

# FDA Continues Crackdown on Cosmetics Marketing Claims, and Microbead Ban Begins

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## 4th Edition: Trends in Marketing Communications Law

Regulating cosmetics continues to be an important priority for the Food and Drug Administration (FDA), although it remains to be seen whether the new administration will take a different approach.

The FDA issued 30 warning letters to cosmetics companies in 2016, the most in recent history. The FDA is concerned with cosmetic claims that indicate that a product can affect a structure or function of the human body, or treat, prevent or mitigate a disease or its symptoms, as these claims indicate that a product is a drug rather than a cosmetic. The FDA singled out claims that a product could “promote collagen production,” “reduce all types of hyperpigmentation,” “lighten the skin,” “fade dark spots” and “stimulate cell renewal.” The FDA found that these claims rendered the products to be new and unapproved drugs.

In July 2017, the initial provisions of the Microbead-Free Waters Act of 2015 will go into effect. That means that, on July 1st, manufacturers no longer will be able to produce cosmetics containing microbeads within the United States. By January 1, 2018, all cosmetics that contain microbeads will be banned from sale. Microbeads are solid plastic particles that are less than five millimeters in size and are used for the purpose of exfoliating and cleansing. Microbeads are present in hundreds of cosmetic products and do not dissolve when rinsed off, leading to pollution in oceans and lakes.

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## Key Takeaways

- It is unclear whether the new administration will impact the FDA’s increasingly conservative approach to cosmetics claims.
  - Companies should continue to vet all new product packaging, marketing and websites to ensure compliance with FDA regulations and review existing packaging and claims through a more conservative lens.
  - Companies that have not already done so, should review their product formulations to ensure that they will cease manufacturing cosmetics containing microbeads by July 1, 2017, and should clear current stocks of products containing microbeads by January 1, 2018.
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## Related People

### Stuart Lee Friedel

Of Counsel

212 468 4818

[sfriedel@dglaw.com](mailto:sfriedel@dglaw.com)

**Brooke Erdos Singer**

Partner

212 468 4940

[bsinger@dglaw.com](mailto:bsinger@dglaw.com)