

# Want to make it in the Thai makeup market? – An attractive legal overview

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“Personal beauty is a greater recommendation than any letter of reference.” – Aristotle Even though it was more 2,000 years ago when the great Greek philosopher Aristotle made the above remark about personal beauty, it appears that his words still ring true in this modern-day world of materialism where people are still judged by how they look and; therefore, are willing to spend a fortune to improve their appearance. Those who are patient may choose to rely on food supplements and exercises while those who are in need of a quick fix may resort to plastic surgery. However, cosmetics have never lost their role in our quest for beauty and the beauty industry seems to never stop flourishing worldwide.



If you are thinking about starting up a cosmetics business in Thailand, here are a few legal issues that you may need to know.

## Governing Authority

The Food and Drug Administration of Thailand (FDA) is the main governmental authority that is responsible for monitoring food, drugs and beauty products. Its roles include issuing cosmetics manufacturing licenses, issuing cosmetics import licenses, and controlling cosmetics labeling. To produce or import cosmetics for sale in Thailand, you have to follow the rules and standard procedures in accordance with the type of cosmetics that you are marketing.

## Type of Cosmetics

Cosmetics can be designated into three types under the Cosmetics Act B.E 2535 - specially controlled cosmetics, controlled cosmetics and general cosmetics.

1. Specially controlled cosmetics - This type of cosmetics may cause serious harm to users or contain toxic substances,

e.g., hair dye, hair perm, toothpaste, mouthwash, and hair removal products. Accordingly, these cosmetics are strictly controlled and must undergo a safety assessment in order to ensure that they can be used safely by consumers. As such, importers and manufacturers of these specially controlled cosmetics must comply with several obligations and follow rigorous standard procedures, which include obtaining cosmetics registration, submitting product sample and supporting documentations to the FDA, notifying the FDA before manufacturing or importing such products, labeling the products with adequate information, and paying an annual fee for the manufacture or import of said products.

2. Controlled cosmetics - This group of cosmetics is less harmful in comparison to the first type, resulting in less stringent control and less complicated standard procedures. Sunscreen, anti-dandruff products, loose powder, and sanitary napkins are just a few examples of these controlled cosmetics. However, before any of these beauty products reaches the Thai market, potential importers and manufacturers are required to submit product samples and documentations to meet the requirements under the Cosmetics Act as well as notify the FDA before manufacturing or importing such products.

3. General cosmetics - Cosmetics other than the first two types fall within this category. They include eyeliners, eye shadows, lipsticks, soap, cream, and perfume. As these general cosmetics do not contain harmful ingredients and are likely safe for consumers, manufacturers can produce any of these







products without having to notify the FDA beforehand. Nevertheless, it is still necessary for importers of these general cosmetics to obtain import licenses from the FDA prior to importing the same.

### Cosmetics Labeling

In addition to manufacturing and importing monitoring processes, labels of cosmetics are also controlled. Labeling requirements are set out in order to provide consumers with access to the information they may need to make an informed decision before purchasing a product. Labeling requirements may vary on the type of cosmetics to be marketed, but it is generally required that all cosmetics labeling must be in Thai and contain sufficient product details, e.g., type of cosmetics, ingredients, place and date of manufacture, manufacturer's or importer's name and address, instructions, caution, and volume of the product.

### Direct Selling

Direct selling is regarded by some as a popular distribution channel for cosmetics. Nonetheless, it is heavily regulated by the Direct Selling and Direct Marketing Act B.E. 2545 where registration of a business plan is an absolute must before business can be conducted. In order to protect consumer interests, a number of rules and regulations in relation to direct selling were also introduced. For example, a salesperson must deliver a document evidencing the purchase and sale of a given product to his or her customer at the time of purchase. The law further requires that said document must be in Thai and contain the name of the salesperson and the customer, the date of delivery of the goods purchased, and, most importantly, the customer's termination rights.

### Advertising

Now that you have your beauty products ready to hit the market, here comes one of the hardest parts of growing your business - advertising. Cosmetics can be advertised without having to notify or file an application with any authority beforehand. However, this does not mean that your creativity has no boundaries as your advertising claims must still comply with the Consumer Protection Act B.E. 2552. For instance, your advertising claims must not be deceptive, exaggerated, unfair, or misleading to consumers.

### Product Liability

Even if your cosmetics have already passed safety tests to primarily ensure its quality, there can still be claims by disgruntled customers that your products produce undesirable or even harmful effects on them. If this is the case, then the parties involved in the manufacturing and selling of such a product, i.e., manufacturers, importers, and sellers, are bound to be jointly liable for any damage caused pursuant to the provisions under the Liability for Injuries from Unsafe Products Act B.E. 2551. Moreover, even if you may have disclaimed liability for damage that may be caused by your product either unilaterally, e.g., having a disclaimer outright on the label or packaging of the product, or bilaterally, e.g., signing an agreement to this effect with a consumer before any damage occurs, such a disclaimer or agreement is not going to be valid in court.

One of the best strategies to avoid or minimize business loss from such unfortunate events is to maintain adequate product liability insurance coverage since it can greatly help protect your business from claims relating to the manufacture or sale of unsafe products.

### Get Professional Help

The issues presented in this article are just a starting point and there are still some other relevant legal issues that should be considered before investing in a makeup business in Thailand. Discussing with legal counsels or professionals who practice in this area is a great idea as you will be able to get answers from the right experts, enabling you to run your business with possibly no bumps in the road.

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