

Navigating Canadian Cannabis Promotion Restrictions: The Age-Gate Exception

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Since the legalization of cannabis and the coming into force of the laws and regulations that govern the use, possession and sale of cannabis on October 17, 2018, there has been a lot of uncertainty surrounding the online promotion of cannabis.

The *Cannabis Act* (Canada) (the “Act”) provides a general restriction prohibiting the promotion of cannabis. But it also provides some exceptions. One such exception is the “age-gate” exception which provides that “subject to the regulations, a person may promote a cannabis accessory or a service related to cannabis by means of informational promotion or brand-preference promotion if the promotion is communicated by means of a telecommunication, where the person responsible for the content of the promotion has taken reasonable steps to ensure that the promotion cannot be accessed by a young person.” The Act defines “young person”, for the purposes of cannabis promotion, as an individual who is under 18 years of age.



In an effort to be in compliance with the Act, the majority of licence holders in Canada implemented a common type age verification system on their websites where the user confirms that they are 18 years of age or older (or 19 years of age or older in certain provinces) prior to entering the website. The user verifies their age by checking a “click to agree” box or inputting their date of birth into drop down menus. The general assumption in the Canadian cannabis industry was that this form of online age-gate system would be sufficient to fall under the age-gate exception.

However, on March 8, 2019, Health Canada sent a letter to cannabis retail licence holders as a warning that it has noted several instances of non-compliance with the Act and regulations. Health Canada noted specifically that licence holders were violating the promotional

restriction laws by making promotional content available online on websites and social media sites “without any steps being taken to ensure that the promotion cannot be accessed by a young person, and in other cases, the steps taken (e.g. simple self-attestation of age) may be easily circumvented by youth.”

The penalties for non-compliance with the Act can be severe and range from warning letters to licence suspension and revocations to administrative monetary penalties of up to \$1,000,000 or the maximum amount set by regulations. Non-compliance is also an offence that is subject to a maximum penalty of up to \$5,000,000 or imprisonment for a term of up to 3 years, or both.

Licence holders should immediately reassess their online age-gate systems used on their websites and social media accounts where promotional cannabis content can be accessed by young persons to ensure compliance with the Act and regulations. The common type age verification system described above is probably not enough. If you require more information on this matter, please contact us.

Read more on this topic: **Sponsorships & Cannabis: Are they a violation of promotion restrictions?**

Co-author Danielle Grzybowski has left TDS to pursue a new opportunity, effective May 26, 2023. Anyone wishing to contact Danielle should contact Marilyn Chubaty at marilync@tdslaw.com or by phone at (204) 934-2591 and she will be delighted to assist you.

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