

Retail Therapy

NY Trend Predictions

2024

Transcript of 1.0 Retail Therapy NY Trends Predictions

Speaker	Details/Event/Content
Nicola Conway	Hello and welcome to Bird & Bird's Retail Therapy podcast where we explore the trends, changes and legal aspects of the retail and consumer industries. I'm Nicola Conway and I'm a senior associate in Bird & Bird's Retail and Consumer Team.
Sana Malik	I'm Sana Malik, I'm a trainee solicitor also at Bird & Bird. In today's episode we're going to discuss Bird & Bird's top ten trend predictions for 2024 in the UK cosmetics, beauty and fragrance industries.
Nicola Conway	Before we get started, we need to mention we are lawyers, but a lot of our guests won't be and, in any event, this podcast is intended to be an open forum for conversation. It does not and is not intended to constitute legal advice. If you do want any legal advice, just reach out to us or your usual Bird & Bird contact. We are always happy to support you and your business however we can. Let's get into this episode.
Sana Malik	We are about to enter a new era of cosmetics, beauty and fragrance, and we have published a paper that sets out our forward-looking trend projection for 2024. Today we are going to run through some of those key takeaways. The overarching positive note is that these sectors are expected to show more resilience in the years to come and by 2027 the global industry is expected to record over \$580 billion worth of retail sales, growing at 6% per year. That's a statistic from McKinsey and Company's paper <i>Beauty; the State of Fashion</i> which was published in May 2023.
Nicola Conway	What's amazing is, that level of consistent and significant growth is predicted despite these industries continuing to push up against so many persistent challenges, like change in consumer preferences, legal

	<p>and regulatory landscape developments, economic instability, political unrest, sustainability concerns, technological innovations and so much more. So, let's run through our list of trends.</p> <p>The first trend is CMA consumer protection crackdown. The UK's Consumer Protection Authority is the Competition of Markets Authority or the CMA, and during 2023 they have been actively investigating a number of companies where they have reason to suspect that they have been breaching Consumer Protection Legislation. In 2024 we expect to see much, much more of this. This is important because the backdrop is that the CMA is about to have new fining powers. They will be able to directly fine traders who are breaching Consumer Protection Legislation and the fines can be up to 10% of global group turnover for certain levels of consumer law infringement. So, these fines could be huge. The enforcement landscape is about to significantly change. In other words, it is more important than ever that you are compliant with Consumer Protection Legislation.</p>
Sana Malik	<p>The second trend is cleaning up, trust washing and green washing. This new year promises a wider clean-up of green washing, and companies must be prepared to substantiate their green claims in order to avoid green washing or trust washing consumers. This may necessitate some changes to your current advertising and marketing strategies. We know that the CMA is actively investigating a number of companies who have been making allegedly unsubstantiated green and recyclability claims in relation to products and packaging, including some in the toiletry sector. We also know that the UK's Advertising and Standards Authority is using AI to significantly increase the volume of its advertisement monitoring activities, so it will be thin ice for any traders who haven't already cleaned up their ads.</p>
Nicola Conway	<p>The third trend is tele-dermatology services. We've all seen these platforms where a customer can upload a photo of their face or some other bodily area affected by a potential dermatological condition, and with the assistance of AI and questionnaires, the dermatologists are then able to assess the potential condition and suggest a skincare regimen that might include prescription only medicines in addition to other cosmetic products. We expect to see regulators this year clamping down on the types of services that offer dermatological services or other prescription level medicines in circumstances where the service provider might not actually have the required regulatory or professional approvals to do so. For example, they will be going after nonregistered dermatologists or healthcare practitioners who should only be providing cosmetic services but who are overreaching.</p>
Sana Malik	<p>The next trend is sporty synergies. Overlaps are developing between the sports and beauty worlds and the two main themes are expected to progress in 2024 are:</p>

	<p>Firstly, we expect cosmetic brands to work with more ambassadors in the sporting world. Brands are learning fast that when working with influencers everything they've ever said and every brand they've ever endorsed can be found online, and if you can't find it, your customers will. Also, if not drafted properly, influencer contracts can be complicated to enforce and terminate when things go wrong, so we expect to see many brands choosing more carefully to collaborate with athletes instead of other celebrities as they seem to be viewed as more trustworthy in many ways.</p> <p>Secondly, small and large beauty brands alike are creating or adding to sport focused product lines. Generally, these fall into categories of:</p> <ul style="list-style-type: none">a) Allegedly performance enhancing solutions, such as sports supplements;b) Cosmetics that promise to last throughout your sport of choice e.g., waterproof; andc) Post workout recovery regimes. <p>We talk in our paper about how brands need to avoid making medicinal or physiological claims. For example, 'this product rebuilds your muscles post workout' where a cosmetic claim is more appropriate. For example, 'this product soothes tired muscles post workout'. Also, the marketing of sports supplements can be approached with extra care as these may end up being controlled under regulation as medicinal products. This is all important to be aware of to avoid the scrutiny of the regulators and we are seeing regulators continue to crack down on companies in this area.</p>
Nicola Conway	<p>The fifth trend is mummy motivation. Many products with innovative or active ingredients aren't recommended for use by those who are pregnant, breastfeeding or increasingly trying to conceive. This is sometimes because the ingredients are known to be harmful, and other times because it's simply not known either way whether they would be harmful or not because they've never been tested on pregnant women. Even outside of family planning concerns, lots of people are generally becoming more selective about the ingredients that they're comfortable using topically. Because of this, we're expecting brands to start marketing more product swaps. So, for example, a brand might say, "look it might not be safe for you to use retinol if you're pregnant, but why don't you try our niacinamide serum which is much safer and it's just as effective?" Putting the legal hat on for a second, brands need to be very careful when making any marketing claims that one ingredient is a safer option when compared to another. These sorts of claims would need to be substantiated on two levels. First, to show that the alternative product is indeed proven to be safe for the intended user group which may be a vulnerable group. Secondly, to show that the original product must be avoided because it really is unsafe, and neither of those are straightforward claims to substantiate.</p>

Sana Malik	<p>The sixth trend is inside-outside beauty. So, the wellness trend lives on and it isn't slowing down. 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. Also, products that are sold as part of a holistic selfcare ritual. Brands need to just take caution with their claims in the wellness space. 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.</p>
Nicola Conway	<p>The seventh trend is storefront successes. Retail rental costs remain high, especially in big cities and online shopping remains a popular and convenient alternative to in person shopping. However, we're still seeing beauty stores thriving. In London, you just have to look at the constant queues outside of the Sephora's in the Westfield centres or the new Boots Beauty in the Battersea Power Station to see that beauty boutiques are booming, and brands are seeing the benefits of continuing to meet their customers both online and offline. But for smaller or independent retailers who may not have the budget to open their own store, some other routes to explore may be having a concession or beauty counter in a popular department store. Obviously, overheads there would be lower for the brand than opening and operating their own location. Or, renting out pop up shop locations. These continue to demonstrate really good sales numbers and increased brand awareness even over shorter-term campaigns, and collaborating with hotels which is more popular than ever. So, for example, contracting to stock the in-room toiletries or on premises spas and salons.</p>
Sana Malik	<p>The eighth trend is tenacious tech. So, we already know that AI and augmented reality are being used at many levels of the supply chain. Some examples of this are:</p> <ul style="list-style-type: none"> a) Manufacturers in cosmetics and noses in fragrance are reportedly exploring how ChatGPT style tools can write innovative formulas. b) Marketing teams use AI such as ChatGPT to write copy for their websites and ads. 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. <p>So far, these cases have created upfront human time cost savings for brands as well as reportedly reducing negative environmental impact. In particular by reducing the volume of products returns in categories where there was previously no at home try on option.</p>

	<p>In 2024, the use of AI and AR will continue to escalate. New rules are coming in and some laws are diverging, and brands need to stay on top of legal compliance. Overall, brands should be especially conscious of regulators watching what they are doing with the data that they obtain through using these technologies.</p>
<p>Nicola Conway</p>	<p>The ninth trend is EQ services. We see loads of stories in the news and on social media that show how women's salons use safe words to protect women from human trafficking and domestic abuse situations. So, for example, if you go to your hairdresser and you order an 'angel cut', presuming your salon uses that safe word, the staff will know that you need help from either a police officer or a doctor. It's great to see that this trend is growing into barbershops and other typically male centric grooming locations. Many barbershops are now training their staff in active listening techniques, observing nonverbal cues and body language and being ready and prepared to refer the customer to support and resources in the surrounding community. But whilst these services are offered with the best of intentions, they do come with some legal risk. As an employer, when you ask and train your staff to provide these kinds of services, sadly there may be a risk of personal injury claims and other employment related claims if your employees themselves suffer, for example, mental health harm as a result of helping the customers. Also, employers may find themselves vicariously liable for their own employees' advice. So, whilst these services are great and long may they continue, if you are wanting to introduce these into your workplace you should take some legal advice at the start to protect your employees and to protect yourself as the employer too.</p>
<p>Sana Malik</p>	<p>The tenth and final trend is Ectoin excitement. Every couple of years, we see a new hero ingredient that we've heard little to nothing about entering into the beauty market and then 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's being touted by dermatologists globally as an effective hydration agent with antioxidant properties that will protect the skin against environmental stressors. The issue with ingredient booms is that once they hit the headlines any retailer that isn't 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 create first or fast to market concepts, even with new ingredients within a flexible production plan and with scalability on demand. It's really important to have those in place in good time.</p> <p>So, that's the whistle stop tour of Bird & Bird's top ten trend predictions for the UK's cosmetics, beauty and fragrance industries. If you'd like a</p>

	copy of the full paper just reach out. We're very happy to share the paper and continue the conversation.
Nicola Conway	Let's close the episode with a fun light little question. Sana what is something that you've purchased recently that you love?
Sana Malik	Okay so, recently I did buy the Haruharu Black Rice Hyaluronic Toner which is just incredible. So, the idea behind it is that black fermented rice is used to gently exfoliate dead skin cells and it seemed to be slightly more gentle than using a hard-hitting acid, but it does combine hyaluronic toner which means you kind of get that glassy Korean trendy skin that everyone is after at the moment. So, I would say that's my kind of hero product that I've bought recently. Nicola what about you? What's something that you've purchased or gifted that you've just loved?
Nicola Conway	First of all, I'm adding that to my shopping list immediately! I was gifted for Christmas the Beauty Pro warming eye masks.
Sana Malik	So amazing!
Nicola Conway	I'm notoriously a really bad sleeper and these are amazing. They're just like slightly warming, completely blackout eye masks. They're just really comforting. I've actually tried warming eye masks from other brands and I found them to be too hot and not particularly comfortable, but these ones I love.
Sana Malik	That sounds incredible Nicola. That's definitely going to be on my shopping list too! We all need help with our bags and eye areas, so absolutely. All right, that's the end of our episode. We'll be back soon with our perspective into the retail and consumer industries, and we hope to see you there soon.

Thank you

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