

“CLEAN” MARKETING CLAIMS LAND COSMETICS COMPANIES IN MESSY CLASS ACTION LAWSUITS

PLAINTIFFS ALLEGE PRESENCE OF PFAS, OTHER SYNTHETIC CHEMICALS

May 03, 2023

Cosmetics marketed as “clean,” “cleaner” or “natural” are being challenged in class action lawsuits asserting that the cosmetics contain PFAS or other synthetic chemicals, and that the marketing claims are therefore false or misleading. Some of these lawsuits are not based on on-product labeling or advertising – instead targeting the cosmetic companies’ broad statements on their website about the safety or environmental sustainability of their products or business practices.

There is no regulatory definition of “clean” when it comes to cosmetics. Many of the defendants in the cases at issue sought to define “clean” by specifying that the products were made without certain ingredients. In one such case, the products were advertised as “The beauty you want, minus the ingredients you might not. This seal means formulated without parabens, sulfates SLS and SLES, phthalates, mineral oils, formaldehyde, and more.” Plaintiffs alleged that based on this representation, they reasonably believed that the products did not contain other synthetic ingredients^[1] – despite the fact that these ingredients were listed on the product labels. The cosmetic company’s motion to dismiss is currently pending.

In another case, plaintiffs claimed they were misled by the labeling of cosmetic products as “clean” and “natural” based on the alleged presence of PFAS. The district court held that the plaintiffs could not rely on studies identifying PFAS in the products, and the plaintiffs failed to allege that they tested the individual products that they purchased. Instead, the plaintiffs identified a list of ingredients that they alleged were *likely* to be treated with PFAS. The district court therefore granted the defendant’s motion to dismiss, but gave the plaintiffs leave to file an amended complaint.

Still other cases alleging the presence of PFAS in cosmetic products have focused on broad statements in the defendants’ overall marketing campaign or ESG statements, such as “we hold ourselves to the highest quality standards when it comes to the safety and efficacy of our products”; “championing open, inclusive and sustainable beauty”; “sustainability is at the heart of our product creation”; and “clean products that meet consumer demand for ingredient transparency and minimalist safe formulas”. In one such case, the court granted the defendant’s motion to dismiss, finding that none of the identified statements were likely to be interpreted by a reasonable

consumer as meaning that the products were free of PFAS, and the plaintiff also failed to allege any injury sufficient for standing. However, the court once again granted the plaintiff leave to amend so the ruling did not dispose of the case

Similarly, another court faced with similar allegations based on a cosmetic company's aspirational company mission statements on its website held that the statements, which were prefaced by phrases such as "We intend to ...", "Our ambition is to ..." and "We continuously seek[s] to improve ...", were puffery that could not be objectively measured or proven true or false. As with other recent decisions, however, the court granted leave to amend, although this decision suggests that courts will be less likely to allow claims based on general, non-label marketing statements to proceed.

In light of these cases, cosmetic companies should be aware that marketing of products as "clean" carries an increasing risk of a legal challenge. Companies should also review their overall marketing campaigns and ESG-type statements for language that could reasonably be interpreted as stating or implying that products are free of synthetic or harmful ingredients, and, at the very least, ensure that such statements are couched in aspirational terms. To the extent that companies still wish to make these types of claims, they should closely evaluate both how they define terms like "clean," "cleaner," and "natural," and should also scrutinize their supply chain to ensure that they have documentation supporting the claims.

Our BCLP team has significant experience evaluating marketing and labeling claims, particularly in the face of increasing claims and lawsuits alleging PFAS in consumer products. For additional information regarding PFAS compounds, please visit our [PFAS webpage](#). If you have a question about PFAS claims involving cosmetics, contact Brandon Neuschafer, Merrit Jones, Tom Lee, or any other member of our PFAS team at Bryan Cave Leighton Paisner LLP.

^[1] These were identified as polyglyceryl-6 distearate, polyglyceryl-10 myristate, cetyl alcohol, glyceryl caprylate, phenethyl alcohol, sodium benzoate, potassium sorbate, and xanthan gum

RELATED PRACTICE AREAS

- PFAS Team
- Environment
- Retail & Consumer Products

MEET THE TEAM



Merrit M. Jones

San Francisco

merrit.jones@bclplaw.com

+1 415 675 3435



Thomas S. Lee

San Francisco

tom.lee@bclplaw.com

+1 415 675 3447



John R. Kindschuh

St. Louis

john.kindschuh@bclplaw.com

+1 314 259 2313

This material is not comprehensive, is for informational purposes only, and is not legal advice. Your use or receipt of this material does not create an attorney-client relationship between us. If you require legal advice, you should consult an attorney regarding your particular circumstances. The choice of a lawyer is an important decision and should not be based solely upon advertisements. This material may be “Attorney Advertising” under the ethics and professional rules of certain jurisdictions. For advertising purposes, St. Louis, Missouri, is designated BCLP’s principal office and Kathrine Dixon (kathrine.dixon@bclplaw.com) as the responsible attorney.



Cookiebot session tracker icon loaded