Midyear 2024 | Food and CPG Legal Trends

PERKINSCOIE

PERKINS COIE IS PLEASED TO PUBLISH ITS MIDYEAR FOOD AND CPG LEGAL TRENDS REPORT.

This report is a bite-size version of our annual year in review, providing timely insights on trends so far this year. In the first half of 2024, the Consumer Packaged Goods (CPG) industry continued to face a meaningful threat of class-action activity, with continued filings against companies in the food, beverage, and personal care space. Recent months have also seen significant regulatory developments relevant to food, beverage, and CPG companies on both the federal and state levels.

Beyond our Food & Consumer Packaged Goods Litigation Blog and annual Year in Review, we also monitor filings on a daily basis and provide real-time information to clients and key contacts via our Food and Consumer Packaged Goods Litigation Update. To receive this daily email report about cases filed, Proposition 65 notices, and industry decisions, please email Kellie Hale at KHale@perkinscoie.com to inquire about this.

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REGULATORY DEVELOPMENTS

The first half of 2024 brought significant regulatory developments affecting food and consumer packaged goods (CPG) companies at both federal and state levels. We review these key developments below.

FEDERAL DEVELOPMENTS

- **DEA Initiates Draft Rulemaking to Reschedule Marijuana to Schedule III.** In a sea change for federal policy regarding marijuana, the Drug Enforcement Administration (DEA) has proposed moving marijuana to a less restrictive standard of federally controlled substances. DEA is currently accepting comments on this significant change in federal regulation. Among other things, this proposed change would dramatically reduce the federal tax burdens facing cannabis companies.
- **USDA Publishes Request for Information Regarding Bioengineered Food Disclosures.** Pursuant to the National Bioengineered Food Disclosure Standard, foods containing a bioengineered ingredient must make a disclosure. As USDA explained in its Request for Information, the agency is reconsidering certain options for making these required disclosures in light of a September 2022 federal court decision. That decision ordered the agency to reconsider the text message and electronic or digital link disclosure options and remanded the regulations back to the agency for further consideration. The agency's Request for Information solicited stakeholder input regarding these text message and electronic or digital link disclosure options. Read more here.
- **USDA Issues Final Rule on Voluntary "Product of USA" Claims.** On March 18, 2024, USDA's Food Safety and Inspection Service (FSIS) finalized a rule on Voluntary Labeling of FSIS-Regulated Products with U.S.-Origin Claim. The final rule clarifies USDA's standards to substantiate a "Made in the USA" claim for FSIS-regulated products and imposes new recordkeeping requirements to support the substantiation of these claims. Read more here.
- **FDA Announces Grease-Proofing Substances Containing PFAS Are No Longer Being Sold.** In February 2024, FDA announced that "the major source of dietary exposure to

The FDA, USDA, and the U.S. EPA announced a plan to update the regulation of products produced using biotechnology.

PFAS from food packaging" is now "being eliminated" as part of a "FDA-led effort" to curtail the sales of grease-proofing substances containing PFAS. Separately, FDA announced an update to the agency's list of chemicals under the agency's review, which included PFAS. In its announcement, FDA noted that it is monitoring "the latest information about all remaining authorized uses of PFAS in food contact application." Read more here.

- **FDA Issues New Guidance Documents Regarding Dietary Supplements.** FDA issued final guidance in March 2024 regarding New Dietary Ingredient Notifications (NDINs). In this final guidance, FDA explained, among other things, who should submit the NDIN as well as the information it should and should not contain. Subsequently, in April 2024, FDA issued draft guidance about NDIN Master Files that are used to facilitate the submission of identity, manufacturing, and/or safety information regarding a New Dietary Ingredient (NDI). This draft guidance reinforces FDA's continued interest in evaluating the safety of NDIs and dietary supplements more broadly. Read more here and here.
- **FDA Issues Final Guidance Regarding Plants Produced Using Genome Editing.** In February 2024, FDA issued final guidance outlining the agency's approach to human and animal foods derived from new plant varieties produced using genome editing. The final guidance discusses voluntary premarket steps producers can take to advise FDA of the safety of these food products.
- **Agency Collaboration on Biotechnology.** In May 2024, FDA, USDA, and the U.S. Environmental Protection Agency announced a plan to update the regulation of products produced using biotechnology. Among other things, the agencies intend to implement joint efforts to clarify regulatory oversight for genetically engineered plants, animals, and microorganisms.
- **USDA Proposes Rule on Organic Mushrooms and Organic Pet Food.** In March 2024, USDA issued a proposed rule that would establish standards for the term "organic" for mushrooms and pet food. In its proposed rule, USDA noted its expectation that the new rule would promote development of these markets by increasing regulatory certainty that would, in turn, encourage investment in the marketplace for organic mushrooms and organic pet food. Among other things, the proposed rule would permit the use of certain specified vitamin and mineral feed additives and synthetic taurine in organic pet foods.
- **USDA Announces Updated Guidelines for Food Donations.** In May 2024, USDA FSIS published a final Guideline to assist meat, poultry, and egg products establishments and nonprofit organizations in meeting FSIS regulatory requirements. Under FSIS regulations, establishments and nonprofit organizations may choose to implement procedures different from those outlined in this Guideline but would need to validate and support how those procedures are effective. The Guideline aims to assist stakeholders in identifying products eligible for donation, labeling donated products, and understanding FSIS obligations for organizations receiving donated products.

New York, Illinois, and Pennsylvania proposed bans on five food additives.

STATE REGULATORY DEVELOPMENTS

- **Florida and Alabama Ban Cultivated Meat Products.** In May 2024, state legislatures in Florida and Alabama enacted prohibitions on the manufacture, sale, or distribution of food products made from cultured animal cells. Cultivated meat, also known as cultured meat or cell-cultured meat, refers to animal meat (including seafood) grown outside the animal (a process known as ex vivo). FDA and USDA regulate cultivated meat at the federal level, and, to date, only two companies are eligible to market these products in the United States consistent with applicable FDA and USDA requirements.
- **New York Proposes New Requirements for Food Advertisements.** State legislators in New York introduced a proposal, S213B, that would, among other things, add new factors for a court's review of food advertisements. Specifically, the bill would amend New York General Business Law § 350 to require the courts to consider whether a food advertisement is false or misleading because it is "unfair"—a defined term—or "targets a consumer who is reasonably unable to protect their interests because of their age, physical infirmity, ignorance, illiteracy, inability to understand the language of an agreement, or similar factor." As of this writing, the bill has passed one chamber of the state legislature, the state senate, and is pending before the state assembly.
- **New York, Illinois, and Pennsylvania Propose Bans on Five Food Additives.** Legislators in New York and Illinois have proposed bans on five food additives: (1) brominated vegetable oil; (2) potassium bromate; (3) propylparaben; (4) red dye 3; and (5) titanium dioxide. In Pennsylvania, legislators proposed bans on brominated vegetable oil, potassium bromate, and red dye 3, in addition to butylated hydroxyanisole, red dye 40, yellow dye 5, yellow dye 6, blue dye 1, and blue dye 2. These bills followed the enactment of a similar law in California, which banned four of the five substances—the final California bill omitted titanium dioxide. As of this writing, the Illinois proposal SB2637 passed the state legislature's upper chamber and is pending before the state's House. New York's proposal A6424/S6055A is pending in committee in both chambers. Pennsylvania's bills (HB 2116 and HB2117) are pending in that state's House.
- **California Proposes New Food Additive Ban.** California legislators have proposed AB2316 that would prohibit public schools in that state (grades K-12) from offering, selling, or otherwise providing any food, except for food items sold as part of a school fundraising event, containing specified substances. Specifically, the prohibited substances would be (1) Blue 1 (CAS 3844-45-9); (2) Blue 2 (CAS 860-22-0); (3) Green 3 (CAS 2353-45-9); (4) Red 40 (CAS 25956-17-6); (5) Yellow 5 (CAS 1934-21-0); (6) Yellow 6 (CAS 2783-94-0); and (7) titanium dioxide (CAS 13463-67-7). As of this writing, the bill has passed the state assembly and is pending in the state senate.
- **New York and New Jersey Propose Mandatory Disclosures of New Food Additives.** State legislatures in New York and New Jersey have proposed requiring manufacturers of food

Some states expanded or otherwise modified their existing PFAS laws.

and beverages to make public disclosures when relying on self-determinations that a new additive has been deemed "generally recognized as safe" (GRAS) and is planned for use in food and beverages without premarket review and approval by the FDA. New York's proposals (A9295/S8615) are pending in committee in both chambers, and New Jersey's proposal (A4640) is pending in the state assembly.

- **States Continue to Focus on PFAS Legislation.** As states seek to enact PFAS bans, some states expanded or otherwise modified their existing PFAS laws. In April, Maine's LD 1537 eliminated the state's general notification requirement that was previously scheduled to take effect January 1, 2025, and instead created a timeline of new sales prohibitions for products with intentionally added PFAS with varying effective dates. In May, Colorado included additional product categories for its PFAS ban through SB24-81. In June, Rhode Island's S2152/H7356 expanded the state's PFAS ban to additional consumer product categories, and H7619 delayed the effective date of the state's food packaging PFAS ban to January 1, 2025, with an additional delay for when processing aids and other intermediates will be considered "intentional introduction."

FOOD AND SUPPLEMENTS

In the first half of 2024, we saw continued focus from plaintiffs related to preservative claims and 100% representations on food and beverage products. We also saw an increase in claims advanced by plaintiffs focusing on sustainability and failure to disclose various microcontaminants. California continues to be the most popular state for plaintiffs to file. Interestingly, we have seen a jump in filing in Missouri state court.

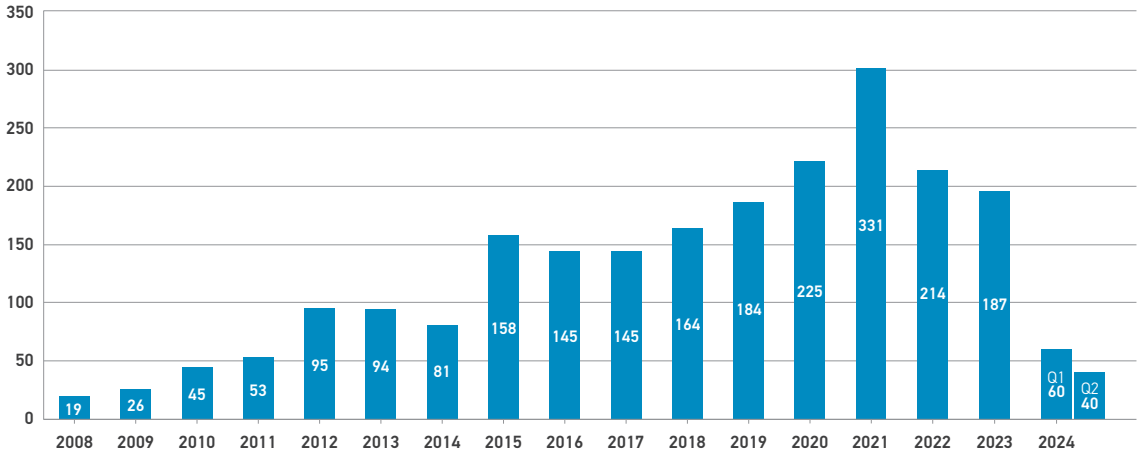
FOOD AND BEVERAGE TRENDS

First, the most popular theory of deception advanced by plaintiffs related to food and beverages in the first half of 2024 pertains to representations about preservatives. This theory was also the most popular theory throughout 2023. Plaintiffs continue to target products that contain phrases such as "No Artificial Preservatives" or "No Preservatives." In these cases, plaintiffs alleged that these statements regarding the absence of preservatives are false and misleading because of the use of certain purported preservatives. Specifically, plaintiffs have focused on the presence of citric acid, sodium benzoate, and/or ascorbic acid in alleging purported preservatives.

Another popular theory of deception in 2024 relates to the use of "100%" in a label statement—e.g., 100% juice. In these cases, plaintiffs alleged that the 100% statements are false because the products contain other ingredients. With this theory having been successful for plaintiffs in the past, the continued focus on the use of "100%" does not come as a surprise. In 2024, there has been a new focus on microplastics from plastic containers, allegedly making claims such as "100% Mountain Spring Water" on plastic water bottles false and misleading. *See Bruno v. Bluetriton Brands, Inc.*, No. E542085810 (L.A. Super. Ct. filed Jan. 23, 2024). Beyond the 100% claims, this new attention on microplastics also allegedly makes statements such as "natural" on plastic water bottles false because microplastics are not naturally occurring. *See Daly v. The Wonderful Company, LLC*, No. 2024-CH-0034 (Cook Cty. Cir. Ct. filed Jan. 18, 2024).

FOOD AND BEVERAGE CLASS ACTIONS

FIGURE 1



We have also seen an increased interest in sustainability and recycling claims. Namely, plaintiffs allege that claims such as "sustainably sourced" and "recyclable" are false and misleading. *See, e.g., Garcia v. Safeway Inc.*, No. TC24-2824 (S.D. Super. Ct. filed Apr. 8, 2024). These cases are gaining traction with the plaintiffs' bar for multiple reasons. First, these types of claims have largely been successful for plaintiffs. *See, e.g., Bohen v. Conagra Brands, Inc.*, No. 23 C 1298, 2024 WL 1254128 (N.D. Ill. Mar. 25, 2024) (denying motion to dismiss based on front label claim that fish product was "Good for the Environment" when plaintiffs had reason to believe the sourcing practices were harmful to the environment). Second, new state legislation such as California's SB 343 will give a statutory tie for consumer protection claims based on false claims of recyclability. Lastly, the Federal Trade Commission (FTC) seems to be particularly interested in curbing broad environmental claims. With the upcoming supplement to the Green Guides, we only expect more litigation based on environmental claims.

Additionally, as expected, we have seen "failure to disclose" microcontaminant cases expand in 2024. For example, following a flurry of news articles related to its presence in oats, we saw cases alleging failure to disclose the use of chlormequat chloride on the label of various food products. *See, e.g., Tepper v. Quaker Oats Co.*, No. 1:24-cv-02055 (N.D. Ill. filed Mar. 11, 2024). We also saw cases alleging failure to disclose PFAS after increased media attention. *See Morton v. Health-Ade LLC*, No. 7:24-cv-00173-CS (S.D.N.Y. filed Jan. 9, 2024).

Increasingly, these microcontaminant cases are turning on standing and plaintiff's ability to link testing to the product the plaintiff actually purchased. On June 10, 2024, a federal court in New York dismissed a lawsuit alleging failure to disclose PFAS in defendant's juice products. *See Lurenz v. Coca-Cola Co.*, No. 7:22-cv-10941 (S.D.N.Y. June 10, 2024) (order on motion to dismiss). In dismissing the case, the court ruled that "[w]ithout specific facts concerning the third-party testing forming the basis of [plaintiff's] allegations that the product contains PFAS chemicals," the presence of PFAS in the product is just a "sheer probability." *Id.* As a result, we expect to see more independent testing, verifying the third-party test results that spawn these lawsuits in the second half of 2024.

BEAUTY, COSMETICS, AND PERSONAL CARE

FEDERAL REGULATIONS

The first half of 2024 saw advancements in the implementation of the **Modernization of Cosmetics Regulation Act of 2022 (MoCRA)**, which provides the FDA with increased power over the regulation of cosmetics. Several of MoCRA's key provisions were put into place as of December 2023, including adverse events and serious adverse event reporting requirements, cosmetic safety substantiation, professional use labeling requirements, and the FDA's authority to issue mandatory recalls and access records.

Cosmetic companies were required to register all manufacturing facilities and product listings by July 1, 2024. In December 2023, the FDA issued the final version of its Guidance for Industry: Registration and Listing of Cosmetic Product Facilities and Products, providing recommendations and instructions to assist persons submitting cosmetic product facility registrations and product listings to the FDA. Failure to register or submit listing information in accordance with MoCRA is a prohibited act under section 331(hhh) of the FD&C Act (21 U.S.C. 331(hhh)), and the FDA will now enforce these requirements.

Going forward, we expect the FDA to propose rules regarding Good Manufacturing Practices and testing methods of asbestos in talc-containing cosmetics, and we also anticipate the agency will report on PFAS in cosmetics.

STATES' REGULATIONS

The cosmetics industry has seen its fair share of state action in the past few years, filling perceived federal regulatory gaps. In the first half of 2024, the industry prepared itself for compliance with several state laws that will go into effect January 1, 2025, including **California's Toxic-Free Cosmetics Act** (AB 2762), which effectuates a statewide ban of 24 chemicals from personal care products. California's act prohibits the manufacture, sale, delivery, holding, or offering for sale in commerce of any cosmetic product intentionally containing any of the following ingredients: (1) dibutyl phthalate; (2) diethylhexyl phthalate; (3) formaldehyde; (4) paraformaldehyde; (5) methylene glycol; (6) quaternium-15; (7) mercury; (8) isobutylparaben; (9) isopropylparaben; (10) m-Phenylenediamine and its salts; (11) o-Phenylenediamine and

Well over 100 putative class action lawsuits were filed against cosmetic companies throughout the United States.

its salts; and (12) more than a dozen specific PFAS and their salts. Notably, California was the first state to put a statewide ban on these chemicals, all of which are banned in the European Union. Most of the ingredients are already on California's Proposition 65 list of chemicals.

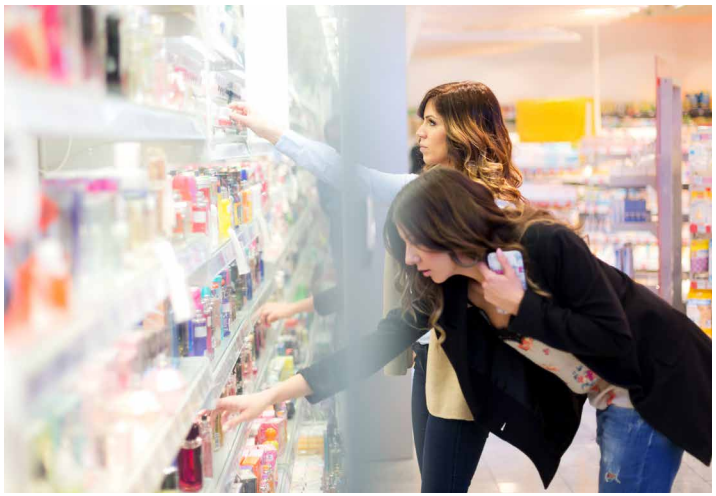
The industry is also grappling with the upcoming compliance requirements of Washington State's Toxic-Free Cosmetics Act, taking effect January 1, 2025. Washington's act sets forth stringent standards for companies operating within the state, aiming to eliminate the use of toxic ingredients in cosmetics and personal care products. Beginning January 1, 2025, no person may manufacture, knowingly sell, offer for sale, distribute for sale, or distribute for use in Washington any cosmetic product that contains any of the following intentionally added chemicals or chemical classes:

1. Ortho-phthalates;
2. PFAS;
3. Formaldehyde (CAS 50-00-0) and chemicals determined by the Washington State Department of Ecology to release formaldehyde;
4. Methylene glycol (CAS 463-57-0);
5. Mercury and mercury compounds (CAS 7439-97-6);
6. Triclosan (CAS 3380-34-5);
7. m-Phenylenediamine and its salts (CAS 108-45-2); and
8. o-Phenylenediamine and its salts (CAS 95-54-5).

Additionally, beginning January 1, 2025, no person may manufacture, knowingly sell, offer for sale, distribute for sale, or distribute for use in Washington any cosmetic product that contains intentionally added lead or lead compounds (CAS 7439-92-1), lead or lead compounds at 1 part per million (ppm) or above, or as otherwise determined by the state's Department of Ecology through rulemaking. Washington's Toxic-Free Cosmetics Act is particularly concerning because the 1 ppm lead limit is not feasible for most color cosmetics.

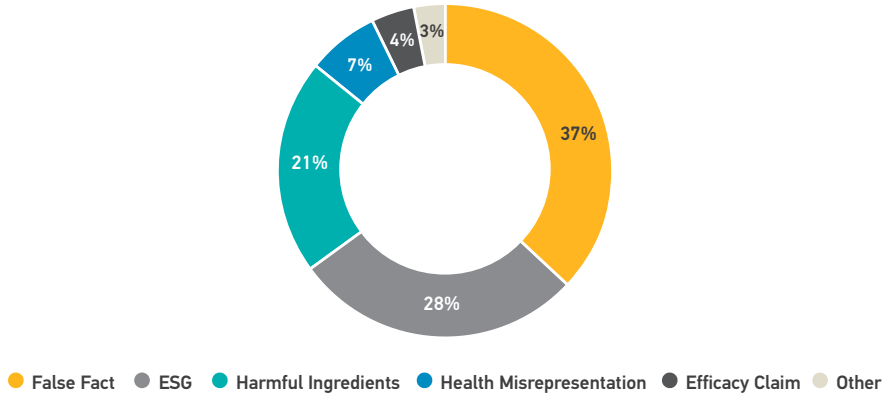
LITIGATION REVIEW (JANUARY 2024-JUNE 2024)

In the first half of 2024, well over 100 putative class action lawsuits were filed against cosmetic companies throughout the United States.



PERSONAL CARE CLASS ACTIONS: Q1 AND Q2 2024 FILINGS BY TYPE

FIGURE 2



Several litigation trends have emerged since January, and we expect those to continue into the next half of the year.

- **The attack on "clean" beauty:** The most notable case decision of the first half of 2024 is undoubtedly the finding in *Finster v. Sephora USA Inc.* The U.S. District Court for the Northern District of New York dismissed a putative class action in which plaintiff alleged that the marketing of cosmetics under the "Clean at Sephora" program misleads consumers into believing that products are free from impurities, have minimal to no synthetic ingredients, and are safe for the body, skin, and environment despite the fact that an alleged significant percentage of the products in the program allegedly contain ingredients that are inconsistent with consumers' understanding of the term "clean." The ingredients at issue included polyglyceryl-6 distearate, polyglyceryl-10 myristate, PGEs, cetyl alcohol, glyceryl caprylate, phenethyl alcohol, sodium benzoate, potassium sorbate, and xanthan gum. The court concluded that plaintiff failed to plausibly allege that defendant materially misled consumers, as nowhere on the label or in the marketing materials did defendant make any claim that the products are free of all synthetic or harmful ingredients. While "clean" is an undefined term that is widely used in the industry, because Sephora's advertising expressly states that its "clean" products are formulated without specific ingredients that are known or suspected to be potentially harmful, Sephora did not mislead consumers into believing the products were free of all synthetic or harmful ingredients.
- **The alleged presence of harmful PFAS in cosmetics:** Several cosmetic companies faced lawsuits in which plaintiffs alleged that their products contained PFAS. For instance, a plaintiff recently brought a putative class action alleging that the marketing and labeling of a cosmetic company's skincare and cosmetics products, including certain eye shadows, is deceptive and misleading because of representations that the products are suitable for sensitive eyes and have a positive impact on the world. The plaintiff claimed that testing revealed that the products contain PFAS, a category of synthetic chemicals considered to be potentially harmful to health and persistent in the environment. Additionally, in *Brown v. CoverGirl Cosmetics; Coty Inc.*, the U.S. District Court for the Southern District of New York dismissed a putative class action in which plaintiff alleged that the marketing and labeling of defendants' CoverGirl brand waterproof mascara cosmetics products are deceptive and misleading. Plaintiff claimed that the products are not fit for their intended purpose because they allegedly contain PFAS, which are known to be toxic to humans. The court concluded that plaintiff failed to adequately allege that they suffered an injury in fact, reasoning that the plaintiff had not specified which PFAS were allegedly in the mascara and in what quantities and therefore failed to show adequate detail as to their claims of deception.

Sunscreens continued to face lawsuits challenging "reef-friendly" claims.

- **The continued war on sunscreens:** Sunscreens continued to face lawsuits challenging "reef-friendly" claims when ingredients included chemicals that are purportedly harmful to coral reefs. Spencer Sheehan filed suit against several major companies in New York, representing plaintiffs who alleged that the marketing and advertising of sunscreens as "reef-friendly" or "reef-conscious formula" are deceptive and misleading because the sunscreens contain chemical ingredients including avobenzone, homosalate, octisalate, and octocrylene, which may cause harm to coral reefs. In addition to reef-friendly challenges, sunscreens were also at the center of putative class action lawsuits for claims such as "waterproof," "sweatproof," and blocks "all UV rays" despite contact with water and sweat. Plaintiffs claim that all sunscreens wash off in the water, and thus, there is no such thing as "waterproof" sunscreen. Plaintiffs further state that no sunscreen blocks UV rays entirely and wearing even the strongest sunscreen will not prevent some UV exposure. *See Bui v. Able C&C US Inc.*, D.N.J., Case No. 2:24-cv-01157, filed February 28, 2024.

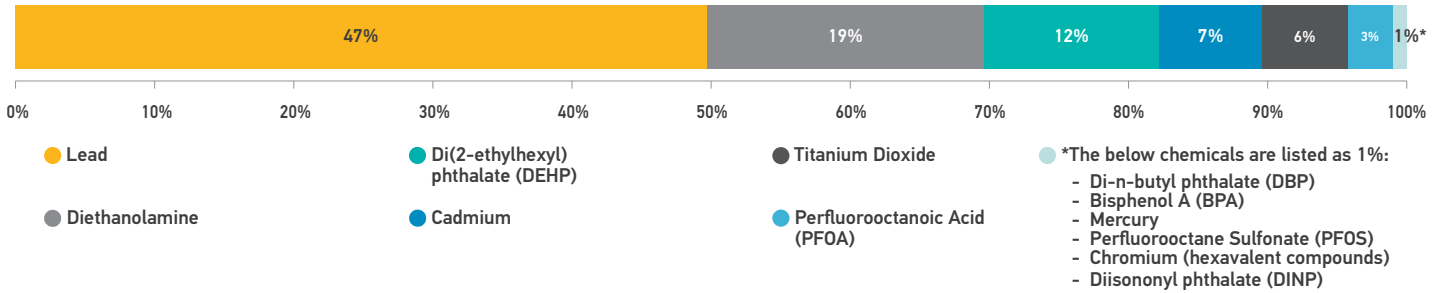
In addition to these trends, we continued to see lawsuits filed challenging animal testing claims made on cosmetic products, the alleged presence of benzene and titanium dioxide in personal care products, and "natural" claims made regarding products that allegedly contained non-natural ingredients.

PROPOSITION 65

2024 BY THE NUMBERS

In the first half of 2024, plaintiffs filed a whopping 2,307 pre-suit notices of violation of Proposition 65 (formally, California's Safe Drinking Water and Toxic Enforcement Act of 1986). That was approximately 400 more notices than filed over the same period last year. Of those, approximately 28% of the notices relate to exposures allegedly caused by foods, dietary supplements, or beverages. A significant number of the notices relating to food involve seafood products that allegedly contain lead, such as shrimp, shellfish, sardines, and seaweed. Of particular note is that there has been a sudden increase in the number of notices relating to mercury. While many of these, unsurprisingly, relate to seafood products, some of the notices allege that mushroom-based foods and kombucha are causing mercury exposures.

There was also a dramatic rise in the number of notices relating to diethanolamine, nearly all of which target personal care and/or cosmetics products. Since January 1, 2023, plaintiffs have filed around 530 notices of violation relating to diethanolamine; more than 400 of those were filed in the last six months. While a variety of long-time enforcers, including Environmental Health Advocates, Ecological Alliance, and Brodsky & Smith, have issued diethanolamine notices, a new enforcer known as the Initiative for Safer Cosmetics (ISC) has issued a significant number. Interestingly, ISC appears to be affiliated with Clean Product Advocates, LLC, another Proposition 65 enforcer known for issuing high volumes of notices. See the chart below for a detailed breakdown of the top chemicals at issue in 2024.



Proposition 65 mandates that businesses that sell consumer products notify Californians about certain chemicals that are in those products.

LITIGATION UPDATES

Attorney General Objects to Settlement in *Environmental Health Advocates, Inc. vs JRD IMC, LLC* (Alameda Cty., Case No. 22CV020981)

In November 2022, Environmental Health Advocates filed a complaint alleging that defendant Atalanta Corporation and other defendants exposed individuals to lead in their baby clams without providing the cancer and reproductive toxicity warning required by Proposition 65. Several months later, the parties submitted a joint motion to approve a Proposition 65 settlement and consent judgment. The proposed settlement defined "compliant products," i.e., those that *do not* require a warning, as those that cause exposures of less than 0.5 micrograms per day and explicitly permitted defendants to calculate exposure by taking the average lead concentration from four samples of the clams during a one-year period. That average concentration is then "multiplied by grams of product per serving of the product (using the serving size appearing on the product label), multiplied by frequency of consumption of once every fourteen (14) days."

On June 10, 2024, the California attorney general's office submitted an opposition to the proposed settlement, arguing that (1) the plaintiff provided no evidence that the product was ever out of compliance with the warning level set in the settlement, and thus, there is no evidence that the settlement provides a public benefit; (2) the exposure calculation set forth in the settlement agreement is not consistent with the requirements of Proposition 65; and (3) because of the lack of evidence of a public benefit, the court cannot approve an award of attorneys' fees. As to the second point, the attorney general's office argues that the regulatory maximum allowable dose level set by California's Office of Environmental Health Hazard Assessment (OEHHA) for lead (0.5 micrograms/day) should be treated as a measure of "the maximum exposure permitted per day," and averaging exposure over 14 days should not be permitted. Indeed, in a subsequent opposition brief filed with the court, the attorney general argues that averaging exposure to lead over a 14-day time period is "legally and scientifically wrong." The court is set to hear oral argument regarding the opposition to the settlement on August 8, 2024.

REGULATORY UPDATES

In response to numerous public comments, California's OEHHA announced on June 13, 2024, that it would be modifying proposed amendments to the regulations governing so-called "short-form" warnings under Proposition 65. Proposition 65 mandates that businesses that sell consumer products notify Californians about certain chemicals that are in those products.

As detailed in a previous update, in 2021, OEHHA proposed amendments to its Proposition 65 warning regulations that sought to dramatically restrict businesses' use of short-form warnings (the Proposed Amendments). Specifically, OEHHA's Proposed Amendments sought to:

- Limit the use of short-form warnings to products with five square inches or less of label space.

The time frame for implementing revised short-form warning content has been extended from two years to three years.

- Eliminate the use of short-form warnings for internet and catalog warnings.
- Significantly lengthen the short-form warning language.

The Proposed Amendments have now undergone three key revisions:

1. **Extended implementation period.** The time frame for implementing revised short-form warning content has been extended from two years to three years.
2. **Reversion to original text for internet and catalog warnings.** OEHHA has decided to revert to the original regulatory text for most of the internet and catalog warning content. This change addresses concerns raised during the public comment period and aims to maintain consistency with existing regulations.
3. **New grace period for internet retailers.** A new provision grants internet retailers a 60-day grace period to update their online short-form warnings after receiving a warning or written notice. This grace period applies during the three-year implementation period, offering retailers a buffer to make necessary adjustments.

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