



# The Next Big Thing?

CSP shines a light on the potential—and pitfalls—of CBDs **P. 30**



# The Next Big Thing

Weighing the potential and the risk of the high-stakes CBD category



BY ANGEL ABCEDE, BRETT DWORSKI AND ALAINA LANCASTER

PHOTOGRAPH BY JASON LITTLE

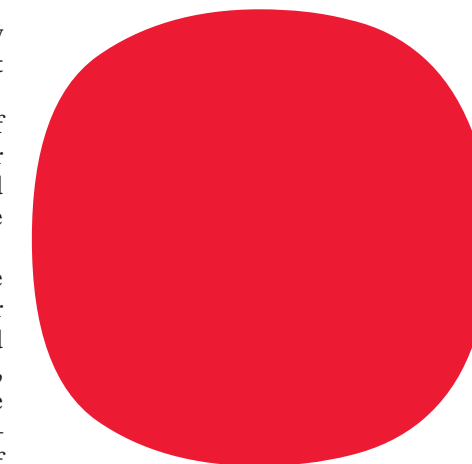
**W**hen did a bag of 14 gummy bears start selling for \$20? At 50% margin?

That's the through-the-roof potential of cannabidiols (CBDs), reported remedies for stress and other ailments that are derived from cannabis plants—in many ways the same bulk material used for marijuana.

Looking past the pot elephant in the room, CBD products appear to be perfect for convenience stores. They're neat, tidy and prepackaged. Because there's no spoilage, waste or handling fears with CBDs, they're much easier than that other magic bullet—foodservice—as retailers look for new relief

from declining categories such as tobacco and fuel. U.S. consumer sales of CBDs were just more than \$500 million in 2018, a figure that is predicted to rise to \$813 million this year and more than double to \$1.8 billion by 2022, according to data aggregation firm Statista, New York.

While nowhere near the projected \$18 billion in sales that marijuana will reach in 2022, the trajectory of CBD products echoes the way energy drinks revived the once-nascent category of packaged beverages. Brought to the industry more than a decade ago, energy drinks in 2018 accounted for \$8.9 billion in sales in c-stores, according to





Chicago-based IRI.

Knowing that any CBD sales would create an incremental new revenue stream gives retailers plenty of incentive to go all-in.

Erin Butler sees the enormous potential in CBDs. “You can’t read [about] trends at the end of 2018 without saying this is a big opportunity,” said Butler, senior category manager for Des Moines, Iowa-based Kum & Go LC, at a panel discussion at CSP’s Convenience Retailing University (CRU) in February.

Another major incentive for retailers came in the spring, when Woonsocket, R.I.-based CVS Health Corp. and Deerfield, Ill.-based Walgreens announced that they had introduced CBDs into stores in eight and nine states, respectively, potentially staking a claim as the go-to channel for the emerging product segment.

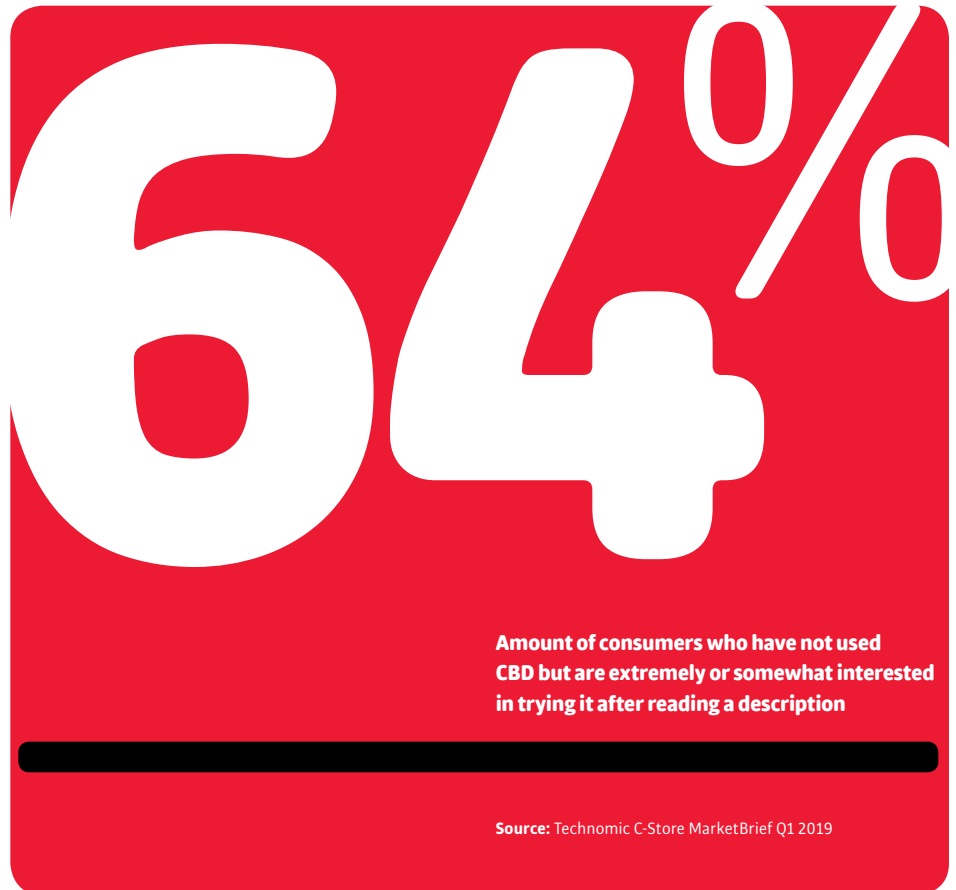
“The convenience channel is better suited than any other retail channel to capitalize on this immense consumer interest,” says Don Burke, senior vice president of Pittsburgh-based Management Science Associates, a research firm that tracks wholesale deliveries through multiple retail channels. “But it will need to act quickly so that as consumer trial builds, consumers will begin to identify their local convenience store as the destination for these items.”

Still, despite growing pressure to take the plunge, retailers like Butler remain hesitant, opting instead to wait for someone else to prove the concept first.

“We’ll take a back seat,” says Paul Casadont, president of ExtraMile Convenience Stores, Pleasanton, Calif., pointing out that the U.S. Food and Drug Administration (FDA) has yet to approve a whole slew of products that include CBDs as an ingredient, specifically in food, beverages, supplements and drugs. “We will re-evaluate CBD products when and if the FDA provides approvals and guidance on these products—that is, when there are clear pathways to ensuring that products containing CBD meet all FDA and other legal requirements.”

## Taking the Leap

**B**ut there are retailers leading the way. Michael Mendez sells CBDs in his c-stores, but he’s trying to play it safe. Mendez, owner of five-unit Mendez Fuels in



Miami, works exclusively with manufacturers that test their products for quality assurance. Today he stocks a carefully curated assortment of about 15 different brands of CBD oils, creams, tinctures, gummies and vape products. But as CBDs become more widely available, Mendez is worried competitors will be less discerning.

“Is the market going to be completely saturated?” he says. “Is it snake oil being packaged? These are the things that concern me—that people are going to package something that’s not CBD and someone gets hurt.”

To better understand Mendez’s angst, retailers have to first grasp the basics. To start, CBD is one of more than 100 naturally occurring compounds called cannabinoids in cannabis. Unlike marijuana, which also comes from cannabis, CBDs have zero to only trace amounts of the psychoactive element called tetrahydrocannabinol (THC).

Industrial hemp, or what people refer to simply as hemp, is defined in the 2018 Farm Bill as cannabis-derived material with a 0.3% level of THC or below. Instead of

wanting to get high, users take CBDs to help curb pain, anxiety, insomnia and a growing list of other conditions.

Mendez has a right to be concerned about CBD product quality. Ellipse Analytics, a Denver-based chemistry lab that tests products such as baby food, found that 80% of CBD brands that it tested fell outside the acceptable 20% range of error for their claims. Ellipse did its study on behalf of Lil’ Drug Store Products, a Cedar Rapids, Iowa-based general-merchandise supplier, which opted to hold off on its participation in the category because of the high odds of selling a product that didn’t contain what it said it did.

What keeps retailers like Mendez in the game is a combination of rising consumer demand, the healing qualities that many users enthusiastically tout and margins currently so mind-blowing they could potentially transform the channel. Mendez says his CBD products can generate up to 50% margins—all with little or no changes to what his c-stores look and feel like today.

Beyond margins, the curative qualities of CBDs become important. Despite passage

of the Farm Bill, the FDA is adamant that manufacturers cannot make claims that the agency has not properly certified, leaving most to back away from claims of any medicinal or healing properties.

While not making specific claims, Case Mandel, CEO and co-founder of Cannadips, Humboldt, Calif., says people take CBDs like other natural remedies to lower anxiety, promote relaxation and achieve a general sense of well-being. Mandel points out that the FDA has approved the use of CBDs in the epilepsy drug Epidiolex, and he feels the entire industry is “at a tipping point” of legitimacy.

“It takes good companies, good voices, rigorous testing” to get there, Mandel says.

## Path to Legality

Putting aside whether CBDs have the reported healing or calming effects, retailers first have to determine if CBDs are even legal.

The best answer is yes, eventually.

The president’s signing of the Farm Bill in December made the growing, production and sale of products made from hemp legal on a federal level nationwide. According to the Brookings Institute, a Washington, D.C.-based nonprofit research group, the legislation allows farmers to grow and cultivate hemp broadly, expanding it from the pilot programs allowed for in a 2014 law that initiated the decriminalization of hemp. Today, people can transfer hemp-derived products across state lines and have no restrictions on their sale, transport or possession—at least on paper.

There are a lot of “buts” to the Farm Bill.

The fine print on all these new freedoms is that CBD items “are produced in a manner consistent with the law,” according to the language in the Farm Bill.

Abiding by the law means following rules, with three of the most visible federal rulemakers being the FDA, the U.S. Department of Agriculture (USDA) and the Drug Enforcement Administration (DEA). On a practical level, the FDA and the USDA have been the most directly involved in hemp regulation. The FDA, under the Food and Cosmetics Act, can approve or ban products that people ingest. The USDA oversees how the federal government and states can license

# Legal Hemp Road Map

Technically, most forms of cannabidiol or CBD derived from hemp are illegal. That’s because the U.S. Department of Agriculture (USDA) has yet to create a regulatory infrastructure to oversee state programs as well as its own rules and processes. The U.S. Food and Drug Administration (FDA) also has its own set of regulatory requirements, especially with regard to CBDs put into food, beverages and dietary supplements. Here’s how CBD legality, more specifically for hemp-derived products, will play out.



### Farm Bill

Passage of the Agricultural Improvement Act of 2018 (the Farm Bill) legalized hemp, but lawful products must follow governmental guidelines.

### USDA

Industrial hemp, or product below a 0.3 THC level, is no longer a Schedule 1 substance and is legal nationwide. But until the USDA creates its own regulatory infrastructure of policies, processes and people, some legal experts believe the Agricultural Act of 2014 stands, making transportation of hemp and hemp-derived products across state lines a legal gray area.



### FDA

The FDA has asserted its authority over products that are drugs or used as ingredients in food, beverages and dietary supplements. Topicals could have an easier path to legality, some legal experts say.



### Hemp seeds

The FDA has said hulled hemp seeds, hemp-seed protein and hemp-seed oil are safe and legal.

### States

Individual states must submit a regulatory plan for hemp with the USDA. Some believe states with legalized marijuana laws will have the experience to move quicker than those that don’t.



### Cities, municipalities

Cities such as New York and Detroit have pulled CBDs from store shelves and restaurants, but they typically follow the FDA’s lead.



### Law enforcement

Local law enforcement may confuse hemp products with marijuana or may discover products with THC levels higher than 0.3%. In states where marijuana is illegal, that confusion is a problem.



### Consumer liability

Consumers could complain or file lawsuits over CBD products. Having a trusted business partner and expert legal advice is critical.

and regulate CBDs. The former focuses on product quality and consumer safety, while the latter has an administrative role in certification, testing and regulation.

The second layer of authority is the individual states. With hemp declared legal nationwide, the Farm Bill puts the onus—and mandate—on states to submit a regulatory plan with the USDA for approval or to allow the federal government to assume that responsibility. Under Section 10113 of the Farm Bill, state departments of agriculture must consult with their governor and chief law enforcement officer to devise a plan and can proceed only with the USDA's blessing, according to the Brookings Institute. (For more on individual states, see p. 86.)

Three states—Colorado, Hawaii and Washington—now have laws regulating CBDs, but they will most likely have to get USDA approval to continue their programs. For its part, the USDA announced it will finalize its standards and accept state submissions by the fall, prior to the 2020 growing season. At least 41 states have enacted legislation to establish industrial hemp cultivation and production programs, according to the National Conference of State Legislatures.

Unfortunately, with generally no regulatory framework yet in place, hemp remains under the Agricultural Act of 2014, which allows only State Department of Agriculture permitted groups such as universities to grow and market hemp for research purposes, according to Rachel Gillette, partner with Greenspoon Marder, Denver, and chair of her law firm's cannabis practice group.

"The regulatory environment has yet to be developed by the USDA," Gillette says.

**"I would not feel comfortable selling a product that contains any THC because it still has psychoactive properties."**



"That means hemp still falls under the 2014 Act until there are state programs approved or if [there's a] relative state law."

In other words, Gillette says that while hemp is no longer a controlled substance under federal law, the USDA has yet to approve any state program, so there is no clear federal legal authority to transport hemp and hemp-derived products across state lines.

Prior to the Farm Bill, the DEA, USDA and FDA all had signed off on a mutual statement of principles that cedes a high level of authority to the states. And some states have been more aggressive than others in prosecuting the use and sale of hemp-based products. For example, in Ohio, a man is facing two felony charges and a jury trial after police found a vial of CBD oil in his car, according to the Mansfield News Journal. Police in Nebraska raided a CBD shop and arrested the mother and son owners, according to the Ministry of Hemp website, a hemp-advocacy group. (The charges were later dropped.) And in Texas, the Fort Worth Star-Telegram reported on two store

owners who were willing to keep selling CBDs, despite state penalties. According to the law firm of Barnett Howard & Williams, Fort Worth, Texas, those penalties could range from 180 days to 20 years in prison and fines of up to \$10,000.

While jail may seem unlikely and extreme, a retailer in a state where marijuana is illegal might unknowingly sell a CBD product that's over the 0.3% THC threshold, Gillette says. Suddenly he or she is facing criminal liability.

"Even if the case gets dropped, no one wants to be arrested," she says.

One of the biggest issues with CBDs is law-enforcement confusion, Gillette says, both in terms of a general understanding of what the Farm Bill allows and the distinction between marijuana (which may not be legal in a particular state) and legally produced, lawful hemp-based products.

"People driving industrial hemp between Idaho and Oklahoma might encounter police who just think it's marijuana," she says. "Police may say it's marijuana until you can prove it."

## Wild, Wild West

Despite the legal haze around CBDs, the horse has left the barn. Thousands of CBD products are already on the market, many promising a range of benefits to consumers—some of which may be completely unfounded.

The central issue for retailers is risk management, says Ryan Sullivan, corporate counsel for BIC Corp., Shelton, Conn. Sullivan is used to issues of consumer-product liability, considering his company's manufacture of lighters and other flame-ignition products.

"The big question is: How do we do business and make sure we don't create too much risk for the company?" Sullivan says.

In this area, the FDA has offered at least one island of legality: the hemp plant's seed. Nancy Kim, partner with Lange, Thomas & Associates, McLean, Va., says the FDA has recognized hulled hemp seeds, hemp-seed protein and hemp-seed oil as safe, and legal to sell. The FDA's "generally recognized as safe" notice says, "Therefore, these products can be legally marketed in human foods for these uses without food-additive approval, provided they comply with all other requirements and do not make disease-treatment claims."

With that in mind, Gillette of Greenspoon Marder says topical CBD products such as hemp-derived cosmetics, lotions, balms and salves have a "relatively clear pathway" to legality. "There are certain regulations for hemp-derived CBDs in cosmetics, but it might be a clearer legal landscape vs. anything consumed, like additives or if CBDs are used in food," she says.

Where retailers could go awry is with consumers. "I would not feel comfortable selling a product that contains any THC because it still has psychoactive properties," Gillette says. These products could pose a temptation—and risk—to kids and teens. She cites incidents in which teens overconsumed energy drinks and overdosed on caffeine. "Teenagers will eat more than one [CBD edible], get high and drive a car," she says.

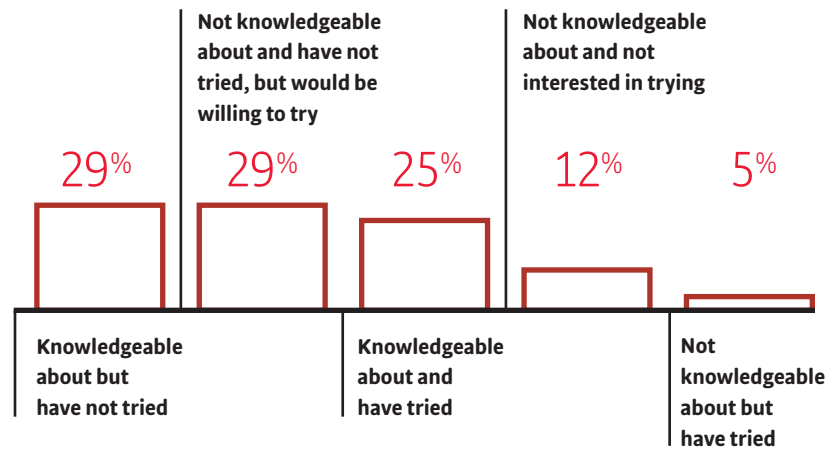
"Addressing product liability is one of the tenets we live by," says Sullivan of BIC, which has developed a considerable legal and manufacturing-practices protocol to

## The New Cannabisseurs

The freshness of the CBD category has retailers, regulators and consumers all rushing to keep up. Here's what c-stores need to know to smoke out old and new CBD consumers.

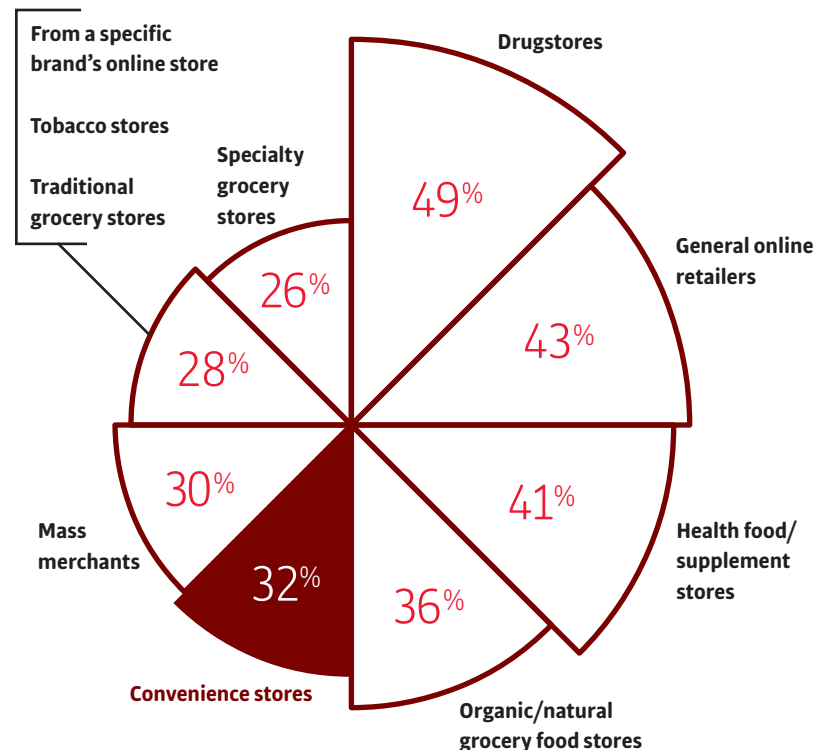
### Consumer Awareness

#### How knowledgeable are you about CBD?



### CBDs at Retail

#### From where do you purchase or would you consider purchasing CBD products?



Source: Technomic C-Store MarketBrief Q1 2019



ensure its safety. “If I were a business owner, I’d want to make sure I was getting [CBDs] from a trusted business partner.”

## The CBD Consumer

For the most part, consumers want to buy CBD products and are fueling their rise nationwide, according to researchers. But the typical CBD customer isn’t necessarily sporting a Grateful Dead T-shirt and smelling of patchouli. Like today’s marijuana users, CBD consumers are an increasingly diverse group with equally varied use cases for the substance.

Unlike THC users, who often skew male, CBD consumers are equally split between female and male consumers, says Jessica Lukas, vice president of consumer insights for cannabis data firm BDS Analytics in Boulder, Colo.

“Females tend to consume CBD for pain management and anxiety benefits,” she says.

About 45% of CBD consumers are younger than 34, Lukas says. “Willingness, openness, awareness and acceptance of cannabis in general is more prevalent in younger consumers,” she says.

The days of rolling up the leaf and smoking it are fading away, said Nik Modi, an analyst with New York-based investment banking firm RBC Capital Markets, at CSP’s Convenience Retailing University. As traditional stoner culture dissipates, the cannabis industry could continue to attract a different subset of users. Modi predicts baby boomers could be the biggest CBD consumers.

Mendez of Mendez Fuel was surprised to see an older demographic reaching for the products. “We have the 30-somethings coming in and buying CBD, but it’s really more of the older generations seeking them out for day-to-day aches and pains,” he says. At Mendez’s stores, Generation X and baby boomers typically prefer gummies, and for the most part they know what brands and products they want.

Although public knowledge of CBD is growing, many consumers are still gaining an understanding of the ingredient.

“About half of consumers say they don’t know enough about it and have to be educated,” says Donna Hood Crecca, principal for Chicago-based Technomic Inc., CSP’s

## Product Rundown

CBDs have emerged in a variety of c-store products over the past year, ranging from snacks and beverages to pills and tinctures. Many CBD products are made with one of two CBD subtypes: full-spectrum and isolate. Full-spectrum means the product contains every cannabinoid found in marijuana along with CBD, including tetrahydrocannabinol (THC). On the other hand, CBD isolate is purified CBD that has been extracted from the cannabis plant. This means the product contains only CBD and no other cannabinoid from the marijuana plant.



### Floyd's CBD Gems

**CBD type:** Isolate

**CBD dosage:** 50 milligrams

**Suggested retail price:** \$2.99

Floyd's On the Go CBD Gems, produced by Floyd's of Leadville, Leadville, Colo., are a twist on traditional gummies that come in three flavors—Strawberry, Blue Raspberry and Green Apple—all of which are offered in 50-, 25- and 10-milligram CBD dosage forms.



### Honeydrop CBD Lemonade

**CBD type:** Full-spectrum

**CBD dosage:** 20 milligrams (per bottle)

**Suggested retail price:** \$5.99

Honeydrop Beverages, New York, a producer of cold-pressed lemonades, partnered with CBD-product manufacturer Evo Hemp to launch Honeydrop Cold-Pressed CBD Lemonade. The drinks come in three varieties—Revive (Matcha), Relax (Lemon) and Rehab (Turmeric)—and are available in Southern California and the New York tri-state market.



### Instant CBD Strips

**CBD type:** Isolate

**CBD dosage:** 10 milligrams (per strip)

**Suggested retail price:** \$15.99 (five tablets)

Vertical, a Los Angeles-based legal cannabis and hemp-based CBD supplier, launched Instant CBD Strips in c-stores nationwide last year, beginning with Florida, Texas and North Carolina. The product is taken orally and reaches the bloodstream within minutes, resulting in high bioavailability, minimal wait time, precision dosing and the elimination of adverse side effects, the company says.

sister data firm. While less than one-third of consumers are knowledgeable about the cannabinoid, about 64% of consumers who have not tried CBD are extremely or somewhat interested in giving it a go after reading a description, according to Technomic's *C-Store MarketBrief Q1 2019*.

Sleep, general relaxation and relief from pain and anxiety are the most common reasons consumers are interested in CBD, according to Technomic. "If this is a category we can get into in a big way, it could shift the utilization of c-stores," Crecca says. "Does it open avenues to other health and wellness products in c-stores?"

## CBD For Sale

**B**utler of Kum & Go shares Crecca's optimism, but to err on the side of caution, she aims to sell CBD like an over-the-counter medication. During CRU, Butler said she hopes the chain is selling CBDs within the next year, although it is still a hypothetical situation until regulations unfold.

"We don't want to risk any legal ramifications," she says. "We're exploring, talking with suppliers and making plan-o-grams for our stores. But we won't act until we know that we can, legally."

Although there is no age restriction for CBD yet, many retailers plan to display it behind the counter like tobacco products. This is exactly how Kum & Go will approach the category—like purchasing Sudafed at a drugstore, Butler says.

Same goes for Dash In, La Plata, Md. In March, the company received its first shipment of CBD products—including tinctures, gummy squares, oral sprays and lotions—which are merchandised behind the counter and age-restricted for those 18 and older. While Dash In looks to make CBD products as visible as possible to consumers, its main priority is keeping them safely secured and controlled, which means away from underage customers and potential thieves, says Aaron Mace, category manager for the chain.

But some retailers also believe CBD items should be placed in their respective aisles. This makes discovering CBD products easier than if they were placed behind the counter, says Ashley Alden, director of product strate-

**"We won't act until we know that we can, legally."**

gy and merchandising for Foxtrot, an upscale c-store chain based in Chicago. Alden has implemented this mentality in Foxtrot: The chain shelves CBD beverages in grab-and-go coolers beside bottled and canned drinks.

Knowing the proper SKU counts also has the industry in limbo, and this varies from retailer to retailer. Factors such as the type of product being displayed, the store's market and size and the core consumer must be considered when developing a plan-o-gram, says Hayley Carstenen, marketing manager for Lii' Drug Store Products, which has yet to offer CBD items. The only commonality for SKUs is that retailers should offer a variety of CBD products and highlight different flavors for each, she says. Foxtrot, for instance,

offers multiple SKUs of CBD-infused food and drink and one SKU of CBD health and beauty care items, such as Vybes Beverages and Wildflower CBD Lavender Soap, respectively.

"It's important to understand what the consumer has a strong preference for," says Carstenen. "There's no single leading CBD product that everyone uses."

Price is also up in the air, says Lukas of BDS. CBD products are currently priced at a premium—many packaged gummies go for nearly \$20 a bag—but those prices will slowly decline as demand increases, she says. "This doesn't mean a cold-brew nitro coffee infused with CBD will become the same price as a regular cold brew, but those prices will get closer over time," she says.

Carstenen agrees that CBD will become a key moneymaker for c-stores. "[C-stores] are a great place for people to try something new when they see it," she says. "[CBD] will be a revenue driver in the channel for years to come."

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## CBD Merchandising Tips

The lack of guidance and infrastructure around CBD can make merchandising it a daunting task. Here are some tips from industry experts.

**Do your research:** Retailers must educate themselves on the products they're considering—and the manufacturers who create them—before shelving them, says Nik Modi, managing director of RBC Capital Markets. "Dive into the manufacturer's history," he says. "Find out if the products are lab-tested and ask to see the results."

**Monitor dispensaries:** CBD products have mainly been sold in dispensaries until now, primarily in states such as Colorado, Oregon and Washington—ones that have legalized recreational cannabis. Tracking what CBD products have thrived in dispensaries may be a key indicator of which items will perform in convenience

stores, says Jessica Lukas, vice president of consumer insights for BDS Analytics. This may also show where the CBD market is headed in general, she says.

**Provide educational tools:** Offering as many educational tools as possible is key to merchandising CBD products, says Floyd Landis, founder of Floyd's of Leadville. This includes providing pamphlets and brochures beside the products and, most important, ensuring these items are THC-free.

**Take your time:** While CBD has garnered massive hype in the convenience industry, approaching the sector with a conservative approach—adhering to the Farm Bill and studying various state regulations—and monitoring what competitors do is key, says Seth Shaw, CEO of New York-based Tauriga Sciences, producer of Tauriga CBD gum. "Dip your toes in the water before diving in," he says.