

June 26, 2025

# ‘Off-Label’ Beauty Hacks: Navigating the Risks of Consumer-Driven Innovation

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Guest authors Rachel Raphael, partner at Morgan, Lewis & Bockius, LLP and associates at the firm, Elizabeth Bresnahan and Kathryn Ignash, advise beauty companies on how to navigate the legal risks associated with consumers ‘off-label’ beauty hacks.

Deodorant as makeup primer. Red lipstick for dark, under-the-eye circles. Antiperspirant as hairspray. On social media platforms, consumers are going viral with innovative ways to get the most out of their favorite cosmetics and personal care products. [1] These “off-label” beauty hacks have been all the rage during the first several months of 2025, and are expected to continue as a top trend in 2025.

Although companies may be eager to jump on the bandwagon and capitalize on creative uses and viral trends to boost brand awareness and drive product purchasing decisions, it is important to tread lightly. These innovative, off-label uses could bring new legal risks.

## Reasonably Foreseeable Misuse

It is well understood that companies are liable for injuries and harm resulting from foreseeable use of their products, i.e., when a consumer follows the instructions on the product label. And cosmetics and personal care companies are no exception. That is why many in the industry work tirelessly to develop safe products, advertise accurately, and include sufficient warnings and instructions to ensure safe and appropriate use. But companies may be surprised to learn that this is not always enough. Cosmetics and personal care brands may also be held liable for foreseeable misuse of their products, i.e., use of a product in a way the manufacture did not intend but should have foreseen.

Of course, not all issues arising from the misuse of a product trigger potential liability, and companies are not required to anticipate and take precautions about every conceivable product use. As a result, the critical question is when does misuse become foreseeable? Not surprisingly, this will vary depending on the circumstances. But in general, product misuse is considered foreseeable if it can be reasonably anticipated. This means anything that shows the company was aware that consumers were using the product in an off-label manner may be evidence of foreseeability. And the more popular the misuse, the more reasonably foreseeable it becomes. As a result, increasingly popular off-label product uses pose a legal risk, especially



in cases where misuse goes “viral,” and a company shares, likes, or otherwise endorses that use on social media.

Although cosmetics and personal care companies have yet to come under fire for the growing trend of off-label beauty hacks, other industries are no stranger to this phenomenon.

For example, last fall, a federal district court in Maine considered whether a manufacturer’s social media endorsement of “off-label” uses of its consumer products could be used as evidence of foreseeable misuse. In that case, the manufacturer posted videos on its Facebook page showing consumers using the product in a way that was contrary to the manufacturer’s own published warnings about safe and proper use, including on the product itself. The manufacturer also engaged with its online audience through positive messages in the comments section of the social media posts. After being injured while engaging in the “off-label” activities promoted on social media, a consumer filed a product liability lawsuit against the manufacturer.

Shortly before trial, the manufacturer sought to preclude the consumer plaintiff from introducing or referring to the social media videos posted by the manufacturer. Ultimately, the district court found that these videos and the manufacturer’s own endorsement of the “off-label” activities were relevant to and had highly probative value on the issue of whether the plaintiff’s misuse was something that the manufacturer could have reasonably foreseen.

Although not involving personal care and cosmetics, the takeaway from this case is that companies must keep tabs on popular consumer-driven innovations involving their products, and those tempted to promote the latest and greatest “hacks” should proceed with caution.

## Best Practices to Mitigate Exposure

In the face of endless off-label beauty trends, there are

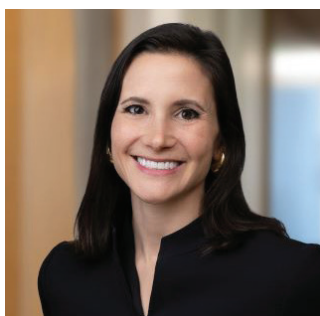
several ways that companies can help minimize their legal risk.

- Include clear and conspicuous warnings and disclosures for foreseeable uses (and misuses) of the company's products. More robust warnings better position the company to protect itself against a customer's misuse of the product in contravention of those warnings.
- Monitor what is being said online and how products are being used on social media by consumers, and take that information into account in the labeling, marketing, and advertising strategy. A company should never "like," "share," or otherwise endorse content that illustrates a use of the product that is improper or unsafe.
- Substantiate all product uses that the company endorses (and, even more conservatively, those that have simply become mainstream). If a

company promotes a product for a certain use (or a use becomes popular enough that it is arguably foreseeable), the company needs competent and reliable scientific evidence to support the safety of the product when used in that way.

- Provide guidelines to sponsored influencers on what they can and cannot say about the company's products. Beauty brands are ultimately responsible for what is said about their products online—by social media influencers and employees alike.
- Look out for off-label uses included in adverse event reports, FDA warning letters, and other product safety communications, and engage counsel early to mitigate the risks.

[1] These uses are for illustration only and do not represent the views of the authors, nor the views of Morgan, Lewis & Bockius LLP, and we do not endorse these uses.



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