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Thank you for reading the April 2022 issue of Sterne Kessler's MarkIt to Market® newsletter. This month, we discuss two ongoing administrative legal challenges to the U.S. Drug Enforcement Administration's policies on cannabis. We also highlight a [Law360](#) article about NFT suits and a win at this year's Managing IP Americas Awards.

Connect with Sterne Kessler at INTA!

My colleagues and I are attending the upcoming [INTA Annual Meeting](#) in Washington, DC, with Counsel [Dana Justus](#) moderating the [virtual panel](#) "The Court of Public Opinion: How to Execute and Manage a Public Brand Evolution" on Sunday, May 1. We look forward to seeing many of our readers in person at the conference panels, committee meetings, and networking events. Please [reach out to me](#) if you would like to connect!

Our [Trademark & Brand Protection practice](#) here at Sterne Kessler is devoted to guiding companies of all sizes in developing and maintaining strong brands around the world. There is always something new and exciting happening in our unique IP niche, and we bring you updates each month to help you keep on top of it all. Thanks for your readership. If there is something you would like us to cover, please don't hesitate to reach out to us and let us know!

Kind Regards,



[Monica Riva Talley](#)
Editor

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Watching the Pot™

APA Challenges to DEA Cannabis Policy: "Hot" Hemp and Research-Grade Cannabis

By: [Pauline M. Pelletier](#)

The beginning of spring brought some interesting developments in administrative legal challenges to the U.S. Drug Enforcement Administration ("DEA") and its policies on cannabis. Two different ongoing challenges highlight the importance of administrative law in this rapidly evolving industry and illustrate the role that agencies play in interpreting two complex statutory schemes involving cannabis: the Controlled Substances Act ("CSA") and the 2018 Farm Bill.

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NFT Suits May Blaze New Trail for Trademark Law

Sterne Kessler Director [Ivy Clarice Estoesta](#) was quoted in the *Law360* article "NFT Suits May Blaze New Trail for Trademark Law," published on April 6, 2022, in which she comments on recent trademark infringement cases concerning NFTs.

"Whether [having famous marks] is enough to extend into the virtual world is one of the key legal questions these cases will potentially resolve," she said regarding suits filed by Nike and Hermès.

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Managing IP Americas Awards

Monica Riva Talley was honored as the U.S. National Trademark Prosecution Practitioner of the Year at the Managing IP Americas Awards earlier this month. This award is a reflection of Sterne Kessler's Trademark and Brand Protection team's great achievements.

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Hemp Industries Association, et al v. DEA, et al. (D.C. Cir. 21-5111): Back in 2020, the Hemp Industries Association and RE Botanicals, Inc. filed a petition for review in the United States Court of Appeals for District of Columbia Circuit challenging the DEA's 2020 interim final rule, which indicated that any hemp derivative would be considered a Schedule I substance if it went over the 0.3% Delta-9-THC limit articulated in the 2018 Farm Bill. The 2018 Farm Bill removed "hemp" from the reach of the CSA, however, a question of statutory interpretation has arisen based on the DEA's position that a derivative of "hemp" could still be within the reach of enforcement under the CSA if the derivative contains more than 0.3% Delta-9-THC (often called "hot" hemp). These two groups and the DEA sparred over this question before the D.C. Circuit, which heard oral arguments on April 19, 2022. The groups are challenging the DEA's interim final rule as arbitrary, capricious, contrary to law, without observation of procedure required by law, and void, challenges grounded in administrative law. How the appellate court rules could affect whether processes used to make hemp-derived products that may indirectly produce hot hemp are compliant with the 2018 Farm Bill or are subject to the DEA's enforcement authority.

MMJ Internal Holdings Corp. et al v. Garland et al. (D.R.I. 1:22-cv-00152): On April 8, 2022, MMJ International Holdings Corp. and MMJ BioPharma Cultivation Inc. filed a petition for a writ of mandamus in the United States District Court for the District of Rhode Island seeking declaratory and injunctive relief against the DEA over applications MMJ filed for registration to manufacture cannabis "for use only in a clinical trial" under 21 U.S.C. § 823(i)(2). Petitioners are alleging that the DEA has unreasonably delayed making a determination on its applications, which sought authorization to cultivate specific genetic strains of cannabis and manufacture MMJ's proprietary active pharmaceutical ingredient ("API") for use in FDA-approved clinical trials involving treatments for multiple sclerosis and Huntington's disease. The petition

alleges that the DEA failed to comply with the statutory timeline requirement for processing the application for registration and is therefore requesting that the court “compel agency action unlawfully withheld” under 5 U.S.C. § 706(1) of the Administrative Procedures Act. In addition to outlining an administrative legal challenge, this case provides a unique window into the efforts being undertaken by those who are working to manufacture APIs for cannabinoid therapeutics.

These cases illustrate how the cannabis landscape is maturing within a complex regulatory environment and posing important questions about the interplay between these statutory schemes and DEA policy. We will continue to monitor both challenges closely.

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