

Ask JeePT: Does ChatGPT replace a traditional trademark availability search?

Unless you live under a rock, you have likely heard of ChatGPT, the artificial intelligence-powered chatbox, and the praises being sung regarding its unlimited functions. Ask it anything, they say. Have it summarize research. Draft a contract. Write a book report. “It reminds me of Ask Jeeves,” I told my husband, except the output isn’t just the first page of Google.

I do a lot of work helping cannabis and CBD companies select brand names and registering those names federally and at the state level. Strong trademarks and branding are always crucial in distinguishing products, goods, or services from others in an industry. This is especially true in an industry that is almost starting from scratch. Individuals and companies are snapping up and reserving key cannabis, hemp and CBD trademarks. Federal registrability in this industry is its own beast in light of the current illegal status of cannabis and CBD federally, but that is a topic for another day.

Much of my business, and those of fellow trademark prosecution attorneys, consists of vetting names proposed by clients to determine if they are fit for federal registration or run the risk of infringing a third party’s trademark. I was curious if ChatGPT could conduct a run-of-the-mill trademark availability search and whether the results would be accurate.

“What are some available names for trademarks for a cannabis brand?” I asked the little chatbot. I got some really good suggestions. I typically pride myself on my ability to wow our clients’ marketing departments with pithy catchphrases and one-of-a-kind slogans, giving a nod to my undergraduate marketing degree.

These were the responses:

1. Herb Haven
2. Weed Wishes
3. Pot Palace
4. Up in Smoke
5. Smokin: Greens
6. High Life
7. Ganja Garden
8. Bud Blaster
9. Grass Gorilla
10. THC Tymes

Wow, I wish I had thought of those.

But are they actually available? There is no way in a climate where trademark real estate has become virtually scarce, those names haven’t already been scooped up at the United States Patent and Trademark Office (USPTO). Right?

Wrong. With the exception of “Up in Smoke” and “High Life,” each of the proposed trademarks did not have a direct hit on the federal trademark register.

Also, who came up with those names? Was it me, or was it ChatGPT? This opens a whole new can of worms regarding inventorship for patents and authorship for copyrights but in this very narrow scope of trademark, who is the owner of this mark? I would argue the first person to file federally or use the mark in commerce.

I dug deeper, wondering if the suggested marks ran afoul of any common law trademark users.



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Related Practice Areas

- Artificial Intelligence
- Intellectual Property
- Trademark & Brand

The answer was yes. A simple Google search revealed third parties already using some of the marks. Other bars to registration, including descriptiveness and genericism, remain. Clients still need counseling on these issues. This is great news for lawyers, as our services are not rendered entirely useless. But, we would be remiss not to direct our clients to this new tool. It can save them money on legal fees (which they will love) and kick off their search process in a direct and meaningful way.

In sum, trademark prosecution attorneys should consider incorporating this simple prompt into the way they conduct trademark availability searches. At the risk of following the artificial intelligence herd, I'll say that ChatGPT is the future.
