
Cannabis Trademark Owners Look to State Courts for Vindication: AR Court Grants Preliminary Injunction for Cannabis Mark

Rock City Harvest LLC v. Natural State Wellness Dispensary LLC, 23CV-20-56 (Circuit Court of Faulkner County Arkansas May 25, 2020).

By: Barry Irwin & Manon Burns | June 5, 2020

The cannabis industry is subject to a confusing, complex web of laws that differ among each state, all while marijuana remains illegal at the federal level. Unable to register trademarks related to cannabis and marijuana with the federal U.S. Patent and Trademark Office or seek protection in federal courts, business owners in the cannabis industry must turn to state law and courts to protect the good will of their marks. *Rock City* illustrates the relief offered by state courts to cannabis IP owners, the Arkansas Circuit Court granting a preliminary injunction in favor of a plaintiff cannabis dispensary's trademark.

Rock City Harvest, doing business as Harvest Cannabis Dispensary, moved for a preliminary injunction against Natural State Wellness Dispensary (NSWD) and Natural State Wellness Enterprises (NSWE) for changing their names to Harvest House of Cannabis and Harvest of Newport, respectively. Rock City had adopted the name in 2017, submitted with its application to operate a medical cannabis dispensary in Conway, Arkansas. It was the only applicant to use the name Harvest, and it was the first to register Harvest as a trademark with the Arkansas Secretary of State. In 2019, it received approval to change the name on its license from Rock City Harvest to Harvest Cannabis Dispensary. It began using the name on signage in August of that year and selling cannabis in labeled packaging in October. NSWD and NSWE changed their names in January of 2020, NSWD first selling cannabis in February 2020, and as of April 2020, NSWE had not made any sales of cannabis.

Instead of extensively examining the legality of the parties' operations, as a federal court would have done, the Arkansas court moved on to evaluate the plaintiff's motion under Arkansas law and the preliminary injunction factors—whether the plaintiff is likely to succeed on the merits, whether the plaintiff is likely to suffer irreparable harm without the injunction, whether the balance of hardship is in the plaintiff's favor, and whether an injunction is in the public interest. The court found that the parties were direct competitors selling the same medical cannabis, and that defendants' use was confusingly similar and subject to instances of actual confusion. Further, that plaintiff was harmed by the confusing use.

Significantly, the court noted that while there was no national market for the sale of cannabis, the plaintiff was the first to use Harvest for the sale of cannabis in Arkansas, and Arkansas was not a "zone of natural expansion" for use of Harvest in relation to cannabis in other states. *Rock City*, at 6. Other cannabis businesses using the term "Harvest" "disclose[d] to [their] investors that [they] will not be able to register any United States federal trademarks for cannabis products. The public is entitled to rely on this disclosure." *Id.* Thus, seeking protection and being the first user of a mark within state borders is critically important for receiving protection in that particular state, as protection is not automatically extended across state lines.

The Arkansas Court's decision provides a promising example to cannabis trademark owners that a vindication of their rights is possible at least at the state level, a stopgap where the federal level fails. Further, it emphasizes the importance of cannabis IP owners to follow all possible procedures within cannabis-legal states to register and protect their trademarks, as they are subject to that protection within a limited geographic area.