

2018 Legal & Regulatory Conference Savannah, GA



Program Agenda

Wednesday, May 9th

8:00 a.m. – Registration and Breakfast

8:30 a.m. – 12 p.m. Morning Business Session

THE STATE OF THE STATES

With Congress in continual legislative gridlock, many states have stepped in to fill the vacuum on consumer safety, health and wellness, and environmental protection. From Hawaii to California to New York, this panel will look at how state legislative and regulatory agendas are impacting your industry. Our distinguished panel of experts will discuss important topics like Proposition 65, Slack Fill, ingredient bans, and more.

Speakers:

- Anthony J. Cortez, Shareholder, Greenberg Traurig, LLP, Sacramento, CA
- John A. Conkle, Partner, Conkle, Kremer & Engel, PLC, Santa Monica, CA
- Greg G. Sperla, Senior Associate, Scali Rasmussen, Sacramento, CA

Moderator: Thomas F. Myers, Executive Vice President, Legal, Personal Care Products Council, Washington, D.C.

EMPLOYMENT LAW

This new panel topic is sure to become a perennial favorite! Our speaker will explore important trends in regulation, legislation and case law affecting labor and employment in the United States. He will also offer useful guidance on how to investigate and handle discrimination in the workplace.

Speaker:

- Raymond C. Baldwin, Partner, Seyfarth Shaw, LLP, Washington, D.C.

Moderator: Emily Harp Manoso, Staff Counsel, Personal Care Products Council, Washington, D.C.

****COFFEE BREAK****

ANIMAL TESTING: WHAT YOU NEED TO KNOW NOW

Urged on by animal rights activists across the globe, federal, state and local legislatures are considering major changes to the regulation and enforcement of animal testing rules for cosmetics. This panel will include an overview of pending legislation and litigation. Are changes coming soon to longstanding principles regarding the use of data from animal testing, exemptions for products sold in China, or regulatory agency requirements? This and related questions are driving major initiatives that industry must face in multifaceted arenas—including regulatory, political, and public relations.

Speaker:

- Fern O'Brian, Hollingsworth, LLP, Washington, D.C.
- Neil S. Bromberg, Partner, Hollingsworth, LLP, Washington, D.C.

Moderator: Alexandra Kowcz, Chief Scientist, Executive Vice President, Science, Personal Care Products Council, Washington, D.C.

CANNABIS AND COSMETICS

With the growing legalization of marijuana in the states, some cosmetic companies have begun to use and promote the beautifying effects of cannabidiol and hemp oil in cosmetic products. But continued uncertainty about the legal status of cannabis has many scratching their heads as they decide whether to formulate, and how to advertise, with this ingredient. Our speakers will examine the potential pitfalls with using this controversial ingredient.

Speakers:

- Maureen F. Gorsen, Partner, Alston & Bird LLP, Sacramento, CA ,
- Jonathan A. Havens, Associate, Saul Ewing Arnstein & Lehr, LLP, Baltimore, MD

LUNCH: Keynote Speaker

Being “Social” Is Your Business – How Emerging Legal Ethics Involving the Use of Social Media and Digital Platforms Will Change the Way You Think About Your Professional Responsibilities

- Our keynote speaker will illustrate ethical concerns related to communications in social media. His discussion will include reference to rules, opinions and interpretations that establish limits for lawyers and professionals when using social media, and expectations that they be competent in its use!

Featured Speaker: Anthony F. Dias, Partner, Jones Day, Washington, D.C..

1:30 p.m. -4:30 p.m. Afternoon Business Session

ADVERTISING, e-COMMERCE AND INTELLECTUAL PROPERTY

The panel will discuss the current hot topics in advertising, ecommerce and intellectual property law. Specifically, the panel will discuss the legal issues related to offering sales and discounts on pricing, the legal issues surround co-branding and sponsorship, and the potential issues with using influencers. The panel will then discuss the legal issues surrounding fulfillment- including inventory controls, warehousing, 30 day mail order rule, handling returns, recalls, and other contractual considerations. Finally, the panel will discuss the legal issues surrounding using virtual mirrors and virtual fitting rooms, AI and the Internet of Things, the latest developments on using user generated content in advertising, model agreements and publicity, and will conclude with the traditional “top class action issues product care companies need to be aware of.”

Speakers:

- Anthony V. Lupo, Partner, Arent Fox, LLP, Washington, D.C .
- Helen Wu, Commercial, IP and Advertising Counsel, JetBlue, New York, NY
- Krista L. Thompson, Senior Attorney, Federal Express, Pittsburgh, PA

COUNTERFEIT & GRAY MARKETING

“Welcome to the Jungle – Trekking the Amazon”: The online marketplace has changed the way the public shops. Customers are drawn to Amazon’s low prices, aura of authenticity and easy shipping options, all of which are fueled by the presence of counterfeit and gray market products and unauthorized third party sellers. When deficiencies in these products are discovered by the customer, it is your brand’s reputation being tarnished, and not that of Amazon or the actual seller. The rise of Amazon has placed a heavy burden on brand owners, and personal care companies are particularly at risk because of the increased health risk. Trekking the Amazon is not easy -- but there are strategies you can put in place to protect your brand!

Speakers:

- Kelly P. McCarthy, Partner, Sideman & Bancroft, LLP, San Francisco, CA
- Erica Brand Portnoy, Partner, Sideman & Bancroft, LLP, San Francisco, CA

LITIGATION AND COMPLIANCE

The U.S. Supreme Court recently handed down a decision in *Bristol-Myers Squibb* that dramatically limited the extent to which courts can exercise personal jurisdiction over corporate defendants. This has had a profound impact on forum shopping by plaintiff attorneys as lower courts begin to apply the *BMS decision*. This panel will examine the impact of that decision and discuss what this means for companies

facing lawsuits outside of their home state. Likewise, in the era of increasing corporate prosecutions and the United States Department of Justice's mandate to prosecute culpable individuals responsible for the corporate wrongdoing, *if the government comes knocking, companies better have an effective compliance program in place*. The compliance portion of this panel will explore the importance of corporate compliance programs and focus on the elements of an effective compliance program which were recently reinforced by the Fraud Section of the Criminal Division at the DOJ.

Speakers:

- Sara K. Thompson, Shareholder, Greenberg Traurig, LLP, Atlanta, GA
- T.C. Spencer Pryor, Partner, Alston & Bird, LLP, Atlanta, GA

6:00 p.m. – 7:30 p.m.: WELCOME RECEPTION

Sponsored by Greenberg Traurig, LLP

Thursday, May 10th

8:00 a.m. – Registration and Breakfast

8:30 a.m. – 1:00 p.m. Morning Business Session

CONGRESS AND COSMETICS: THE STATUS OF FEDERAL COSMETIC AND OTC REFORM LEGISLATION

For almost a decade, Congress has considered legislation seeking to modernize FDA's regulatory authority over cosmetics and OTC drugs. Unlike before, however, there appears to be a growing momentum toward passage of legislation addressing these product categories. This panel will provide you with the ultimate insiders' understanding of ongoing negotiations with the House and Senate, and what your company can expect if legislation is enacted.

Speakers:

- Wade F. Ackerman, Partner, Covington & Burling, LLP, Los Angeles, CA
- Richard F. Kingham, Partner, Covington & Burling, LLP, Washington, D.C.

Moderator: John A. Hurson, Executive Vice President, Government Affairs, Personal Care Products Council, Washington, D.C.

“BREXIT” – AND WHAT IT MEANS FOR YOU

Beginning in 2019, the U.K. will no longer be part of the EU. While Brexit has been the subject of near constant media attention, uncertainty seems to be the only certainty. The U.K. is the third largest economy in the EU and the EU is far beyond a simple customs union. It is single market where more than half of EU member states' national legislation originates in Brussels. As expected, Brexit has been complex, complicated and the stakes seem to grow as the negotiation deadline quickly approaches. For the cosmetics industry, the EU cosmetics regulation set the regulatory framework in the U.K. for more than product formulation, labeling and claims; it governs all aspects of compliant product marketing in the U.K. This expert panel will discuss the vast ramifications of Brexit on the cosmetics industry.

Speakers:

- Chris Flower, Ph.D., Director General, Cosmetics, Toiletry and Perfumery Association, UK
- Benno van der Laan, Director, Transatlantic & South America, Interel, Washington, D.C.

Moderator: Francine C. Lamoriello, Executive Vice President, Global Strategies, Personal Care Products Council, Washington, D.C.

****COFFEE BREAK****

“RETAILER REGULATION”

Retailers play a critical role in the development and continued success of the cosmetic and personal care product industry. While understanding existing regulatory regimes can be challenging alone, industry must also, with increasing frequency, adjust to the specific policies of its retailer partners. It is critical for our industry to recognize that retailers face their own set of external and internal factors that drive the development of retail policy.

Speakers:

- Michael Jacob Steel, Morrison Foerster, LLP, San Francisco, CA
- Gregory W. Blount, Partner, Troutman Sanders LLP, Atlanta, GA
- Mallory McCormick, Director, EHS Compliance, Walmart, Bentonville, AR

Moderator: Jack E. Linard, Ph.D., Head of Regulatory Affairs, Unilever North America, Englewood Cliffs, NJ

CYBER SECURITY & DATA PRIVACY

No industry is immune from threats to cybersecurity, the integrity of data, intellectual property, the privacy of customers and employees, and the costs and reputational harm that accompany breaches. In the last year alone, we have witnessed several notable and high-profile security and data privacy breaches. This panel addresses what companies are doing to protect themselves, and their customers and intellectual property, and what the regulators and courts are expecting of the industry.

Speaker:

- John Banghart, Partner, Venable, LLP, Washington, DC

6:00 p.m. – 7:30 p.m.: OFFSITE RECEPTION

Sponsored by Morrison Foerster, LLP

Friday, May 11th

8:00 a.m. – Registration and Breakfast

8:30 a.m. – 12 p.m. Morning Business Session

PUBLIC AFFAIRS AND COMMUNICATIONS: “BREAKING THROUGH THE NOISE”

Our panel of seasoned professionals will provide their perspectives on the political and media climates, impacts on reputations, managing issues, building narratives, strategies for working with reporters, and providing information to help break through the overload of information to empower informed choices and perceptions.

Speakers:

- Lisa M. Powers, Executive Vice President, Public Affairs & Communications, Personal Care Products Council, Washington, D.C .
- James Bowers, Senior Vice President, Berman and Company, Washington, D.C .
- Jayne O’Donnell, Health Reporter, USA Today, Washington, D.C.

“JUDICIAL HELLHOLES”—WHAT ARE THEY AND HOW TO AVOID THEM”

‘Judicial hellholes’ is a disparaging term applied to those courts where judges apply laws and procedures in what arguably is an unfair and unbalanced manner, generally against defendants in civil lawsuits.

Technology has only made the problem more acute, as plaintiff attorneys learn ways to expand the number of potential claimants and filings. This panel will offer hard-won insights and advice from defense counsel and their clients.

Speakers:

- Laurie A. Henry, Partner, Shook Hardy Bacon, LLP, Kansas City, MO
- Phil S. Goldberg, Senior Fellow, Progressive Policy Institute and Partner, Shook Hardy Bacon, LLP, Washington, D.C.
- Beth Janeway Hallyburton, Assistant General Counsel, Dispute Resolution & Prevention, GlaxoSmithKline, Warren, NJ

OUR CURRENT REGULATORY LANDSCAPE

As always, our closing panel will feature a presentation by the inimitable Peter Barton Hutt, former General Counsel of the U.S. Food and Drug Administration and attorney with the Washington, D.C. office of Covington Burling.

Speaker:

- Peter Barton Hutt, Senior Counsel, Covington Burling, LLP, Washington, DC

Program Ends at 12:00 p.m.

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