



ECigIntelligence

Regulatory and Market Intelligence for the e-Cigarette Sector

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 ecigintelligence.com/vape-startups-turning-to-cannabis-in-face-of-attorney-generals-opposition/

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Vaping startups appear to have begun refocusing the way they present their products in a bid to capture the cannabis industry. Eschewing the once-prominent “for tobacco only” message, companies developing vaping gear have found it easier to raise capital for cannabis-based ventures than for those based on e-cigarettes or tobacco.

According to the technology news site [TechCrunch](#): “Not a single company that mentioned tobacco, cigarettes or e-cigarettes in its Crunchbase profile raised a disclosed funding round in [the year to March 2017]. By contrast, at least 45 self-described marijuana and cannabis companies did.”

This is not entirely surprising, either. As far back as 2015, for example, when Pax Labs announced it had raised \$47.6m in funding, it was credited as a sign of investor confidence in the vapouriser market and the coming marijuana industry – even though nicotine was a more immediately available market.

The [San Francisco Chronicle](#) reported then: “Treading carefully, [CEO James] Monsees said that some of the interest in the Pax products may be ‘speculation on how the underlying technology could be used in the cannabis industry in the future’.”

Former CEO of the now defunct Palm Beach Vapors, Chip Paul, is now acting as a co-founder of the GnuPharma Corp, a company that works with endocannabinoid systems, dealing with cannabinoid receptivity in the brain. In 2016, when Palm Beach Vapors was still an active chain of franchises in the vaping space, Paul [told news agency Reuters](#) that as many as 90% of its franchisees were looking to capitalise on future marijuana sales.

Regulatory complexities

But while cannabis has been gaining increasing attention in the e-cig industry, those considering entering this new space will find themselves facing a very different market, and a completely different

set of regulatory complexities.

The US cannabis industry is projected to grow to about \$40bn by 2021, according to a report from Arcview Market Research and BDS Analytics. They currently estimate it at nearly \$17bn. This report also claims that the economic impact of the industry will include 414,000 jobs and more than \$4bn in tax receipts.

Though these figures should be taken with a pinch of salt, since both companies are involved in the cannabis industry, they are not risible. Some press reports claim the cannabis industry made around \$7.9bn last year, while inferred figures suggest there are more than 2.6m users of medical marijuana in those US states where it is legal.

In California alone, the industry was projected to pull in nearly \$1bn in taxes in its first year of legalisation, according to figures from the California Legislative Analysts Office from 2016.

California was, of course, the first state to pass medical marijuana with Proposition 215, the Medical Use of Marijuana Initiative, in 1996. Subsequent bills in the state Senate in the early 2000s eased penalties for possession of small amounts of the drug and created guidelines for medical marijuana. Full state acceptance of marijuana, however, has only really come about in the last couple of years.

Research restrictions

Cannabis research is growing as well. It has been estimated that by 2015 there were about 22,000 studies on cannabis. However, relatively little is known about the medical-grade cannabis ingested by Americans because the federal government restricts research to federally grown product. And that product is considerably weaker than the legal stuff people actually ingest, according to a study in the research journal Scientific Reports.

Overall, cannabis is blooming. California has made recreational weed legal, meaning it's legal across the west coast. In fact, recreational use has been approved in Massachusetts, Maine, Nevada, Oregon, Washington, Alaska and Colorado. Speculation holds that Michigan, Connecticut, Ohio, Oklahoma, Kentucky, South Dakota, Utah and Missouri will see some form of decriminalisation in the near future.

Vermont, New Jersey and Rhode Island are expected to introduce decriminalising measures this year. And the New York state assembly held a public hearing on decriminalisation in the second week of 2018.

Canada is legalising as well. The United States' northern neighbour is planning to legalise recreational use across provinces and territories in the summer. Canada has had legal medicinal use for years.

In the US, at federal level, marijuana is listed under the Controlled Substances Act as a Schedule 1 drug – the same classification as heroin, ecstasy and LSD, and a level above cocaine.

Arrests for marijuana still make up a little more than half the drug arrests in the US, according to the American Civil Liberties Union (ACLU). Between 2001 and 2010, 88% of those arrests, about 8.2m, were for possession, the ACLU says. And those arrests reveal serious racial bias.

Obama and after

However, the Justice Department has taken a swipe at this nascent and tax-rich industry, which currently exists in a weird, half-legal condition – not legal at the federal level but legal in some states.

To alleviate this, in 2013 the Obama administration offered an emollient policy, dubbed the Cole Memorandum – named for the then deputy attorney general, James M. Cole, no relation to Representative Tom Cole, champion of the e-cig industry in Congress. The Cole Memo hindered US attorneys from prosecuting cannabis consumers and businesses in states where it is legal, with some exceptions, such as selling to minors. In effect, this would have had federal attorneys deferring to state laws.

In the first week of January 2018, a one-page Justice Department memo from Attorney General Jeff Sessions took a different approach.

Framing it as a means of re-establishing principle and returning to law and order, Sessions's memo gave US attorneys the green light to go after users and businesses as they see fit. This lines up well with the Trump administration's general slash-and-burn approach to all things Obama.

And it was unsurprising because, though he may never have claimed that marijuana “makes people retarded,” as conservative pundit Ann Coulter did, Sessions has never tried to hide his anti-marijuana stance. He has said he considers marijuana to be a life-wrecking and addictive drug, only “slightly less awful” than heroin. (In a notably similar vein, an anti-vaping ad in New York last year compared e-cigarettes to heroin.)

Sessions's red pen has struck out all federal protection for cannabis, apart from the congressional Rohrabacher-Farr amendment, which prevented the Justice Department from spending money to interfere with the implementation of state laws on medical marijuana. That amendment expires this month, but a new bill would expand it to adult use and remove the need to keep renewing it.

The Sessions approach has not gone down well with all of his own party. Cory Gardner, a Republican senator from recreational-legal Colorado and chairman of the National Republican Senatorial Committee, stood up in Congress to say he'd “hold up every single Department of Justice nomination” until Sessions honoured a private commitment to states' rights.

Social justice

Meanwhile, the pot issue has taken on a social justice hue. New Jersey senator Corey Booker introduced a bill last summer aimed at legalising cannabis across the US, dropping it from the list of controlled substances on the argument that the war on drugs – at least, the marijuana bit – disproportionately targets communities of colour.

If passed, Booker's bill would bring the release of probably thousands of prisoners across the US, who are currently being held on charges related to possession or trafficking.

Some analysts have predicted that Sessions's decision will lead to a flourishing of the industry in Canada at the expense of American cannabis. However, it remains to be seen what the future of the US cannabis industry will be. Or, rather, what shape it will take.

A recent study seems to confirm earlier findings that both marijuana use and e-cigarettes are on the rise among young people, even as combustible cigarette use has slumped.

In what was billed as the first annual survey to look explicitly at [national, standard estimates for the vaping of marijuana, nicotine and flavours](#), researchers at the University of Michigan reported that about one in ten high school seniors said they had vaped marijuana at least once in the previous year. In the first significant increase in seven years, marijuana use rose steeply from 1.3% to 24% for eighth, tenth and 12th graders combined, researchers found; 8% of high school sophomores and 3% of eighth graders had vaped marijuana.

Richard Miech, who led the study, said: "This increase has been expected by many. Historically, marijuana use has gone up as adolescents see less risk of harm in using it. We've found that the risk adolescents see in marijuana use has been steadily going down for years to the point that it is now at the lowest level we've seen in four decades."

What This Means: This is the first in a series of cannabis-focused updates from ECigIntelligence. As the US industry grows and receives legal or semi-legal status, we will continue to keep a piercing eye on it. This will benefit you whether you're considering jumping into this industry, or merely curious about its growth and challenges.

The cannabis market clearly has potential and there is some crossover in technology, but vaping companies seeking to enter it will have to be prepared to start over again in a market and regulatory environment that is just as confusing and rapidly changing as e-cigs were a few years ago.

– Daniel Mollenkamp *ECigIntelligence staff*

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