

# **Branding Cannabis in Canada: Challenges for the Cannabis Act's Promotion Restrictions**

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## **ABSTRACT**

**Background:** This article examines how Canadian cannabis companies promoted their new brands after legalization in late-2018.

**Analysis:** Nearly 4,000 items were collected from the websites and social media of 20 cannabis brands and triangulated with insight from the trade press. The promotional practices are contextualized in two areas: the history of tobacco advertising in Canada, as legal precedent for the *Cannabis Act*, and theories of branding.

**Conclusion and implications:** Brands are navigating the *Cannabis Act's* promotion restrictions by embodying what it means to be a brand in the twenty-first-century media environment. This reveals an incompatibility between regulations and contemporary marketing.

**Keywords:** advertising; cannabis; law/legislation; marketing; new media

## **RÉSUMÉ**

**Contexte :** Cet article examine comment les compagnies de cannabis canadiennes ont promu leurs nouvelles marques suivant la légalisation du cannabis à la fin de 2018.

**Analyse :** Sur les sites web et les médias sociaux, on a recueilli près de 4 000 références à vingt marques de cannabis qu'on a triangulées avec des commentaires provenant de la presse spécialisée. On a contextualisé les pratiques de promotion par rapport à deux domaines : celui de l'histoire de la publicité pour le tabac au Canada comme précurseur légal de la Loi sur le cannabis, et celui des théories sur la valorisation de la marque.

**Conclusion et implications :** Les compagnies de cannabis, tout en respectant les restrictions sur la promotion imposées par la Loi sur le cannabis, cherchent à incarner ce que cela veut dire que d'être une marque de commerce dans l'environnement médiatique du 21<sup>e</sup> siècle. Les contraintes sur les compagnies soulignent cependant une incompatibilité entre la réglementation et le marketing contemporain.

**Mots clés :** publicité; cannabis; loi/législation; marketing; nouveaux médias

## **Introduction**

On October 17, 2018, Canada's *Cannabis Act* (Canada, 2018) came into force, legalizing the use of cannabis and controlling various aspects of its production, sale, and consumption. This research examines Canadian cannabis advertising, promo-

tion, and more generally, *branding* during the immediate period after legalization. Cannabis offers a unique case study to which critical theories of branding can be applied because, with legalization, a product that has long been exchanged in inconspicuous ways can be commodified and branded explicitly for a competitive consumer marketplace. For Canada's licensed cannabis producers, dozens of companies all launching at the same moment, branding is a necessity; as can be observed throughout consumer culture, branding thrives when corporations sell products that are largely identical and at similar prices. For the cannabis industry as a whole, post-legalization marketing messages also serve the meta-function of overcoming stigma surrounding the product.

The *Cannabis Act* severely limits advertising options and content, but these legal constraints may have been conceptualized within a legacy mass media and traditional marketing environment. Meanwhile, the branding efforts of Canadian licensed cannabis producers take full advantage of digital and social media channels. Consequently, this research seeks to examine cannabis branding as an illustrative example of the incompatibility between advertising law and regulation, developed to govern twentieth-century advertising, and twenty-first-century promotional practices. Through an examination of the brand-building activities of Canadian licensed producers, this analysis argues that cannabis brands are managing legal restrictions by embracing contemporary social media branding strategies.

The next section surveys the *Cannabis Act's* promotion restrictions and explains how legal battles over tobacco advertising in Canada in the eighties and nineties directly influenced the law. This legal context is followed with a synthesis of theories of contemporary branding from critical communication and media scholars. This literature is directly applied within a primary analysis based on a sample of nearly 4,000 items collected from the websites and social media accounts of 20 cannabis brands, combined with insight from the trade press. The primary analysis is coded under four trends identified in the literature review: branded content as education; social media content as providing a context for consumption; audience labour in a regime of engagement; and celebrity, earned media, and non-advertising influence. Each category presents challenges for the *Cannabis Act's* promotion restrictions and demonstrates how the law, largely borrowing from the *Tobacco Act* (Canada, 1997), may struggle to govern twenty-first-century branding activity in the same way in which it contained cigarette advertising over two decades ago. Although the specific case study is legal cannabis, the conclusion offers broader reflections on the continuing challenges of regulating advertising practices in a social media environment.

### **The *Cannabis Act's* promotion restrictions and the *Tobacco Act's* legal precedent**

Section 17(1) of the *Cannabis Act* (Canada, 2018) stipulates that "unless authorized

under this Act, it is prohibited to promote cannabis or a cannabis accessory or any service related to cannabis.” This section effectively bans most advertising, and then with five further points, prescribes that even where the law authorizes limited exceptions, messages can never communicate prices, appeal to young persons, use testimonials or endorsements, depict persons or characters, or rely on lifestyle appeals. Of importance for this study, section 17(1)(e) of the *Cannabis Act* offers a legal definition of lifestyle advertising, characterizing it as promotion “in a manner that associates [cannabis] or the brand element with, or evokes a positive or negative emotion about or image of, a way of life such as one that includes glamour, recreation, excitement, vitality, risk or daring.” Later, under sections 21 and 22, the *Cannabis Act* forbids sponsorship arrangements, thereby preventing the cannabis sponsorship of a music festival or a cannabis company from purchasing an arena’s naming rights. All prohibitions cover “promotion,” a wider term than advertising, because promotion encompasses persuasion methods beyond paid media placement. The *Cannabis Act* also clarifies that these promotion restrictions do not apply to “a report, commentary or opinion in respect of cannabis ... if no consideration is given” (section 16(b)).

The only promotional activities permitted fall under specified exceptions, outlined under section 17(2) of the *Cannabis Act* (Canada, 2018). This section sanctions the promotion of cannabis by means of “informational” or “brand-preference” messaging where the audience is assured to be of legal age. The *Cannabis Act* allows a further exception for the display of a “brand element of cannabis” (e.g., company logo) on material that is not cannabis (e.g., a T-shirt), as long as the item is not something that might appeal to children or “a thing that is associated with a way of life such as one that includes glamour, recreation, excitement, vitality, risk or daring” (section 17(6))—further reinforcing the *Cannabis Act*’s efforts to curb lifestyle appeals.

Although cannabis is a new branded commodity in Canada, it inherits a lengthy history of debates about tobacco advertising.<sup>1</sup> This history must be reviewed because many of the above-quoted *Cannabis Act* definitions (including lifestyle advertising), prohibitions (appealing to young people, endorsements, the use of characters, sponsorship), and exceptions (informational and brand-preference promotion to adults) first appeared in Canada’s 1997 *Tobacco Act*, which itself was a response to a Supreme Court decision on its predecessor, the 1988 *Tobacco Products Control Act* (TPCA). The federal government authored the 1988 TPCA with public health goals, principally discouraging young people from trying smoking. Canada’s tobacco manufacturers, including RJR-MacDonald and Imperial Tobacco, launched a legal challenge that argued the TPCA infringed on their constitutional right to freedom of expression as per the Canadian Charter of Rights and Freedoms (1982). The case made its way to the Supreme Court, where the tobacco industry’s defence maintained that they invest in advertising only to persuade existing smokers to change brands, not to attract young people to start

smoking (Leiss, Kline, Jhally, Botterill, & Asquith, 2018). Although unrelated to advertising, the tobacco industry also argued that the TPCA requirement to put warnings on packages was tantamount to a form of unconstitutional forced expression (Pritchard & Vogt, 2015).

Supreme Court cases place the onus on the government to prove that the limit on a right is, per the Charter, “reasonable” and “demonstrably justified” (Leiss, 1999, p. 104). The Supreme Court assesses this with a three-part test, asking if the government infringement of a right is rationally connected to social objectives, impairing the Charter right as little as possible (minimal impairment), and proportionate to the social objective (Berman, 2013; Gower, 2005; Leiss, 1999). In 1995, the Supreme Court ruled in a five-to-four decision that the TPCA violated the right to free expression. Specifically, the prohibitions failed the minimal impairment test. The government expressed concern about lifestyle advertising crafted to appeal to young people, but the TPCA banned all advertising, everywhere, to everyone. The *RJR-MacDonald Inc v. Canada* (Canada, 1995) decision determined that “a complete ban on a form of expression is more difficult to justify than a partial ban” and that the government failed to produce evidence “to show that a partial ban would be less effective than a total ban” (para. 26). The decision argued that lifestyle advertising could be prohibited if that is the government’s concern, but other limited types of advertising could still be permitted.

In response, Health Canada developed new legislation that would address the issue of minimal impairment. The federal government enacted this revised legislation, the *Tobacco Act*, in 1997. The *Tobacco Act* allows for limited promotion within the categories of informational and brand-preference advertising, as long as it appears only in places where minors cannot see it, such as nightclubs or adult magazines. As of 2003, the *Tobacco Act* terminated tobacco sponsorship of events, including sporting and cultural events. Around this time, the Canadian tobacco industry launched a new Charter challenge of the *Tobacco Act*, which arrived back at the Supreme Court in 2007. This time the Supreme Court unanimously determined that the *Tobacco Act*, including its definition of prohibited lifestyle promotion as something separate from allowable informational and brand-preference promotion, was a reasonable and justifiable infringement on free expression rights. In their decision, the Supreme Court also backed the prohibition on tobacco sports sponsorship because associating cigarettes with sporting events is “essentially lifestyle advertising in disguise” (see Canada, 2007: *Canada v. JTI-MacDonald Corp*, para. 120). Given this lengthy legal history escalating in two Charter challenges, it makes sense that the *Cannabis Act* borrows, at times verbatim, the promotional definitions, prohibitions, and exceptions from the Supreme Court-tested *Tobacco Act*.

### **Theorizing the twenty-first-century brand**

If Canada’s *Cannabis Act* must be understood in the context of the history of the

*Tobacco Act*, branding, by contrast, must be understood in the context of the twenty-first-century media environment. The digital media landscape necessitates promotional tactics beyond what cigarette brands utilized: traditional, discrete, paid advertisements that purchased recognition. To combat ad-blocking technologies and confront the perceived cynicism of millennial and Gen-Z audiences, brands turn to subtler forms of generating awareness, based on discovery and participation rather than forcing attention. Michael Serazio (2013) proposes that brands utilize a “cool sell,” a less visible rendering of consumer governance based on audience pull rather than advertiser push. Audiences opt-in to marketing efforts, such as voluntarily following a brand on social media. Serazio suggests a tendency to self-determination motivates this: “Just as citizens have been trained to loathe the ‘nanny state’ in this regime of consciousness, so too are consumers now thought to loathe the ‘nanny marketer’” (p. 159). Whereas the loud disciplinary voice of traditional advertising dictates, “Learn! You must,” contemporary branding invites, “Discover! You may!” (Arvidsson, 2006, p. 93).

Mara Einstein (2016) adds that brands now try to “engage consumers without their realizing they’ve taken part in a promotional initiative” (p. 2) by blurring the line between what is content versus advertising. “Native advertising” describes sponsored-publisher custom content, whether a sponsored *BuzzFeed* list or piece of ostensible journalism created in partnership with a brand (Hardy, 2017; Serazio, 2019). “Branded content” refers to the converse, advertisers envisioning themselves as content producers. Serazio’s (2019) research documents how major brands such as Visa and Coca-Cola have internal content “newsrooms.” Branded content offers consumers useful information and exists in communication channels owned and controlled by corporations, such as official websites and social media accounts (Einstein, 2016). Something limited to a company magazine in the twentieth century, branded content now saturates the feeds of digital media: airlines tweet travel infographics, clothing brands offer fashion tips on Instagram, diaper brands offer resources for new parents on their websites. Cause-related marketing often incorporates branded content, for example, the mini-documentaries and other educational resources—all sharable digital “content,” not paid “advertising”—produced by Dove’s Campaign for Real Beauty (Banet-Weiser, 2012). Devoid of a call-to-action, both native advertising and branded content generate a subtle brand “ambiance” where the sales pitch is simultaneously “everywhere and nowhere” (Serazio, 2013, p. 56). Even when laws such as the *Cannabis Act* (Canada, 2018) use the broader term of “promotion” over “advertising,” drawing boundaries around promotional activity proves difficult when brands produce informational content designed to be anything but a sales pitch.

Opening a new chapter in ongoing attempts to prohibit lifestyle appeals, brands also use their social media content to construct and celebrate lifestyle. Lifestyle, as both a category of advertising and central aspiration of twenty-first-century brand-

ing, confirms how branding now privileges “the making and selling of immaterial things—feelings and affects, personalities and values—rather than actual goods” (Banet-Weiser, 2012, p. 7). Adam Arvidsson (2006) posits that branding offers a “context for consumption” (p. 8), a way of life that helps commodities “anticipate a certain attitude, mode or feeling” (p. 61). Lifestyle advertising relies on depictions of settings, activities, and social situations, illustrating how commodities connect with desired values while communicating little about the product itself (Leiss, Kline, Jhally, Botterill, & Asquith, 2018).

Arvidsson (2006) concludes that “for consumers, brands are a means of production” (p. 93), because their carefully crafted images offer a context for consumption, an invitation to participate in a lifestyle–identity, but simultaneously, for capital, “brands are a means of appropriation,” because they “capture the productivity of the social and subsume it as a form of value-generating immaterial labour” (p. 94). Twenty-first-century brands are unfinished texts that consuming subjects must complete (Banet-Weiser, 2012; Carah & Angus, 2018; Serazio, 2013). This downloading of brand-building to consumers is now central to brand management. Sarah Banet-Weiser (2012) distills that advertisers desired mass audiences in the mid-twentieth century and niche audiences by the end of the century. In the current era of interactive media, however, they care most about engagement with audiences. When users themselves participate in, if not lead, promotional campaigns, it creates an obstacle for advertising law.

Deemphasizing hard sells and instead investing in a digital brand community merges advertising into public relations—a promotional domain that appeared distinct from advertising only a few decades ago. Edward Bernays, a self-proclaimed founder of American public relations, achieved fame by earning free media attention for his clients rather than paying for it through traditional advertising. Another element of Bernays’ repertoire can be seen in twenty-first-century branding: word-of-mouth marketing and selling *through* opinion leaders (Einstein, 2016). The trusted leaders of the twenty-first century are social media “influencers,” a form of celebrity that can be utilized by brands through various sponsorship deals (Abidin, 2018; Banet-Weiser, 2012; Marwick, 2015). Contrary to the time of the *Tobacco Act*, regulators may potentially need to monitor a decentralized network of cannabis brand ambassadors, rather than merely the advertising and sponsorship activities of a few large cigarette makers.

In summary: first, twenty-first-century brands utilize digital and social media for subtler forms of promotion, whereby advertising is concealed as organic digital content that audiences can voluntarily discover, follow, and share. Second, brands further embrace lifestyle imagery on social media, offering attitudes, feelings, and open-ended contexts for commodity consumption. Third, the governed labour of consumers further constructs and authenticates brand value. Finally, brands also position themselves in an economy of attention through techniques long deployed

by public relations practitioners, from earned media attention to leveraging influential personalities. As this primary analysis will demonstrate and assess, these features of contemporary branding deliver new tests for advertising law and regulation, including Canada's *Cannabis Act*.

### **Method**

The analysis is performed on an archive of digital promotional materials from 20 cannabis brands licensed in Canada, collected by a small research team from October 17, 2018, until mid-December, 2019. The 20 brands were selected as those with the most active marketing efforts, measured by the extensiveness of their social media presence and/or coverage in the trade press, during this 2018–2019 period.<sup>2</sup> When considering brands to study, conscious decisions were made to include ones from different provinces and ones owned by different corporations, as many cannabis brands are owned by larger entities, such as Canopy Growth and Aphria. October 17, 2018, the day the *Cannabis Act* took effect, was selected as a start date; although some brands began promotional efforts ahead of legalization, this study aims to analyze their practices in the context of what is permissible by law. To keep the sample cohesive, the archive ends in December 2019 because, as of this month, additional products—such as cannabis-infused beverages, edibles, and topicals—entered the Canadian market.

The materials collected are predominantly artefacts of branded content, because paid cannabis advertising remains prohibited by several major platforms, such as Google (including YouTube) and Facebook (including Instagram). Activity was focused on Facebook, Instagram, and Twitter, as well as official websites, as they are the platforms used most frequently by the brands selected. Fewer brands were active on YouTube or Snapchat at the time of collection. This archive contains nearly 4,000 screen captured items, including 1,724 Instagram posts, 670 Facebook posts, 928 Twitter tweets, as well as another over 400 social media posts from other social media users tracked through brand-created hashtags, and approximately 100 webpages and blog posts, including video content. Some brands share the same content across their multiple social media channels and, consequently, there is considerable duplication represented in these numbers, approximately one-third of the total sample.

Beyond the discussions contained in this article, it is important to capture these materials as this initial 14-month period represents a time of experimentation and possibly testing the waters for how Health Canada will interpret and operationalize the *Cannabis Act*. Health Canada may intervene with additional guidelines that alter these practices and much of this social media content could be deleted. In fact, at the time of writing, some posts described in this article have already disappeared, although it is unclear if these removals are the result of changing marketing strategies, platform-specific content policies, or conflicts with the *Cannabis Act*.

These primary sources have been triangulated with articles on cannabis marketing from the advertising trade press, Canada's *Strategy* magazine, and cannabis industry trade press, such as the Postmedia-owned *Growth Op*. As Thomas Corrigan (2018) recommends, reviewing the trade press offers an opportunity for critical researchers to "listen in" (p. 2757) on media industries. Combining trade press analysis with a reading of a large sample of advertising texts is common in other works, such as Roland Marchand's (1985) *Advertising the American Dream* and William Leiss, Stephen Kline, Sut Jhally, Jacqueline Botterill, and Kyle Asquith's (2018) *Social Communication in Advertising*. The social media promotion examples and trade press sources are considered and compared in the contexts delineated in the preceding two sections: the legal history of the *Tobacco Act* and theories of contemporary branding.

### **Branded content as education**

During legal battles over tobacco advertising, policymakers grappled with traditional print advertising and later event sponsorship. They did not have to contend with brands producing large quantities of educational content—a common category of the promotional artefacts collected from the sample. Cannabis as a familiar-yet-newly legal product furnishes an ideal opportunity for brands to create informational digital content under the auspices of educating Canadians on legal consumption. Such brand-produced content invites consumers to discover the names of new brands and also functions to legitimize cannabis.

In the immediate period after legalization, brands produced communications that resembled public service announcements. The brand Tweed entered a partnership with Uber and Mothers Against Drunk Driving (MADD) to educate consumers on impaired driving. Built around the concept of "101 things to do high instead of drive," the fall 2018 campaign involved web content and advertisements in digital, print, and outdoor locations (Kolm, 2018). Campaign materials incorporate Tweed's logo and colour palette but do not promote cannabis. Consistent with the growth of cause-related marketing (Banet-Weiser, 2012), several brands embrace the cause of cannabis amnesty, a move to expunge pre-legalization cannabis-related criminal records. This is an important social justice movement, as cannabis criminal charges disproportionately target Black and Indigenous people and people of colour. However, this is also an example of the marketing goal of cause-brand fit (Leiss et al., 2018). The brand Doja aligns itself with an organization called Cannabis Amnesty and the partnership involved a van featuring the Doja logo visiting Canadian cities to collect signatures throughout 2019 (Dunne, 2019). This is in line with other brands that position themselves with an activist voice, for example Lush Cosmetics, which utilizes its retail locations for what Melissa Aronczyk (2013) terms "sponsored protest" (p. 8).

Recognizing that legalization is likely to attract new users, cannabis brands publish advice on their websites and social media feeds that conveys the helpful tone of education, not the persuasive tone of advertising. Consistent with the age restrictions of the *Cannabis Act*, websites require visitors to input their birthdate to enter and social media accounts limit access to social media users whose profiles indicate they are of legal age. The brand Blissco (2019) publishes articles such as “Talking to Your Family about Cannabis” on its website, while Tweed writes blog posts with titles such as “How to Come Down from Being Too High” (2018a) and “9 Responsible Use Tips to Help Be a Real Adult” (2018b). According to the trade press (Brunico Communications, 2018), Tweed engineered these blog posts in October 2018 for search engine optimization, recognizing many Canadians would be researching cannabis the month of legalization. The posts model the cool sell philosophy: while audiences appear to serendipitously discover them, the content has been strategically designed to ensure this discovery is far from accidental (Serazio, 2013).

Functioning as both a public service announcement and education, the refrain for new users to “start low and go slow” frequently appears in both web and social media content. This messaging recalls other “sin” industries throughout the twentieth century, namely tobacco and alcohol, that stressed “responsible” consumption while simultaneously leaving it up to the consumer to define their own limits. Lisa Jacobson’s (2012) analysis of American alcohol advertisements after prohibition locates how advertisements used ambiguous definitions of moderate consumption and moved the “burden for protecting the public against harm” (p. 124) from the product maker to individual. As an illustrative example, the brand Houseplant released a now-deleted video on its website in March 2019. This two-minute video, part of a “Houseplant Presents” series, serves as an educational lesson on “portion control.” The video has an eighties aesthetic, consistent with the brand’s retro image, and documents a fictional party scene in which one partygoer warns a woman about smoking too much cannabis too quickly. The climactic scene consists of the woman who consumed too much in a washroom, paranoid and comically giving herself a pep-talk to “get it together.” Houseplant founder Seth Rogen narrates, advising consumers to start slow and “if you’re not excruciatingly tired or having a panic attack, maybe have another hit” as well as casually reminding it is “better to under do it than over do it” (Houseplant, 2019a). The video features extreme overacting and random B-roll footage, recalling the knowing-wink humour used by brands such as Old Spice to create entertaining, authentic, and sharable digital content that resonates with even the most cynical of audiences (O’Barr, 2007).

While informational resources exist as branded content in “owned” media spaces, women-targeted brand Van der Pop (2019) developed informational resources in a paid media context with a multimedia native advertisement on Vice’s

website. Placed in Vice, this material retains a greater aura of authenticity and may come across even less overtly promotional (Einstein, 2016). The age-gated microsite reinforces the Van der Pop brand's colours and visual style and offers multimedia content, such as the "Open Session" video series on the topics of sex and cannabis, debunking cannabis myths, and cooking with cannabis. Offering quasi-journalistic reporting while reinforcing the brand's unique positioning, video content titled "High Femme" spotlights women in the cannabis industry. Consistent with native advertisements, such as those produced by the *New York Times'* T Brand Studio, the content is presented as editorial but with the brand reinforced in an ambient manner, everywhere and nowhere. The microsite's header included a typical native advertising disclosure: "Partner content ... created in collaboration with and paid for by Van der Pop."

The above examples are consistent with twenty-first-century branding practices, including the production of "non-advertising" informational content that pulls in and engages audiences, embrace of relevant social causes, and lack of direct sales pitch. The arrangements between Tweed and MADD, or Doja and Cannabis Amnesty, are neither advertising nor sponsorship. Web content such as the Seth Rogen-voiced video is likewise content, not advertising. In fact, the Van der Pop native advertisement is one of the few examples collected that satisfies the narrow definition of advertising as paid media placement.

To its credit, the *Cannabis Act* focuses on promotion broadly defined and avoids the term *advertising* entirely. The obstacle, instead, is one of enforcement. The exceptions for informational and brand-preference advertising to adults carry over from the *Tobacco Act*, which was written at a time when such exceptions allowed for relatively contained avenues of promotion. Regulators may not be able to track or confront promotional practices when they consist of a logo-laden van driving city-to-city with a petition, or a plethora of ever-growing social media posts and web content. Moreover, the brand presence on some of these materials is so subtle that it may not be detected by audiences or regulators as promotional at all. In addition, the age-gating of material meets the minimum standard in the *Cannabis Act*, but in doing so, illustrates how its promotional restrictions assume a media environment where brands can fully control who sees their material. The law may not consider the ways in which this content is designed to be shared by social media users, something essential to twenty-first-century branding. Some cannabis brands include an unenforceable decree that by following their social media feed, users pledge to be of legal age and not share content with those under 19.

### **Social media content as providing a context for consumption**

A significant amount of social media activity contributes to branding by constructing abstract attitudes and feelings or more literal contexts for cannabis consumption. This supports Arvidsson's (2013) theory, which argues that brands are "more

than mere symbols” and instead “objectifications of a particular way of living with commodities” (p. 377). In offering a vision for living with commodities, social media imagery may also help to normalize legal cannabis consumption in the same way that cigarette advertising visuals countered smoking critiques.

Nature and landscape photography appear in the Instagram feeds of several Canadian cannabis brands. The brand Cove (n.d.) is notable, with many of the company’s Instagram posts showcasing nature photography. Cove’s posts often include hashtags such as #travel and #travelphotography. Their vivid images of a rustic dock at sunrise over serene water, a Muskoka chair looking out over a dock at sunset, and many images of the Rocky Mountains stand out as an Instagram user scrolls their feed. Cove (2018) captions some of these Instagram posts with cannabis puns, such as a photo of the sun peeking through a treed mountainside captioned, “Enjoy the trees.”

The calm, uninhabited spaces of the Canadian outdoors fit into the aspirational “dream life” culture of Instagram, but they also recall cigarette advertisements of the seventies and eighties. The iconic Marlboro Country campaign, as interpreted by Douglas Holt and Douglas Cameron (2010), is not about a “cowboy” character but an independent and autonomous life in frontier spaces. These advertisements connote freedom, including freedom from authorities telling you not to smoke. The Marlboro brand’s imagery offered an enticing context for consumption—the physical landscape itself symbolized a state of mind. Tobacco market research from the seventies and eighties reveals the importance of advertising with themes of independence and self-confidence to reach youth (Dewhirst & Davis, 2005; Robinson, 2018). Accordingly, cigarette advertisements targeting young and new smokers “featured solitary wind surfers, skiers, and mountain climbers ... activities of a youthful nature that also communicate a feeling of independence and freedom, in settings of excellent scenic value where the environment is pure and pristine” (Pollay, 2000, p. 143). Timothy Dewhirst and Robert Sparks (2011) also describe lifestyle imagery of cross-country skiing or hot air balloon journeys in cigarette advertisements from the eighties. As a contemporary cannabis equivalent, the brand Flowr’s (n.d.) Instagram photos depict individual people participating in outdoor sports, such as a solo cross-country skier in the wilderness or a sole skater on outdoor ice at night. Beyond nature visuals, social media posts of inspirational quotes further embrace ideals of self-confidence and autonomy. The brand Qwest’s (2019) Instagram feed includes quotes such as, “When someone tells you it can’t be done, it’s more a reflection on their limitations than yours.”

Other Instagram activity builds cannabis brands by offering more literal, but equally attractive, contexts for consumption—a vision of ways to live with commodities. Playing into a cliché, six different brands produced Instagram content associating cannabis with vinyl records. Self-care furnishes another visual cliché for multiple brands, generating Instagram photographs that display cannabis prod-

ucts beside a book in a cozy reading spot, or depict product packages arranged with items for a bubble bath. Food, and socializing over food, marks another common trope, with several brands conveying this context on Instagram. The brand Solei (2019a) crafts numerous posts with this theme, such as a photo displaying a charcuterie board with pre-rolled joints, the brand's package, and other cannabis accessories, with part of the caption reading, "Forget the group message and re-discover the meaning of a group chat." These posts avoid flaunting consumption, such as a group of friends passing a joint. Without the presence of people, the consumption of cannabis is always implied through the settings displayed.

Looking back at tobacco history once again helps to interpret the significance of the imagery in these Instagram posts. Dewhirst and Davis (2005) argue that cigarette advertising sought to make smoking seem "normal," because research showed that cigarette smokers felt as if they were social pariahs. Therefore, the visuals help legitimize the consumption of cannabis at a time when existing and new cannabis users may still feel stigmatized. Additionally, visual clichés of outdoor sporting activities such as skiing benefitted cigarette makers by connoting health. Cigarette makers leaned on imagery of active lifestyles to imply health claims that they could not make explicitly. Similarly, for contemporary cannabis brands, social media photography of nature, self-care, food, and socializing helps to associate their newly legal commodity with positive physical and mental health, without actually making such claims. Combatting anti-drug messaging from previous decades that may have portrayed a downward spiral of addiction, cannabis marketing positions consumption as part of a normal and even active and healthy lifestyle. For controversial products from cigarettes to cannabis, marketing must overcome obstacles beyond brand awareness—lifestyle branding that privileges settings while downplaying the material product helps achieve this.

With numerous parallels to cigarette advertising imagery, the tone conveyed by cannabis brands on social media is precisely the lifestyle appeal the Canadian government sought to prohibit as far back as the 1988 TPCA. The contrast between the law and the activity of brands on social media demonstrates the challenge of drawing legal boundaries around lifestyle branding in the current media landscape. Constraining lifestyle promotion once branding weaves itself into social media proves difficult, because a platform such as Instagram is fundamentally a showcase of lifestyle, of human life full of glamour, recreation, excitement, and vitality. Lifestyle is often encoded into the content by the brands, and it is also actively decoded by ordinary social media users, perhaps imagining themselves in those Canadian nature landscapes, cozy homes, or dinner parties. This active decoding of lifestyle themes is encouraged by surrounding social media content because Instagram posts are experienced scrolling through a feed rather than as a discrete unit in isolation. Nature, travel, self-care, and food are popular genres on Instagram, which both disguises brand-produced posts as organic content and also primes au-

diences for decoding. As such, while the compositions and connotations of the posts closely mirror those of twentieth-century cigarette advertisements, lifestyle themes are now endemic on social media to the point they may be impossible to fully contain.

### **Audience labour in a regime of engagement**

Identifying the active role of audiences as immaterial labourers, Arvidsson (2006) explains that twenty-first-century brand management “is about ensuring that the means of consumption effectively become means of production; that the ethical surplus that consumers produce also becomes a source of surplus value” (p. 82). Canadian cannabis brands do exactly this, recognizing that consumers are “free” to post and comment on social media and that brands conduct this autonomy to provide “free” marketing labour (Serazio, 2013). A *Strategy* magazine article quoted the vice president of marketing for the brand Tokyo Smoke acknowledging that “there’s a lot of regulation, so you somewhat rely on consumers to help amplify your brand and spread the message” (cited in Kolm, 2019c, para. 7). “Fans” of brands often do the promotional heavy lifting through their own social media content production, sharing, and participation—another aspect of promotion with which earlier debates over tobacco advertising did not have to contend.

The *Cannabis Act* allows brand elements such as logos to appear on non-cannabis products and merchandise. Cannabis brands openly promote this merchandise, offer it through giveaways, and encourage fans of the brand to contribute selfies while modelling it. Common items include branded lighters, hoodies, toques, bags, and even shoes. Merchandise represents a kind of productive consumption, where end consumers become display billboards—in person and on social media. Although cannabis packaging is strictly regulated, some brands still invite consumers to share images of their product, celebrating it as a commodity-sign. Houseplant (2019b) posted an Instagram video of their product package on a bookshelf with the caption: “Houseplant should be displayed proudly on a shelf just like that one postmodern classic you bought four years ago but haven’t read yet. Post a #HouseplantShelfie.” This is a common social media promotional strategy. It is designed to “work from below” by courting user co-production while simultaneously encouraging free exposure as users share a Houseplant “shelfie” with their own followers (Serazio, 2013).

Brands believe interactivity and engagement encourage an “affective connection based on authenticity and sincerity” (Banet-Weiser, 2012, p. 37). Cannabis brands introduce hashtags for consumers to use, such as Solei’s “#FindYourMoment” (2019a), which prompts users to consider and share their own individuated and authentic moments. Many social media posts provoke discussion and commenting. For example, Solei (2019b) shared an Instagram video of its product and accessories laid out with a ticket stub and earplugs captioned, “Festival season is in full swing.

What have been your favourites so far and which are you most looking forward to?" The brand San Rafael '71 (2019) similarly employed music festivals for audience engagement, with an Instagram post querying, "From concerts to festivals, which event was super chill, in your first summer of legal cannabis?" In addition to initiating conversation, brands also react to conversations trending across social media platforms by participating in day-to-day trending topics. Contributing to authenticity and sincerity in this marketing regime of engagement, this activity repositions brands as "regular" and relatable social media users rather than a corporate voice of authority. For example, several brands also exploited the Toronto Raptors' 2019 National Basketball Association championship, including the brand HEXO (2019), which tweeted "The North has never been higher. Time to celebrate!"

From the perspective of individual businesses, this may be ineffective branding because companies are emulating their competitors. Holt (2016) observes that while "branding is a set of techniques designed to generate cultural relevance" (p. 42), many "companies are doing exactly the same thing with the same generic list of trends" (p. 49), such as music festivals or the Toronto Raptors. According to the trade press, "brand differentiation continues to be an ongoing hurdle" (Kolm, 2020, para. 1) nearly two years after legalization. Yet, for the growing Canadian cannabis industry, inviting consumers to associate legal cannabis with mainstream topics helps to normalize the commodity, which in turn benefits the industry as a whole. In other words, even the most mundane and formulaic attempts at social media engagement have an important function in generating cultural relevance for the entire product category. Audience labour "authenticates" the product category by treating cannabis brands in the same way as any other corporation; the small act of sharing a user-generated photo of merchandise or products, using a brand's hashtag, commenting on a brand's prompt for discussion about summer concerts, or liking a brand's congratulatory message to the Toronto Raptors legitimizes legal cannabis. And, as long as no material compensation or consideration is given, these small acts fall outside the *Cannabis Act*.

### **Celebrity, earned media, and non-advertising influence**

Celebrity associations are common with twenty-first-century brands and may also assist with the promotional meta-function of normalizing cannabis. Because the *Cannabis Act* forbids testimonials and endorsements or any depiction of real (or fictional) people, celebrity associations are not traditional endorsement deals but ownership arrangements. Several trade press pieces discuss the move from endorser to co-owner (Finkelstein, 2020; Riches, 2020; Subramaniam, 2019). Ownership group Canopy Growth partnered with Martha Stewart to create a line of products (Kolm, 2019a). Canopy Growth also partnered with Drake on the brand More Life Growth; Drake owns 60 percent and Canopy owns the remaining 40 percent (Subramaniam, 2019). Canopy Growth has also benefited from celebrity with Seth Rogen's afore-

mentioned Houseplant. Seth Rogen and Evan Goldberg are the brand's creators and owners; Canopy Growth provides production facilities and has a 25 percent stake in the company (Kolm, 2019b). Rogen announced the launch of the brand with posts on his own social media. Although celebrity endorsements are not unique to the social media era of marketing, celebrities founding their own brands is a more recent development, particularly with beauty/cosmetics influencers. Prohibitions on endorsements, going back to the 1997 *Tobacco Act*, would not have been able to anticipate this arrangement.

Partnerships with celebrities can also generate considerable brand awareness through earned media attention. When Houseplant launched in early 2019, over 50 media outlets reported on Rogen's brand. The value of this kind of earned media—the classic public relations game—may be worth the “expense” of giving up an ownership stake. The *Cannabis Act* (Canada, 2018) cannot control this kind of earned media because its promotion restrictions do not apply to a published “report, commentary, or opinion ... if no consideration is given” (section 16(b)). Writing in the *Growth Op*, a lawyer surmises that “a press release or media statement about a business collaboration is no more a depiction of a person than would be the case for an executive who isn't a celebrity, if it's even a ‘promotion’ at all” (Finkelstein, 2020, para. 9).

Contemporary brands shift emphasis from paid media advertising to earned media as a way to combat ad blocking and avoidance. For cannabis brands, further earned media attention came from legalization launch events. Tweed invited journalists to an elaborate October 17, 2018, launch party in Toronto to document the evening on social media and write about it for their respective outlets (Krishnan, 2018). A number of social media personalities also attended the launch party, recording their experiences with an abundance of photos of Tweed logos and gifted merchandise. The line between journalistic media and social media influencer—and therefore endorser—is now difficult to locate. Exceptions for reporting “if no consideration is given” rest on a twentieth-century mass media environment where reporting and publishing were exclusive domains reserved for trained journalists from established outlets, rather than bloggers and social media celebrities who can be courted with exclusive event invites. Additionally, because the social media influencer is defined as a mindset and set of practices rather than a specific achieved status (Marwick, 2015), there exists a seemingly limitless number of individuals to partner with and invite to events.

## Conclusion

On paper, Canada's 2018 *Cannabis Act* places strict prohibitions on promotion. In practice, this research documents extensive activity that functions to both build brands as well as legitimize and normalize legal cannabis consumption. The law borrows from the 1997 *Tobacco Act* to regulate promotion, but cannabis brands

are far more prolific in quantity and bolder in marketing content than cigarette makers operating under similar rules. This may be because cannabis marketing remains in its infancy and has yet to face major challenges from Health Canada. Cigarette makers, by contrast, have now been on the losing end of decades' worth of legal cases and are winding down marketing efforts.

This divergence can, however, also be attributed to the fact that cannabis brands all launched in the social media era—a different media landscape with a different advertising philosophy than the one that existed during the debates about tobacco. In following, rather than insinuate a nefarious attempt to defy the spirit, if not letter, of the *Cannabis Act*, this analysis suggests cannabis brands are navigating the law simply by *embodying what it means to be a twenty-first-century brand*. Cannabis brands cannot buy advertisements on television, but many twenty-first century brands are less interested in those promotional methods. Similar to contemporary brands in almost all other consumer product categories, cannabis companies produce digital content that offers consumers “education” instead of a hard sell; create vivid imagery to convey lifestyle through day-to-day social media posting; engage audiences through user-generated and viral content; and rely on celebrity partnerships, earned media attention, and social media influencers. Cannabis brands embody the philosophy of the cool sell, governing consuming subjects in a manner that is subtle, participatory, and seemingly serendipitous (Serazio, 2013).

The promotion restrictions of the *Cannabis Act*, based on the *Tobacco Act*, are media neutral. Nevertheless, they might have best achieved the intended policy goals in a twentieth-century marketing paradigm, where allowable promotion meant an informational print tobacco advertisement in a physical publication mailed directly to someone of legal age, or brand-preference cigarette logos posted around an age-restricted nightclub. This research shows how branding on social media complicates legal boundaries, such as identifying what constitutes promotion, how effective age restrictions can be enforced, the definition of lifestyle advertising, or the difference between endorser and company co-owner. Additionally, the social media era allows for a much greater prevalence of owned media content, earned media attention, and user-generated content and influencer marketing. The slightly more lenient 1997 *Tobacco Act*, a solution to the Supreme Court striking down the 1988 TPCA for going beyond minimal impairment of the right to free expression, opened the door for limited promotion, or at least limited by standards of a mass media era.

Larger conclusions beyond the specific case study of cannabis can be drawn from this research, relating to the incompatibility between advertising law, presupposing an older and narrower conceptualization of advertising, and contemporary branding practice. This incompatibility exists on two fronts. The first is the design of law and other regulations. Much of Canadian advertising law and regulation, including industry self-regulatory codes, was born out of early twentieth-century

concerns related to false and misleading advertising (Leiss et al., 2018). A misleading product claim remains “the root of all evil” (Pritchard & Vogt, 2015, p. 45) in advertising law. Yet, successful branding now occurs not through product performance claims but instead a subtle brand ambience, the development of an affective and open-ended context for consumption.

The second incompatibility exists in the possibility of enforcement. Even where the letter of advertising law and regulation adequately captures contemporary branding activities, enforcement in the social media era remains an immense challenge. Most Canadian advertising regulations, including those contained in the 1997 *Tobacco Act*, best suit a media environment where advertising can be easily monitored by regulators or through consumer complaint mechanisms. When promotion includes day-to-day social media posting, or even user-generated content, it becomes too great in quantity for any regulatory body to comprehensively monitor. Consider that this article’s sample of cannabis promotional material, covering 20 brands for a 14-month period, quickly added up to almost 4,000 items. This material is also ephemeral compared to traditional print or broadcast advertising; content can be quickly deleted, and with Instagram stories, the content is designed to disappear. Furthermore, for consumers to complain and/or regulators to investigate, they must be able to detect something as promotional, which contradicts the current advertising objective of ensuring consumers—and by extension regulators—do not perceive branded content, native advertising, user-generated content, or an influencer’s endorsement as an advertising message (Einstein, 2016). As Serazio (2013) summarizes “advertising is slowly receding from view even as it, paradoxically, becomes more ubiquitous than ever” (p. 169).

Through the case study of cannabis promotion, it is apparent that contemporary branding practice has expanded in scope and scale beyond the regulatory apparatus that is supposed to govern it. Although this article makes a contribution in identifying the disconnect, further interdisciplinary research—incorporating media theory, marketing and branding literature, and Canadian jurisprudence—is needed to better understand and work to bridge this gap. In creatively considering the future of advertising regulation, several lingering lessons from the history of cigarette advertising must also be considered. Corporations enjoy a Charter-protected right to freedom of expression. Any significant attempts to shape and constrain commercial discourse can be expected to be met with legal challenges from industries that depend on commercial speech, as with the case of tobacco. Large-scale prohibitions on specific practices or the advertising of entire product categories, then, are unlikely. However, as Dewhirst and Sparks (2011) observe, partial advertising restrictions simply encourage companies to shift marketing budgets to other avenues; in the case of tobacco, initial advertising bans drove investments in event sponsorship until those practices were later prohibited. Advances in regulation unintentionally inspire further marketing innovation. Speaking to the

dominance of the institution within media, culture, and society, advertising has always been both a delicate and moving target for regulatory intervention.

### Acknowledgements

The author would like to thank the anonymous reviewers and two research assistants, Brenna O’Gorman and Sarah Foster.

### Notes

1. There are questions about why cannabis is regulated more similarly to tobacco than alcohol. This debate relates to the health consequences of the product and is beyond the scope of this article.
2. The 20 brands included in the sample are: 7Acres, Ace Valley, Blissco, Cove, Delta 9, Edison Cannabis Co., Flowr, HEXO, Houseplant, KKE, Liiv, Qwest, RIFF, San Rafael ’71, Saturday, Solei, Spinach, Tokyo Smoke, Tweed, Van der Pop.

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