



Inside Beauty: Legal Considerations for Today's Brands

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Agenda

Setting the Stage

- Previous Roundtable Discussions
- Introducing the Podcast: Beauty Law Glow-Up

Clean Beauty

- Federal Agency Jurisdiction and Issues
- State Issues

Product Claims: Litigation Landscape

Social Media Influencer Marketing

Dupe Culture

Trade Dress

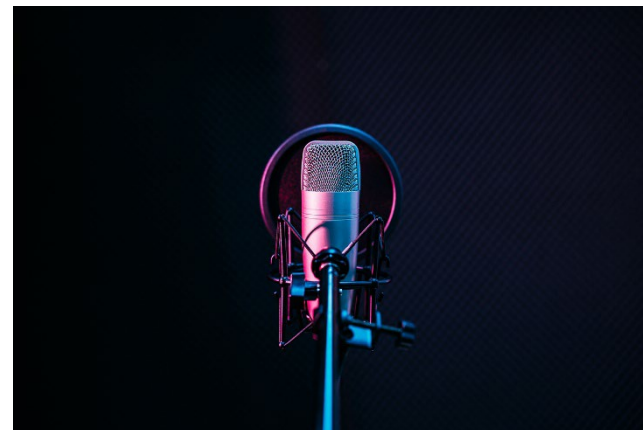
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Setting the Stage: Previous Roundtable Discussions

- Beauty and the Regs: The Intersection of FDA, CPSC, and Beauty Laws
- Beauty Marks: Navigating Trademark and Trade Dress Challenges
- From Source to Shelf: Transparency and Ethical Sourcing in Beauty Supply Chains
- Beauty Patents Unboxed: Protecting Innovation from Lab to Launch
- The Beauty of Branding: Navigating Challenges and Opportunities in the Age of UGC, CGI Influencers, AI, Dynamic Pricing, and Tween/Teen Beauty Trends
- Polished Proof: Leveraging Data for Effective Beauty Advertising Campaigns
- Beauty Delivered: Legal and Operational Challenges of Subscription Models
- Beauty Confidential: Privacy Compliance in the Data-Driven World
- Defending Beauty Brands: Navigating IP Litigation in the Cosmetics Industry

Introducing the Podcast: *The Beauty Law Glow-Up*

- Engaging discussions focused on key, hot-topic issues for beauty brands
- Deep dives into evolving, highly relevant topics, such as:
 - Clean beauty
 - Influencer marketing
 - Dupe culture
 - Trade dress
 - Product claims
 - And more!
- Introducing many of these topics today as a sneak peak of what is to come



Summer | 2026

The Beauty Law **Glow-Up**

A Venable Podcast



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Clean Beauty: Federal Agency Jurisdiction – FDA

FDA

Regulates “cosmetics” under FDCA, as amended by MoCRA (FDCA does not include soap)

MoCRA Rules on the Horizon	
Required Rulemaking	Status
Good Manufacturing Practice (GMP) Regulations	Publication of proposed rule delayed
Establishing and Requiring Standardized Testing Methods for Detecting Asbestos in Talc-Containing Cosmetic Products	The Notice of Proposed Rulemaking (NPRM) withdrawn Nov. 18, 2025
Disclosure of Fragrance Allergens in Cosmetic Labeling	Proposed rule undergoing OMB review; publication of proposed rule is imminent



Clean Beauty: Federal Agency Jurisdiction – FDA (cont.)

FDA

- FDA Adverse Event Reporting System (FAERS) Public Dashboard for Cosmetic Products launched in September 2025 (individual case safety reports are subject to FOIA)
- **Enforcement Activities**
 - **Warning Letters and Import Alerts:** Commonly address unapproved drug claims, marketing unapproved medical devices as cosmetics, GMP issues (microbial contamination), and non-permitted, uncertified, and undeclared color additives
 - [Aug. 6, 2025 – K & Care Organics; skincare products marketed with unapproved drug claims regarding sun protection](#)
 - [Oct. 21, 2024 – Choice All Natural, Inc. dba Om Botanical; topical lotions marketed with unapproved drug claims \(e.g., “Rash & Itch”\)](#)
 - [Mar. 5, 2026 – Import alert for cosmetics containing mercury and methylene chloride](#)
 - **Recalls:** Common reasons for cosmetic product recalls administered by FDA include microbiological or chemical contamination, undeclared ingredients, and prohibited ingredients (e.g., methylene chloride and chloroform)
 - **Inspections:** Inspections are under way; FDA Draft Guidance, *FDA Records Access Authority for Cosmetic Products: Guidance for Industry*



Clean Beauty: National Advertising Division

NAD

- The National Advertising Division (NAD) monitors national advertising in all media, enforces high standards of truth and accuracy, and efficiently resolves disputes to build consumer trust and support fair competition.
- NAD reviews advertising based on challenges from businesses or complaints from consumers, or on its own monitoring initiative, covering a wide variety of both industries and issues.
- NAD's decisions represent the single largest body of advertising decisions in the United States.
- NAD decisions in the cosmetic space:
 - Nov. 2024, B-Goldi Bright Drops Skincare; NAD found that compliance with guidelines set forth in European Commission Scientific Committee on Consumer Safety's Cosmetic Safety Standard supports "safe for kids and tweens to use" claim.
 - Jun. 2024, Native Brand Personal Care Products; NAD found that "Clean. Simple. Effective." as a whole tagline was supported by a minimal or few-ingredient product formulation but recommended "simple" as a singular claim be modified to "simple ingredients."

Clean Beauty: State Issues

Trends in recent years demonstrate **increasingly aggressive state activity** regarding cosmetic ingredients, particularly in large markets like California and New York. As of May 2026, **at least 14 states** have enacted laws **banning or restricting** certain ingredients in cosmetics, such as intentionally added PFAS.

State legal and regulatory activity includes:

- Ingredient bans and
- Labeling requirements



Clean Beauty: State Issues – Some Examples

New York

- Ban on 1,4-dioxane and mercury in cosmetics
- We are aware of enforcement activities by NY regulators regarding compliance with ban (e.g., testing products, issuing notices, etc.)

California

- Banned over 50 ingredients from being “intentionally added” to cosmetics with limited exceptions
 - 24 banned as of Jan. 1, 2025 (including several PFAS and phthalates, and formaldehyde and mercury)
 - 26 banned as of Jan. 1, 2027 (such as styrene, acetaldehyde, cyclohexylamine, vinyl acetate, and several boron substances and “basic” colors)
- Reportable ingredients under California Safe Cosmetics Act
- Potential labeling obligations under California Proposition 65

Oregon

- Ban on various substances (orthophthalates, PFAS, etc.) comes into effect Jan. 1, 2027
- Website disclosure for certain substances comes into effect Jan. 1, 2027

Vermont

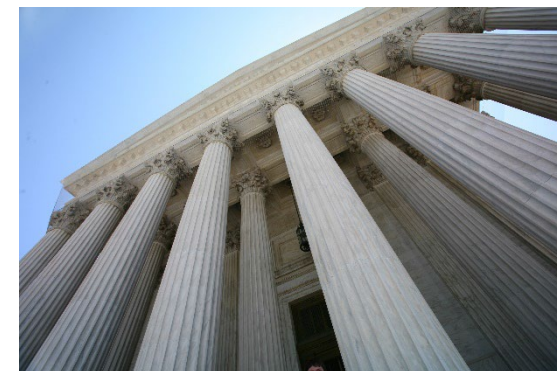
- Since Jan. 1, 2026, bans intentional addition of various ingredients in cosmetics
 - Unintentional presence limited to trace, unavoidable levels
 - 1,4-dioxane may not be present above 10 ppm
- Additional substances to be banned July 1, 2027

Connecticut

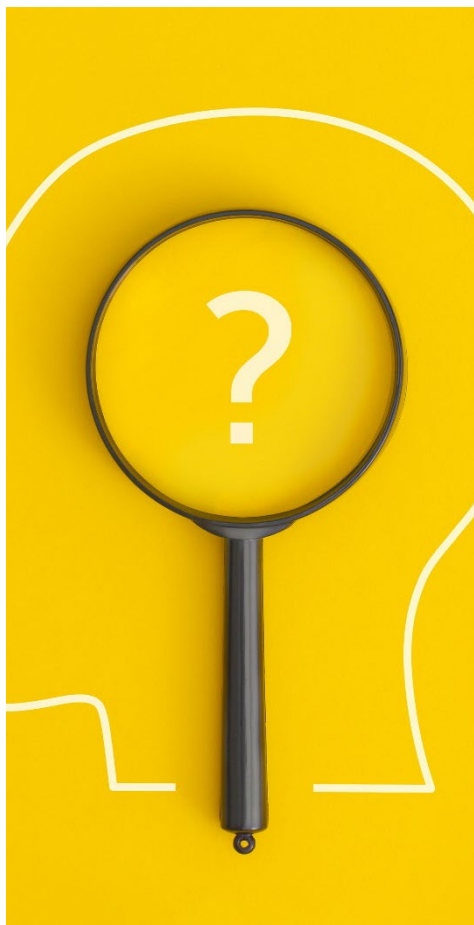
- 2026 begins rollout of intentionally added PFAS ban in cosmetics
 - Jul. 1, 2026 – “Made with PFAS chemicals” notice and labeling requirement
 - Jan. 1, 2028 – Full ban on intentionally added PFAS

Product Claims: Litigation Landscape

- Litigation increasingly targeting “clean,” “toxic-free,” “plant-based,” “safe,” “natural,” and “free-of” claims
- Allegations based in **state and federal consumer protection laws**
 - Commonly filed in **New York and California** U.S. District Courts
- Plaintiffs may identify product **brands *and/or* retailers** as defendants
- Common arguments supporting deceptive marketing allegations:
 - Greenwashing, using FTC “Green Guides” as legal standard
 - General disagreement on the definition of non-standardized terms, like “natural”
 - Allegedly “unsafe” ingredients present at very low levels



Social Media Influencer Marketing: Claims



- When an influencer makes claims about your product, those claims become your brand's claims. Under FTC regulations, **the brand is responsible** for ensuring statements are truthful and substantiated.
- Therefore, if a claim cannot be made directly by a brand, it cannot be made through an influencer either.

NAD Inquiry: *NuOrganic* Cosmetics (2024)

- Social media influencer/product reviewer's statements (e.g., "naturally grown long lashes") were attributable to the brand. Advertiser was asked to have the videos containing unsupported claims discontinued.

Dupes, Trade Dress, and Trademarks in the Beauty Industry

- Understanding Dupe Culture and Brand Protection Strategies
- What Is Dupe Culture?
 - Lower-cost product mimicking performance and aesthetic of a premium product
 - Often framed as “look for less” or “save vs. splurge”
 - Accelerated by social media platforms – short-form video and affiliate links
 - Dupe culture is fueled by accessibility and social media virality. Consumers are actively encouraged to compare high-end products with cheaper alternatives.

Why Dupe Culture Is Prominent and Its Issue for Brands

- Expands access and affordability
- Increases price competition
- Can erode brand equity and perceived exclusivity
- Driven by fast-moving trends

Challenges for Brands

- Erosion of brand equity
- Loss of exclusivity
- Consumer confusion
- Dupes can dilute brand identity and make it harder for consumers to distinguish authentic products from imitations

Strategies to Overcome Dupe Culture

Intellectual Property Protection

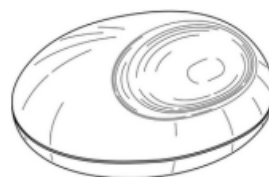
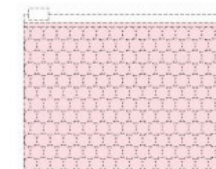
- Obtaining trademarks, trade dress, copyrights, and patents for beauty products is crucial in protecting brand identity, innovation, and market position, especially when it comes to combating dupes.
 - Brands are filing trademark applications to protect their unique brand elements, such as names, packaging, and overall aesthetic.
 - Lululemon Athletica Canada Inc. (“Lululemon”) moved beyond traditional legal action and filed a trademark application for “LULULEMON DUPE” in the United States based on a Benelux trademark application and claimed a 44(d)-filing basis. The application registered on October 21.
 - This strategy allows brand owners to file a U.S. trademark application without needing to prove use upfront. Once registered, they can take action against dupes sold on social media and online marketplaces using terms like “LULULEMON DUPE.”

Strategies to Overcome Dupe Culture (cont.)

Trade Dress Protection: Trade dress refers to the overall look and feel of a product, including packaging, colors, and design elements that create a distinctive visual identity. By protecting their trade dress, beauty brands can prevent copycat companies from mimicking their product presentation, which could confuse consumers or dilute the brand's value. This is particularly important for beauty products where packaging and design often play a significant role in consumer appeal and market differentiation.

These examples show how distinctive packaging can be legally protected and enforced:

- Tatcha LLC owns a trade dress registration for its skin care products, which feature a spoon-like applicator with beveled edges affixed by a stylized butterfly-shaped holder to the lid of the container in which the goods are sold.
- Glossier, Inc. (“Glossier”) owns a trade dress registration for its cosmetic bags, which feature lining of translucent circular air bubbles and a zipper closure.
- Glossier also owns a trade dress registration for its unique product packaging, which consists of an irregular spheroid container comprising two equal halves characterized by an oval indentation sitting off-center on the top of the packaging; the halves are aligned with each other when the container is in the fully "closed" position.



Strategies to Overcome Dupe Culture (cont.)

Patent Protection: For products with unique formulations or designs, such as packaging or shape, brands are turning to patent protection to better safeguard their innovations. If a "dupe" product infringes on a design patent, the brand can sue for infringement and seek damages.

Copyright Protection: Copyright protection can play a significant role in fighting against dupes in the beauty industry, although it may not be as commonly utilized as trademarks or patents.

- **Packaging Designs:** Unique, creative packaging designs (like illustrations, logos, or graphics) can be copyrighted. If a dupe copies these design elements, the original brand can claim copyright infringement and take legal action.
- **Combating Copycat Packaging:** A common issue in the beauty industry is the imitation of packaging designs. If a brand has copyrighted its packaging design or labeling, it can pursue legal action against dupes that use similar designs to mislead consumers. This helps in maintaining brand integrity and reducing consumer confusion.

Strategies to Overcome Dupe Culture (cont.)

Copyright Protection (cont.)

- **Digital Content Protection:** In the age of e-commerce and social media, brands frequently use digital content (e.g., images, videos, and promotional material) to promote their products. If a dupe company uses the same or similar digital content without permission, the original brand can enforce its copyright rights, demanding the removal of the infringing content and stopping the sale of dupes.
- **Supplementing Trademark and Trade Dress Claims:** While trademarks and trade dress provide direct protection for the overall appearance of a product or brand, copyright can enhance these protections by safeguarding specific creative elements tied to the brand. For example, if a beauty product features a unique bottle shape that qualifies as a work of art, the brand could pursue both trade dress and copyright protection

While copyright can be useful, it's important to note that it doesn't protect functional aspects of a product (like the formula, functional design, or uncreative elements). For those elements, a brand may need to rely more on patents (for innovations) or trademarks (for branding and packaging).

Legal Claims Against Dupes

Dupes are not automatically illegal, but they cross the line when they confuse consumers or misrepresent affiliation. Brands can pursue legal action against "dupe" products using intellectual property laws, targeting trade dress infringement, trademark infringement, design patents, and unfair competition, especially when a dupe's design or marketing leads to consumer confusion.

- **Trade Dress Infringement:** You can sue for [trade dress infringement](#) regarding "[dupes](#)" (look-alike products) if the imitation mimics your product's non-functional, distinctive, and recognizable packaging or design in a way that causes consumer confusion. While dupes often avoid direct trademark infringement by using different brand names, they can still face litigation if their "look and feel" violates the [Lanham Act](#).
- **Trademark Infringement:** If a brand holds a registered trademark for its logo, name, or other distinctive features, it can sue a "dupe" manufacturer for trademark infringement if they create a likelihood of consumer confusion, dilute a famous brand, or violate trade dress (referenced above), though "dupes" are not automatically illegal if they are properly branded.

Legal Claims Against Dupes (cont.)

- **Unfair Competition:** A brand can file a lawsuit for unfair competition if a "dupe" product is designed to closely resemble the original, leading consumers to mistakenly believe it is the same product or affiliated with the original brand.
- **False Advertising:** If a "dupe" product is falsely marketed as the authentic product or as endorsed by the original brand, the brand can take legal action for false advertising.

The term "dupe" is still new enough that questions about its responsible use remain unanswered by federal and state regulations, as well as related lawsuits, which are just beginning to emerge.

Additionally, making false claims about other companies to promote a dupe can lead to liability.

Influencers and celebrity endorsers can also be held liable for promoting misleading dupes—whether by repeating false claims about a product or, in the case of influencers, endorsing items they've never actually used.

Enforcement Tools

- **AI-Based Digital Monitoring:** Brands are increasingly leveraging online brand protection tools to actively monitor social media platforms, e-commerce sites, and digital marketplaces for potential intellectual property infringements. These tools use advanced technologies like AI and image recognition to detect unauthorized use of trademarks, logos, and product designs—especially in posts or listings promoting dupes. By identifying potential violations in real time, brands can respond more quickly with takedown requests, cease and desist letters, or legal action. This proactive approach not only protects brand integrity but also helps maintain consumer trust in an era where imitation products can spread rapidly online.
- **Cease and Desist Letters:** A brand can issue a "cease and desist" letter to a "dupe" manufacturer, demanding that they halt the sale of the infringing product.
- **Border Seizures:** Brands can request border authorities to seize "dupe" products at the point of import into a country.
- **Consumer Protection Laws:** Brands can use consumer protection laws to address misleading marketing practices by "dupe" manufacturers.

Global Enforcement

File in favorable jurisdictions

- Some countries have more robust or streamlined intellectual property systems that are more conducive to enforcing brand rights, particularly when it comes to trademarks, patents, and trade dress.
- Many beauty brands operate globally, and "dupe" products often originate from foreign markets. By filing lawsuits in other countries, brands can stop the production and distribution of these infringing products before they even reach the U.S. This can help prevent knockoff products from flooding the U.S. market, maintaining the brand's exclusivity and protecting consumer trust.

Stop production at the source

- In today's digital age, beauty dupes are often sold online across international borders. By taking legal action in countries where "dupe" products are manufactured, brands may be able to seek court orders to prevent the sale of these products on global e-commerce platforms, which might eventually reach U.S. consumers. This proactive approach can reduce the flow of "dupe" goods into the U.S. market.

Marketing and Consumer Education

- **Highlight brand authenticity and quality**
- **Highlight brand heritage**
- **Build emotional connection**

Creative Campaigns

- **Engage directly with dupe culture**
- **Collaborate with influencers**
- **Turn trends into marketing opportunities**

Innovation and Differentiation

- **Invest in unique products**
- **Maintain high quality**
- **Enhance customer experience**

Key Takeaways

- **Dupes are both a threat and an opportunity**
- **Legal + marketing strategies are essential**
- **Adaptability is critical**
- **Authenticity remains the strongest differentiator**

Hosts of *The Beauty Law Glow-Up*



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