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Hiding In Plain Sight: Can TTS Pharma's 'Assured Advice' Unlock UK's CBD Mass Market?

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Executive Summary

UK CBD supplier TTS Pharma believes its strategy of establishing partnerships with local food law enforcement agencies as part of the "assured advice" scheme will unlock the country's cautious mass market. However, without proactive enforcement, the company worries that the UK food authority's legislative efforts to remove sub-standard CBD products from the market, as well as TTS' own efforts to become compliant, will be in vain.

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It's easy to understand why the UK's retail sector sees the country's booming CBD food supplements market as potentially very lucrative but also highly risky.

As a recent HBW Insight analysis has shown, health food shops, grocery stores and pharmacies, both independent and chain, are all taking wildly different approaches to the trending ingredient. (Also see "UK Retailers Take Divergent Paths With CBD Enforcement On Horizon" - HBW Insight, 14 Dec, 2020.)

However, local CBD specialist TTS Pharma thinks it has found a way to reassure retailers ahead of the March 2021 compliance deadline and protect the brands that it supplies from a possible future UK Food Standards Agency crackdown.

All of TTS' finished products carry "Assured Advice" from Trading Standards – the regulator responsible for enforcing the FSA's novel food framework for CBD.

In TTS' case, this means that the company has set up a "Primary Authority" (PA) partnership with Hertfordshire County Council, and through this partnership, has obtained written consent that TTS' products are compliant with UK food law.

Crucially, this Assured Advice applies wherever the business operates in the UK and can't be challenged by other regulators.

"As far as we know, we are currently the only CBD company in the UK with this," insisted TTS CEO Mark Tucker, in an exclusive interview with HBW Insight.

"PAs carry statutory protection against enforcement in the event inspections are carried out – expected from 1 January 2021 onwards – and allow product-specific liability insurance," he continued, "which protects the consumer and retailer against mislabeling and the use of false promotional materials."

PAs Explained

Launched about ten years ago, the Primary Authority scheme has provided a useful way for UK-based companies with wide geographical coverage – national supermarket chains like Sainsburys and Tesco, for example – to reduce the administrative burden of regulatory compliance.

"It makes a lot of sense if you're a supermarket chain," commented David Lovell, who advised TTS to join the PA scheme. "If you've got Trading Standards inspectors going into every store, with hundreds of letters or emails coming into HQ, that causes a real problem for a company."

A single point of contact for regulators – which is what the PA scheme offers – is therefore "particularly attractive," argued Lovell, who spent many years working in regulatory delivery for UK Local Authorities (LAs) and is now founding director of DSL Regulatory Ltd.

Asked why other CBD suppliers or finished product manufacturers haven't set up PAs as a way to get ahead of enforcement and reassure retailers, who are already used to the scheme, Lovell said that most CBD firms "have never heard of it."

Another reason, he suggested, is that many CBD suppliers are perhaps distrusting of regulators, having moved into the food sector from adjacent spaces like vaping or "head shops" – retail outlets offering cannabis-smoking and cannabis culture paraphernalia.

"You've got to be careful not to generalize, but some of these operators have migrated into the CBD world, which has caused some problems," he continued. "It's a bit of mess really."

"The PA scheme is just an option," he added. "If you think that you've got a potential risk where there might be legal challenge from a Trading Standards department, I'd always recommend exploring this option."

As for why Liverpool-based TTS chose Hertfordshire Council, Lovell said it was a commercial decision after reviewing several options. "Hertfordshire was chosen based on the resilience of this LA and its expertise in relation to UK food law generally and the food supplements sector specifically," he explained.

"In terms of LA competence, it's a bit of an uneven landscape in the UK," Lovell revealed. "It's similar to the legal system in the sense that you'll have experts in a particular area, like food."

Just as with other commercial decisions, therefore, Lovell said it is the responsibility of companies to find the right LA to set up a PA with, and "vote with their feet" if they do not provide the service they are charging for.

While the Trading Standards landscape may be as uneven as the CBD retail sector it polices, the "game-changer" of PAs lies in their statutory force, he insisted.

"It's a legal requirement that local Trading Standards offices, if they discover an issue with a particular product on a retail outlet shelf, check first if there is a relevant PA in place, and if so, contact the PA in question, not the retailer, brand owner or even supplier in the first instance," Lovell noted.

"Then the two authorities can have a sensible conversation about what advice has been given and whether there is going to be a problem," he added.

Enforcement Needed

However, for TTS Pharma, the concern is that, without enforcement, all its efforts since the Novel Food regulations were introduced for CBD in the UK and Europe may have been in vain.

"We know that some companies are mislabelling their CBD products and taking both retailers and consumers for a ride," Tucker said. "We also know that there are dozens and dozens of new CBD products that have been placed on the market since February despite specific advice to the contrary by the FSA."

As the national regulator, the FSA is trying to tackle the issue at the root by creating a framework that will remove unsafe and illegal products from the market in March.

While Tucker said he supported the FSA's general approach, he maintained that enforcement must begin now, with LAs making examples of a worst offending brands and suppliers to show they are serious about enforcement.

This would have the effect of not just bringing businesses in line, but also getting LAs up to speed with the new rules and establishing relationships with CBD suppliers, finished product manufacturers and retailers operating in their constituencies, he argued.

Lovell agreed, pointing out that such a proactive approach is required by the UK Regulator's Code, introduced in 2014 to "reduce regulatory burdens and support compliant business growth through the development of an open and constructive relationship between regulators and those they regulate."

LAs should be writing to local CBD companies to check that they are aligned with a novel food application that has been submitted to the European Food Safety Authority for validation and are ready to formally submit their applications to the FSA in the new year, as per regulations, Lovell maintained.

"This doesn't appear to be happening," he lamented. "At the moment, LAs aren't warmed up."

While CBD enforcement, like the rest of the food and novel food sector, is the responsibility of LAs, Lovell and Tucker both agreed that it is the FSA that should be training Trading Standards officers to deal with the specifics of CBD and coordinating local approaches, and sooner rather than later.

"If you leave it to the 430 odd local authorities to decide what they're going to do it's going to be very uneven," he predicted. "The vast majority, perhaps 80% or more, will do nothing."

Compliance Pays

TTS Pharma's long-term, compliance-first strategy seems to be finally paying off, with more and more final product manufacturers in the UK and Europe switching their supply chain over to them.

In the last few weeks, the company has signed a raft of partnership agreements, with its CHOtrak-linked CBD bulk ingredients expanding their reach across the world.

In the UK, where TTS Pharma markets its own Endopure range of CBD cosmetics and food supplements via its webshop and selected distributors, TTS has recently signed an agreement to supply five of CiiTECH Ltd's Provacan-branded CBD products and has finalised terms with a number of other existing UK brands as well, TTS noted.

In Europe, six new products licensed under the Endopure brand will soon be available in Portugal, thanks to a long-term supply agreement with Smart Nature, which TTS said was the "first local company to give access to Portuguese consumers to cannabis-based therapies, all tested, certified, and approved by the competent authorities."

South African consumers will also soon be able to buy two new Endopure products thanks to a long-term supply agreement between TTS and Agribiomed Group, TTS pointed out, thanks to efforts by Agribiomed to satisfy recently changed local CBD regulations established by the South African Health Products Regulatory Agency (SAHPRA).

While these deals indicated a European market in transition towards tighter regulation and compliance, Tucker said that a lack of enforcement was holding back this wave of positive change.

"One of the difficulties we are facing at the moment is that this absence of enforcement has encouraged illegal importation of goods from overseas, which has flooded the European CBD market with poor quality products," Tucker explained.

Meanwhile, distributors and wholesalers who may have been misled into stocking these substandard products "want to sell through their inventory before they switch suppliers," he continued.

"If there was enforcement, they would return the non-compliant stock to the supplier, and they would switch to a credible supply chain accelerating the pace of change and forcing the market into earlier compliance," Tucker suggested.