



Balancing Innovation and Transparency: Navigating Trade Secrets, Sustainability, and Regulatory Challenges in the Cosmetic Industry.

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Abstract

The cosmetic industry represents a convergence of consumer safety, regulatory compliance, and the protection of trade secrets. Ingredient labeling is a matter under contention, with growing pressures mounted on cosmetic companies concerning transparent disclosure of the contents of their products against the backdrop of protecting their proprietary formulation. The Drugs and Cosmetics Act of 1940 and the Cosmetics Rules of 2020 in India and other regulations, such as the Fair Packaging and Labeling Act of 1966 in the U.S., provide a framework that stresses the ingredients' disclosure for consumer protection yet remains an area of concern for brand owners aiming to protect their trade secrets. This study investigates the precarious equilibrium between regulatory ingredient transparency and the business demands for trade secret protection that are prevalent in the cosmetic industry.

This study examines the legal aspects of ingredient labeling under these laws to the extent that they bear upon manufacturers compliance with disclosure requirements while enabling maintenance of competitive advantage. Secondly, this study will analyze the difficulties that companies encounter in disclosing names of ingredients without risking exposure of proprietary formulations, with possible consequences for non-disclosure. Its analyses will also encompass ethics in relation to consumer trust, informed choices, and public health.

This research aims to focus on how complex and difficult it could be to balance the concept of legal obligation with business interests by comparing regulatory frameworks, discussing case studies, and conducting industry surveys. It will analyze some of the proposed reforms to labeling regulations to ensure that they are more transparent while at the same time not impairing intellectual property protection. This paper will foster the debate on fair labeling practice and provide guidance for the regulatory bodies, manufacturers, and consumers. It ultimately seeks to come up with a more harmonious solution, balancing consumer safety and business interest from the cosmetic industry perspective.

Keywords- Cosmetic Industry, Trade Secrets, Innovation, Transparency, Sustainability.

Introduction

The last decade has seen a steady rise in personal care and cosmetics in India, mainly due to the increasing number of boutiques and retail outlets. Valued at USD 6.5 billion, the market is expected to touch USD 20 billion by 2025, growing at a Compound Annual Growth Rate of 25%¹. The segments are anticipated to grow as India will be one of the top five cosmetics markets globally and include skin care, hair care, oral care, fragrances, and color cosmetics. While Indian consumers increasingly turning to specialized products, such as organic, herbal, and ayurvedic cosmetics. With consumers upgrading from basic products to high-end lifestyle items, demand for high-end goods continues to rise. Multinational giants have seen the Indian market as an opportunity, leaving no stone unturned in the competition. Yet India's ayurvedic and herbal products continue to dominate. Attractiveness and potential of India would be its huge population, increasing disposable income, and growing considerations in personal care².

Expansion of the beauty and personal care (BPC) market in India is more rapid than ever and is truly experiencing a metamorphosis due to the changing consumer trends and perceptions. From being the fourth-largest market in the world for BPC with abundant revenues, the Indian BPC market is likely to continue on its fabulous journey, predicted to attain a whopping USD 34 billion by 2028. The perception of beauty has changed to a greater degree; the poise and glamour that were once reserved for special occasions are now considered a part of living. Beauty and personal care, therefore, are part and parcel of daily routines, with an increasing number of consumers seeking products that fulfill both functional and aesthetic needs. Thus arose the demand for products across a wide arena-from skin care and hair care to specialized makeup-giving new meaning to an old saying about the holistic approach to personal care³.

Wellness and self-care awareness is further driven by lifestyle changes, rising disposable incomes, and awareness of wellness and self-care. The presence of social media and digital marketing has made consumers more well-informed than ever about their choices in beauty. Another important contributing factor to the market momentum includes rising middle-class incomes in India, urbanization, and increased awareness of organic and natural products.

The most important issue in the cosmetic trade in India is the lack of any specific provisions under the trade secret status for the cosmetic ingredients. The cosmetic industry has grown so much in recent times and yet very little has been defined in terms of clear regulations to protect proprietary formulations used and commercial exploitation of their trade secrets easily possible. Basically, these companies are in the game because they have unique and different formulations as an edge over their competitors. However, this unique technology is within the purview of legal protection and is copied or disclosed, thereby disallowing a lot of innovations and investments within the industry. It is paramount to strengthen the intellectual property offerings within the regulatory framework in India with a view to promoting the sustenance of the industry

¹ IBEF. (n.d.). *Growth of the cosmetic industry in India*. India Brand Equity Foundation. Retrieved April 8, 2025, from <https://www.ibef.org/research/case-study/growth-of-the-cosmetic-industry-in-india>

² *Ibid.*

³ Statista. (n.d.). *Beauty industry in India*. Statista. Retrieved April 8, 2025, from <https://www.statista.com/topics/5039/beauty-industry-in-india/#topicOverview>

while at the same time affording transparency to the consumers but protecting the necessary competition innovations.

This paper addresses the research question of how cosmetic companies can adequately juggle innovation vs. the necessary level of transparency with the continuous development of regulations? In particular, the study analyzes how companies might internally protect their proprietary information without conflicting with ingredient disclosure laws and sustainability practices, particularly within those regions that have different regulatory frameworks in place. This paper will also look into highlighting regulatory issues confronting cosmetic companies.

The Drugs and Cosmetics Act of 1940

The Drugs and Cosmetics Act of 1940⁴ is one of the major statutes in India intended to import, manufacture, distribute and sell drugs and cosmetics in the country. The primary aim of the Act is to protect public health, which is done through ensuring safe, effective, and quality drugs and cosmetics. The Act has regulatory bodies such as the Drugs Technical Advisory Board⁵ and the Central Drugs Laboratory⁶, which oversee the implementation of standards and guidelines for the Act. It has explicit rules regarding the import and manufacture of cosmetics, stating that such products should adhere to the prescribed quality standards, be free from misbranding, adulteration, and spurious substances, and be protected from being manufacturing or imported in the country. Also, it gives power to the government to prohibit certain detrimental drugs and cosmetics from manufacture and sale in the interest of the public at large.

Almost nothing is without its loopholes even if said to be comprehensive, so is the Act. One of the many facts that give place to concern is that the Act does not deal with the aspects of specific provisions regarding trade secret protection for cosmetic formulations. In absence of clear laws on this matter, proprietary formulas become subject to commercial exploitation as companies are not adequately protected against unauthorized use of their secret ingredient, or disclosure thereof. This not only bounds the abilities of businesses to drive competitive advantage but also discourages innovation and leads towards unfair market practices.

Besides that, the Act does not fully meet the reception demands for organic and natural cosmetic products which are highly demanded in India. It offers some guidelines on quality and safety, however, regulation of herbal and Ayurvedic products is inconsistent and far removed from international standards such that it also does not inspire consistency in enforcement. Besides that, as the Act regulates the sale and distribution of drugs and cosmetics, in most cases, enforcement is weak, and penalties are not always exemplary. All these gaps create a background for a stronger and modern regulatory framework so that cosmetics in India can ensure a better future for sustaining growth without compromising consumer interests and innovation in business.

⁴ Act No. 23 of 1940 (India).

⁵ Act No. 23 of 1940, Sec. 5, Chp II (India).

⁶ Act No. 23 of 1940, Sec. 6, Chp II (India).

A cosmetic is a product intended to cleanse, beautify, enhance attractiveness, or alter the appearance of the human body, such as creams, lotions, perfumes, or hair-care products. An item can be said to be cosmetic if it meets three criteria: one, it has a purpose of beautifying or changing the appearance; it is not pharmaceutical, meaning it should not treat diseases; two, it should be applied externally: that is it should be rubbed, sprayed, or sprinkled in the body; and three, its composition should consist of ingredients that improve aesthetic qualities without affecting the function of the body. These three criteria ensure that cosmetics serve only for the beautification of externals and, hence, draw a dividing line between cosmetic products and therapeutic agents⁷.

The Cosmetics Rules 2020

The Cosmetics Rules 2020⁸ are a whole new set of rules framed under Drugs and Cosmetics Act of 1940 for the import, manufacture, sale, and labeling of cosmetics. Cosmetologists will be introduced to key terms like "authorised agent," "manufacturer," import registration certificate and will have duties assigned to central and state authorities responsible for licensing and enforcement. Furthermore, these rules also make provisions for registration relating to the import of cosmetics in the country and receipt of relevant documents and due procedures. Manufacturing licenses must be drawn based on Good Manufacturing Practices specifying detailed technical requirements and facilities for testing and analysis aligned to Indian standards as established by the Bureau of Indian Standards (BIS). The rules stipulate also that the labeling must encapsulate important information regarding such products as expiry date and batch number and there shall also be provisions for suspension or cancellation of licenses for noncompliance. Examples of prohibitions include certain harmful materials from being used and animal-tested cosmetics after 2014 to suggest that it has an advanced approach to product safety and ethical standards.

However, there are gaps in these excellent provisions. The clarity in establishing online portals for the regulatory submissions is hazy, which might cause delays. The rules do not specify much for routine inspections, nor do they provide any guidance for accountability among inspectors, which is crucial for enforcement. The penalties regarding violation do not specify any punishment, other than license suspension or cancellation, and leave room for discretion. Central and state authorities may, at times, have overlapping areas of responsibility, which could lead to jurisdictional conflicts; in addition, it does not follow international cosmetic standards to the robustness that it should prevent obstructions in trade. Little attention is focused on awareness and training activities for representative stakeholders, which are basic elements of compliance. The rules are also deficient in provisions concerning safety mechanisms for consumers, being limited in referencing the scope of complaint handling or product recalls. Although animal testing is banned, there is no clear guideline on alternative testing methods complimentary to animal testing, thus causing ambiguity during implementation.

⁷ Sec. 3(aaa), Act No. 23 of 1940.

⁸ G.S.R. 763(E), dated 15.12.2020.

This loophole indicates the areas where there is a requirement for more clarity, greater harmonization with global requirements and reinforced provisions for consumer safety so that the Cosmetics Rules, 2020 may be made effective.

Fair Packaging and Labeling Act 1966

The primary purpose of the United States Fair Packaging and Labeling Act⁹ was to guarantee consumers correct information about a product using a standardized label. The Act strives to eliminate deceptive actions and impart to consumers vital information concerning the commodity they are about to buy in terms of quantity, content, and identity. The Fair Packaging and Labeling Act defines a label as written, printed, or graphic information closely associated to a consumer commodity or its packaging. The label serves as the primary basis of consumer information and provides for transparent communication of the product contained. Quite specifically, the label must carry information about the name and location of the manufacturer, packer, or distributor, and the metric and customary units of net quantity, so that it may provide for uniformity and the consumers' choice.

The Act further states that anything printed on the label shall be in large, legible type so that an ordinary consumer will easily find it and understand it. Most goods, except drugs, medical devices, and meat predicate regulated by law, fall under its ambit. FPLA has played a major role in consumer rights and protection, building a sense of trust between consumers and manufacturers by environmental labeling endeavoring smooth and consistent labeling for the consumer. Because of its very nature, FPLA requires periodic updating to address challenges that are modern-like misleading claims, sustainability disclosures, and requirements of the digital age.

Regulatory Challenges in the Cosmetic Industry

Indeed, the cosmetic industry faces a lot of difficult regulatory challenges born from ensuring public safety, a competitive market, and consumers ever-changing demands. Regulatory frameworks are important corners for ensuring product safety and transparency; however, they tend to pose challenges for manufacturers and stakeholders interested in innovation and growth. This is balancing the disclosure of ingredients with the need for trade secret protection. The requirement to label the ingredients, which is in the interest of consumer safety, created by Cosmetics Rules, 2020 in India or Fair Packaging and Labeling Act, 1966 in the U.S., will expose proprietary formulations and might undermine a competitive advantage for the organization. Another challenge is that there is no global harmonization of standards. Companies become participants in a tangle of regulatory frameworks when operating in multiple jurisdictions since there is a difference between the stringent cosmetics directives in the EU and India's relatively nascent regulations. These differences, besides causing difficulties in global trade, make compliance and mushrooming costs higher. There is a growing pressure on regulators to act about sustainability and ethics because of consumers demanding environment and animal-friendly products. However, a lack of clear guidelines on alternative testing methods or sustainable labeling adds to the whole complexity of the industry.

⁹ Fair Packaging and Labeling Act, Pub. L. No. 89-755, 15 U.S.C. §§ 1451–1461 (1966).

Low enforcement mechanisms and overlapping responsibilities between regulatory bodies pose a burden on even the operation of existing laws. In India, for example, it would be the inconsistency in their implementation of the Drugs and Cosmetics Act of 1940, worsened by the lack of routine inspections or clarity on inspector accountability. Innovations in cosmetic formulations, such as biotechnology or nanotechnology, are problems for regulators to keep pace with. The lag may stifle innovation or add to regulatory burdens. Another issue is consumer safety, where false claims and low-quality products easily prevail in the marketplace. Consumer protection from adulterated or misbranded cosmetics calls for better-monitoring systems with increased deterrent capability. The development of digital and e-commerce platforms has posed further regulatory challenges, especially regarding imported products and counterfeit cosmetics, making it more difficult to ascertain and ensure compliance with domestic laws relating to online sales.

Lastly, integrating traditional cosmetics, such as ayurvedic and herbal products, into the regulatory framework remains sporadic in markets like India. They often operate outside the strictest quality and safety standards. Addressing these difficulties would require a multi-pronged approach that considers, among others, the modification of existing regulations, harmonization of international standards, the establishment of better enforcement mechanisms, and improved collaboration among regulators, manufacturers, and consumers. By effectively tackling these challenges, the cosmetic industry should be able to protect consumer interests while spurring innovation and sustainability.

Recommendations for India Regarding Trade Secrets and Economic Espionage

Recommendation 1 - Amendment of the Cosmetic Rules, 2020

The Indian Parliament shall look into amending the Cosmetics Rules, 2020, to widen the scope of trade secret protection for cosmetic ingredients so that confidential formulations and proprietary production methods can be protected from unauthorized use or disclosure. Trade-secret protection provisions suitably drafted for this sector would provide an impetus for innovation and foreign investment.

Recommendation 2 - Enact an All-Encompassing Legislation on Trade Secrets

India does not have an independent law on trade secrets. It is time Parliament enacted a comprehensive statute that would define trade secrets, set out the standards of protection in clear contours, and lay down the remedies against misappropriation. Such statute should be compatible with global standards such as the Uniform Trade Secrets Act (UTSA) in the U.S. or the EU Trade Secrets Directive, and hence compatible with international trade practices

Recommendation 3 - Include Economic Espionage into Nurturing Security Frameworks

Economic espionage should find its mention in an unambiguous manner by national security legislation. The legislation should punish the theft of trade secrets with emphasis on violations of key industries such as pharmaceuticals, defense, and IT. This will deter both foreign and domestic actors from engaging in espionage actions detrimental to India's economic interests.

Recommendation 4 - Strengthen the Mechanisms of Justice

Specialized courts or fast-track mechanisms need to be set up to deal with the trade secret misappropriation cases efficiently. The courts should be empowered to grant injunctions, order the confiscation of materials obtained through misappropriation, and charge offenders with exorbitant amounts as penalty.

Recommendation 5 - Advocate for Non-Disclosure Agreements (NDAs)

The government must promote the use of NDAs and confidentiality clauses in commercial agreements. Otherwise, enforce them in their application under Indian law, for these should be the first line of countermeasure to help businesses shield proprietary information.

Recommendation 6 - Impart IP Awareness and Training

Strengthening the defense mechanisms against a trade secret is primarily through awareness creation and business training, primarily targeting the smaller firms or MSMEs. This would extend stakeholders interested in issues binding around confidential information and identify remedies to be sought in the event of a breach.

Recommendation 7 - Enable Technology Transfers with Pods of Safety

It should promote transfers and partnerships in technology, but stringent compliance with the protocols of government secrecy will be necessary. Patent licensing contracts must involve clauses that prevent third parties from unauthorizedly using proprietary technology.

Recommendation 8 - Link with International Cooperation

India must take part in international dialogue on protection of intellectual property rights, including trade secrets. Work with WIPO and bilateral regional trade agreements could boost the country's efforts in legally addressing cross-border trade secret theft and economic espionage.

Conclusion

The intersection of sustainability and trade secrets within the cosmetic industry presents a dynamic landscape of challenges and opportunities. Public pressure is making cosmetic companies adopt sustainable practices that will include using greener innovations in their operations. However, proprietary formulations and processes of the industry are being trade secrets, and thus there is a tension between needing to be transparent and protecting competitive advantages.

However, for the cosmetics industry, the best way is to achieve the right balance. The use of environmentally sustainable practice responding to consumer expectations in compliance with regulations contributes towards the global environmental goals without compromising the market position of these companies. Several frameworks, such as sharing best practices under confidential agreements or entering pre-competitive sustainability initiatives, could advance this aspect. Lastly, indeed, it is a matter of balancing the dynamic approach of innovation with the sanctity of intellectual property rights, which thus satisfy both ecological and economic sustainability.