

Bird & Bird

Our top ten *trend*
predictions for 2024

UK cosmetics, beauty and fragrance industries



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Introduction

The cosmetics, beauty and fragrance sectors are competitive and demand flexibility and dynamism in light of changing consumer preferences, legal and regulatory developments, economic instability, political unrest, sustainability concerns, and technological innovations.

We're about to enter a new era of cosmetics, beauty and fragrance and what follows is our forward-looking trend projection for 2024. The key theme is that, despite persistent challenges, these sectors are expected to show more resilience in the years to come and, by 2027, the global beauty industry is expected to record over \$580 billion of retail sales, growing at 6 percent per year¹.

Retailers and other supply chain players in these sectors need legal advice that is properly tailored to support them in navigating the evolving market conditions. Part of giving full legal advice means constantly monitoring, assessing, and intimately understanding the industries in which we advise. Bird & Bird's Cosmetics, Beauty & Fragrance Group is expertly placed to provide such advice, drawing on its extensive knowledge of the Retail & Consumer sectors within its global network of lawyers.

1. Beauty, The State of Fashion (May 2023). The Business of Fashion and McKinsey & Company.



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the *conversation*.

Sporty synergies

Overlaps are developing between the sports and beauty worlds - both industries attract high-spending consumers so it makes sense to cross-over to find customers in both. Two main themes are expected to progress in 2024:

First, greater synergies are growing between cosmetics brands and ambassadors in the sporting worlds. Many brands seem keen to pivot to collaborating with athletes who are often perceived as trustworthy alternatives to other 'celebrities'. Brands are fast-learning that, when working with influencers, everything they've ever said and every brand they've ever endorsed can be found online (if you don't find it, your customers will). If not drafted properly, influencer contracts can be complicated to enforce and/or terminate when things go awry. It is unsurprising to see companies being more cautious in their selection of brand affiliates in the first place (choosing someone who aligns with the reputation and values of the brand is important). Further, we predict greater care to be taken in ensuring that proper contractual protections are in place to enable brands to exit a relationship unscathed when needs be.

Secondly, small and large beauty brands alike are creating (or are adding to) sport-focused product lines. Generally, these fall into categories of: (a) (allegedly) performance-enhancing solutions (such as sports supplements); (b) cosmetics that promise to last throughout your sport of choice (e.g., waterproof); and (c) post-workout recovery regimes and routines.

In respect of (a) and (c) in particular, and to avoid scrutiny by regulators, brands need to avoid making medicinal or physiological claims (e.g., "re-builds your muscles post-workout") where a cosmetic claim is more appropriate (e.g. "soothes tired muscles post-work-out"). As regulators continue to crack down on companies in this area, consumers can expect to see fewer unsubstantiated claims throughout 2024, which in the long term should enable greater trust in the claims that are ultimately advertised. The marketing of sports supplements should be approached with extra care, as these may end up being controlled under regulation as medicinal products (this is dependent on a number of complex factors, but should always be assessed properly with legal support).

Tele-dermatology services

Platforms exist where a customer can send a photo of their face or other areas affected by potential dermatological conditions, and with the assistance of AI, questionnaires, or otherwise, dermatologists are able to assess the potential condition and suggest or “prescribe” a skincare regimen that might include prescription-only medicines (in addition to other cosmetic products).

We expect to see regulators in 2024 clamping down on the types of services that offer the prescription of medicines or the provision of healthcare/dermatological services where the service provider might not have the required regulatory/professional approvals (e.g. non-registered dermatologists or healthcare practitioners who cannot offer dermatological/healthcare services, and should be limited to providing cosmetic-only services).

Platforms might also take the opportunity to promote their own services and products to customers during their experience. The promotion of any services and products may further be specifically regulated, depending on a number of factors, including the specific nature of the services and products (e.g. prescription-only medicines may not be advertised to the general public).



Mummy motivation

Many cosmetic and beauty products, particularly those with innovative and active ingredients, are not recommended for use by those who are pregnant, breastfeeding and, increasingly, trying to conceive. There are some ingredients that are known to be harmful when consumed and/or absorbed. Outside of the 'known' category, there are other ingredients for which the risk to an unborn child or nursing child is largely 'unknown' (i.e. unproven). Companies are often, unsurprisingly, unwilling to trial products on those who are pregnant or nursing due to the risks involved and, therefore, the safety claim cannot be proven and thereby made. As a result, those who are pregnant or breastfeeding often find that their choice of cosmetics and beauty options is greatly narrowed.

Outside of family planning concerns, other consumers in general are becoming more inquisitive and selective about the ingredients they are comfortable using topically. There is an increased curiosity in learning: (a) what ingredients are in products and (for actives) in what percentages; (b) what effect these ingredients purportedly have both short- and long-term; (c) whether or not they contain any known allergens or irritants; and (d) of any other potentially harmful effects. As a result, there is a growing movement towards avoiding any ingredients where there is any uncertainty, and doing "product swaps" for alternatives that claim to have a similar cosmetic effect but raise fewer concerns.

Due to the increasing appetite for product swaps, we predict an increase in marketing aimed at those who are either in the process of growing their families (be that trying to conceive, pregnant or nursing) or otherwise making personal choices to avoid particular groups of ingredients through an abundance of caution. Any marketing claims that one ingredient is a "safer" option when compared to another would need to be substantiated on two levels – first to show that the alternative product is indeed proven to be safe (including for the user group concerned which may be a high-risk group) and secondly to show that the original product should actually be avoided due to it being unsafe. Without firm substantiation, these comparative safety claims are likely to put a company on thin ice from a legal and regulatory perspective.

CMA consumer protection crack down

During 2023, the UK's consumer protection authority (the Competition and Markets Authority, or "CMA") has been actively investigating a number of companies where it has reasons to suspect or believe that there are breaches of consumer protection legislation and guidance.

At present, the CMA can enforce consumer law through the courts, and where appropriate, seek additional measures to improve consumer choice, drive compliance with the law, or secure redress for consumers. However, this is about to change. The Digital Markets Competition and Consumer Bill is currently passing through parliament and, when it passes, it will enable the CMA to impose fines directly (without needing court approval) for non-compliant traders. The fines can be up to 10% of global group turnover for certain consumer law infringements; so this significantly changes the enforcement landscape.

In other words; ensuring that you are compliant with applicable consumer protection legislation is more crucial than ever.



Cleaning up greenwashing

2024 promises a continued (and wider) clean-up of greenwashing. We know that the CMA is actively investigating a number of companies who have been making (allegedly) unsubstantiated green claims and recyclability claims in relation to products and packaging, including some who crossover into the toiletries sector. Further, the UK's Advertising Standards Authority ("ASA") is promising to continue with their focus on climate change and the environment, including by significantly increasing the volume of its advertisement monitoring and reviewing activities by using AI. The ASA reportedly anticipates processing 10 million ads through its AI Active Ad Monitoring system² next year. In addition, the ASA has updated its guidance on misleading environmental claims and social responsibility in advertising. Importantly - it has added a new section on 'green disposal' claims and announced that in 2024 it will ramp up its enforcement work to target businesses that are putting out ads that are in breach of the rules.

2. Read more here - asa.org.uk/news/our-active-ad-monitoring-system

Overall, the enforcement priority in 2024 will be across all green claims including:

- A. the use of generic terms such as 'sustainable', 'natural', 'green' or 'eco';
- B. imagery, colour schemes and/or designs on packaging that mislead consumers into believing that something is more environmentally friendly than it really is; and
- C. packaging disposal claims such as "100% recyclable / biodegradable / compostable".

Companies must be prepared to substantiate their claims in order to avoid trustwashing consumers; this may necessitate a different advertising and marketing strategy for some in 2024.

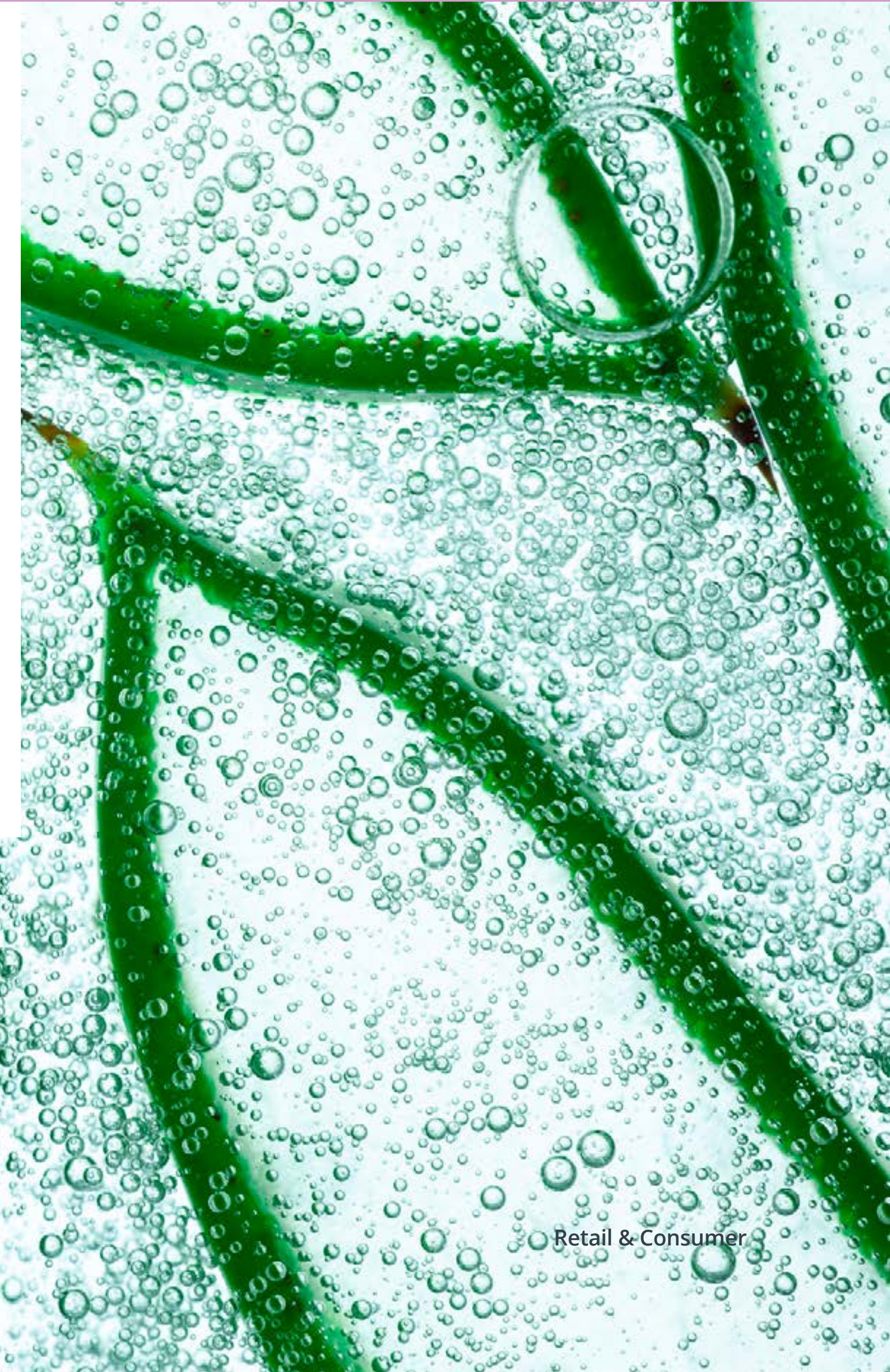
Inside : outside beauty

The wellness trend lives on and it isn't slowing down. Addressing gut health, stress, anxiety, and "inside" health is shown in many studies to improve our "outside" health i.e. hair, skin, nails and overall beauty. Further, consumers are reportedly spending more time exploring (and investing more money into) meditation, reiki, energy healing, sensorial therapy and other well-being practices.

Cosmetics, beauty and fragrance brands are leaning in. We can expect to see more fragrances that focus on aromatherapy benefits, supplements-supplements-and-more-supplements, nootropics, adaptogens, products that are novel in their delivery system and therefore create curiosity and enjoyment, and also products that are sold as part of a holistic self-care ritual.

Even Pantone's colour of the year for 2024, which has been announced as "Peach Fuzz" (PANTONE 13-1023), seems to validate the continuing trend of wellness and self-care. The colour has a theme of "embrace the warmth" and is described as being a colour that "captures our desire to nurture ourselves and others... It's a velvety gentle peach tone whose all-embracing spirit enriches mind, body, and soul." We're expecting to see lots of peachy tones in colour cosmetics but also packaging and marketing campaigns across the board.

Walking a fine line; brands need to take caution with their claims in the Wellness space. Whilst consumer research statistics suggest that consumers are interested in and willing to spend more on products with mood-boosting properties, there are obvious legal risks with making claims that products go further than being cosmetic or enhance general wellbeing, for example to claim that they are medical-grade and/or will improve your physical, emotional or mental health. In the UK and the EU there is a different risk profile when making a cosmetic claim versus a medical claim (i.e., that a product can treat or prevent a medical condition), with the latter opening up a business to medicinal regulatory red tape and (in some cases) the need to obtain necessary regulatory approvals from the relevant medical and/or healthcare regulators.



Storefront successes

Despite retail rental costs remaining high (especially in big cities), and online shopping remaining a popular alternative to in-store shopping, many beauty stores are thriving. In London, you only need to look at the constant queues outside of Sephora (in both Westfield shopping centres) and the Glossier flagship (Covent Garden) to see that beauty boutiques are booming. 'Boots Beauty' has also recently opened in a new 11,200 square foot space at Battersea Power Station. These storefronts highlight a big investment in both multi-brand and mono-brand physical stores, but also the consumer's desire to have the choice to shop across both online and in-person doors.

Preferred routes (other than e-commerce) for smaller and independent retailers with smaller budgets could be:

- A. contracting for concessions / traditional beauty counters in larger successful department stores, where individual brand overheads will be lower than opening and operating a mono-brand location;
- B. renting out pop up shop locations which seem to demonstrate good sales numbers and increased brand awareness even over short-term campaigns; and
- C. collaborating with hotels (for example, contracting to stock in-room and/or on-premises spas and salons).



EQ services

Many women's salons already use "safe word" systems, meaning, you can let the staff know that you need help outside of the aesthetic services by ordering something specific. For example, if you order an "angel cut" or "special layers" the salon will know that you need the assistance of either a law enforcement officer or of a medical nature. There are many stories in the news and on social media that show how salons are can be used as a safe zone to protect women from human trafficking and domestic abuse situations.

This trend is now growing into barbershops and other male-centric grooming locations. Many service providers are training and coaching their staff to provide a more emotionally-aware experience. The training could include, for example, upskilling active listening techniques, observing nonverbal cues and body language, and having greater knowledge of resources in the surrounding community that the customer may want to be connected with. This is promising news, given the UK's Office of National Statistics reported that in 2021 around three-quarters of suicides were males. The barbershop in particular seems to be a valuable space to develop the service, since studies show that men tend to be loyal to one barber and also that (akin to unisex or female-centric salons) barbershops are frequently seen as a place to open up and discuss topics that you might not have the time or space to raise elsewhere.

These services are usually offered with the best of intentions, but brands will need to train and support their staff to deliver these services effectively and safely. Providing this kind of support (and any related threat or harm to the client or staff member) may be distressing and could have an impact on staff mental health and team morale. From a legal perspective, there may be a risk of personal injury claims and constructive dismissal claims associated with such services, if the employer has not provided sufficient training or support to staff who provide these services and they suffer mental illness as a result. Employers may also find themselves vicariously liable for their employees' advice / actions (and/or any associated consequences).

Employers should implement policies and reporting structures, and provide training and support to staff providing these services so that they understand what action or advice is appropriate and when and to whom to escalate concerns. Employers should also consider whether it is appropriate for all staff members to provide such services, or just employees / certain staff members. In some cases, staff members may be engaged as workers or independent contractors rather than employees – employers do not have the same level of control over genuine workers and independent contractors, and treating all staff in the same way may create misclassification risk which could have both employment law and tax consequences.

Tenacious tech

We know that Artificial Intelligence (“AI”) and Augmented Reality (“AR”) are already being used at many levels of the supply chain:

- A. manufacturers in cosmetics and Noses in fragrance are reportedly exploring how ChatGBT-style-tools can draw up innovative formulas and juices;
- B. marketing teams use AI such as ChatGBT to write copy for their websites and ads; and
- C. consumers show interest in exploring AR on brand websites to “try on” makeup and new hairstyles, at home, using just their laptop or phone camera. Many shoppers report that an AR function gives them more confidence in purchasing something without having seen it in-store.

So far, these use cases have created upfront human-time-cost savings for brands as well as (reportedly) reducing negative environmental harm (in particular, by reducing the volume of product returns in categories where there was previously no “at home try on” option).

In 2024, the use of AI and AR will continue to escalate. Some key aspects to keep in mind are as follows:

1. A greater focus will shift to what brands are doing with the data that they obtain through using these technologies. The data can be valuable to enable companies to analyse household spending habits, lifestyle, environmental influences, and genetic information. All of this information enables brands to offer more personalised and accurate purchasing recommendations, but online sales recommendations can also trigger compliance obligations under the Digital Services Act (especially with regard to the use of sensitive data or marketing to minors).
2. Overall, the AI regulatory environment is shifting quickly and it will remain critical for companies using AI/AR/new technological innovations in their products/services to stay abreast of changing and diverging rules. This applies for example when AI-systems are used in relation to potentially regulated products, such as toys and medical devices. However, whatever the product, regulation will be relevant, in particular in relation to data protection, privacy and IP and platform regulation. Additionally, what should not be overlooked is regulation applying when AI-systems are used for purposes which will be regulated, such as interaction with customers, and internal purposes such as recruitment and HR.
3. Cosmetics companies offering connected products to consumers will not only have to navigate the incoming compliance demands of the AI Act, but also prepare for the EU Data Act which will apply from 2025. In this context, companies should consider changes to product design, manufacturing and information requirements to comply with the new “data access by default” rules, and taking steps to identify any trade secrets that should be protected in light of the new data sharing obligations.


ECTOIN excitement

Every couple of years we see a new “hero” ingredient that we have heard little to nothing about entering the beauty market. All of a sudden, it flies into products left, right and centre. For 2024, we predict this product to be ECTOIN.

ECTOIN is an amino acid derivative that is being touted by dermatologists globally as an effective hydration agent with antioxidant properties that will protect the skin against environmental stressors. In some ways, this could be seen as the new-to-the-scene cousin to niacinamide and hyaluronic acid. There are claims that this product can promise you almost anything: hydration and reduced transepidermal water loss, UV radiation / pollution protection (although since it’s not an active UV filter, it may not be credited as an SPF), anti-aging and line reduction, skin texture and elasticity improvement, inflammation soothing, and skin barrier repair. Reportedly, it plays well with other ingredients so is relatively safe to add into any skincare regimen and can be used by almost all skin types (although, unsurprisingly, it is not being recommended for use by those pregnant or breastfeeding).

The issue with ingredient booms is that once they hit the headlines, any retailer that is not already formulating and manufacturing with that ingredient may fall behind that quarter or that year. One of the key takeaways that we learned from our brand clients in 2023 was how much they rely on watertight contracts with manufacturing teams that can create first (or fast) to market concepts, even with new ingredients, within a flexible production plan and with scalability on demand.





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We are proud to offer a free 30 minute consultation to businesses in the Cosmetics, Beauty and Fragrance industries -

Please contact us to arrange a time to discuss

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Acknowledgements

The authors would like to thank our colleagues as follows for sharing their insights and foresights in the preparation of this report:

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Hester Borgers Associate, Intellectual Property, Amsterdam

Amy Cole Associate, Retail & Consumer (with specialist knowledge in Consumer Law), London

Shona O'Connell Senior Associate, Retail & Consumer (with specialist knowledge in Consumer and Advertising Law), London

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