



May 8, 2023

The Honorable Jacqui Irwin
Assembly District 42
1021 O Street, Suite 6220
Sacramento, CA 95814

RE: AB 1207 (Irwin) Cannabis: labeling and advertising - Oppose

On behalf of Origins Council, representing 800 small and independent cannabis businesses in rural legacy producing counties throughout California, most of whom are homestead and legacy cannabis cultivators, we are writing in opposition AB 1207, which would prohibit humans, animals, fruits, and vegetables from use in packaging, labeling or advertising of cannabis products.

While we believe it is critical that state law includes thoughtful regulation that constrains the marketing of cannabis products to children, we believe that AB 1207 as written will not meaningfully address this issue, and instead would primarily target naturalistic imagery utilized by small operators who cultivate cannabis in rural areas.

Existing Law and Regulation Already Prohibit Products Attractive to Children

Images of candies and cartoons most attractive to children are already addressed in DCC regulation §15040:

§15040. Advertising Placement and Prohibitions.

- (a) Any advertising or marketing, as defined in Business and Professions Code section 26150, that is placed in broadcast, cable, radio, print, and digital communications:
- (1) Shall only be displayed after a licensee has obtained reliable up-to-date audience composition data demonstrating that at least 71.6 percent of the audience viewing the advertising or marketing is reasonably expected to be 21 years of age or older;
 - (2) Shall not use any depictions or images of minors or anyone under 21 years of age;
 - (3) Shall not use any images that are attractive to children, including, but not limited to:
 - (A) Cartoons;
 - (B) Any likeness to images, characters, or phrases that are popularly used to advertise to children;
 - (C) Any imitation of candy packaging or labeling; or
 - (D) The terms “candy” or “candies” or variants in spelling such as “kandy” or “kandeez.”

Additionally, DCC regulation §17300(k) gives the Department the ability to prohibit products determined to be attractive to children on a case-by-case basis.

Additional Requirements in AB 1207 Target Naturalistic Imagery, Not Images Attractive to Children

AB 1207 would further define the phrase “attractive to children” in state law as including “any real or fictional humans,” “any fictional animals or creatures,” or “fruits or vegetables, except when used to accurately describe ingredients or flavors contained in a product.” These images would then be prohibited from use in packaging, labeling, or advertising.

Most of our members are homestead farmers operating on very small scales, most commonly under a quarter-acre, and many produce organic food crops in addition to cannabis. As a result, small cannabis farmers have utilized images of fruit and vegetable crops including broccoli, carrots, lettuce, asparagus, tomatoes, radishes, cherries, and strawberries in brand logos, packaging, and on their websites.

Similarly, many small farmers utilize images of animals on their packaging that reflect the animals present on their farm, such as rabbits, bears, frogs, or fish. Some packaging also utilizes stylized depictions of the farmer themselves, often emphasizing that the brand is woman or minority-owned.

In each case, the images mentioned above are simply accurate depictions of the farm where the cannabis was produced or the farmer who cultivated the product.

Attempts to incentivize organic and regenerative cannabis agriculture have also led to the development of environmental certifications intended to encourage consumers to purchase environmentally sustainable products. Many of these existing or planned certifications include imagery of animals, including dragonflies, mountain lions, and fish.

Broad Definition of “Advertisement” Potentially Prohibits Any Accurate Depiction of Small Cannabis Farms

The “advertisement” of cannabis is broadly defined by Business and Professions Code 26150 to include a wide range of media and communications used by a licensee in connection with their product:

“Advertisement” includes any written or verbal statement, illustration, or depiction which is calculated to induce sales of cannabis or cannabis products, including any written, printed, graphic, or other material, billboard, sign, or other outdoor display, public transit card, other periodical literature, publication, or in a radio or television broadcast, or in any other media, except that such term shall not include:

- (1) Any label affixed to any cannabis or cannabis products, or any individual covering, carton, or other wrapper of that container that constitutes a part of the labeling under provisions of this division.
- (2) Any editorial or other reading material, such as a news release, in any periodical or publication or newspaper for the publication of which no money or valuable consideration is paid or promised, directly or indirectly, by any licensee, and which is not written by or at the direction of the licensee.

Adding humans, fruits, vegetables, and animals to “advertising” prohibitions would potentially prohibit nearly any media - such as videos or brochures - that accurately depict small cannabis farms and farmers. These images and media, which essentially depict people and place rather than large-scale commodity production, are essential for small, independent operators to differentiate themselves from larger-scale competition.

Small Operators are Disproportionately Affected by Brand Imagery Prohibitions

To the extent that AB 1207 would prohibit existing brands and brand imagery on cannabis products, these prohibitions would disproportionately harm small operators. Small operators inherently produce at a higher cost compared to large-scale commodity producers, and therefore depend on craft differentiation of their products for their survival; this craft differentiation depends, in turn, on developing a brand which communicates that the product is distinct from products produced by large companies.

Because small operators typically do not have access to investment capital, most existing small brands have been developed based on considerable one-time investments of personal funds. While larger operators with capital investment may be able to establish new brands to comply with evolving regulations, most small operators have no such ability.

Unintended Consequences of AB 1207

While we appreciate the intent of AB 1207 to hold operators accountable for bad-faith marketing practices, we do not believe the current approach of prohibiting naturalistic and human imagery accomplishes this goal.

To the extent that AB 1207's concerns are driven by specific cannabis products which are marketed towards youth, we encourage a more targeted approach to these products, rather than broad prohibitions on categories of imagery which would predominantly affect good-faith operators.

Thank you for your consideration,



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