company against GG Strains LLC for its use of the trademarked name "Gorilla Glue" in its award-winning cannabis strain. The parties settled this case with GG Strains LLC agreeing to stop using the Gorilla Glue name, renaming it GG4.[25] The threat of trademark lawsuits prompted name changes for other popular cannabis strains including the strains formerly known as "Girl Scout Cookies" (now GSC) and "Jagermeister" (now JGR), as well as strain names reportedly based off the *Star Wars* franchise.[26]

Candy makers have also been careful to protect their trademarks. For example, a major candy company filed federal trademark infringement lawsuits against TinctureBelle LLC (a parody name for Tinker Bell) and Conscious Care Cooperative alleging violations of its IP rights. TinctureBelle LLC sold products named "Hasheat," "Hashees" and "Dabby Patty" that allegedly infringed on popular candy trademarks. Conscious Care

[24] *See*, *e.g.*, 765 ILCS 1036 (Illinois state trademark statute).
[25] https://www.cannabisbusinesstimes.com/article/gorilla-glue-vs-gorilla-glue/.
[26] https://www.leafly.com/news/strains-products/cannabis-and-trademark-where-did-star-wars-strains-go.

Cooperative sold "Reefer's" peanut butter cups, an alleged rip-off of Reese's Peanut Butter Cups' trademark. Those cases settled with the cannabis companies agreeing to stop sale of the brands at issue and to destroy any remaining branded inventory and packaging.[27]

In addition, distributors and retailers can also be found liable for trademark infringement by simply carrying cannabis products that infringe a trademark. In a recent case, the makers of gummy candy Sour Patch Kids sued under US trademark law to stop the sale of THC-infused gummy products sold under "Stoney Patch" branding in pouches mimicking the trade dress of the candy by retailers and distributors because the candy company has been unable to identify the makers of the "Stoney Patch" edibles.[28]

Celebrity branding of cannabis lines has also become common throughout the brief history of legal cannabis sales, with Carlos Santana's partnership with Left Coast to market a "Smooth" line of products being the most recent example.[29] Partnerships like these require careful negotiations between the cannabis company and the rightful holder of a brand. The case of *Experience Hendrix, L.L.C. v. Andrew Pitsicalis* shows the risk a company takes by sidestepping these negotiations.[30] In that case, a company associated with the brother of late rock musician Jimi Hendrix began selling cannabis products under a Hendrix-related brand. But his sister, the administrator of the Hendrix estate, sued under trademark laws. In October of 2019, the defendants admitted to willful infringement and agreed to a $2 million judgment, as well as harsh injunctive relief.

[27] https://www.reuters.com/article/us-usa-hershey-marijuana-idUSKCN0I702R20141018.
[28] *Mondelez Canada Inc. v. Stoney Patch et al*, No. 2:19-cv-06245 (C.D. Cal. July 19, 2019).
[29] https://variety.com/2020/music/news/santana-talks-cannabis-market-1203469831/.
[30] *Experience Hendrix, L.L.C. v. Andrew Pitsicalis*, No. 1:17-cv-01927 (S.D.N.Y. Mar. 16, 2017).

B. Patent Law

While federal trademark protection is currently unavailable for cannabis operators, federal patent law in this space, on the other hand, is in its infancy. The United States Patent and Trademark Office does not require a product to be legal to achieve a patent. Cannabis operators are obtaining patents on a variety of products and technologies including growing techniques, specialized cultivation devices, extraction methods, packaging designs and many other categories of cannabis-related invention. Moreover, the Plant Patent Act allows a breeder to obtain patent protection on asexually reproducing plant lines, and the Patent Office granted the first plant patent for a cannabis variety in 2016.[31]

The legal CBD space saw the first infringement lawsuit based on a cannabis patent (for liquid CBD extracts) filed in 2018.[32] And while that litigation has not progressed significantly, the judge has already confronted (and rejected) an argument that the covered invention was an unpatentable natural phenomena[33] that was naturally occurring and that the patent, which merely specified a particular concentration of those compounds, was ineligible for patentability under the *Alice* test.[34] This case, and future cases like it, promise to illustrate a number of cannabis-specific issues of patent law.

The patent at issue in that case concerned liquid preparations containing specified concentrations of cannabinoids such as CBD and CBN. The defendant had moved for summary judgment, arguing that those chemicals were naturally occurring, and that the patent, which merely specified a particular concentration of those compounds, was ineligible for patentability under the *Alice* test. This case, and future cases like it, promise to illustrate a number of cannabis-specific issues of patent law.

C. Trade Secret Law and Restrictive Covenants

Even if federal protection for intellectual property in the cannabis space may not yet be settled or robust, state trade secrets laws can help protect cannabis companies' intellectually property and trade secrets. From

[31] 35 U.S.C. 161; US PP27,475 P2 (granted Dec. 20, 2016).

[32] *United Cannabis Corp. v. Pure Hemp Collective Inc.*, No. CV 18-01922 (D. Colo. July 30. 2018).

[33] *United Cannabis Corp. v. Pure Hemp Collective Inc.*, No. CV 18-01922 (D. Colo. April 17. 2019) (order denying Defendant's early motion for partial summary judgment).

[34] In *Alice Corp. v. CLS Bank Int'l*, 537 U.S. 208 (2014), the Supreme Court determined to be patentable, a patent 1) must be directed at a patent-ineligible concept and 2) must contain some "inventive concept."

growing techniques to customer development and retention, the cannabis industry promises to create a wealth of proprietary knowledge crucial for the success of an enterprise. The state-by-state implementation of trade secret law means that companies need to analyze their trade secret strategies in light of *every* state they operate in. Understanding how to protect critical trade secrets will be a crucial step in developing a cannabis business in the state.

To begin with, operators must understand what trade secrets have been generated by their operation. Examples could include defend against trade secret claims, including to protect against acquiring trade secrets through hiring.

Once trade secrets have been identified, a strategy must be implemented to protect them. A key part of this strategy will be the use of restrictive covenants and confidentiality agreements. Recent trends show increased scrutiny of restrictive covenants at the state level, making it increasingly important for these contractual clauses to be carefully drafted and tailored to your business needs.[35]

Cannabis companies must also prepare to become trade secret defendants. The labor market for skilled positions in the cannabis industry (positions which include everyone from growers to geneticists) is tight. Assuming that a new hire has previous in-industry experience, there is risk that a former employer might attempt to use trade secret law to disrupt the new employment. To this end, companies must have a plan prepared to allow smooth operations after acquiring new employees.

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In sum, the cannabis industry presents numerous business opportunities in Illinois and other states that have legalized adult-use marijuana, but as noted above, the nascent industry presents several unique legal issues. Any entrepreneur or business must be aware of these issues and should carefully consider working closely with legal counsel who have experience in the many legal areas at play. Jenner & Block has lawyers and practice groups with significant experience in these areas, including a working group of attorneys focused on the cross section of traditional legal issues and the growing cannabis industry, who are extremely well-positioned to provide legal counsel to address them. Please reach out to us to assist.

[35] Trade Secrets and Restrictive Covenants: FTC May Wade into Enforceability of Non-Compete Agreements, By: Debbie L. Berman, Andrew W. Vail, Amit B. Patel and Aaron J. Hersh. (January 16, 2020).