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GLOBAL RISK & REGULATION NEWS

Amazon has faced more than 1,000 Prop 65 'intent to sue' notices

Notifications have been lodged over almost 20 year period

8 August 2019 / CMRs, Enforcement, Labelling, Prop 65, Retail, US states

More than 1,000 notifications of intent to sue have been filed against online retailer Amazon, for claims that products it sold violate California's chemical exposure warning law, Proposition 65.

As of 7 August, 1,026 notices of intent to sue the company have been recorded since 2000 on California's Justice Department 60-day notice database. This far exceeds the number filed against many other major US retailers.



The database shows 309 have been filed against Target and 176 against Walmart, while CVS has 137 and Costco 76.

The law requires businesses to provide warnings, typically in the form of labels or signs, for exposure to chemicals that cause cancer or reproductive harm. California maintains a **list of chemicals**¹ it has determined present these effects, which currently holds around 900 substances. The law allows private parties to "enforce" it with lawsuits.

John Conkle, a partner at law firm Conkle, Kremer & Engel, told Chemical Watch Amazon is a big target because of the number of products they offer. "It is also easy to find and buy products that are potentially in violation online through sites such as on Amazon," he said.

And Caroline Cox, senior scientist for NGO Center for Environmental Health – which, since 2016, has lodged four notices against Amazon – agreed the large number filed against the company is likely due to the volume and variety of products available through its online platform.

Amazon declined to comment on why so many notifications have been filed against it and how it is dealing with the increasing number of notices. On its website, Amazon does provide information on the law and how to provide compliant warning labels.

Target, Walmart and Costco did not respond to a request for comment by the time of publishing. CVS provided a statement saying "We strive to comply with all laws and regulations applicable to our business, including California's Proposition 65. If we learn of a potential product compliance issue regarding Proposition 65, whether it's through our own internal review processes or an external notification, we fully investigate the issue and if required, act quickly to rectify it."

Halting sales?

The law's approach to enforcement is through the threat of lawsuits. This has caused some companies to take drastic action to ensure compliance. Following **amendments²** to the law last year, which updated how warnings are provided and displayed, US retail giant BJ's Wholesale Club **stopped³** online sales to consumers in California because its products "may not comply" with the state's law.

CEH has been involved in hundreds of Prop 65 lawsuits over the years. "We do occasionally have retailers who make the choice to stop California sales but it's rare. Most of our legal actions end with the company agreeing to meet strict standards for product safety. We applaud all of the companies that have responded that way," said Ms Cox.

However, Maureen Gorsen, partner at law firm Alston & Bird and former director of the California DTSC and general counsel of the California EPA, told Chemical Watch that "many block the sale of items to California addresses."

Mr Conkle said he is not aware of companies restricting sales in California "entirely". "Many of them grumble about it, but due to the size of the market it generally does not make business sense to stop sales to California."

"We have seen retailers restrict particular products from shipment to California if they don't have adequate testing or proof that the products are compliant," he added.

In general, said Ms Gorsen, the "vast majority" of these notices are "nuisance suits that settle at de minimis levels."

Ms Gorsen, a defence lawyer for clients involved in Prop 65 litigation, said most retailers pass the notices to the vendor or manufacturer of the product.

"Retailers have strong indemnification provisions in their supplier contracts. The plaintiffs sue the entity from whom they purchased the item, but expect the retailer to then identify the manufacturer. Then the plaintiff works with the vendor and both grant the retailer a full release of liability," she added.

Major US retailers - intent to sue notifications as of 7 August

Amazon – 1,026

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Costco – 76



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