Schedule III Rescheduling and Federal Cannabis Trademarks: Are State-Licensed Medical Cannabis Businesses Finally Eligible for USPTO Protection?

For decades, the United States Patent and Trademark Office ("USPTO") has refused trademark applications covering cannabis products because the applicant could not demonstrate lawful use in commerce under federal law. However, in April 2026, the U.S. Department of Justice and the Drug Enforcement Administration issued a final order rescheduling certain cannabis products and state-licensed medical marijuana from Schedule I to Schedule III under the Controlled Substances Act ("CSA"). This landmark "rescheduling" could provide a meaningful opportunity for at least some state-licensed medical cannabis businesses to test whether the USPTO's longstanding rule has changed.

A New Wave of Trademark Filings

Almost immediately following rescheduling, applicants began filing federal trademark applications that would have been viewed as highly aggressive only months earlier.

For example, multiple applications filed by Connected International Inc. identify goods such as "Cannabis for medicinal purposes," "medicinal herbal extracts for medical purposes namely, medical cannabis extracts," and "cannabis infused herbal extracts for medical purposes." Similarly, an application for KANHA identifies "Cannabis preparations for medical purposes," including dried flower and cannabis preparations intended for therapeutic use. DABSTRACT goes even further, expressly identifying "Medical marijuana and cannabis" and "Pharmaceutical preparations containing medical marijuana." Another filing, JUICED POWERED BY JUICY, references "state-

legal medicinal cannabis pre-rolls," directly incorporating state-law compliance into the identification itself.

These filings appear designed not merely to obtain registrations, but to force the USPTO to articulate how it intends to apply the lawful-use doctrine after rescheduling.

Importantly, many of these applications are not attempting to obscure the nature of the goods. Historically, applicants often avoided explicit cannabis references altogether. In contrast, these post-rescheduling filings appear intentionally direct and intended to provide test cases for the USPTO to issue updated examination guidance, or even eventually force federal court review.

Why Schedule III May Matter — and Why It May Not Be Enough

On one hand, after rescheduling applicants now have a stronger argument that state-licensed medical cannabis products are no longer categorically unlawful under federal law. If a product is no longer prohibited by the CSA, the traditional basis for refusing cannabis applications becomes less certain, and applicants may argue that the USPTO can no longer rely on blanket assertions that medical cannabis goods are per se unlawful. In addition, some applicants may argue that state-regulated medical cannabis now occupies a position analogous to other federally regulated pharmaceutical or controlled products that nonetheless qualify for trademark protection.

However, significant uncertainty remains.

First, the precise scope of the rescheduling order matters enormously. Questions remain regarding whether the order protects only FDA-approved cannabis products, all state-licensed medical cannabis activity, or some narrower subset of regulated products. The USPTO may take a conservative position pending additional agency guidance.

Second, the FDCA remains a major obstacle. Even if certain cannabis products are no longer unlawful under the CSA, ingestible products may still face refusal if the USPTO concludes they violate the FDCA, which would be especially important for edibles, beverages, supplements, gummies, tinctures, and wellness products.

Third, the USPTO may distinguish between medical and adult-use cannabis. Many of the recent applications appear carefully drafted to emphasize medicinal, pharmaceutical, or therapeutic uses rather than recreational consumption. That distinction may prove strategically important, as the USPTO could theoretically permit certain medical cannabis goods while continuing to refuse broader adult-use products.

Fourth, applicants may still face evidentiary problems regarding lawful interstate commerce. Because cannabis distribution remains heavily state-regulated, applicants may need to navigate

difficult questions concerning whether their use satisfies the Lanham Act's interstate commerce requirements.

Emerging Filing Strategies

The early post-rescheduling filings suggest several emerging strategies.

One approach is careful medical framing. Terms such as "medicinal cannabis," "pharmaceutical preparations," "medical marijuana," and "cannabis for medicinal purposes" appear repeatedly throughout the new applications as applicants seek to identify federally tolerated medical uses rather than the broader recreational cannabis market.

A second strategy is combining traditional cannabis goods with clearly lawful ancillary products or services, such as apparel, smokers' articles, retail services, or educational services, potentially preserving partial registration value even if cannabis-specific goods are challenged.

A third strategy may be intentionally creating test cases. Some applicants likely understand that initial refusals remain possible — perhaps even likely. Nevertheless, obtaining a well-developed refusal record could create opportunities for appeals before the Trademark Trial and Appeal Board or future federal litigation forcing courts to clarify how rescheduling affects the lawful use analysis.

Looking Ahead

The next 12 to 24 months may become one of the most consequential periods in the history of cannabis trademark law as the USPTO navigates how rescheduling impacts its lawful use analysis..

Cannabis companies should watch closely for:

- USPTO examination guidance addressing Schedule III cannabis products;
- office actions involving "medical marijuana" or "medicinal cannabis" identifications;
- TTAB appeals involving lawful-use refusals after rescheduling;
- evolving FDA guidance concerning ingestible cannabinoid products;
- and distinctions between medical and adult-use cannabis applications.

For cannabis brand owners, the current moment presents both opportunity and risk. Applicants willing to become early test cases may gain substantial strategic advantages if federal registration pathways begin to open. At the same time, uncertainty surrounding the CSA, FDCA, interstate commerce, and agency enforcement means that aggressive filing strategies still require careful legal analysis.

What is clear, however, is that the federal trademark conversation has fundamentally changed. Applications that once would have been viewed as facially impossible are now being filed openly and intentionally. Whether those applications ultimately register may determine the next chapter of cannabis intellectual property law.

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