

Speaker 1 ([00:00](#)):

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Tonya Esposito ([00:19](#)):

I want to thank everyone for joining us for this episode of our podcast. We are going to focus on post pandemic beauty trends and in the next 30 minutes or so talk about some of the consumer trends we've seen of late, of course, post pandemic, and how those claims have sort of evolved into consumer trends, I should say, that we have seen become the subject matter of both regulatory investigations, as well as private litigation. And then talk a little bit about some of the ways that brands might consider avoiding some of that exposure and taking some steps to minimize risk.

([01:06](#)):

And so I started by saying that the focus would be on post pandemic beauty, and the reason that we thought it would be interesting to start from that perspective is that I think the pandemic found a lot of us spending more time at home, less time in an office, socializing, less time feeling the need to wear makeup or dress up generally. And so for a lot of people, from this perspective, just kind of led to what I think is a desire to embrace a more natural appearance. So focusing on the quality of skincare routines and products and less on the actual outcome or need for a made up look, if you will. And so in that process, I think the marketplace saw a little bit of a shift, and I am certainly someone who saw a shift in my own behaviors and in my own routines.

([02:08](#)):

And so with that shift from a consumer perspective, we see new trends that are evolving in terms of product marketing and claims associated with products. And in connection with new claims and new products, you also tend to see new regulatory and legal exposure. So the point of our discussion is to spend some time talking about these trends, changes to the industry, and focusing really on the associated marketing and advertising from a very general level, the popular platforms that are used, the risks that are typically associated with making some of these claims. And then wrap with just a little bit about how manufacturers and retailers can take steps to minimize or hopefully eliminate risk.

([02:57](#)):

So starting with an introduction of who I am, my name is Tonya Esposito, I am a shareholder in Greenberg Traurig's Washington DC office. My practice involves all things consumers, including representing companies who manufacture and sell personal care products and cosmetics. And I do a lot of regulatory work, I certainly do a lot of litigation, and I also represent clients in front of the states, the federal agencies and other organizations including the NAD and so forth. So that's who I am, and I've been doing a lot of talking, I'm going to hand it over to my colleague, Nilda, and let her introduce herself and her practice.

Nilda Isidro ([03:46](#)):

Thank you, Tonya. I'm Nilda Isidro, I'm a shareholder in Greenberg Traurig's New York office, and it is a real pleasure to be able to be here with you, Tonya, talking about this industry. This is an industry that means a lot to me, not just professionally, but also personally. It's an industry that I've been very passionate about for a very long time, these are products that I use in my everyday life, and working with the textures and the colors and the fragrances has always been something that brings me a lot of joy personally. It helps me relax, it helps me express myself creatively. So it's a real treat to be able to

work with this industry in my professional life as well. As a litigator, I represent companies in connection with product liability litigation and class action litigation that arises with respect to cosmetics and personal care products. And I also work with these companies from a prevention standpoint, so figuring out how to mitigate their risk and position their products as best as possible to avoid litigation.

Tonya Esposito ([04:54](#)):

Just to let all of our listeners know, we came together to work on this podcast because we have a shared passion for the industry and our client base is similar. And I think that we really want this to be a useful exercise and a practical one, and one that's very digestible in terms of length, in terms of subject matter, but also fun. And so the goal really is to talk about what we see from a legal perspective, but also include some of our personal views and just have a robust conversation about some of the things that we're seeing.

([05:29](#)):

So starting with trends, I'm going to start off by identifying one that I sort of mentioned in the opening, and that's the minimalist trend. And I think that that trend can be described as all my products need to go on quickly, and I don't want any more than three. And I don't know about you, Nilda, but I find myself drawn to that trend more and more the older I get, because I recall when I was younger, having more time and the inclination to start with a variety of products that I still love but find myself not having any time for, and so I really am at the point where I think I'm falling into that minimalist bucket.

([06:19](#)):

Do you think that that's something that has been around and we just haven't noticed? Or do you think that's one that is really sort of a byproduct of what we went through during the pandemic?

Nilda Isidro ([06:30](#)):

I think that's something that's always been around, but probably has been even more critical to an even broader number of people because of the pandemic. I think we all saw ourselves stretched thinner than we ever thought possible during the pandemic. And so I think it can be a relative thing for certain folks, maybe if your regular routine was six or eight, it went down to three, just depending on what it normally was. I know I have not considered myself a minimalist over time, but I definitely saw my routine trimmed down to the essentials, and that is something that has stuck with me post pandemic as well.

Tonya Esposito ([07:17](#)):

Yeah, interesting. Yeah, I would agree with all of that. And so relatedly, I've seen a trend, and I'm sure you have too in your practice, in the market generally, where a lot of consumers of cosmetics are really committed to, in an effort to have that minimalist look, also have products that are clean. And so that begs the question, what does that really mean? So clean from my perspective, certainly could mean that the products don't give you sort of an artificial look, or don't present in a way that's not genuine, but just more of a clean, fresh face kind of look. But I know that there are a number of interpretations out there of the word clean and how it applies to cosmetics. So from your perspective, what have you seen in connection with the clean trend?

Nilda Isidro ([08:21](#)):

I think that's right, I think there's been the, and these are not necessarily mutually exclusive, but there's been sort of the camp of the clean look, and then there's been sort of the camp that maybe to a certain extent because of the pandemic, maybe to a certain extent because of factors that were there pre-

pandemic, have really focused in a lot more on what is it that I'm putting in and on my body and trying to have a clean approach to that. And so some of that has been looking for products with fewer ingredients, looking for products with ingredients that you can pronounce, looking for products where you understand why each ingredient is there and it's something that the consumer is okay putting on their body.

[\(09:10\)](#):

One area that has come out of this, and I think has very much been boosted by people's increased focus on things like immunity and how does their body work and how do the body's natural defenses work, which was all kind of part of the general conversation during the pandemic. I think there's been an increased focus and concern around understanding the body and the skin's microbiome and how do the products that we use every day impact that microbiome, and thinking about that when purchasing products. And I think that's something that we had not seen to anywhere near this degree before the last few years.

Tonya Esposito [\(09:58\)](#):

Yeah, I agree, I've seen a lot of conversation around that particular topic, and it's always very interesting to me in terms of the level of education that I think a lot of consumers have sought in connection with better understanding what a microbiome is, and how it's even a part of the world of cosmetics or personal care products and what we put on our bodies in that regard. But I would agree, that's definitely one that seems to be trending and remains popular. What about vegan? That's one that I've seen a lot and have dealt with a lot in my practice, and I think that a lot of brands have certainly recognized a strong desire in the marketplace for those types of products. And there's been certainly a lot of back and forth about what constitutes an animal byproduct versus something that you can truly include in a product and still call it vegan, and I know there's a lot of debate about that. So what are your thoughts on that trend?

Nilda Isidro [\(11:10\)](#):

It's also a trend that exists on a spectrum. I think there have been a lot of folks who have used the increased ability to sort of focus on what you're consuming in general. And I use the term consuming broadly, not just what you're ingesting, but just what you're consuming as a consumer. And so I do think that there are a lot of people that have used that time to reflect and have gone towards something like incorporating more vegan products, either in all spheres of their life or in certain spheres of their life. I think it's also goes hand in hand with trends toward more conscious products, so cruelty-free and conflict free.

[\(12:07\)](#):

I think there are some folks for whom vegan is very important. I think there are others where it's more about is this a product that is cruelty-free or is this a product that is sustainable? I think different people sort of focus on different aspects of the issue, and it can influence whether you end up looking for specifically that vegan product or a cruelty-free product or a sustainable product, but it's all reflective of the same trend towards higher conscientiousness in terms of what you're purchasing.

Tonya Esposito [\(12:50\)](#):

Yeah, no, I agree that all of those kind of align and to some extent, even come together full circle. I mean, just thinking back to some of the purchasing trends of folks of my age and younger me, would purchase products and never think really to look at what was on the label or what was included on the label in terms of coloring or any of the components of products that were going on my face or on my

skin. And now I will 100% spend a solid amount of time looking at them and trying to determine what's best for me, what's important for me. And it can be a full exercise before you pull the trigger, if you're certainly committed to clean, vegan, conflict, cruelty-free, all of these things, environmentally conscious, but very, very, very, very important part of I think what's going on in the industry.

[\(13:50\)](#):

What about ingredients? I remember that when I was a much younger person, I would use a lot of things that had benzoyl peroxide or things that were intended to help with acne. And luckily that phase of my skin journey is gone, and I'm moving on to other concerns that women of my age tend to focus on. But what about hyaluronic acid or some of these other very popular ingredients that we all see? I know CBD was a big one and still, to some extent, is very popular. What are you seeing with your practice there?

Nilda Isidro [\(14:33\)](#):

Just as we're seeing a trend towards streamlining routines and streamlining number of products that you're using, there's sort of been an increased focus on what are ingredients where I can still have sort of a narrower list of ingredients on my product, but these are going to be multitasking ingredients. These are going to be sort of the superstar ingredients that are going to tackle two or three major concerns.

[\(15:00\)](#):

And so in looking at some ingredients that have really started to rise in popularity building on that, I think niacinamide is one that we're starting to see a lot more frequently in products. It's sort of touted as having a lot of potential benefits to address a lot of potential concerns, everything from oil control to calming skin, addressing redness, evening skin tones are all very common concerns that can come up, different age levels, different skin types, and so ingredients that can have that sort of broad appeal without having to add five or six different ingredients to the product to get there, are appealing from both a formulation standpoint and also from a consumer standpoint. So that's definitely something that we're seeing.

[\(16:03\)](#):

I think CBD is one where it's been in the trend for a while, but there are, I think, some regulatory issues, a little bit of a mish-mosh in terms of how the different states are approaching CBD in cosmetics products. And I think that has maybe led to the ingredient gaining less momentum than it might have otherwise, but it's definitely something that's still around and still a trend to watch.

Tonya Esposito [\(16:40\)](#):

Sure. Yeah, I recall that in my practice over the past couple years, there was such a desire to infuse a product with CBD, and the uncertainty is certainly something to consider when you're developing or formulating a product and it's unclear whether, at a federal level, it's going to work and be just fine versus whether the states are going to be fine with what you're packaging and producing, and trying to have a platform where your products are available in all 50 states. There's just a whole lot of risk and uncertainty involved. So I personally have seen sort of a number of my clients shift away from CBD. That's not to say that it's not still very popular, I agree with everything you said, I think that level of uncertainty has maybe evened it out a little bit, until we can figure out where the regulators are going with it ultimately and have some consistency across the board.

[\(17:49\)](#):

So that's from my perspective, and let me know if you disagree what the big trends are that we're seeing. As I mentioned earlier, I think that with trends and newer claims and just sort of innovative

products, you're always going to see risk, you're going to see a level of risk that may be temporary and ultimately may be long term. But from my perspective, I think it's really important that any brand considering following one of these trends and producing or manufacturing products that fit into one of the buckets that we've just discussed, or making claims that sort of promote one of those trends, need to consider, just generally speaking, from 's standpoint, I think we're really just going to focus very generally on what the risk is, but also you always have to consider the regulatory risk. And so you've got your federal regulators, but then you've also got your state regulators.

[\(19:02\)](#):

And now as we've just discussed with CBD, they're not always on the same page about everything, which can make it a challenge. And I find that a lot of the counseling and advice that I've provided to my clients, is often one that involves a cost benefit analysis. There's certainly, in many instances, particularly with claims that are not fully defined, not fully litigated, the best approach from my perspective, is to just really consider what the most conservative approach is versus perhaps the most aggressive approach. And always let the client decide, making them aware of what the potential risk could be from a regulatory and also from a litigation perspective. Just curious to know what you think about that and in your practice, whether you're finding it possible to give advice that is more, I don't want to say concrete, but if you're able to provide certainty around some of these claims, where we can make a best educated guess and give the best advice we can based on what we see happening in the marketplace or what your approach has been.

Nilda Isidro [\(20:16\)](#):

It sounds like our approach is pretty similar on that, Tonya. I think that very often, sometimes we can give a very bright line response, sometimes that does exist out there, but a lot of times what we find is that the regulatory framework is struggling to keep up with the innovation in the industry. And so anytime you have that, there's going to be uncertainty, it's something that we have to live with. And so it's about counseling the clients on how best to achieve their business goals while mitigating the risk as best they can. And of course, staying on top of the regulatory developments that come up in connection with that.

[\(20:59\)](#):

So for example, we've been talking about clean and claims around that on products, well, FTCs in the process of revamping its green guides, and they just recently announced that they're extending the comment period on that until towards the end of April of this year. So these are all things that are rapidly evolving. And similarly, we're seeing technology come up a lot in the beauty industry as well. Devices showing up in a way that I don't think we've seen as heavily in the past, and that's also an area where the regulations struggle to keep up. So it's about continuously monitoring that and just continuing to try and strike that balance between staying on trend with the innovations and then mitigating your regulatory and litigation risk accordingly.

Tonya Esposito [\(21:53\)](#):

I agree with that completely. Well, I think we'd be remiss to not leave our listeners with a few thoughts on how best to minimize risk. So I'm going to offer two, and then maybe you can back me up and fill in any holes. But I would say the first and foremost is to stay abreast of any anticipated or pending legislation at the state and federal levels. And that seems like a really big, tall task, but I know that we at GT try to do a good job of pushing out summaries on anything that we're aware of, and certainly anything that's out there, but really having a good understanding of what's happening and what you should anticipate, I think is really just very important for purposes of looking at where you are currently

with your marketing, with your advertising, with your products, but also as you develop things going forward, having that sort of framework in place.

[\(23:01\)](#):

And second, I would say that it's really important to pay attention and make sure that you understand or at least have some awareness of claims that are being brought against your competitors or other brands. And again, that may not be something that is on your radar 100%, but I know that Nilda and I are doing a good job of trying to stay on top of that and summarize it and push it out to our clients and folks who are listening to this podcast and following us on LinkedIn. But those would be my biggest tips, just to stay educated and try to check in and do a little analysis of what you're seeing out there, and then compare it to or apply it to what you know is on your plate for your particular products. So those are my tips. What about you?

Nilda Isidro [\(23:52\)](#):

I would agree with those, Tonya. And I would add, sort of building on that second tip, something just a little bit broader, which is really keeping an ear to the ground about what consumers are concerned about. What are they thinking about? What are the questions that they're starting to ask about products? Because a lot of times that can sort of be an early indicator to what sorts of things are going to start to give rise to claims. And so having that ear to the ground, really making the effort to understand what's on consumer's minds, is something that can give you a little bit of a leg up in terms of anticipating what might come up in the litigation side of things. And for regulators as well, because the regulators are also paying attention to what consumers are worried about.

Tonya Esposito [\(24:49\)](#):

Sure. No, that's a great point. I 100% believe that. And from your perspective, what are some of the best ways to follow what's on consumer minds? Is it their comments on social media or blogs, or what do you think are the best ways to keep your ear to the ground with consumers?

Nilda Isidro [\(25:08\)](#):

I think that's absolutely a huge part of it, especially nowadays with social media, that's very often the first place that consumers are going to, to sort of express their thoughts and their questions and their concerns. A lot of times it's product questions that might come to a company, whether through social media or through other means, what are customers asking? What feedback is coming in from consumers? Those are things to look at. Obviously, staying on top of just general media about the industry and about products. We've seen in the last couple of years a number of litigation trends that have originated with a newspaper article, a magazine article, an article in a scientific journal, and then these things are getting picked up in the media. They're sparking questions and concerns in consumers, and then that's leading to a litigation trend. So staying on top of those things is critically important.

Tonya Esposito [\(26:15\)](#):

Great. I think those are some good quick tips. And I'm afraid we're out of time for , but I want to thank everyone who's listening to the Big Law Redefined Podcast and let you know that we'll be back. We're going to keep talking about cosmetics and personal care products, and we want to hear from you. So if there are questions or thoughts about what you think we could focus on that would be helpful, feel free to reach out to us. We're happy to respond and take all those suggestions under consideration. But for now, we'll say goodbye, and we thank you so much for listening.