

February 25, 2022

Mr. Tom Mungham
CEO and Registrar
Alcohol and Gaming Commission of Ontario
90 Sheppard Avenue East, Suite 200-300
Toronto, ON M2N 0A4

RE: Inducement Rules for Licensed Cannabis Retailers

Dear Mr. Mungham:

The Ontario Chamber of Commerce (OCC) is writing in regards to the Guidance Document released outlining [inducement rules for licensed cannabis retailers](#), following the OCC's [submission to the AGCO's](#) consultation on inducements.

Of particular concern is the listing of in-house brands or white label products under prohibited activities. **We are urging the Government of Ontario to reconsider this Guidance and continue to permit licensed retailers to enter into white label agreements with licensed producers that are not material to the retailer's business to avoid the unintended adverse impacts**, including:

- **Undermining confidence in the regulatory process and environment.** The AGCO's recent consultation process in support of amendments to the Registrar's Standards regarding inducements did not mention or solicit input on in-house brands and white label products. The Ontario Cannabis Store has actively encouraged development of white label programs and, as a result, these changes were unexpected. Both retailers and producers that have developed compliant white label strategies will be harmed, impacting all stakeholders involved and resulting in considerable operational challenges to unwind. Beyond that, there may be a chilling effect on further investment in Ontario without certainty of regulatory processes. Concerns have also been raised about what the AGCO's rationale for prohibiting white labelling and whether it is appropriate for the AGCO to be tightly regulating the vertical arrangements of retailers and producers and how that may inhibit the Competition Bureau from taking action against anticompetitive conduct.
- **Inequitable treatment of the sector.** White label and in-house brands are common features of all other retail sectors, both regulated and unregulated. This further perpetuates a cumbersome regulatory regime for legal cannabis operators, with no public policy rationale for distinguishing the cannabis sector being provided.
- **Material impact on the legal sector's ability to differentiate and compete effectively.** Developing of white label products and in-house brands has been leveraged by retailers both large and small as part of their strategy to differentiate their products, brands and stores. Conversely, some independent retailers have white label strategies that involve selling these products outside of their store. The regulations as stated does not contemplate the variety of potential strategies and approaches to a still-to-be-defined part of the industry and will undermine industry growth. Product differentiation is an important aspect of retail competition, meeting consumer demands and growing the economic potential of the industry, particularly in a market where wholesale pricing is fixed by a government-operated distributor.

- **Inequitable treatment of retailers.** Licensed producers are permitted to license their intellectual property to licensed retailers and receive royalties by way of franchising arrangements. A prohibition on white label and in-house brands effectively prohibits licensed retailers from licensing their intellectual property to licensed producers, thereby depriving licensed retailers of a key tool that producers can leverage.

Ontario's cannabis market just reached a milestone, with legal purchases surpassing illegal sales for the first time since legalization. This is due in large part to structural regulatory reforms which the Ministry of the Attorney General championed, such as the expansion of retail stores and the introduction of permanent delivery options for retailers.

The OCC would like to continue to work with government and build on this positive momentum. Unfortunately, prohibiting in-house brands and white label products can have severe unintended consequences for the sector and its ability to continue to combat the illegal market. Effectively displacing the illegal market will only occur when the legal sector is able to compete effectively. Understanding consumer preferences and providing tailored product offerings are critical aspects of a vibrant legal retail market. The existing materiality threshold is sufficient to prevent white label and in-house programs from being abused while preserving competition.

We would be happy to discuss this further with you and appreciate your consideration.

Sincerely,



Rocco Rossi
President and CEO
Ontario Chamber of Commerce