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Publications

Protecting the Future of Cannabis Biotechnology

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In an article published in Cannabis Business Executive on May 4, 2020, Emily Gant and Benjamin Hodges discuss the expanding competitive landscape for cannabis biotechnology. Gant and Hodges explain the ways various intellectual property (IP) protections can help players in the cannabis biotechnology space carve out a competitive advantage.

Their article reviews the different types of IP protections available, including copyrights, trademarks and patents. They write, "Each of these have slightly different impacts in the cannabis biotechnology industry. In addition to the different types of IP protection, there are different nuances to protection based on if the technology or produce is directly cannabis, for instance a new strain of cannabis, or if it is cannabis related or adjacent, for instance hydroponic units."

On trademarks, Adam Simon, owner of The Reef, a marijuana retailer with multiple locations in Washington state weighed in to share, "There is a race to trademark brands under the 'smoking accessories' classification, and other tangential classifications. So that category, in particular is getting hammered pretty hard as a holding place for brands that would otherwise seek trademarks in cannabis classification. We are waiting for the cannabis classification to open up when it becomes federally legal, and we expect to apply again at that time."

In the meantime, Gant and Hodges offered workarounds to help businesses register lawful goods and services in addition to seeking state trademark protection when available. Patent protections in the form of utility patents, design patents and plant patents are also discussed as potential IP protections available to the cannabis biotechnology industry.

Even if a business decides not to pursue IP protection, Gant and Hodges warn that businesses "cannot operate in a vacuum when assuming others will have similar good will. Instead, before making a product, growing a new strain or putting out any new marketing materials, businesses should review those to make sure no one else has IP protection over the new product. If so, the business will need to alter its product to avoid the limits of such protection and ensure that the company does what it can to avoid costly and time-consuming litigation."

To read more, please visit Cannabis Business Executive here.

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