Blogs
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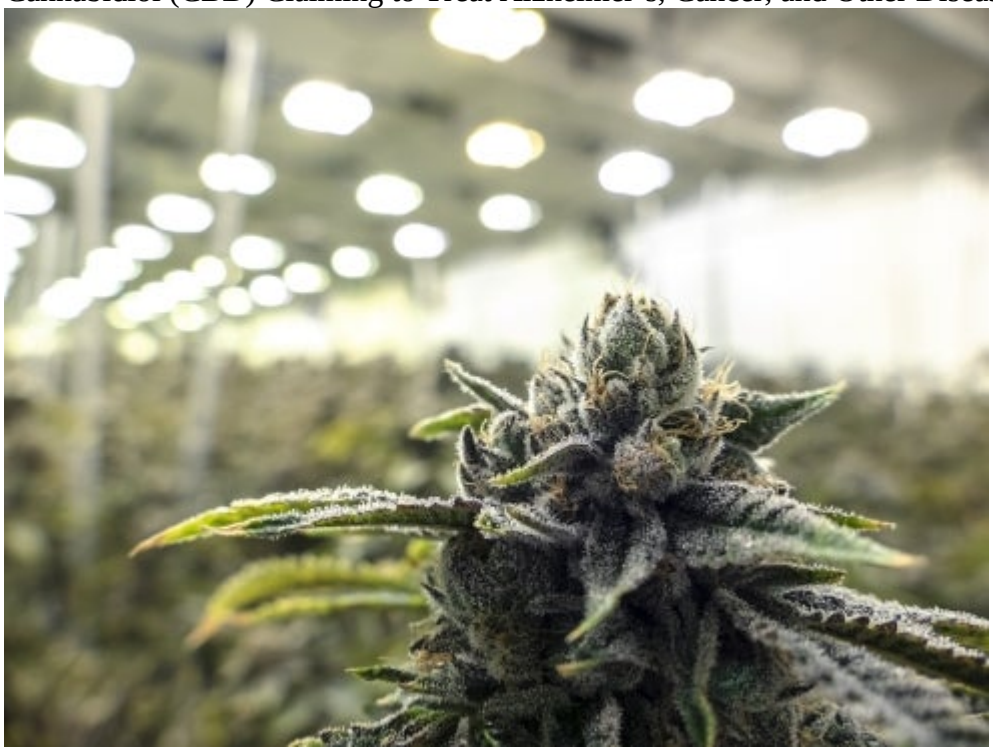
FTC Joins FDA in Sending Warning Letters to Companies Advertising and Selling Products Containing Cannabidiol (CBD) Claiming to Treat Alzheimer’s, Cancer, and Other Diseases



On March 28, 2019, the Federal Trade Commission (FTC) joined the Food and Drug Administration (FDA) in sending warning letters to three companies that market products that contain cannabidiol (CBD), which the companies claim can treat a variety of serious physical and mental disorders.

CBD can be added to foods and beverages, and can be synthesized, or derived from either hemp (which is legal at the federal level under the 2018 Farm Bill) or marijuana (which is illegal as a Schedule I controlled substance under the Controlled Substances Act). The FDA has not yet approved CBD as a food additive, and products containing CBD are currently deemed unsafe under the federal Food, Drug, and Cosmetic Act. The FDA has cited deceptive marketing practices as its main concern with respect to products that contain CBD, and has taken the position that selling products that contain CBD through unapproved therapeutic claims is illegal. Between 2015 and 2018, the FDA issued 18 warning letters regarding products containing CBD. Each of the letters was triggered by drug claims. Ten of the warning letters also challenged adding CBD to dietary supplements, and one warning letter also challenged adding CBD to food. Despite the warning letters, the FDA has not yet undertaken a single enforcement action against a CBD product. Similar to the FDA, the FTC has previously taken notice of health-related claims made with respect to CBD products, and in 2018 inquired into cancer-fighting claims made by That's Natural, LLC regarding CBD hemp oil. The FTC ended the inquiry after That's Natural LLC agreed to modify advertising and promotional material to discontinue the disputed claims, and to delete disputed blog postings by the company regarding the health claims. The three warning letters sent jointly by the FTC and FDA in March went to Nutra Pure LLC, PotNetwork Holdings, Inc., and Advanced Spine and Pain, LLC (d/b/a Relievus) and asserted possible violations of the FTC Act based on false or unsubstantiated health claims. The target companies advertised a variety of supplements containing CBD, including oils, softgels, and gummies (edibles), claiming that these products could treat diseases including cancer, Alzheimer's disease, fibromyalgia, and "neuropsychiatric disorders." Nutra Pure LLC ads also claimed that, "Science also shows that CBD has anti-emetic, anti-convulsive, anti-inflammatory and analgesic properties," and that, "CBD is a viable option for minimizing these effects within the brain." **Takeaway:** Neither the FTC nor the FDA have taken any significant

actions to date that relate to CBD, but the three warning letters sent jointly by the two agencies relating to supplements that contain CBD indicates that companies in the CBD industry should continue to take precautions to avoid attracting interest from the regulators. To reduce the risk of FDA or FTC action against CBD products for deceptive marketing practices, it is recommended that manufacturers use terms such as "maintain," "support" and "promote" to soften promotional claims regarding CBD products (i.e., the product "*contains* calcium to *support* strong bones"), describe the role in the product of the nutrient or ingredient intended to affect the human body's normal structure or function, and to the extent possible substantiate claims made regarding the product.

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