VIEWPOINT

The Need for Federal Regulation of Marijuana Marketing

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A national for-profit marijuana industry is expanding substantially in the United States. Thirty-three states have legalized medical marijuana, 10 of which (where 1 in 4 individuals reside) have also legalized recreational marijuana. Sales of marijuana are projected to increase from $8.5 billion to $75 billion by 2030, rivaling current tobacco sales ($125 billion).[1] The initial marijuana marketplace was limited to a few states, but emerging brands have developed sophisticated national marketing campaigns that could potentially have an effect across state lines. This marketplace expansion, along with questionable marketing practices, introduces a need for federal action.

An Emerging Marijuana Brand: MedMen

An example of a major, emerging national marijuana brand, MedMen, is helpful to illustrate the challenges ahead as more national brands emerge. MedMen is a US-based, publicly traded company that owns and operates licensed cannabis facilities involved with the cultivation, manufacture, and retail distribution of marijuana. The self-proclaimed "Apple Store of Weed," MedMen is a lifestyle marijuana brand that operates under its newest slogan: "Welcome to the new normal" and has locations in Arizona, California, Florida, Illinois, Nevada, and New York (including a flagship on Fifth Avenue). This past year, MedMen initiated a well-funded national advertising campaign, including advertising buys on *The Howard Stern Show* (with a potential audience of 100 million since Sirius XM's acquisition of Pandora) and *The Adam Carolla Show* (which holds the Guinness World Record for most downloaded podcast).[2] Sleek, bright red billboards, YouTube videos, and social media advertisements coordinate both with the company's yoga and apparel line that are sold in all 50 states. With MedMen's product offerings, consumers can integrate marijuana into almost every aspect of their life, including bath soaps and bombs, candy, cosmetics, drink mixers or tincture, food, medicinal products (eg, pain pills or sleep aids), pet products, sex lubricants, and vaporizers.

> A national evidence-based regulatory regime for marijuana marketing must become a public health priority.

Health Claims, but No Health Warnings

Health and medicine are implied in the name of this company, even though a majority of MedMen's stores sell recreational marijuana. Billboards read, "Heal. It's Legal. "The company's blog *Ember: A Journal of Cannabis and Culture* has an entire section dedicated to health, including a claim that marijuana "can reduce anxiety, pain, and so much more,"[3] a physician's recommended list of marijuana products for menstrual cramps,[4] and promotion of marijuana as a safe, natural, and nonaddictive alternative to prescription medications, even implying that marijuana can treat opioid addiction, an opinion with which experts disagree.[5] The first national radio–podcast advertisements in 2018 did not mention marijuana, but advertised unnamed wellness treatments. A planned collaboration with Gwyneth Paltrow's Goop, which was recently fined for misleading health claims,[6] has been announced. A short film to promote MedMen starred actor Jesse Williams, who portrays a surgeon in the hit ABC 1-hour medical drama *Grey's Anatomy*. Despite all of these nationally broadcasted health claims, MedMen's products do not carry any national health warnings about the potential adverse effects of marijuana use. The only health warnings included on the MedMen website are "marijuana products impairs your ability to drive and operate machinery" and that MedMen "cannot guarantee the accuracy of any marijuana information provided" on its website.

Appeals to Youth

MedMen uses advertising techniques that could appeal to teenagers and perhaps even to children. MedMen makes use of models with youthful appearances. The MedMen clothing line features a high school varsity jacket emblazoned with a marijuana leaf. One celebrity spokesperson, Lake Bell, is known among teen audiences for her role in the 2016 animated film *The Secret Life of Pets*. A blog post entitled "How CBD Can Help With Breakouts"[7] offers a dermatologist's endorsement of products for treating acne, a condition affecting nearly all teenagers. Highly sexualized imagery and promises to improve a user's sexual experience are often used by MedMen, including T-shirts that pair the word *cannabis* with unrelated images of women's bodies and a recent promotion featuring a salivating fruit placed over a woman's genitalia with the caption "Get High Down Low." Taffy, gummies, and gingerbread house kits are among many additional MedMen products that may appeal to youth. Regardless of intent, these marketing strategies might indeed attract youth.

The Need for Regulation

It is critical that regulators investigate these problematic marketing practices across all marijuana brands,

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not just MedMen, to ensure that health claims are independently verified and youth are protected from marijuana marketing. Precedent exists for federal action to regulate MedMen's national marketing strategy because the responsibility to regulate "products containing cannabis and cannabis-derived compounds" currently rests with the FDA under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act.

Official FDA Commissioner statements about marijuana regulation suggest that many of the health claims used by MedMen may be unlawful. For example, "the FDA requires a cannabis product (hemp-derived or otherwise) that is marketed with a claim of therapeutic benefit, or with any other disease claim, to be approved by the FDA for its intended use before it may be introduced into interstate commerce."[8] However, interstate commerce does not necessarily mean that a within-state vertically integrated business is immune to these regulations; according to the FDA, "Cannabis and cannabis-derived products claiming in their marketing and promotional materials that they're intended for use in the diagnosis, cure, mitigation, treatment, or prevention of diseases (such as cancer, Alzheimer's disease, psychiatric disorders and diabetes) are considered new drugs or new animal drugs and must go through the FDA drug approval process for human or animal use before they are marketed in the US."[8]

The FDA's mission to protect youth from tobacco marketing aligns with the need to protect youth from marijuana marketing. Just as with tobacco, the developing brain is more susceptible to addiction, and exposure among youth could potentially result in greater numbers of heavy users.[9] Moreover, marijuana has distinct health effects on youth, underscoring the need for protections. For example, heavy marijuana use among youth is associated with cognitive deficits.[10] Recently, the e-cigarette brand Juul was censured by the FDA for promoting this product among youth using appeals similar to MedMen, except that these advertising strategies were potentially less overtly kid friendly.

For some physicians and public health experts, the marketing strategies used by MedMen may harken back to an era when physicians endorsed their favorite tobacco products and youth wore tobacco-branded clothing in schools. The time for a response is now, for delayed reaction will yield lingering exposure to potentially hazardous marketing claims. A national evidence-based regulatory regime for marijuana marketing must become a public health priority.

ARTICLE INFORMATION

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