Businessman tries his luck at building pot brand

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SEATTLE — For the activists who led the effort to legalize recreational marijuana in Washington state last fall, Jamen Shively was one of their biggest fears: an aspiring pot profiteer whose unabashed dreams of building a cannabis empire might attract unwanted attention from the federal government or a backlash that could slow the marijuana reform movement across the country.

With visionary zeal, the 45-year-old former Microsoft manager described his plans to a conference room packed with reporters and supporters last month, saying he was tired of waiting for a green light from the Obama administration, which still hasn't said how it will respond to the legalization of recreational pot in Washington and Colorado.

Shively vowed to quickly raise $10 million and eventually build his company, Diego Pellicer, into an international pot powerhouse.

Though he promised a "cautious and measured" expansion, Shively's approach nevertheless contrasted with that of state regulators who want to avoid repeating the national experience with Big Tobacco and Big Alcohol, industries that profited wildly on addiction and abuse.

Mark Kleiman, who heads the team hired to be Washington's official marijuana consultant, responded on his blog: "It was inevitable that the legalization of cannabis would attract a certain number of insensate greedheads to the industry."

PROSECUTIONS

Shively's ambitions — "We are Big Marijuana," he proclaimed — don't merely raise questions about what marijuana legalization might look like in the long run and whether large corporations will come to dominate. He also risks getting himself indicted.

The Justice Department has said while it doesn't intend to prosecute sick people for using marijuana, it will go after those who try to get rich from commercial sales. It hasn't said yet whether it will sue to block Washington and Colorado from licensing pot growers, processors and stores.

The legalization votes in Washington and Colorado have created a fever for cannabis-related investing, to an extent. Conferences have focused on the parameters for legally investing in "ancillary businesses" — those that supply equipment needed by pot grows, for example — without financing the actual production or distribution of marijuana, which remains illegal under federal law.

Shively isn't skirting the edges of the nascent industry, but diving right in, in a way that few other entrepreneurs are. Some companies that make high-end marijuana-infused products, such as Colorado-based Dixie Elixirs, are planning to make their brands available in other states, but it's not clear anyone else is taking steps to create a pot empire.

"Developing a national brand in an industry in which it is illegal to move the core product across state lines presents some serious logistical challenges," said Betty Aldworth, deputy director of the National Cannabis Industry Association.

Diego Pellicer's business plan estimates $120,000 of pure profit per month, per recreational pot store. Shively said he plans dozens of stores in Washington and Colorado.

WALKING AWAY

At the May 30 news conference, Shively announced Diego's first corporate deal — an arrangement with a Seattle medical marijuana company called the Northwest Patient Resource Center. He said Diego would be starting in the medical marijuana market in Washington and Colorado, and then transitioning some dispensaries to recreational pot stores once the states begin issuing licenses.

Shively said the arrangement was "not in violation of either federal or state law," but it was troubling enough to one of the dispensary company owners that he's walking away from the deal — and the company he helped found — because he fears it puts everyone involved at risk of federal prosecution.

"I'm not an activist. I'm just a businessman," said the part-owner, Thomas Jun, a 42-year-old father of three. "I can't afford to do any federal time."

According to Shively, Diego Pellicer has acquired the option to buy Northwest Patient Resource Center, but does not actually own it. That's what gives Diego Pellicer some protection and allows it to position itself for the time when more states legalize pot and Congress changes federal laws, he said. No marijuana will be moved interstate.

"We don't touch cannabis. We don't have ownership of cannabis," he said. "It's not a perfect insulation or buffer, but it's the best possible mechanism that we can come up with."

CONSPIRACY

Through his lawyer, Douglas Hiatt, Jun provided the AP with internal company documents, including a draft of the $1.6 million agreement dated May 30. The deal directs monthly payments of up to $50,000 from Diego be used to "to further develop and enhance NWPRC's customer locations and to otherwise grow its business as currently conducted."

Former federal prosecutors say that could be seen as a conspiracy to violate federal law.

"It certainly would make me nervous to be involved in anything like this," said Laurie Levenson, a professor at Loyola Law School-Los Angeles and a former assistant U.S. attorney.

Shively called the draft provided to AP "an obsolete document," but declined to provide further details. He also declined to discuss a $10,000 check he wrote to the dispensary company May 27.

The deal highlights the tension between the varying degrees of acceptance of marijuana by the states and the outright prohibition by the federal government, which makes banking and other business functions problematic. For example, beyond the growing and sale of marijuana constituting federal crimes, the movement of money related to marijuana sales likely constitutes money laundering.

LICENSING

Dixie Elixirs won't be directly involved in the growing, processing or sale of pot in multiple states, said Tripp Keber, its managing director. Instead, it will license its technical know-how and recipes to people in Washington or elsewhere who want to produce products under the Dixie Elixirs brand _ and try to avoid the attention of federal prosecutors by adhering to state laws.

“Big public federal indictments are going to do the industry a disservice,” Keber said.

If Shively’s model is endorsed by the regulators writing rules for Washington’s pot industry, “then we would be increasing the risk of intervention by the federal government,” said Alison Holcomb, the Seattle lawyer who drafted Washington’s law.

Shively said investors are advised that the company and those involved could face federal prosecution. A copy of Diego’s business plan includes 11 bullet points listing risks the company faces. None specifically suggests those involved could be

prosecuted.

*PROFITEERS: Taking aim at the marijuana business.