

Pot industry tries to build brands

By Kristen Wyatt, AP

DENVER – Snoop Dogg has his own line of marijuana. So does Willie Nelson. Melissa Etheridge has a marijuana-infused wine.

As the fast-growing marijuana industry emerges from the black market and starts looking like a mainstream industry, there's a scramble to brand and trademark pot products.

The celebrity endorsements are just the latest attempt to add cachet to a line of weed. Snoop Dogg calls his eight strains of weed "Dank from the Doggfather Himself." Nelson's yet-to-be-released line says the pot is "born of the awed memories of musicians who visited Willie's bus after a show."

The pot industry's makeshift branding efforts, from celebrity names on boxes of weed to the many weed-themed T-shirts and stickers common in towns with a legal marijuana market, show the industry taking halting steps toward the mainstream.

Problem is, those weed brands aren't much more substantial than the labels they're printed on. Patents and trademarks are largely regulated by the federal government, which considers marijuana an illegal drug and therefore ineligible for any sort of legal protection. The result is a Wild West environment of marijuana entrepreneurs trying to stake claims and establish cross-state markets using a patchwork of state laws.

The result is that consumers have no way of knowing that celebrity-branded pot is any different than what they could get in a plastic baggie from a corner drug dealer. And people in the business are relying on a patchwork of state-level laws to try to stake claims and establish cross-state markets.

“You can’t go into federal court to get federal benefits if you’re a drug dealer,” said Sam Kamin, a University of Denver law professor who tracks marijuana law.

That doesn’t mean that the pot business isn’t trying.

Hundreds of marijuana-related patents have likely been requested by the U.S. Patent and Trademark Office, according to those who work in the industry. Exact numbers aren’t available because pending patent information isn’t public.

So far federal authorities have either ignored or rejected marijuana patent and trademark requests, as in the 2010 case of a California weed-delivery service that applied to trademark its name “The Canny Bus.”

“They haven’t issued a single patent yet. But generally speaking there is broad agreement within the patent law community that they will,” said Eric Greenbaum, director of intellectual property for Ligand Pharmaceuticals, Inc., which is seeking a patent for a strain of marijuana to treat seizures that it has developed in Minnesota.

Companies like Ligand are betting that if marijuana becomes nationally legal, they’ll be first in line to claim legal ownership of whichever type of marijuana they’ve already developed.

Pot companies are also filing state-level trademarks, thereby avoiding the snag in a federal trademark application: the requirement that the mark is used in interstate commerce, which remains off-limits for pot companies. In Colorado, for example, there are nearly 700 trade names and 200 trademarks registered that include the word “marijuana” or a synonym, Kamin said.

Marijuana producers are also claiming everything they can that doesn’t involve actual weed. So a pot company could trademark its logo, or patent a process for packaging something, without

mentioning that the “something” is marijuana.

The marijuana industry certainly has been on the receiving end of legal threats from other companies that do have trademark and patent protection. Cease-and-desist letters aren't uncommon in the mailboxes of marijuana companies, whether it's for making a candy that looks like a non-intoxicating brand, or for selling a type of pot that includes a trademarked word or phrase in its name.

The Girl Scouts of the U.S.A., for example, says it has sent dozens of cease-and-desist letters to those selling a popular strain of pot known as Girl Scout Cookies, or another called Thin Mints.

“The use of our trademarks in connection with drugs tarnishes the Girl Scouts name,” the organization says in the letter it says it has sent to pot sellers primarily in California, Colorado and Washington.

And last year, Hershey Co. sued two marijuana companies in Colorado and Washington for selling “Reefer's” peanut butter cups and “Dabby Patty” candies, which resembled Hershey's Reese's Peanut Butter Cups and York peppermint patties. Both pot companies agreed to stop selling the products and destroy any remaining inventory.

But the industry can't use those same laws to protect its own brands.

“We're in a new industry, where the benefits of federal protection aren't open to us,” said John Lord, CEO of LivWell, a 10-store chain of Colorado marijuana shops that recently entered an agreement to sell Leafs By Snoop, the entertainer's new line of marijuana.

Decades ago, Kamin said, pot smokers simply asked a black-market dealer for marijuana. These days, in those states that allow marijuana sales for either medical or recreational

purposes, those smokers now may ask for a calming indica or energizing sativa strain of pot.

Which leads back to the Colorado pot shop selling Leafs By Snoop.

LivWell grows the Snoop pot alongside many other strains on its menu. But it charges up to \$175 more an ounce for the Snoop brand, which is sold from behind a glittery in-store display, similar to what you'd see in a grocery store marketing a certain type of soda or soup.

"Brand differentiation is the normal progression of events," said Lord, who wouldn't share sales figures on the Leafs By Snoop pot but says its performance has been "outstanding."

"Consumers will see more and more of this in the future."