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# Cannabis Plain Packaging Rules: Examples and Opportunities

## WRITTEN BY

Agustin E. Rodriguez | Christina Sava

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Much attention has recently been placed on hemp-derived products marketed in packaging that mimics popular snack foods.<sup>[1]</sup>

According to the U.S. Food and Drug Administration and various state regulators, this type of packaging has contributed to an increase in accidental consumption of intoxicating hemp products by minors.

Hemp product regulations have not kept up with the evolution of the hemp-derived products marketplace. Thus, an ever-changing menu of hemp-derived products have been launched into the public marketplace, with little federal and state guidance as to packaging, labeling and content.

Cannabis — or marijuana, the high-THC version of the cannabis plant — in contrast, has been highly regulated for over a decade.

In states like Virginia, marijuana is only available for medical use, and can only be purchased by patients or caregivers who receive a recommendation from a doctor. In some cases, patients even must register with the state for a medical marijuana card.

In states where cannabis can be sold to any adult 21 and older, cannabis products are still sold only in highly secure, licensed dispensaries, and sales are subject to strict statutory age-verification requirements.

In both recreational and medical markets, cannabis products are traced throughout the supply chain and must be tested by third-party laboratories for contaminants and cannabinoid content before they can be sold.

Nonetheless, concerns around hemp product packaging — which have largely arisen because hemp products have been so loosely regulated — have spilled over into the highly regulated cannabis industry.

States that have only recently legalized cannabis for adult use are implementing more stringent requirements on packaging and labeling of cannabis products.

All states have some level of prohibition on packaging that is attractive to minors, but the states discussed below

take these requirements further by prohibiting packaging that mimics popular candy or food, limiting the use of colors, and imposing other important restrictions.

Ironically, some of these states do not yet have the same robust requirements for the hemp-derived products sold at gas stations and corner stores.

Proponents of these so-called plain packaging rules believe they help prevent accidental ingestion of cannabis products by minors and help to deter young people from trying cannabis.

Opponents of such rules see them as overregulation that hurts an already struggling legal cannabis industry — struggling in part because it must compete with an unregulated intoxicating hemp products industry.

Further, packaging is a primary way that brands communicate with their target audience and distinguish themselves from one another. Opponents argue that plain packaging rules unduly limit consumers' ability to receive information from a product's packaging.

One can look to Canada as an example of what a dispensary shelf might look like if plain packaging rules are taken to the extreme.

Strict plain packaging rules have been built into the country's Cannabis Act and corresponding regulations since their inception, prohibiting the use of graphics and images, branding elements and multiple colors in an effort to reduce the products' attractiveness to minors.

As a result, Canadian cannabis product packaging looks a lot like pharmaceutical product packaging.

While these prohibitions may indeed make the packaging unattractive to minors — and probably adults, as well — they also make it difficult for brands to deliver a message about their products to consumers.

Nonetheless, as discussed below, plain packaging rules may offer a path to compromise between proponents and opponents of legal cannabis in states that have yet to establish a cannabis industry.

This article describes plain packaging rules enacted in Massachusetts, Connecticut, New Jersey and Missouri, and discusses how such rules may help parties find common ground in states that haven't yet legalized marijuana — as long as the rules aren't taken too far.

## **Massachusetts**

In 2016, Massachusetts became the first East Coast state to legalize the adult use of cannabis.

Resulting legislation requires that packaging be "plain in design" in an effort to reduce its appeal to minors.

Despite this requirement, Massachusetts' plain packaging rules still have enough flexibility to allow brands to customize the look of their products and permit quick differentiation among products.

Manufacturers may submit product packaging for preapproval by the Cannabis Control Commission to ensure compliance with the regulations.[\[2\]](#)

### ***Prohibitions and Requirements***

Massachusetts prohibits several potential design features that may appeal to minors, such as bright or neon colors, cartoon characters, symbols or celebrities that are commonly used to appeal to minors, and actual images of minors.

In addition, cannabis product packaging may not imitate any commercially available product that does not contain cannabis or is typically marketed toward minors.[\[3\]](#)

Further, cannabis packaging must be opaque and plain in design, and include a warning label that states, "KEEP THIS PRODUCT AWAY FROM CHILDREN."[\[4\]](#)

Because the requirement that packaging be plain in design is relatively vague, brands that are in doubt should take advantage of the preapproval process to learn more about the regulators' interpretation of plain.

### **Connecticut**

Connecticut legalized recreational cannabis in 2021.

The policies and procedures[\[5\]](#) promulgated by the state's Department of Consumer Protection to effectuate the adult-use statutes incorporate some level of plain-packaging requirements, including limitations on the use of colors in packaging and logos.

Notably, Connecticut has also introduced novel warning requirements for cannabis concentrates, drawing attention to the potentially increased risk of psychosis alleged to arise from the use of such concentrates.

### ***Prohibitions and Requirements***

In Connecticut, cannabis packaging may not use more than one color and may not incorporate "any information, print, embossing, debossing, graphic or hidden feature," other than the labeling required by law.[\[6\]](#)

Edible cannabis products must use packaging that is black and white, except for the required warnings and a picture of the product inside.

Cannabis beverages may use one uniform color other than white.[\[7\]](#)

Cannabis establishment logos can be shown in up to three colors other than black or white, but the logo on an edible must be in black only.[\[8\]](#)

Packaging must be uniformly opaque and light-resistant, and include the following warning statement:

This product is not FDA-approved, may be intoxicating, cause long-term physical and mental health problems, and have delayed side effects. It is illegal to operate a vehicle or machinery under the influence of cannabis. Keep away from children.<sup>[9]</sup>

Further, Connecticut requires packages to display one of four other warning statements rotated on a quarterly basis,<sup>[10]</sup> plus the following warning on a cannabis concentrate with a total THC concentration over 30%: "Warning: This is a high-potency cannabis product and may increase the risk of psychosis."<sup>[11]</sup>

With cases of cannabis-induced psychosis allegedly on the rise,<sup>[12]</sup> all manufacturers of cannabis concentrates should consider whether this warning would be appropriate for their products.

## **New Jersey**

New Jersey legalized the adult use of marijuana in 2021, and moved to enact packaging and labeling regulations shortly thereafter.

While New Jersey's prohibitions focus mainly on imagery that may appeal to youth or mimic popular noncannabis products, New Jersey also prohibits images and statements that promote overconsumption.

Like Connecticut, New Jersey requires warnings about the potentially increased risk of psychosis associated with cannabis concentrates.

While preapproval is not required, a cannabis licensee must provide a copy of its label to the state's Cannabis Regulatory Commission for record-keeping.<sup>[13]</sup>

### ***Prohibitions and Requirements***

New Jersey law prohibits statements, illustrations and images that are deceptive, as well as those that promote overconsumption.<sup>[14]</sup>

Packaging may not imitate a trademark or characteristic of a commercially available food product or depict a person under legal age consuming cannabis.<sup>[15]</sup>

Any statement, illustration, image, cartoon, color scheme, graphic or feature that might make the cannabis item or package attractive to children — such as toys, games, candy, beverages, food products or cartoon characters — is prohibited.<sup>[16]</sup>

Packaging must be opaque, light-resistant and of a single color, except that logos or symbols may be a different color or colors.<sup>[17]</sup>

Products that contain 40% or more THC must warn: "This is a high potency product and may increase your risk for psychosis."<sup>[18]</sup>

Any product that can be ingested should also include the following warning: "The intoxicating effects of this

product may be delayed by two or more hours.”[\[19\]](#)

Cannabis businesses must also make a good faith effort to use packaging that is biodegradable.[\[20\]](#)

## **Missouri**

Missouri is the latest state to take on some form of plain packaging rules.

Missouri voters recently passed a constitutional amendment that legalized recreational cannabis and gave the Missouri Department of Health and Senior Services the power to promulgate further restrictions on cannabis packaging and labeling.

DHSS rules restrict the use of multiple colors, large logos and cartoon characters on packaging and include certain novel requirements for the information that must be included on the package.

All packaging designs and labels must be submitted to the DHSS for review and approval, and an approval number must be included on the package label itself.

### ***Prohibitions and Requirements***

Missouri prohibits designs “using the shape or any part of the shape of a human, animal, or fruit, including realistic, artistic, caricature, or cartoon renderings.”

Designs may not cause confusion between cannabis product and other commercially available products that do not contain cannabis.[\[21\]](#)

Packaging must be opaque and use “[l]imited colors, including a primary color as well as up to two (2) logos or symbols of a different color or colors.”

The widest part of a logo or symbol may not be wider than the length or height — whichever is greater — of the word “marijuana” on the packaging.[\[22\]](#)

Missouri also distinguishes between inner and outer packaging. The marijuana product container closest to the product may display only specific information, including active and inactive ingredients, including solvents used in the manufacturing process; estimated length of time the serving or dosage will have an effect; and the warning, “Cognitive and physical impairment may result from the use of marijuana. Keep out of reach of children.”[\[23\]](#)

By allowing this information to be included on inner packaging, manufacturers have more room to include other information on outer packaging.

## **Finding Common Ground**

As can be seen, states are becoming more sophisticated and detailed with their cannabis product packaging and labeling regulations, especially in the absence of federal guidelines to set a uniform standard.

Plain packaging rules and novel warning requirements represent an effort to balance any actual or perceived cannabis public health risks with the push to legalize cannabis for adult use.

In states that have not yet legalized marijuana, more restrictive plain packaging rules like those discussed above may provide a vehicle for compromise between opponents and proponents of legalization.

For instance, opponents of legalizing cannabis for adult use frequently cite concerns about youth access and youth uptake of cannabis as a reason not to legalize cannabis.

Plain packaging rules, which may diminish cannabis products' appeal to youth, may be a way to assuage some of these youth uptake fears.

These rules should be carefully crafted, however, so as not to limit adult consumers' ability to glean information about a product from its packaging.

Packaging designs, for instance, can often hint at whether a product is intended to be more recreational, offering a powerful high, or more medicinal, focusing mainly on therapeutic benefits.

If all product packaging looks the same, consumers may have a hard time differentiating between products and their expected effects.

States should be careful to avoid the potential pitfalls of the Canadian model so that brands are still able to effectively communicate information about their products.

## **Conclusion**

Data gathering in states with plain packaging requirements will help determine whether such packaging requirements have their intended effect, which may further support efforts to legalize and regulate cannabis.

Such data may also provide states with an opportunity to reassess their laws for intoxicating hemp products. Goals may include promoting public health and leveling the playing field between legal cannabis and intoxicating hemp products.

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[1] <https://www.fda.gov/news-events/press-announcements/fda-ftc-warn-six-companies-illegally-selling-copycat-food-products-containing-delta-8-thc>.

[2] 935 CMR 500.105(7).

[3] 935 C.M.R. § 500.105(6)

[4] 935 C.M.R. § 500.105(7).

[5]

<https://eregulations.ct.gov/eRegsPortal/Search/getDocument?guid=80AEBF88-0000-C11D-8043-3F13476EB6D6>.

[6] Conn. Gen. Stat. §21a-421j(b)(18).

[7] Dept. of Consumer Protection Policies and Procedures § 21a-421j-32(c)(4).

[8] Conn. Gen. Stat. §21a-421j(b)(17).

[9] Conn. Gen. Stat. § 21a-421j(b)(5)(N)(ii)(VIII).

[10] *Id.* at (IX).

[11] Dept. of Consumer Protection Policies and Procedures § 21a-421j-33(a)(2)(l).

[12] <https://www.kqed.org/news/11916028/lawmakers-consider-adding-mental-health-warnings-to-pot-products>.

[13] N.J.A.C. 17:30-16.3(d).

[14] N.J.A.C. 17:30-16.5(a)(1).

[15] N.J.A.C. 17:30-16.5(a)(2), (5).

[16] N.J.A.C. 17:30-16.5(a)(6).

[17] N.J.A.C. 17:30-16.2(f)(1).

[18] N.J.A.C. 17:30-16.3(c)(2)(i).

[19] *Id.* at (3)(i).

[20] N.J.A.C. 17:30-16.2(h).

[21] 19 C.S.R. 100-1.120(1)(B).

[22] 19 C.S.R. 100-1.120(1)(B)(5).

[23] 19 C.S.R. 100-1.120(1)(C)(2).

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*Our Cannabis Practice provides advice on issues related to applicable federal and state law. Marijuana remains an illegal controlled substance under federal law.*

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*Samuel Reese Shelton, a summer associate at Troutman Pepper who is not licensed to practice law in any jurisdiction, also contributed to this article.*

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