Government faces balancing act on marketing, packaging of legal marijuana.

VANCOUVER - David Brown's marijuana marketing students are often shocked to learn how difficult it is to - well - market marijuana. Advertising medical cannabis is essentially banned in Canada, with some exceptions. Restrictions on recreational weed are set to be a bit looser, but Brown still advises students to think of the constraints as opportunities. "These limitations can really aid in creativity. Marketing weed isn't difficult, but marketing a highly regulated cannabis product is a lot more of a challenge," said Brown, an instructor in Kwantlen Polytechnic University's cannabis professional series.

As legalization looms, observers say Ottawa faces a tricky balancing act on marketing. Large growers say branding is necessary to convince consumers to switch to the legal market, while health advocates call for plain packaging and strict advertising limits.

The Cannabis Act, which would legalize recreational marijuana next July, would restrict marketing similarly to tobacco. It would ban promotion that appeals to youth, contains false or misleading statements or depicts people, celebrities, characters or animals.

It would allow ads that present facts or promote brand preference. But they could only be shown in places
where youth are not legally allowed, or broadcast if "reasonable steps" have been taken to ensure they "cannot be accessed by a young person."

The rules have been criticized as hazy. It's unclear, for example, whether a commercial could air before a TV show or movie that is intended for adult audiences or how internet ads would be policed.

Health Canada spokesperson Tammy Jarbeau said the "reasonable steps" to ensure an ad cannot be seen by a young person would depend on the circumstances. For example, websites could use age verification mechanisms, she said.

"This would provide an opportunity to communicate factual information about cannabis, as well as information about a product's brand characteristics, to allow adult consumers to make informed decisions," she said.

She said the government was not considering changes to the advertising provisions of the legislation, but if it's passed by Parliament, Health Canada will develop guidance documents to help industry comply with the rules.

Seventeen licensed producers have formed a Coalition for Responsible Cannabis Branding and put forward proposed guidelines, including that ads be allowed on TV, radio and websites where at least 70 per cent of the audience is expected to be over 18.

Provinces can introduce additional marketing rules. Quebec's framework allows some ads in newspapers and magazines where 85 per cent of readers are of the legal age, as well as in displays inside cannabis stores.

"Off-loading it to the provinces is not the answer," said Lindsay Meredith, a Simon Fraser University marketing professor, who added it can lead to "spillover advertising," where ads that comply with rules in one province are shown in another where they don't.

Mark Zekulin, president of Canada's largest licensed producer, Canopy Growth, said branding breeds accountability. If consumers are going to be more likely to remember their experience, companies will put more effort into ensuring it's a good one.

"If everybody's in the same white packaging, maybe they'll remember what they bought, maybe they won't," he said.

Health Canada recently proposed regulations that would limit the use of colours and graphics on packages and require labels to have specific product information, mandatory health warnings and a standardized THC symbol.
They would also restrict brand elements, including requiring a standard font, size and colour relative to other information on the package. Public consultation on the rules ends Jan. 20.

Restrictions on fonts, graphics and colours open the door to brand prohibition, limiting the ability of companies to differentiate from each other and the black market, said Brendan Kennedy, president of Tilray, a leading licensed producer.

"What you'll see is a race to the bottom, where all these products are essentially competing on price," he said. "You'll see less investment in high-quality products."

Rebecca Jesseman of the Canadian Centre on Substance Abuse and Addiction said the regulations were positive overall but restrictions on brand elements should be clearer.

"It's a tricky balance, because we don't want to promote increased use and we don't want (packaging) to be flashy, but we do certainly want to use it as a way to convey information effectively," she said.

"I think we're looking at something that's informative, truthful and perhaps a little bit bland."

Canada can learn from U.S. states that have legalized pot. Colorado allows print, radio, TV and internet ads if there’s reliable evidence that 70 per cent of the audience is over 21, while Washington state requires ads to contain a number of warnings.

Colorado banned promotions that appeal to kids when it legalized cannabis, but over time the rules became more specific, including prohibiting edibles shaped like animals, said Lewis Koski, the state's former marijuana enforcement director.

The federal government has given itself extra time to allow edibles, such as candies and cookies, in the marketplace, with regulations expected by July 2019. Koski, co-founder of consulting firm Freedman & Koski, praised the strategy.

"Health Canada has done a really, really good job," he said. "They've been very thoughtful in their approach and they recognize that this is going to take some time and it's going to evolve."

The department said companies that violate the advertising or packaging rules, if passed, could face licence suspensions or revocations, fines of up to $1 million and potentially be referred to police.

Brown, the Kwantlen instructor, said he expects Health Canada to make examples of those who don't comply early on. The department already sends a stern letter about once a year to all the licensed medical producers, he said.

"Inevitably, it's a cycle where they all agree and they all comply, and then six or seven months later, they tend to drift away from that compliance," he said. "We've yet to see any enforcement of that."
Recreational marijuana will be legal in Canada next year, but marketing a highly regulated cannabis product will be a challenge.