

October 20, 2015

California's Plastic Microbeads Ban Moves the Bar for Cosmetic and Personal Care Companies Again

On October 8, 2015, California Gov. Jerry Brown signed into law one of the toughest bans in the nation on personal care products containing plastic microbeads. Plastic microbeads are frequently used by cosmetic companies in soaps, shampoos and scrubs. They are in hand sanitizers and in toothpaste. This ban has a direct impact on cosmetic and personal care companies and could lead to various consumer protection-related lawsuits. It also has a potential effect on the way other states address this commonly used ingredient.

The ban was the result of various concerns including claims that the spheres of plastic are too small to be caught in the wastewater treatment systems and end up in rivers, lakes, and oceans. The California ban extends to plastic microbeads (defined in the bill as intentionally added solid plastic particles measuring five millimeters or less in every dimension) of any kind. The law approves penalties of up to \$2,500 per day for each violation, in addition to any other penalty established by law, as well as injunctive relief.

Similar, although not as stringent, plastic microbead bans are currently found in Colorado, Illinois, Wisconsin, Indiana, Maine, Maryland and New Jersey. Other states such as New York and Michigan are contemplating similar bans. However, unlike the ban in other states, the California ban does not allow for companies to use plastic microbeads that are made with new formulations of plastic that are allegedly "biodegradable."

The California ban will take effect in 2020 and carries potentially significant penalties in the event of violation. As California has seen with other consumer protection actions, we expect to see a significant number of private attorney general lawsuits following the implementation deadline. This is especially true given that the bill is unclear as to what alternatives may be used to replace plastic microbeads.

Brownstein's government relations and consumer protection practices will continue to monitor the bill and any subsequent related legislation in California. We are also in position to help shape the way other states address this growing target. If you have any questions, please contact one of our team members below.

This document is intended to provide you with general information regarding legislation banning plastic microbeads. The contents of this document are not intended to provide specific legal advice. If you have any questions about the contents of this document or if you need legal advice as to an issue, please contact the attorneys listed or your regular Brownstein Hyatt Farber Schreck, LLP attorney. This communication may be considered advertising in some jurisdictions.

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