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**Baker
McKenzie
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#SkinDeep Risks & Pitfalls

Navigating the Cosmetic
Products Industry



The cosmetic products industry is one where beauty and innovation intertwine. There have been no lack of novel trends in the cosmetic products industry with a myriad of strategies being adopted by beauty brands to remain resilient in their pursuit to hold consumers' attention.

Beauty brands have had to navigate the conventional legal landscape, considering legal issues such as product specific regulatory requirements, market entry conditions, product recall/liability, brand management, data.

However, the continuing innovation in the industry has resulted in beauty brands exploring new strategies, including omnichannel approaches, digital marketing and using key opinion leaders, sustainability, new technologies such as artificial intelligence (AI) and the metaverse, cosmeceuticals.

Against the backdrop of consumers and activist groups taking their space in the spotlight, there has been a greater emphasis on not only the ingredients used in a cosmetic product, but also how these ingredients are manufactured / sourced. Regulators have also adopted a more aggressive stance with product defects given the spotlight that discerning and savvy consumers have illuminated on the industry.

As always, it is important to have answers to potential legal issues to ensure your brand's compliance in the ever-changing landscape of the industry.

Key Issues

As your brand examines the various trends in the industry, it is important to ensure compliance with both traditional and novel issues. Some key trends and issues (both old and new) to consider in the beauty industry are as follows:

Product regulatory and recall/liability

- Am I aware of all market entry conditions as I expand into new markets, such as product notification and/or licence requirements?
- Have I identified all industry-specific regulations that apply to my products within each of my markets including labelling requirements?
- Am I aware of the product regulatory requirements in each of my markets such as safety reporting obligations in the event of a product defect which results in product recall liability issues?
- Do my commercial partners comply with all applicable product regulatory requirements?
- Will my cosmeceutical product face further industry-specific regulations depending on the unique product classification laws of each local market?

Sustainability

- Am I making overreaching sustainability-related / "greenwashing" marketing claims?
- What are the local regulators' enforcement attitudes in respect of non-compliant sustainability-related / "greenwashing" marketing claims?
- Do my commercial partners in the supply chain strictly adhere to all sustainability-related claims I am making? How do I ensure their compliance?

Digital marketing and key opinion leaders

- Do my marketing claims through my various marketing channels put me at risk of breaching any regulations and industry codes or from civil actions by third parties?
- When engaging key opinion leaders, am I aware of all disclosure requirements? Do I have the necessary contractual documentation in place?

Brand management and enforcement

- Are my intellectual property rights adequately protected?
- Do I have strategies in place to deal with counterfeiting and grey market issues?

Data

- When collecting, using and disclosing consumer personal data, do I comply with all applicable data protection and cybersecurity laws?

Technology

- Have I fully considered the potential legal issues arising from my brand's use of AI? Are there any country-specific requirements and guidelines?
- In the metaverse, am I aware of which jurisdiction's laws will apply? Will consumer protection, marketing and personal data protection laws apply in the metaverse?
- What should I consider when determining the rights accompanying the sale of my nonfungible tokens?

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Contact Us

We would be happy to have a chat with you to see how we can assist your business with these issues.



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