

## FTC Takes Action Against Six Firms for False CBD Disease Claims

December 29, 2020 Suzie Trigg, Kayla Cristales

**PRACTICES** CBD and Hemp, FDA Regulatory and Compliance, Food, Beverage and Restaurant, Advertising, Marketing and Promotional Law, Healthcare Transactions and Regulatory

The Federal Trade Commission (“**FTC**”) announced a major crackdown on deceptive advertising for cannabidiol (“**CBD**”) products recently, taking aim at six sellers for making wildly exaggerated, scientifically unsupported claims about their products’ ability to treat cancer, heart disease, hypertension, Alzheimer’s disease and many other serious health conditions.

The penalties for the sellers were notable. Each company entered into a civil judgment and consent decree in which it pledged to stop making such claims immediately and notify its customers that it had no proof that its products could deliver the claimed benefits. Five of the six companies also paid fines ranging from \$20,000 to \$85,000.

The FTC ordered the firms to refrain from making any health or disease claims for their products unless they had competent and reliable scientific evidence (which must also include multiple efficacy studies) supporting those claims. As part of their consent decrees, the firms agreed to send consumers who purchased their products a letter, in a form approved by the FTC, to advise that they had no proof that their products provided any of the promised health or therapeutic benefits and that the FTC sued them to stop making such claims.

The FTC issued a press release and held a press conference on December 17, 2020, to announce the settlements. It also said that the crackdown, called “Operation CBDeceit,” is part of its ongoing effort to protect consumers from false and misleading health claims made on websites and through social media. While the Food and Drug Administration (“**FDA**”) has been issuing warning letters on an ongoing basis to food and dietary supplement companies making therapeutic and disease claims for CBD, the FTC’s announcement constituted the first significant enforcement actions initiated to specifically curtail such claims in the marketing and advertising space, including direct-purchase websites.

“The six settlements announced today send a clear message to the burgeoning CBD industry: Don’t make spurious health claims that are unsupported by medical science,” said Andrew Smith, Director of the FTC’s Bureau of Consumer Protection. “Otherwise, don’t be surprised if you hear from the FTC.”

The consent decrees will soon be published in the Federal Register for a thirty-day comment period, after which the Commission is expected to make the orders final. The following is a summary of the FTC’s findings concerning each firm as set forth in civil judgments and consent decrees:

- **Bionatrol Health:** Since December 2019, the Utah-based firm has claimed that its CBD oil treats pain better than Oxycontin and can prevent age-related cognitive decline. The firm also claimed its oil was “medically proven” to improve a variety of conditions. The firm was ordered to pay \$20,000.

- **Epichouse:** This Utah corporation, which also operates under the name First Class Herbalist CBD, marketed oils, creams, coffee and gummies on their website. The firm claimed its products outperformed Oxycontin in the treatment of pain and could prevent cancer, diabetes and heart disease. The firm was ordered to pay \$30,000.
- **CBD Meds / G2 Hemp:** This California business was ordered to stop making several false or unsubstantiated claims for its CBD extract, including that it effectively treats, prevents or mitigates serious conditions such as artery blockage, cancer, glaucoma, autism and schizophrenia, among many others.
- **Hempme CBD:** The firm marketed its CBD-infused shea butter, gummies, lozenges, honey sticks, vape pens and oils as treatments for cancer, substance abuse and AIDS. The firm was directed to pay \$36,254.
- **Reef Industries:** The FTC found that the firm marketed a variety of CBD products and falsely claimed that CBD has been proven effective in treating Alzheimer's disease, arthritis, autoimmune disease and irritable bowel syndrome. The firm was ordered to pay \$85,000.
- **Steves Distributing:** For two years, the company marketed CBD tinctures, gummies, capsules, topical balms and suppositories with the false claims that such products were an effective alternative to prescription medications and could treat a wide range of conditions, including Alzheimer's disease, cancer, diabetes, heart attacks and strokes. The firm was ordered to pay \$75,000.

**Why It Matters:** While the regulatory status of cannabis and cannabis-derived products is far from clear because of multiple federal agencies, states and tribal entities asserting jurisdiction, there is one thing on which everyone seems to agree: apart from one drug, (Epidiolex, approved for the treatment of epilepsy), there is no proof that CBD products can diagnose, treat or cure any disease or ailment. FDA continues to monitor the CBD marketplace closely for disease claims and other high-risk marketing claims; FDA recently issued a flurry of warning letters on December 22, 2020, to five companies selling CBD products claiming to treat medical conditions. In addition to the medical claims, FDA's press release highlighted the routes of administration, particularly nasal, ophthalmic, and inhalation, as especially concerning from a public health perspective. With CBD enforcement actions now coming from FTC as well as FDA, any firm that seeks to tout the therapeutic benefits of a CBD product without a strong dossier of competent and reliable scientific evidence can expect to hear from the FTC, the FDA, or both, as well as state and local prosecutors and consumer protection agencies.