

Regulatory notes

Communicating With Customers About Fragrance Regulatory Changes

The effect of the Seventh Amendment to the European Cosmetic Directive and the California Safe Cosmetics Act on fragrance suppliers and customers

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While visiting a fragrance supplier earlier this year, the conversation turned to the challenges of communicating with customers about regulatory changes. In addition to exchanging information about what ingredients might be in a particular fragrance, these conversations frequently touch on the need for the customer to decide either to label or disclose the presence of a particular ingredient, or to reformulate. Regulations that require registration or record keeping are usually straightforward. The obstacles occur when regulations require labeling or disclosure to authorities of certain ingredients.

Two recent changes in the law have made this a challenge for the cosmetic industry. Neither the Seventh Amendment to the European Cosmetic Directive nor the California Safe Cosmetics Act requires reformulations of fragrances, but some customers have responded as though they do.

Seventh Amendment to the European Cosmetic Directive

The Seventh Amendment to the European Cosmetic Directive, published in March 2003, requires manufacturers of cosmetics to indicate the presence of certain allergenic substances in the list of ingredients if the substances are present above certain levels.

This regulatory change has created many challenges. Primarily focused on banning animal testing, the amendment led to the necessity of identifying certain ingredients on the label. Does this apply to any ingredient from any source? The answer is yes, to the consternation of essential oil suppliers.

Common misunderstandings: One misunderstanding is the typical belief that

the amendment *banned* these 26 so-called allergens. It did not. Some customers believe that the easy solution is to remove the ingredients. However, when a customer takes into account the wide use of these ingredients, the impact of reformulations on the fragrance and the administrative hassles, it seems much easier to label. Most companies arrive at this conclusion, but it usually takes time and a lot of communication with fragrance suppliers. Many suppliers have gone to the trouble of presenting both traditional and reformulated versions of products to help customers decide. In most cases, I am told, they choose to label.



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California Safe Cosmetics Act

The California Safe Cosmetics Act is the latest regulatory hurdle faced by the cosmetic industry. Technically, it is a legislative problem because the California Legislature passed the bill without any regulatory staff or guidance for implementation. The bill requires cosmetic product manufacturers to disclose to the

state (beginning in 2007) any products that contain ingredients identified as causing cancer or reproductive toxicity by authoritative bodies, including the National Toxicology Program, the US Environmental Protection Agency and California's Proposition 65. This is a disclosure bill, not a labeling bill. The disclosures are supposed to remain confidential, but customers should prepare for the worst whenever giving confidential information to the government.

There should be an ongoing dialogue between fragrance suppliers and customers to discuss these types of regulatory developments.

When to disclose: When should the presence of these ingredients be reported? They always should be reported when they are added deliberately to a product. But what if they are present from residual solvent use, or as a naturally occurring constituent of an essential oil? The statute clearly says that these do not need to be reported. However, some cosmetic companies are nervous about European-style off-the-shelf testing that could detect these substances. What will they have to fall back on if this happens? The industry needs an answer to this question.

The Need for Communication

The company that recently mentioned the challenges of communicating with its customers about regulations is fairly aggressive in product development collaboration. This probably means there are good, open lines of communication; however, it also creates more frustration when the fragrance customer appears to be overreacting by reformulating instead of simply labeling or disclosing.

What about ingredients restricted by one or more major customers? Why do companies take unilateral action? Arguably,

this undermines the strength of the fragrance industry's self-regulatory program. Customers who have concerns about the safety of a particular ingredient should bring it to the attention of the fragrance suppliers. They, in turn, should use the existing self-regulatory framework to consider restrictions that would apply to all users and protect all consumers.

There should be an ongoing dialogue between fragrance suppliers and customers to discuss these types of regulatory developments. A handful of fragrance companies are invited to attend cosmetic industry scientific meetings, but the meetings are brief and not always collaborative in nature. I believe that fragrance suppliers and customers alike should strive to work together to respond to regulatory challenges.

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