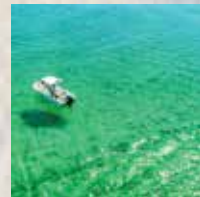


Rough Notes[®]

A supplement to the June 2023 issue of Rough Notes magazine



FLORIDA SPECIAL REPORT 2023



STAYING ON THE SUNNY SIDE OF COSMETICS

Florida poses unique risks to cosmetics manufacturers that require thoughtful, preventative strategies for success

By Sean Brownyard

From extreme temperatures to frequent legislative changes, there is plenty of risk in the state of Florida challenging businesses, and cosmetics manufacturers are no exception.

Some of the top risks cosmetics manufacturers face in the sunshine state are mirrored nationally, though some have their own unique Florida-related considerations.

Legislatively, in 2021, Florida Governor Ron DeSantis signed SB 1966 into law, which, among other things, updated Florida cosmetic regulations. Specifically, it exempted certain individuals from the requirement of possessing a cosmetic manufacturer's permit.

While these individuals must follow certain requirements such as having less than \$25,000 in annual gross sales, having labels that meet U.S. Food and Drug Administration (FDA) requirements and only manufacturing innocuous products such as soaps and lotions, this legislation does open manufacturers to additional risk.

Without the need for a permit, individuals may become lax on certain protective or preventative processes, leading to potentially unsafe or mislabeled products. For those manufacturers operating under this law, it is important to ensure that they are not producing hazardous chemicals or unsafe products. While it may be an extra step, going through the process to obtain a manufacturer's permit can help ensure the firm is following all the right safety protocols and requirements.

Environmentally, Florida presents a host of unique challenges whether related to its heat, humidity, sunshine or extreme storms. These challenges take typical risks that many manufacturers face nationwide and exacerbate them in ways unique to the climate of one of our southern-most states.

Packaging. While manufacturers are focused on producing safe, high-quality products, they also have an obligation to ensure that they are packed in materials that will maintain the integrity of the product. For instance, if a product is not sealed correctly or stored in the right container, it could degrade, limiting its effectiveness and

potentially exposing consumers to unintended side effects. Aside from the risk of injuring a consumer, poorly packaged products might spill in transit, damaging the manufacturer's reputation in addition to exposing them to liability.

Such packaging issues can be exacerbated by Florida's distinctive climate. For instance, products usually stored in clear plastic or glass may break down more quickly when exposed to direct sunlight or increased humidity. When developing products to be sold in Florida, manufacturers should consider how they will hold up against such factors.

In diligently packaging and labeling products, cosmetics manufacturers can protect themselves against costly legal situations and maintain a strong reputation among consumers.

Labeling. Packaging aside, manufacturers also have an obligation to clearly label products with accurate depictions of any risks or side effects that may occur along with clear instructions for use. For instance, products meant for salon use only should be clearly differentiated from products intended for home or personal use. If a consumer were to purchase a product meant only for use in a salon, such as salon-grade bleach, and attempt to use it without fully understanding its uses, ingredients or potential side effects, the consumer could become injured. This opens the manufacturer to liability.

In Florida specifically, products need to be labeled clearly for any changes or side effects that may occur in direct sunlight, heat or humidity. Certain products such as face lotions, perms or hair dye may react with the

Florida poses unique risks to cosmetics manufacturers that require thoughtful, preventative strategies for success.

skin differently in such weather and cause adverse side effects and injury.

Similarly, sunscreen, an important product in the sunshine state, could be impacted by weather conditions. When developing sunscreen, it is important for manufacturers to ensure that the UV filters/absorbers are properly combined and stabilized, so that the SPF on the label of the bottle is correct.

Ensuring the stability of products and adding extra language to labeling may require extra time and steps within the product development process, but it will also help to protect manufacturers against additional risks they may face in states with sunny, warm climates.

National risks

There are some risks that cosmetics manufacturers will face regardless of the states in which they operate or ship their products. It is important for insurers to advise their cosmetics clients of these risks in addition to any geographically specific risks they may face to avoid costly claims and legal implications.

Record keeping. Manufacturers should be aware that consumers may open a case or a claim against them for a product that was purchased years ago in a number of states. For instance, in Florida, consumers have four years from the date of their injury to bring a legal case against a cosmetic manufacturer. Due to this possibility, it is important for manufacturers to keep an extensive library of records on all products sold. This library should include not only information on recalled products, but all products. Such extensive records can help cosmetics manufacturers build a stronger defense against potential lawsuits and in some instances prove that their product was not at fault for injury.

Communications. Accidents do happen, and despite manufacturers' best efforts, it is rare for an organization to completely avoid recalling a product. This is where proper communication comes into play. Manufacturers who have a crisis communications plan in place will rebound more quickly

and may prevent larger or additional claims as a result.

If an issue of concern involving a product develops, the crisis communications plan should provide clear steps forward using sample crisis scenarios established with the manufacturer, their communication and legal teams, and other relevant parties.

These scenarios within the plan often provide resources and guides, such as when and how to create a statement, what should go in the statement and to whom messaging should be sent. With the right preparation and plan in place, manufacturers can avoid expensive lawsuits, reputational damage or other issues.

Understanding Florida's risks

While diving into the cosmetics space in Florida can seem daunting, no industry is without its own risks. Fortunately, understanding the risks, being prepared and having the right partners can help. Be sure to find an insurance partner who fits your needs and can both help to mitigate risks and move claims quickly when accidents happen. ■



The author

Sean Brownyard is senior vice president of operations for the Brownyard Group, an insurance program administrator with specialty programs for select industry groups. Sean has nearly three decades of experience in the insurance space and has contributed to leading insurance publications as a highly regarded subject matter expert in the field. He can be reached at sbrownyard@brownyard.com.

