

PFAS and Cosmetics: Another Lawsuit, Another ESG Lesson

Article By:

John Gardella

PFAS and cosmetics is a topic that saw increased scrutiny from the scientific community, legislature, and the media in 2021. As we predicted in early 2021, the increased attention on the industry presented [significant risks to the cosmetics industry](#), and our prediction was that the developments made the cosmetics industry the number two target for future PFAS lawsuits. Shortly before the New Year, two industry giants – Shiseido and CoverGirl – were hit with [separate lawsuits](#) related to their cosmetics and PFAS content in some of the companies' products. On February 22, 2022, L'Oreal was hit with a similar lawsuit in California. The industry, insurers, and investment companies interested in the consumer goods vertical with niche interest in cosmetics companies must pay careful attention to the L'Oreal lawsuit and the increasing trend of lawsuits targeting the industry.

Cosmetics and PFAS: the 2021 Foundation

On June 15, 2021, a scientific study in the [Journal of Environmental Science and Technology Letters](#) published conclusions regarding testing of a variety of cosmetics products from the United States and Canada for PFAS content, and found PFAS present in over half of the products. On the same day that the study was published, the [No PFAS In Cosmetics Act 2021](#) was introduced in the Senate by U.S. Senators Susan Collins (R-ME), Richard Blumenthal (D-CT), Dianne Feinstein (D-CA), Maggie Hassan (D-NH), Jeanne Shaheen (D-NH), Kirsten Gillibrand (D-NY), and Angus King (I-ME). The bill sought to ban PFAS in cosmetics.

These two developments led us to conclude “with these developments, our prediction that cosmetics is the number two target for PFAS litigation issues behind water rings true.”

Why PFAS In Cosmetics Is A Concern

PFAS content in cosmetics raises concerns for human health in scientific communities due to the fact that PFAS are capable of entering the bloodstream in ways other than direct oral ingestion, and one of these ways includes dermal absorption. Concerns have also been raised regarding absorption of PFAS into the bloodstream by way of tear ducts. The absorption issue is one that is being studied fairly extensively through various pending scientific studies. At the end of 2021, the federal Agency for Toxic Substances and Disease Registry (ATSDR) went so far as to recommend that citizens in Southern New Hampshire [reduce their risk of further PFAS exposure](#) by avoiding the use of certain consumer goods, including cosmetics.

L'Oreal PFAS Lawsuit

On February 22, 2022, in the United States District Court Central District of California, plaintiff Summer Davenport filed a proposed [class action lawsuit](#) against L'Oreal. The lawsuit alleges that the company does not disclose to consumers that its mascara products contain PFAS. Instead, the lawsuit states, the products were fraudulently and misleadingly marketed as safe for consumers, in violation of federal and state consumer laws. The Complaint details several examples of L'Oreal marketing indicating the safe nature of the products.

The plaintiff seeks certification of the class action lawsuit, an injunction forcing L'Oréal to relabel the products, damages, fees, costs and a jury trial. The proposed class is any consumer in California who purchased L'Oreal mascara products from 2018 to the present.

Just the Beginning For Cosmetics Industry

With studies underway, legislation pending that targets cosmetics, and increasing media reporting on cosmetics concerns to human health, the cosmetics industry has a target on its back with respect to PFAS that will have impacts on the industry's involvement in litigation. Twelve months ago, we made this prediction: "Personal injury / products liability cases, false advertising, and failure to disclose theories of liability are some of the more prominent allegations that cosmetics companies are likely to face. Further, the cosmetics industry is concerned about federal and state level regulatory enforcement action for environmental pollution remediation costs stemming from placing PFAS waste into the environment as a by-product of the manufacturing process."

The first part of our prediction is becoming reality, as three significant cosmetics industry players now find themselves embroiled in litigation focused on false advertising, consumer protection violations, and deceptive statements made in marketing and ESG reports. The three lawsuits may well serve as a test case for plaintiffs' bar to determine whether similar lawsuits will be successful in any (or all) of the fifty states in this country. Each cosmetics company faces the stark possibility of needing to defend lawsuits involving plaintiffs in all fifty states for products that contain PFAS.

It should be noted that these lawsuits would only touch on the marketing, advertising, ESG reporting, and consumer protection type of issues. Separate products lawsuits could follow that take direct aim at obtaining damages for personal injury for plaintiffs from cosmetics products. In addition, environmental pollution lawsuits could seek damage for diminution of property value, cleanup costs, and PFAS filtration systems if drinking water cleanup is required.

Conclusion

It is of the utmost importance that businesses along the whole supply chain in the cosmetics industry evaluate their PFAS risk. Public health and environmental groups urge legislators to regulate PFAS at an ever-increasing pace. Similarly, state level EPA enforcement action is increasing at a several-fold rate every year. Now, the first wave of lawsuits take direct aim at the cosmetics industry. Companies that did not manufacture PFAS, but merely utilized PFAS in their manufacturing processes, are therefore becoming targets of costly enforcement actions at rates that continue to multiply year over year. Lawsuits are also filed monthly by citizens or municipalities against companies that are increasingly not PFAS chemical manufacturers.

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