The New Want Ad: Cosmetics Industry Seeks FDA Regulation

An industry actively seeking government regulation is indeed a rare occurrence. In an unusual turn of events, the Cosmetics Industry has requested that the Food and Drug Administration (FDA) update the current governing statutory authority so that the industry as a whole may avoid a growing number of new and inconsistent state-level regulations – complying with each and every state's regulations would substantially increase the cost of producing, distributing, monitoring and litigating personal care products. Relying on a uniform, national standard would ease the costs associated with compliance, allowing the industry to maintain reasonable consumer pricing. Of course, the industry's request presupposes that the FDA regulations would preempt all of the various state laws.

The industry has been regulated by the FDA since enactment of the Federal Food, Drug and Cosmetic Act of 1938 (FFDCA). However, on March 27, 2012 the House subcommittee heard testimony from representatives of the industry's major trade association, the Personal Care Products Council, and individual manufacturers. During testimony, points were made that the cosmetics industry is largely unregulated despite being subject to the FFDCA. Other representatives were not convinced, and believe the way to deal with inconsistent state law is to work with each state's legislature, not increase the federal regulatory burden. Arguments were made that a state should be allowed to supplement federal laws if the proposed state standards are more stringent, but this is exactly what the industry as a whole is trying to avoid.

This leads to another obstacle the industry must overcome in persuading the FDA to act: funding. Currently the FDA only has 14 full-time people who work on cosmetics issues – if there are 300 million consumers in America who could potentially submit complaints about various cosmetic products, the FDA would need a far greater number of people to handle, address and investigate the complaints. On the upside, part of the FDA's 2013 fiscal budget request includes new legislative authority for the FDA to require domestic and foreign cosmetics manufacturers to register with the FDA and pay an annual registration fee. The fee is estimated to generate $19 million that would then be applied towards developing guidance and safety standards.

At present, all efforts by the FDA to monitor the cosmetics industry, such as registering manufacturing facilities or tracking product ingredients, are voluntary, and the FDA does not have recall authority. These measures would become mandatory should the Cosmetic Safety Amendments Act of 2012, introduced on April 18, 2012, become law. The currently pending bill would provide certainty and clarity to cosmetics manufacturers bringing new products to market and monitoring existing products, effectively modernizing the industry without placing a long-term, undue burden on it. Although a handful of manufacturers oppose far-reaching industry reform, citing substantial cost associated with federal regulatory compliance, the majority of industry representatives realize that the initial cost to comply with uniform regulations is substantially less when compared with trying to satisfy varying degrees of state-created standards.