

'Non-Plant Touching' Cos. Shine In 2021 Top Cannabis Deals

By **Sarah Jarvis**

Law360 (December 15, 2021, 7:40 PM EST) -- The biggest U.S. cannabis transactions this year show "non-plant touching" businesses coming into their own and bringing diversity to transactions in the industry, though experts say the majority of deals were of multistate operators acquiring smaller companies and dispensaries.

While the top deal of the year, Trulieve Cannabis Corp.'s blockbuster acquisition of Harvest Health & Recreation Inc., involved two MSOs, several of the top 10 transactions by dollar value this year involved non-plant touching, or ancillary, companies. In the cannabis industry, that refers to companies that avoid direct contact with marijuana. One such transaction is cannabis e-commerce site Leafly's go-public merger with a blank-check company, which was the second-largest deal this year, according to data compiled by Dealogic.

Marc Hauser, counsel and chair of the cannabis practice at Reed Smith LLP, said that this year's list of top deals shows there's diversity in deal-making in the cannabis industry and that it's not just big companies merging with other big companies. He said ancillary businesses have caught up to other industry players in a lot of ways after not receiving as much focus from investors in 2018 and 2019.

"You are starting to see a breakout of potential market leaders," Hauser said of non-plant touching businesses.

But while ancillary businesses showed their maturity this year, Hauser said 2021's biggest deals don't fully reflect the state of deal-making in the industry. The "vast majority" of deals in the cannabis space are MSOs acquiring single-state operators, be they one-off dispensaries or companies with a number of dispensaries, he said.

Hauser said MSOs are generally aiming to have a large footprint so they can offer scale and depth relative to their peers when federal legalization of cannabis happens. He added that once that occurs, the industry will become more attractive and garner more capital and M&A from other industries.

"The next big milestone is legalization," Hauser said. "A lot of M&A activity has been thinking toward that future."

Top 10 Cannabis Deals of 2021

Trulieve Cannabis Corp.'s acquisition of Harvest Health & Recreation Inc. was the biggest cannabis M&A deal of 2021, leading a top-10 list that also includes transactions involving non-plant touching cannabis businesses, according to data from Dealogic.

Target	Acquirer	Announcement Date	Deal Value
Harvest Health & Recreation Inc.	Trulieve Cannabis Corp.	May 10	\$814M
Leafly Holdings Inc.	Merida Merger Corp. I	August 9	\$445M
California Cannabis Enterprises Inc.	Mercer Park Brand Acquisition Corp.	April 8	\$399M
Courier Plus Inc. (9.33%)	Eleven firms, including Tiger Global Management LLC	Oct. 14	\$350M
Mountain High Products LLC	Canopy Growth Corp.	Oct. 14	\$298M
Courier Plus Inc. (11.76%)	Seven firms, including Tiger Global Management LLC	March 16	\$200M
Garden State Dispensary NJ LLC	Ayr Wellness Inc.	Sept. 15	\$198M
KushCo Holdings Inc.	Greenlane Holdings Inc.	March 31	\$173M
MedMen NY Inc. (86.7%)	Ascend Wellness Holdings LLC	Feb. 25	\$136M
MedMen Enterprises Inc. (27.4%)	Ascend Wellness Holdings LLC	August 17	\$100M

TRULIEVE ACQUIRES HARVEST:

Florida-based Trulieve **announced in May** that it would absorb Arizona-based Harvest in a roughly \$2.1 billion deal that closed in October.

Dealogic's latest figures put a significantly smaller value on the transaction — \$814 million — that it said was taken from company press releases and filings with the U.S. Securities and Exchange Commission. The \$814 million figure includes a particular exchange ratio of a subordinate voting share of Trulieve for each Harvest subordinate voting share valued at the completion-day share price.

DLA Piper (Canada) LLP and Fox Rothschild LLP acted as Canadian and U.S. legal counsel, respectively, to Trulieve, while Bennett Jones LLP and Troutman Pepper LLP served as Canadian and U.S. legal counsel, respectively, to Harvest.

The transaction saw Trulieve pick up all the issued and outstanding shares of Harvest, the companies said. Together, the companies said they'd have operations in 11 states, with 22 cultivation and processing facilities and 126 dispensaries.

Sean Coyle, a Fox Rothschild partner who represented Trulieve in the transaction, told Law360 the deal came about by conventional means.

"Trulieve had a very strong cash position; Harvest had a very large debt position," said Coyle, who has represented Trulieve for years, starting at his previous firm, Akerman LLP. "So I think it was a matching of what each side needed, in terms of Harvest's complementary footprint in the country versus Trulieve's existing footprint."

Coyle said that compared to previous deals he's worked on for Trulieve, this case was particularly challenging because of its multijurisdictional nature. He credits handling the deal to Fox Rothschild's

geographic footprint and skill set, which he said allowed him and his colleagues to navigate various regulatory environments.

OTHER TOP DEALS:

In the second-biggest deal tracked by Dealogic this year, Seattle-based Leafly Holdings Inc. is in the process of **going public** via a merger with Merida Merger Corp. I, a special purpose acquisition company, or SPAC, sponsored by private equity firm Merida Capital Holdings. Dealogic valued the deal at \$445 million as of Dec. 1, though its enterprise value was initially announced at \$385 million.

That deal is the biggest on the list to feature a non-plant touching cannabis business. Leafly has said it brings in an audience of 125 million visitors a year across its website and mobile app.

Leafly was advised in the deal by Weil Gotshal & Manges LLP, and Merida was advised by Graubard Miller.

In the third-biggest transaction, blank-check company Mercer Park Brand Acquisition Corp. acquired California cannabis company Glass House Group, formerly known as California Cannabis Enterprises Inc., in a deal that closed in June valued at \$399 million.

Jamie Mendola, former head of strategy and M&A at Mercer Park and current board member of Glass House, said when the deal was **announced in April** that Mercer Park's goal was to build "the largest independent brand platform." Glass House owns the brands Glass House Farms, Forbidden Flowers and Mama Sue.

The fourth- and sixth-biggest transactions tracked by Dealogic are fundraising rounds for Courier Plus Inc., which does business as Dutchie — a non-plant touching e-commerce company that helps dispensaries handle online orders, digital payments, curbside pickup and deliveries, according to its website.

In the fourth-largest deal, Dutchie raised \$350 million at a \$3.75 billion valuation in a funding led by Paul Weiss-advised D1 Capital Partners. That **October capital raise** also featured participation from existing Dutchie investors Tiger Global Management, Dragoneer Investment Group, DFJ Growth, Thrive Capital and Casa Verde Capital, the latter of which counts rapper Snoop Dogg as a general partner, according to a company statement.

Per Dealogic, that funding round involved a 9.3% stake in the company.

The **other funding round**, which took place in March, was the sixth-largest deal at \$200 million. The group behind that capital raise was led by Tiger Global, and Dutchie was valued at \$1.7 billion at that time.

The Series C round was led by Goodwin Procter LLP and featured Dragoneer, DFJ Growth, Casa Verde Capital, Thrive Capital and former Starbucks CEO Howard Schultz. Dealogic said that deal involved a roughly 11.8% stake in Dutchie.

Coming in fifth is Canopy Growth Corp.'s acquisition of cannabis gummy maker Wana, which was collectively owned by Mountain High Products LLC, Wana Wellness LLC and The Cima Group LLC. That deal, which was **announced in October** and still pending as of Dec. 1, is structured as three separate option agreements, and Canopy Growth will have a call option to acquire 100% of the membership interests in each entity that owns Wana.

As part of the agreement, Canopy Growth will make a \$297.5 million upfront cash payment, and it will make a payment equal to 15% of the fair market value of each Wana entity when the option is exercised, per the companies' announcement.

In the seventh-largest deal, the MSO Ayr Wellness Inc. acquired Garden State Dispensary NJ LLC for a total upfront consideration of \$101 million, plus up to \$97 million in earnouts based on reaching certain revenue targets in 2022. Ayr announced a **letter of intent** for the deal in late 2020 before announcing a definitive agreement in March and closing the acquisition in September.

Ayr said in September that Garden State was one of 12 existing vertical permit holders in New Jersey.

The company noted at closing that Garden State had three open dispensaries and about 30,000 square feet of operational cultivation and production facilities, with 75,000 square feet of cultivation under construction.

The eighth-largest deal was cannabis accessory company Greenlane Holdings Inc.'s **acquisition** of another non-plant touching business, KushCo Holdings Inc., in an all-stock deal steered by Reed Smith LLP and Morrison & Foerster LLP. Dealogic's data indicated the deal value for the August-closed transaction was \$173 million, but the initial offer price valued KushCo's equity at roughly \$180 million.

The companies said in their March announcement that they anticipate more than \$250 million in projected pro forma 2020 revenue, and the combined company is expected to see pro forma 2021 revenue of between \$310 million and \$330 million.

The ninth-largest deal involves Ascend Wellness Holdings LLC's planned acquisition of a stake in MedMen NY Inc., which has four medical cannabis stores and a cultivation and processing facility.

MedMen had said in its February announcement — which came weeks before former New York Gov. Andrew Cuomo **signed into law** a recreational cannabis legalization bill — that the MSO's investment would total up to about \$73 million. But Dealogic pegged the more recent value of the still-pending deal at \$136 million for an 86.7% company stake in MedMen's New York operations.

Rounding out Dealogic's top 10 list is a \$100 million investment in MedMen Enterprises Inc. led by Serruya Private Equity Inc. MedMen's units were priced at 24 cents each at the time of the investment, per the company's announcement, and certain investors associated with Serruya agreed to backstop the \$100 million to be raised in the private placement, MedMen said.

MedMen said the investment would allow the company to expand its operations in California, Florida, Illinois and Massachusetts.

CANNABIS DEAL-MAKING OUTLOOK:

Bill Doran, a partner specializing in M&A at Benesch Friedlander Coplan & Aronoff LLP, said that while the M&A market was busy across all industries, 2021 was one of the strongest years ever for cannabis. He predicted this year's activity level will largely be mirrored in 2022.

He said one trend in the industry is regional, midtier players seeking partners to gain scale and sustainability, while some smaller single-license operators aim to sell out while they can achieve a higher return on investment.

Noting that it took decades after the 1933 repeal of Prohibition for the alcohol market to actually consolidate in the U.S., he speculated that even after federal cannabis legalization occurs, regulation will still largely be in the purview of individual states, and it will take time before true interstate commerce takes hold.

"There's a trend toward bigger, and a trend toward consolidation, and that will be accelerated the moment some sort of federal banking act is passed. And it'll be really accelerated once federal legalization occurs," Doran said.

"But even at that point, however accelerated, there will still be years and years of M&A activity as this market takes the time to mature into what it's ultimately going to be," he said.

Coyle of Fox Rothschild predicted that acquisitions will remain hot in states that cap the number of licenses they give out, saying it puts a natural limitation on competition. But he said the real space for movement is on the legislative side.

While he doesn't expect a sea change soon, he said he's hoping for incremental progress in the coming year on banking and Section 280E of the federal tax code, which forbids businesses from taking credits or deductions when trafficking in controlled substances.

Hauser of Reed Smith said that while the prospect of federal legalization has cooled off since the beginning of the year, the sheer possibility of legalization has been a wake-up call to the cannabis industry, which can now think more long-term than it has in recent years.

"I think the industry is still heading north," Hauser said.

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