Cosmetic Claims in China

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Relevant Laws and Regulations

- Advertisement Law (and related regulations)
- Cosmetics Hygiene Management Regulation (and related regulations)
- Law for the Protection of the Rights and Interests of Consumers
- Law Against the Unfair Competition
- Law on Tortious Behavior
Relevant Agencies

- State Administration for Industry and Commerce ("SAIC")
- China Food and Drug Administration ("CFDA")
- Provincial level AICs
- Provincial level FDAs
- The people’s courts (administrative and civil)
Structural Questions

- What is a label and labeling?
- What is an advertisement?
- What is a claim?
- What support is required for a claim?
Key Features of Claims Regulation

- Lack of a safe harbor for puffery
- Requirements that all statements be substantiated
- Restrictions on misleading advertising and consumer promotion
- Restrictions on statements regarding safety and effectiveness, product comparisons, and therapeutic and medical claims
- Strict limits on endorsements
Cosmetic Advertisement Regulations

Administrative Measures on the Regulation on the Cosmetics Advertisement (SAIC 1993) prohibit the following content:

- Exaggerating claims in the name, production method, composition, performance or efficacy of the cosmetics
- Use of the name or image of a consumer or other endorser to prove effectiveness
- Therapeutic claims and medical terms
- Comparisons that denigrate similar products
- Using absolute language
- Data related to performance, function, sales and other similar features
Problems with the Current System

- Lack of definitions and guidance on the scope of the system
  - Scope of advertisements and labeling
  - Scope of therapeutic claims
  - Standard for support
  - Safe harbors

- Lack of consensus on what constitutes adequate substantiation and adequate sources
  - Foreign data and human and animal studies
  - Consumer in-market data

- Confusion as to when company employees, spokespersons and satisfied consumers may speak about product satisfaction
**Enforcement Action Examples**

- Problem areas:
  - Claims that a product eliminates a problem/condition
  - Claims that a product acts definitively within a certain number of days
  - Claims that a product will be effective (without qualification)

- AICs have issued increasingly high fines in some cases over one million dollars and courts have sided with the AICs, when companies have sued
Cosmetics Enforcement Action Examples

- In March - April, 2015, a domestic cosmetic company received a fine of RMB 1.1 million (approx. $170,000) from Shanghai AIC for making exaggerating claims related to a skin lightening product:

  - In the product advertisement, the company claims: “[t]he more sun exposure you get, the clearer and brighter your skin will be, and the more moisture your skin will have.”

  - Shanghai AIC stated that this claim lacked a common sense basis
    - The company admitted that it lacked a basis for the statement
Enforcement Examples

Other problematic claims:

- “Turn grey hair black in 10 minutes, and grow black hair in 30 days”

- “Remove all kinds of freckles, effective the same day; have a flawless face in 15 days”

- “Only 28 days to remove all the wrinkles, no matter how deep they are!”

- “After using a set, spots gradually fade, using 2 sets, freckles will be largely reduced, stick with three sets and eliminate melanoma”

- “Lose 500 g per day... eat and drink whatever you want, the fat will fade away while you are sleeping”
## CHMR/CSAR – Cosmetic Claims

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<td>Sets forth content restrictions on claims, but does not set forth a standard for substantiating them. Similar.</td>
<td>Cosmetic efficacy claims must be substantiated by scientific data. Claims that are verified in a report issued by a CFDA accredited verification institution may be stated on the label without qualification. Claims that are not verified through verification institutions must have the phrase “this function has not been verified” marketed at the end. The credentials of the claim verification institutions and the reports they issue will be published on CFDA’s website.</td>
<td>Cosmetic claims should still be substantiated by scientific proof – either literature or research data. If CFDA deems verification necessary for certain claims, then it will issue claims verification principles. This draft drops the verification institutions. CFDA will publish literature, research data, or claims verification materials supporting claims online.</td>
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Proposed Guidance on Cosmetic Efficacy Claims

- Draft Guidelines for Verification of Cosmetic Efficacy Claims
  - Related to the draft CSAR, labeling and biomedical research rules
  - Sets forth requirements for the verification laboratories
  - Act as a kind of good clinical/laboratory practices/ technical standard for claims verification
  - Advocate both clinical and in vitro testing methods