

What Prop 65 Ruling Means For Cosmetics, Personal Care Biz

By Kathryn Ignash, Megan Suehiro and Elizabeth Bresnahan (September 17, 2025, 4:56 PM EDT)

In a decision building on some recent industry wins, the U.S. District Court for the Eastern District of California granted a permanent injunction, which extended an earlier-issued preliminary injunction, prohibiting the filing of new lawsuits to enforce Proposition 65's warning requirement based on alleged exposure to titanium dioxide from cosmetics and personal care products.

On Aug. 12, in *The Personal Care Products Council v. Rob Bonta*, U.S. District Judge Troy L. ruled^[1] that compelling businesses that sell cosmetics and personal care products to provide a Proposition 65 cancer warning for listed titanium dioxide — i.e., airborne, unbound particles of respirable size — violates the First Amendment because the warning is not purely factual and is controversial.^[2]

The court found the industry group plaintiff's claims met all the same tests as when the judge issued its earlier preliminary injunction order in 2024, reaffirming that there were no developments in the evidentiary record or the warning language sufficient to change the court's earlier conclusion that compelling the Proposition 65 cancer warning was unconstitutional.^[3]

The ruling is good news for companies in the cosmetics and personal care space, as it will relieve businesses of the need to apply Proposition 65 warnings to products containing titanium dioxide. It will also likely stop a wave of pending failure-to-warn litigation focused on the ingredient.

But parties to any previous legal settlements requiring reformulation of certain products containing titanium dioxide particles should continue to honor the terms of those settlements.

Proposition 65, also known as California's Safe Drinking Water and Toxic Enforcement Act,^[4] is a right-to-know law that requires the governor of California to publish and maintain a list of chemicals known to the state of California to cause cancer or reproductive toxicity: the Proposition 65 list.^[5]

Absent an exemption, Proposition 65 requires businesses with 10 or more employees to provide a clear and reasonable warning to consumers before knowingly and intentionally exposing them to chemicals on the Proposition 65 list.^[6]



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The mandate to provide the Proposition 65 warning is considered compelled commercial speech by the government that is subject to a First Amendment challenge.

Typically, Proposition 65 enforcers contend the challenged warning survives scrutiny because it advances a substantial government interest — namely, preserving public health and California's interest in protecting consumers from exposure to chemicals on the list.[7]

However, the nature of the listing of titanium dioxide and the application to exposure from cosmetics and personal care products raised issues of whether the government's interest was sufficient under the circumstances.

The Eastern District of California found that the warning in this instance would be misleading, and issued an order preventing further enforcement of compelling a Proposition 65 warning for exposure to titanium dioxide in all cosmetic and personal care products on First Amendment grounds.

The Titanium Dioxide Cancer Risk Assessment Debate

Titanium dioxide is used as a whitening pigment and is commonly used in cosmetics and personal care products, including toothpaste, sunscreen and makeup.

The U.S. Food and Drug Administration has determined that titanium dioxide may be safely used in these products with some limitations.[8] Health risks have been identified with respect to exposure to titanium dioxide, particularly as a food additive and potential inhalation.

In 2011, the California Office of Environmental Health Hazard Assessment placed titanium dioxide on the Proposition 65 List of carcinogens based on the International Agency for Research on Cancer's 2010 determination that the substance is "possibly carcinogenic to humans" due to "sufficient evidence" of carcinogenicity in animals, citing two studies involving experimental rats that inhaled titanium dioxide where an increased rate of lung tumors was observed.

Subsequent research, including that of the International Agency for Research on Cancer, found there was inadequate evidence to draw the conclusion that titanium dioxide is possibly carcinogenic to humans, not just in experimental animals.

Establishing Important Precedent for a First Amendment Challenge to a Proposition 65 Warning

The primary argument presented to the court challenged the constitutionality of "the compulsion of a cancer warning that misleads consumers into believing a product will increase their risk of cancer when the sum of all available evidence does not indicate it will." [9]

In the Aug. 12 order, Judge Nunley concluded that the totality of the Proposition 65 warning for titanium dioxide is misleading because it conveys the core message that using a cosmetic or personal care product containing listed titanium dioxide poses a risk of cancer in humans.

The district court held it would be reasonable for the average consumer to read the warning and conclude that listed titanium dioxide may cause them cancer or increase their chances of obtaining cancer, when there was no evidence in the record to show this was true or "much less any 'sufficient scientific consensus' to support this message." [10]

Scientific disagreement as to whether listed titanium dioxide causes cancer in humans also renders the Proposition 65 cancer warning controversial. Because the Proposition 65 warning in this case is misleading, and "not purely factual and uncontroversial," it therefore violated the First Amendment's protections against government-compelled commercial speech.

The Immediate Effect of the Court's Permanent Injunction and Declaratory Relief

The Aug. 12 ruling represents a significant win for cosmetics and personal care products manufacturers, suppliers, distributors, retailers, and other entities involved in the supply chain for these everyday products. The industry has seen a steady uptick of Proposition 65 challenges, with only 45 notices of violation issued in 2020, to over 550 in 2024.

However, the Eastern District of California's issuance of a permanent injunction and grant of declaratory relief will likely halt the dozens of pending lawsuits alleging failure to warn of listed titanium dioxide, and should prevent the filing of any new lawsuits with similar allegations.

Moreover, the ruling adds support for applying scientific rigor in the application of the warning requirements imposed by Proposition 65.

Key Takeaways for Cosmetic and Personal Care Brands

In the near term, cosmetics and personal care product companies will not be compelled to provide a Proposition 65 warning or make changes to their approach to compliance relating to listed titanium dioxide.

The order does not alter any existing consent decrees, settlements or agreements related to Proposition 65 warnings. Many of the settlements and consent decrees that were already in place required reformulation of products with the use of binding agents and/or major reductions in respirable-size unbound titanium dioxide particles.

Those defendants that agreed to implement these changes to their formulation pursuant to their settlement terms or consent decrees should continue to honor those agreements.

Cosmetics companies should continue to track which of their products may contain listed titanium dioxide and monitor developments with respect to the regulation and use of titanium dioxide.

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[1] *The Personal Care Products Council v. Rob Bonta*, No. 2:23-CV-01006-TLN-JDP, 2025 WL 2323833 (E.D. Cal. Aug. 12, 2025).

[2] Id. at *13, *16.

[3] Id. at *6.

[4] California's Safe Drinking Water and Toxic Enforcement Act of 1986 (Prop 65), Cal. Health & Safety Code §§ 25249.5, et seq.

[5] Cal. Health & Safety Code § 25249.8(a).

[6] Cal. Health & Safety Code §§ 25249.5, 25249.6, 25249.11(b).

[7] The Personal Care Products Council v. Rob Bonta, 2025 WL 2323833, at *14 (citing Nat'l Ass'n of Wheat Growers v. Bonta, 85 F.4th 1263, 1283 (9th Cir. 2023) ("California unquestionably has a substantial interest in preserving the health of its citizens.")).

[8] See 21 C.F.R. §§ 73.1575(b) (color additive in drugs), 73.2575(b) (cosmetics), 73.575(c) (color additive in foods), 352.10 (sunscreen).

[9] The Personal Care Products Council v. Rob Bonta, 2025 WL 2323833, at *6.

[10] Id. at *7.