

Retail Therapy:

Mummy Motivation in Cosmetics

2024

Transcript of Retail Therapy episode 4

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| Nicola | <p>Hello and welcome to Bird & Bird’s Retail Therapy podcast – where we explore the trends, changes and legal aspects of the retail & consumer industries.</p> <p>I’m Nicola Conway and I’m a Senior Associate in Bird & Bird’s R&C team.</p> |
| Sana | <p>And I’m Sana Malik, I’m a Trainee Solicitor also at Bird & Bird</p> <p>In today’s episode: We’re going to talk about skincare and in particular we will be discussing why there is a growing trend towards consumers wanting to swap out more active and innovative ingredients and products for simpler formulations. We’re joined by our colleague, Megan Harrison, who is an Associate in Bird & Bird’s Retail and Consumer team but who also heads up our sector focus on Mother & Baby care. Megan, would you like to kindly introduce yourself and a little bit about your practice?</p> |
| Megan | <p>Hi! My name is Megan, and I am an associate in Bird & Bird’s retail and consumer team, largely working with retail, F&B, fashion and cosmetics brands and helping them both get their products to market from the manufacturing stage right through to the end sale to consumers. I’ve recently come back from maternity leave and since then I’ve been working with our colleagues in the IP team to build our mother and baby and Early Years sector focus groups.</p> |
| Nicola | <p>Before we get started, we need to mention that this podcast is intended to be an open forum for conversation – it does not and is not intended to constitute legal advice. If you do want any legal advice, just reach out to us or your usual B&B contact. We’re always happy to support you and your business however we can. Let’s get into this episode...</p> |

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| Sana | So maybe we could just kick off by talking about what we mean when we say consumers are <i>simplifying</i> their skincare routines, and then we can move into exploring <i>why</i> that seems to be happening |
| Megan | <p>Well when we're talking about simplification of skincare, we're talking about two elements;</p> <ul style="list-style-type: none"> - The first element being removing some skincare steps. At several points in the last few years it's been trendy to follow really elaborate (for example) 10-step skincare routines and we see that preference dwindling a little bit. - And the second element being – using products that are by their very nature 'simpler'. So we're talking about consumers opting out of using really strong actives and seemingly showing preference towards what we could refer to as more basic, maintenance skincare. <p>So what we're looking at in the round is maybe a 2 step or 3 step skincare regimen only, that uses products that aren't necessarily seeking to target specific concerns but really are just to stay maybe clean and hydrated in the skin.</p> |
| Sana | Got it, and so <i>why</i> do we think that this simplification process is happening? |
| Megan | <p>There's actually a ton of thought and opinion on this. But if we look specifically at the mother & baby category, the main issue is that many cosmetic and beauty products, and particularly those with innovative and active ingredients, are not recommended for use by people who are pregnant or breastfeeding. This is for a number of reasons:</p> <ul style="list-style-type: none"> - there are some ingredients that are <i>known</i> to be harmful when consumed or absorbed; and - there are others that we simply don't know whether they're harmful or not – we don't know if there's a risk to an unborn child or nursing child because companies can't or won't trial products on pregnant women or children. <p>But the overall takeaway is that people who are pregnant or breastfeeding often find that their choice of cosmetics and beauty options is heavily narrowed.</p> |
| Sana | And I think that everything that you've just said is also increasingly true to say for people who are trying to conceive. If people simply don't know whether something is harmful to their family planning the simplest option is just to avoid it. |
| Nicola | Yeah, piggybacking on that thought, I think that even outside of family planning concerns – so even outside of consumers who are pregnant or breastfeeding or trying to conceive – I think more generally that a lot of other consumers are generally becoming more inquisitive and selective about the ingredients that they're comfortable using topically. I've heard a lot of feedback from brands that their consumers are asking questions and becoming increasingly curious about: (a) what |

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| | <p>ingredients are in products and (for actives) in what percentages; (b) what effect these ingredients purportedly have both short- and long-term; (c) whether or not they contain any known allergens or irritants; and (d) where there are of any other potentially harmful effects.</p> |
| Megan | <p>Yeah, I think that's right. I guess the trend could be summarised in the round and across different consumer groups as a choice to have an abundance of caution in terms of what we're using on our skin.</p> <p>But, Sana, I think from previous conversations that we've had that you might still fall into the former category of preferring to be more explorative, of the more innovative and in the active side of skincare – so it would be interesting to hear what you think of this general movement away from that.</p> |
| Sana | <p>Yeah, I'm already laughing! Yeah, I think so. I was one of those people who definitely looked up the trend when it when it became trendy to have the 10 step Korean, I think it was Korean skincare, and it was because of the sheer compliments afterwards and also taking the time to spend a little bit of time on your skincare without make-up, so especially in Covid, we saw that consumer trends pointed down towards make-up, lipstick those kind of things, especially foundation and people were just reassessing their health in general so spending 10 or 15 minutes on just a purely, exclusive skincare regime which was really to do with the health of the skin vitality- glowing, that kind of thing or something was something I really enjoyed and I still enjoy even if I can't do it in the morning and in the evening, it's something that is a nice part of the day to look forward to, but having said that, and listening to you now Megan, I think people are more inquisitive about combining products especially. So we know for example hyaluronic acid and retinol are hand-in-hand amazing products together and if you just do that in the evening, for example, like that's case well done in my opinion so the streamline process is something we're seeing more especially on TikTok. Definitely I think TikTok is moving more towards haircare anyway now but it's really interesting to hear that and yeah, I'm still pretty much seven- step maybe!</p> <p>Megan, Nicola, would you say you're both more in the simplification category?</p> |
| Megan | <p>I would say I am a bit of both – I certainly miss my retinol products! However I have quite enjoyed changing my skincare regime to work with my pregnancy and breastfeeding journey – it has probably encouraged me to be more experimental with new products that I wouldn't necessarily have chosen before because they didn't contain the actives I was looking for like retinol.</p> |
| Nicola | <p>I am not very explorative when it comes to my facial skincare. I used to have skincare issues and my dermatologist put me on a skincare regimen that just works, and I just don't mess with it at all, so I have a very simple facial skincare routine, however, I'm much more curious about body care. I'll pretty much try anything new or interesting in the body care space and slightly off-topic but kind of inter-related, I would say I have very few qualms when it comes to perfumes so I'm pretty open to trying most fragrances on myself and or in my home and that's</p> |

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| | <p>actually not very trendy right now. A lot of the bigger fragrance houses are making statements that a large group of consumers are moving away from the bigger more complex fragrances and trending back towards some of the more single molecule or single note fragrances instead.</p> |
| Megan | <p>Do you think people are simplifying their fragrance usage for the same reasons that we've discussed people are simplifying their skincare usage?</p> |
| Nicola | <p>It could be. I mean I guess in the parenting category in particular if you're having skin-to-skin contact with your baby you probably do care what you're spraying on your skin and equally you probably do care more about what you're spraying into the air and what you're breathing in your home. But I think part of it could also be more of a psychological or social reason. During the covid pandemic I remember hearing something similar was happening, that lots of people were buying, for example, gentle or diffused skin scents and I think a lot of that was aligned to us all needing comfort and almost softness in our environments. So it could possibly be another psychological shift like that.</p> <p>But in either case I should say, I don't actually think this by any means spells the end for big and bold fragrances I think we will just see consumers will be split in to two camps in terms of what their preferences are.</p> |
| Sana | <p>I really agree with that. I think in terms of what's trendy at the moment as well there's a lot of kind of natural fragrances, natural deodorants, moving away from over generated products and anything too artificial and again something we've spoken about in previous podcast is the new generation Gen Z are very switched on with packaging, sustainable initiatives, vegan products and a lot of that is now tied into brand who are really focusing on all natural products or vegan, no animal tested, kind of natural from the Earth- from the shop you know right to your beauty counter kind of process so I think that will be kind of the decisive factor and we're going to see those two camps, I definitely agreeing.</p> <p>Which I guess leads to another key question in relation to the skincare discussion - which is – what are brands doing to respond to the trend towards skincare simplification? It's obviously important for brands to keep producing and selling products so is this going to be bad news for profits?</p> |
| Megan | <p>In short, no, we're not seeing any immediate signs that brands are suffering. But we are seeing them acknowledge what's happening and responding to that. We're seeing new product launches that seem to meet the need for something simpler. So new formulations, new products. And we're also seeing a lot of marketing messaging around this. So, for example, you might see a brand saying, "look you may not be able to use retinol when you're pregnant but why don't you try our niacinamide serum which is just as cosmetically effective but much safer".</p> |

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| | <p>Whilst we're on this point we should explore just briefly the legal risk of a marketing claim like that though because it can, and it does in practice create some legal risk for a brand. Basically - any claim that one ingredient or product is a "safer" option when compared to another would need to be substantiated on two levels –</p> <ul style="list-style-type: none"> - first to show that the alternative product is indeed proven to be safe (including for the user group concerned which may be a high-risk group) and - secondly to show that the original product should actually be avoided due to it being proven to be unsafe. <p>And both of those claims are hard to substantiate and prove. So it's just important to keep in mind when making comparative safety claims because if you make them in the wrong way, you might find yourself on thin ice from a legal and regulatory perspective.</p> |
| Sana | <p>That's a really poignant point especially now because we know the regulators are very active in this space at the moment.</p> <p>Whilst we're touching on what the regulators are scrutinising, we know that the CMA and ASA are cracking down on brands that are making unsubstantiated claims that something is 'green' and 'clean' or 'natural' etc. Are claims of that nature something that you see a lot in the mother & baby category as well?</p> |
| Megan | <p>Yes, definitely – these are claims that brands look to make really regularly in relation to mother and baby products for the reasons we have discussed today - ultimately these consumers are in a higher risk group and are more likely to be critical of the products they are using. The problem is that words like "natural" and "green" don't really have useful definitions. They're hard to use within the regulatory framework because they're hard to substantiate and we're seeing more and more companies being challenged on them and basically getting into hot water. And that's true even outside of the skincare or the mother & baby product category, its true across the board.</p> |
| Nicola | <p>It can be kind of a minefield I think, if you're trying to shop in an intentional way when you don't really know if all brands are using the same meaning when they're saying clean or natural or whatever think it just kind of puts the onus on consumers have to go research these things themselves, which I mean, is time consuming isn't it?</p> |
| Megan | <p>I mean yeah, I think so. Every product now there is marked as "green" in some way or better than it was then with formulations and things like that makes it really hard to be discerning when you're a consumer of those products to find which products actually are green and which are just saying they are.</p> |
| Sana | <p>Since you're a mum yourself, what do you think is the biggest challenge or what do you think could be a way to make this process easier for you in terms of sourcing the thing that you really want for you and your baby?</p> |

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| Megan | That's a really good question. I think what can be frustrating with some marketing claims out there, is they're not necessarily in contravention to the regulations because they're not making a claim that the product itself is green but they're implying that it's better than it was, so saying, for example, 'BPA free' makes you think as a consumer- oh great it doesn't have toxic plastic, that's great for my baby, but actually the ingredients they are using instead of BPA are just as bad so it's clamping down on those, not necessarily illegal claims, but ones that are misleading to consumers and I really appreciate the efforts of the CMA in the ASA are going to, to clamp down on this as well |
| Nicola | I think that's a key point to make as well is that when we when we're assessing whether a claim is acceptable or not you really do have to keep in mind not what you as the brand intended for it to mean or think it means but what is the average consumer going to think when they see that because that's one of the tests that the regulators apply. What would the average consumer think you mean when you say XYZ. |
| Megan | Exactly, and actually there are so many great companies out there doing great things in this space making much more sustainable, green, natural products and they're getting drowned out by the noise out there so yeah, it's definitely an interesting area from a legal perspective at the moment. |
| Nicola | Have you seen these new brands that target babies' skin? So there are some that create fragrance for babies and fragrance for babies? Even little lip balms and lipstick but like they are aimed at three years old, not children but babies. |
| Megan | No, I mean, I use specific baby skin products because obviously their skin is more sensitive and developing, but no, I've not seen anything like that. I think we saw in the news recently, haven't we? That one of the unwelcome effects of social media is children younger and younger using retinol products and heavily activated products on their developing skin outside of what the brand is actually recommend and a lot of these brands are coming back and saying- no, it's not intended on users that young with their skin, so you have to be careful about targeting an audience like that. |
| Nicola | Well I think we can talk about this all day, but we close the episode with a fun, light little question – Megan and then Sana, what's something that you purchased recently and loved? |
| Megan | Oh it's really good question and I feel like everything in the ME & EM winter sale that I purchased is great. I think more specifically I recently bought, and actually on trend for this podcast topic, Rehab hair tamer which looks like a clear mascara of your hair and Rehab is a brand that Stacey Solomon's recently invested in and yeah it acts like a bit of a clear mascara and you put it on your hair and it's really tamed my post baby hair growth so I look a little less professor in the office! |
| Sana | I love that answer. I just love that! And obviously we are fans of new hair growth so that sounds amazing. I guess for me I'm going to also stay on topic. So I repurchased the Innisfree green tea facial wash- that is my favourite facial wash. I feel like every time I'm on the podcast I'm |

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| | <p>always recommending a Korean product so there's definitely a trend here. I think it's just really gentle. It's one of these easy to foam in the tips of your finger's facial cleansers, it's perfect for getting make up off in one go, heavy eye makeup included, and the packaging is very cute.</p> |
| Megan | <p>What is step is it in your routine?</p> |
| Sana | <p>Probably three out of seven!</p> <p>And what about you Nicola?</p> |
| Nicola | <p>I'm going off topic, sorry guys I've got a book. It's The Great Believers by Rebecca Makkai and it's mostly set in the 80's Chicago AIDS epidemic but also a little bit in contemporary Paris as well so it focuses on stories of love and loss and frankly chaos. Don't read this book if you don't want to cry, it is heartbreaking but it's just beautifully written and I have to say it's probably jumped up pretty high on my favourite books of all-time list already.</p> |
| Sana | <p>So I guess we've got some recommendations for hair, skin and for the soul!</p> <p>Alright that's the end of our episode – thanks for joining us! If you'd like to join us for more Retail & Consumer discussions, don't forget to subscribe or follow wherever you listen to your podcasts so that you're notified when the next episode goes live. Bye for now!</p> |

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