

C/M/S/

Law . Tax

Health and beauty

CMS Cameron McKenna

2011



An introduction to our Health and Beauty Group

Our knowledge, your benefit

Today's consumer product manufacturers face a myriad of challenges. Globalisation, emerging markets, supply chain management, consumer and media pressure, and growing retailer power all place their own demands on management.

Couple these challenges with changing regulatory frameworks impacting virtually every aspect of your business and add a dash of competition from cheap imported products and the challenges become greater.

In this complex and regulated environment, where European Union regulations and legislation co-exist with national laws and custom, it is vital to engage legal experts who can provide detailed local advice and assistance across a full range of practice areas, in a coordinated and cost-efficient manner. Through CMS we aim to provide our clients with a seamless European wide legal strategy.

At CMS our specialist health and beauty group, which sits within our consumer products group, brings together experts from throughout the firm, all focused on providing tailored services to the sector. By concentrating on the sector we have immersed ourselves in the issues of the day. We provide advice on everything from the financing and acquisition of companies through to dawn raids, media litigation procedures, brand protection strategies, regulatory and advertising, outsourcing and distribution agreements and product liability within the sector.

Our range of services include:

- Advertising and marketing
- Commercial
- Competition
- Corporate and Banking
- Environment
- Intellectual Property
- Litigation
- Mergers and acquisitions
- Outsourcing
- Product liability
- Regulatory
- Tax

Our lawyers work together, with cross-border teams assembled when necessary, to ensure seamless international legal support. Communication is key, and an agreed partner and/or senior associate will always be available to act as first contact in every transaction.

We regularly comment on issues affecting the industry and our free online news service, Law-Now, means that our clients can keep up-to-date with the latest news and developments. To register for this service visit

www.law-now.com

Added Value

- Law-Now – our on-line information system
- Bulletins and newsletters
- Sponsored research
- Tailored briefings
- Attendance at industry events
- Secondments



Our CMS Network

We are a full service international law firm providing tailor-made services to the consumer products sector.

CMS is an organisation of 9 major law firms bringing together legal and tax experts across Europe and beyond. CMS offers clients all the advantages of a local firm. With our knowledge of the local markets and the added benefit of international standards of service clients can be confident their transaction is in professional hands, wherever it might take place. We adopt the same approach to service delivery everywhere, based on a common training programme and a shared understanding of what our clients value.

In relation to CEE, we have an unparalleled presence through which we are able to develop long-term relationships with our regional clients and help them to take advantage of the many opportunities available in CEE whilst minimising their business risks.

CMS: facts & figures

- An organisation of nine major European law firms
- One of the largest legal services providers in the world
- 770 partners and over 5000 employees
- 54 offices in 29 jurisdictions

CMS means

- Europe's leading legal organisation
- Leading firms in major domestic markets across Europe
- Lawyers who think international but who also have the local touch
- Integrated, high quality services across all offices and jurisdictions
- Lawyers who regularly work closely together on cross-jurisdictional cases
- Consistent high-quality legal advice
- Project management skills across jurisdictions when required, with instructions managed by a single contact
- Dedicated lawyers that genuinely care about client solutions
- Local legal market experts that know and understand your business



“CMS Cameron McKenna has good industry knowledge and therefore provides excellent advice.”

Client feedback



An understanding of the issues you face

A challenging environment

Today's health and beauty companies face a myriad of challenges. The current environment demands that managers have access to the right form of advice, particularly legal advice. Take, for example, competition law both in the UK and EU, not to mention the EU accession states. Failure to factor in changes to the competition regime could seriously damage a company's growth plans. Then there is the issue of corporate governance and, more broadly, corporate social responsibility. Whether we like it or not, employees, consumers, shareholders, business partners and the broader public are operating to an increasingly complex social agenda where brands can be seriously damaged by a single false move and where governments are responding with increased regulation and guidance.

Product regulation

There are numerous areas which companies must be aware of such as labelling, product claims, traceability, hazard analysis, manufacturing and distribution. In the current climate companies need to ensure protection of their reputation and brands in light of ever increasing legislation, self-regulation and voluntary industry Codes of Practice and/or conduct.

For example, with the ongoing transition to the European Cosmetics Regulation companies are having to adapt and develop existing regulatory practices with some of the key issues facing the industry being those concerned with centralised notification procedures, labelling, traceability,

consumer safety and hazard analysis, and the continuous updating and renewal of a product information file.

As the health and beauty industry strives to develop new and innovative products and make stronger claims, many companies are having to face up to complex borderline issues created by the different cosmetic, medicine, medical device and biocide regulatory regimes. With such different sets of regulatory requirements to comply with it is vitally important that a company knows what its products are classified as and therefore how they can be manufactured and legally marketed to consumers. For example, the Medicines and Healthcare products Regulatory Agency (“MHRA”) has concerned itself recently with claims relating to sensitive toothpastes and certain hand cleaning products that can kill specific microbiological organisms.

Brand protection

Brand protection strategies are becoming more and more complex, with a continuing stream of new law and procedure at both European and domestic level. For example, there are ongoing developments relating to the parallel importation of branded goods, the inter-relationship between intellectual property rights and competition law and the level of flexibility permitted in comparative advertising. A higher demand for innovative and luxury goods in CEE countries and emerging markets raises product authenticity issues with the increase of counterfeited luxury goods on those markets. All of these issues affect brand owners across the full range of industry sectors.



“They are pragmatic, commercial and accessible”

Chief Counsel, international consumer goods manufacturer

Crisis management

No business is immune to crisis. Any company may face problems such as product recalls, competition investigations, environmental incidents, large-scale labour disputes, criminal offences by senior employees of a company or even corruption charges or investigations. They may be different in substance, but they will all have one thing in common – they attract a lot of unwelcome media attention and rapidly change from being an internal company issue into a public event. Negative consequences of an improperly managed crisis may be devastating – it may threaten the good name of a company, jeopardise its creditability and shake clients’ trust, even bringing business to a complete standstill in extreme cases.

Advertising and media scrutiny

The health and beauty industry is no stranger to close media scrutiny. In this multimedia age it is often called upon to justify itself, whether for the ingredients it uses, the manufacturing processes it employs, or the effectiveness of its products and claims associated with them.

The industry has always been at the forefront of technical advances and as it continues to push boundaries and develop new and innovative products, the claims associated with those products are subject to ever closer scrutiny. It has never been more important for a company to be able to substantiate those claims and the efficacy of its products. Claims bringing a completely new benefit to the consumer will very quickly be called into question, whether by the media, a consumer or a competitor, and any difficulties in substantiating those claims have a significant detrimental impact on a brand and severely hinder a new product launch.

Retailer dominance

Commentators predict that a handful of big players will dominate the world marketplace in a few years’ time. They will do so through increased investment in, and forthright protection of, their brands and corporate reputation.

New markets and expanding markets

India and China have seen significant growth in the health and beauty sector. Whether it be in terms of R&D, manufacturing or consumer purchasing the sector is growing, with many companies finding themselves facing East. New markets may be exciting and the revenue benefits substantial however, to a company unfamiliar with the practices and procedures of these new markets the opportunities for capitalising can be daunting.

Relocations

Western European companies continue to shift some of their operations to CEE and emerging market countries, which boast lower production and labour costs combined with relative political stability and a highly qualified workforce; with such transfers often taking place to so-called special economic zones, which offer interesting tax incentives and public funds support.

An integrated team of health and beauty industry specialists

Advertising and Marketing

- Copy clearance
- Negotiation of media buying agreements
- Negotiation of marketing agency agreements
- Compliance with advertising codes of practice, e.g. CAP/BCAP, Ofcom etc
- ASA complaints handling
- Comparative advertising
- Sponsorship agreements

Commercial

- Manufacturing, supply and distribution agreements
- Licensing
- Outsourcing
- Terms and conditions
- Data protection
- Joint ventures
- Franchising

Competition

- Dawn raids
- Compliance
- Pricing
- Dominant position
- Competitor relationships

Corporate and Banking

- Acquisitions and disposals
- Management buy-outs
- Private equity
- Fundraisings / Corporate Finance
- Shareholder agreements

Environmental

- REACH
- Environmental labeling and packaging
- Environmental permitting
- Carbon reduction commitment
- Emissions trading
- Waste management and waste water issues

Intellectual Property and Brand Management

- Trade marks
- Patents
- Copyright
- Design rights
- Anti-counterfeiting
- Customs and exercise and parallel imports
- Product liability

Regulatory

- EU Cosmetics Regulation
- Centralised electronic notification
- Cosmetic product safety assessment
- Post marketing safety reporting
- Cosmetic/medicine/medical device/biocide borderline issues

Tax

- Transfer pricing
- International investment and funds
- Tax planning
- International holding structures
- Employee share schemes
- Customs and excise
- VAT



"I think CMS was fantastic. They were highly responsive, highly thoughtful. They were very thorough. They brought up issues that we missed internally. We had lively debates on things. They were practical and very business-orientated."

Client feedback



"CMS strengths are: being very easy to deal with, very practical and good at getting things done. They are very professional and there is generally a great sense of trust that they will give good advice."

Client feedback

Examples of some of our recent experience

US headquartered global consumer healthcare company

- undertaking the assessment of product classification and advising on complex borderline issues (cosmetic/biocides/medicinal products /medical devices). Work has included advising on the cosmetic/medical device/biocide borderline in relation to an oral care product and potential claims in relation to new product developments within the oral care sector.

Major multinational personal care company

- advising the company in the Office of Fair Trading's UK Brands Investigations.

We act for an international company with significant global brands in the health and beauty sector

Problem: In light of the current economic climate, a client instructed us to audit its agreements with suppliers and customers, and to advise on strategy for such arrangements in the future.

Solution: We identified a number of action points for the client. Specifically, having reviewed the existing contractual matrix, we identified a number of options, including:

- (i) achieving further leverage from existing arrangements by invoking rights already in place – for example, to benchmark and review service levels using rights to audit;
- (ii) terminating under-performing contracts in accordance with rights to terminate;
- (iii) renegotiating contracts, or entering into new ones, to establish a contractual regime that met our client's current and expected future needs, for example by the use of retention of title provisions with customers, broader insolvency provisions and resistance to exclusive arrangements with suppliers; and
- (iv) outsourcing back office functions such as IT and call centre services.

Benefit: This strategy reduced costs and gave our client greater control over its relationships with third parties. CMS' broad general commercial experience gave our client the resource and expertise they needed, in the UK and throughout Europe, to carry out a complete restructuring of its operations.

We acted for the management of Simple Health & Beauty on the £240m sale to Alberto Culver Company, a leading manufacturer and marketer of beauty care brands including TRESemme, Alberto VO5, Nexxus, St. Ives and Noxzema. Simple, is a strong skin care brand with a unique market position that is distributed in mass outlets and was the second largest skin care brand on a value share basis in the U.K., Alberto Culver's largest foreign market. Our role included advising the management team on the exit and negotiating the sale and purchase agreement.

Global health and beauty manufacturer

- advising on competition compliance aspects concerned with distribution arrangements, relationships with retailers and pricing strategy. Work also included advising on and drafting a competition law compliance policy
- advice to downstream users regarding various issues regarding REACH including partial exemptions, safety data sheets and communications to supply chain, and SIEF participation.

Market leader in consumer health care products

- advising on the process of restructuring Eastern European operations, as well as on competition issues in Poland.

Leading French perfumes and cosmetics company

- advising on tax and customs issues regarding its operations in Russia.

Various clients

- advising on appropriate marketing and development strategies for new product launches, including advice on advertising compliance with the ASA Code of Practice. Work regularly includes advising on advertising complaints and comparative advertising disputes in relation to product claims.

Various clients in the cosmetics and consumer healthcare markets

- advising on labelling requirements for a number of cosmetic products in the healthcare, personal and oral care markets, including the requirements for both inner and outer packaging labelling, information leaflets, instructions for use, and coordinating legal advice regarding environmental labelling requirements and use of voluntary labels. We also have experience in advising a consumer products company in relation to trading standards investigation and threatened prosecution regarding alleged excessive product packaging.



What our clients say about us

We work hard to be a truly client focused law firm. This means understanding the unique needs and challenges of each market sector in which we specialise, and providing a service that is tailored to the particular concerns and requirements of each client. We could tell you what makes us different but we would rather let our clients tell you:

We are a relationship firm

We focus on service and building strong, long-term relationships.



“Our relationship with CMS Cameron McKenna fills a niche, there are probably no other partners like these. They communicate well, have good legal brains and commercial nous. They also have complete commitment to the transaction. You don’t see this much.”

Clients recognise that our approach is very different from some other firms that focus primarily on ‘transactional’ relationships. We are committed to building enduring relationships with individuals, departments and organizations. We listen to what our clients want and take the time to understand what their criteria for good service are. We are then able to deliver this, person by person, and together on an organisational level.

We are flexible

Our clients range from multinationals and blue-chip companies to small, privately owned companies. We have learned that you can not operate a one size fits all approach and our clients welcome the way in which we pull together team members from across the firm and match their skills, experience and personality to the client’s team.

We bring relevant expertise

One of the fundamental factors in a successful relationship is being able to offer the client relevant expertise and advice. Our clients consistently rate us highly for our technical expertise and our ability to deliver this expertise in a commercial manner.

Our lawyers undergo training not only in their legal practice areas but also within industry specific sector groups in order to develop a deep understanding of your business. Our various industry groups hold regular briefings, read your industry publications, attend industry events and receive frequent industry intelligence briefings in order to stay on top of the latest trends and issues relevant to your business. The result: we offer a full-range of lawyers trained to apply their legal know-how to offer solutions unique to your business.



“CMS Cameron McKenna has sector specialism. Here they are able to add a tremendous amount of value, which is why we use them.”



We deliver quality

Clients want concise, confident and relevant advice in a commercial format, which can be passed on and understood by the board, the CEO and business managers.



“CMS Cameron McKenna stands out because advice is practical, business specific and I like their style – they are happy to give advice.”



“Their strengths are being very commercial and very sensible. CMS Cameron McKenna has more of an attitude of ‘here are the legal issues and how they can be addressed.’ ”

All of which goes to show why so many businesses choose to work with us, time and time again.

We are commercial

One of the essential contributory factors to a successful relationship is our commitment to building a thorough understanding of our client’s businesses, their industries and their strategies. This enables us to tailor our advice in a meaningful way and ultimately to deliver better solutions.



“...their ability to get to the crux of the issue. Understanding the business needs as well as explaining the law.”

Contact Us



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"She is a high achiever, hits the ground running and you know what you are getting with Louise. She has a commitment to transactions that cannot be faulted and she is good fun."

Client feedback



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"Sarah Hanson is a favourite with clients for corporate and commercial work."

Chambers and Partners



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"experienced and extremely bright" her advice is "succinct and easily understood."

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"She is absolutely wonderful. If I had to choose anyone to advise me it would be her hands down."

Client feedback



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"offers clients top-notch consumer understanding."

Chambers and Partners



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"extremely practical and knowledgeable."

Chambers and Partners



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"Tom is one to watch, noting he is 'very strategic and pragmatic in his advice'."

Chambers and Partners



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"Helen was absolutely excellent."

Client feedback



