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## California Bans Animal Testing and Fur Products; Enforcement Delayed For Alligator and Crocodile Ban

California recently passed several laws addressing California consumers' concerns around the mistreatment and preservation of animals in connection with the beauty and fashion industries. More specifically, California has banned the use of animals in cosmetic testing, has added several more species to its existing exotic skin prohibitions and has implemented a ban with respect to fur products.

In this alert, we discuss these new laws and address how a beauty or fashion brand operating in California can prepare to comply.

### Cruelty-Free Cosmetics Testing Required Beginning Jan. 1, 2020

California Civil Code §1834.9 prohibits both manufacturers of cosmetics and contract testing facilities from using animal testing methods *within the state* when an appropriate alternative test method has been scientifically validated and recommended by the Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM) or other specified agencies. In the past, companies have bypassed this restriction on animal testing by manufacturing and testing cosmetic products outside the state. After Jan. 1, 2020, cosmetics manufacturers wishing to sell cosmetics within California will no longer be permitted to use that work-around.

The California Cruelty-Free Cosmetics Act ([SB 1249](#)) makes it unlawful for a cosmetic manufacturer to import for profit, sell or offer for sale in the state of California any cosmetic developed or manufactured using an animal test that was conducted or contracted by the manufacturer or any supplier of the manufacturer on or after Jan. 1, 2020. The act defines "animal test" to include the internal or external application of a cosmetic in its final form, or any ingredient thereof, to the skin, eyes or other body part of a live, nonhuman vertebrate. For purposes of the law, "cosmetic manufacturer" has been defined as any person whose name appears on the label of a cosmetic product. So while the law does not expressly implicate cosmetic retailers, we anticipate that retailers will, and should, request assurances from any cosmetic manufacturers whose products will be sold in their California stores.

This law applies to any cosmetics sold in or brought into California for sale — including sales through brick-and-mortar locations in California and direct-to-consumer or other e-commerce sales. A "grandfather provision" affords manufacturers an exemption for finished cosmetics or cosmetic ingredients tested on animals and sold in California before Jan. 1, 2020. The California Legislature has also provided beauty companies with a grace period whereby any cosmetic inventory that violates the law may be sold for a period of 180 days following the Jan. 1, 2020,

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effective date — or until June 29, 2020. After the conclusions of this grace period, the district attorney or city attorney in the county or city where a violation occurred may bring an enforcement action for a violation of the law with an initial fine of \$5,000 and an additional fine of \$1,000 for each day that the violation continues.

### Eleventh-Hour Reprieve on Enforcement of the Ban on Alligator and Crocodile Products

California is officially the first state to ban the sale of alligator and crocodile products. California Penal Code Section 653o makes it a misdemeanor to import into the state for a commercial purpose, to possess with the intent to sell or to sell within the state the dead body, or a part or product thereof, of a number of specific animals. [AB 1260](#), signed into law last October, amends California Penal Code Section 653o(b) to add alligators and crocodiles to this list. The penalties under Section 653o are steep — a person who violates the law is guilty of a misdemeanor and may be subject to a fine of no less than \$1,000 but not to exceed \$5,000, imprisonment in the county jail not to exceed six months, or both, for each violation.

Because the amendment does not exclude preowned items, it poses a particularly unique challenge with respect to the resale or repair of alligator or crocodile skin items within the state of California that were sold prior to Jan. 1, 2020. For example, in the event such an item becomes damaged or requires repair, the designer completing the repair may be required to send the product outside of California to be fixed. Additionally, residents may be required to venture outside the state to retrieve their restored item, to avoid implicating themselves in a commercial transaction within the state.

Although Section 653o was passed in the 1970s, enforcement with respect to alligator and crocodile products was delayed through sunset clauses in both 2006 and 2014. Despite similar industry initiatives

to again delay its implementation this year, the amendment will go into effect Jan. 1, 2020. Two bills (AB 719 and AB 1561) remain pending in committee, which could still pass during the next legislative session.

However, eleventh-hour efforts to delay or halt the enforcement of California's ban on the trade of alligator and crocodile skins have met with some success. Two related cases filed earlier this month, *April in Paris et al. v. Becerra* (plaintiffs are a group of farmers, retailers and manufacturers who claim to “represent every step in the chain of commerce for alligators and crocodiles”) and *Delacroix Corp et al. v. Becerra* (led by Louisiana Attorney General Jeff Landry's Office, on behalf of the Louisiana Department of Wildlife and Fisheries, the Louisiana Landowners Association, and the Delacroix Corporation, one of Louisiana's largest coastal landowners), seek declaratory and injunctive relief on the basis that AB 1260 is preempted by the Federal Endangered Species Act (ESA) and the U.S. Fish and Wildlife Service implementing regulations, and that AB 1260 violates the Supremacy Clause, the Commerce Clause and the Due Process Clause of the U.S. Constitution.

The ESA prohibits or restricts the commercial trade of certain protected animal or wildlife species. Although older case law exists to support the proposition that federal law preempts state commerce bans under the Endangered Species Act, the federal government has since added to federal legislation special rules for reptiles, which provide that permittees of alligator and crocodile products may not violate state law. Plaintiffs in *April in Paris* assert that three species of alligators and crocodiles that they utilize exclusively in their products are “legally and exclusively permitted for commercial trade in the United States” under the ESA and its regulations, due to their classification as “species not necessarily threatened with extinction, but in which trade must be controlled in order to avoid utilization incompatible with their survival.” Arguing

that Section 653o as amended by AB 1260 conflicts with the federally permitted and highly regulated commercial trade of these species, the suit seeks a declaration that AB 1260 is both preempted by the ESA and unconstitutional, and seeks an injunction preventing enforcement. Similar claims and relief were presented by plaintiffs in the *Delacroix* case.

Just last week, the court in each case entered a Stipulated Order, enjoining enforcement of Section 653o (and related section 653r) with respect to alligator and crocodile parts or products until 30 days after the entry of the earlier of any full or partial denial of plaintiffs' motions for a preliminary injunction or a final judgment adverse to plaintiffs.

Luxury brands and other retailers that sell products comprising alligator or crocodile skins — many of which may already have been preparing to move inventory out of state — thus have a grace period until at least May 24, 2020, 30 days after the April 24 hearing date in both cases. If the court takes the matter under submission, a final ruling or adverse judgment could issue much later.

### On the Horizon — California's Ban on the Sale of Fur Products

California has also become the first state to enact a ban on the sale of fur products, perhaps driven by similar legislation enacted locally in Los Angeles and San Francisco. Section 653o allows for the sale of fur products only as long as these sales are conducted within the licensing parameters set forth by the Fish and Game Commission and Department of Fish and Wildlife. [AB 44](#), which was signed into law in October and which goes into effect Jan. 1, 2023, makes it unlawful to sell, offer for sale, display for sale, trade or otherwise distribute for monetary or nonmonetary consideration a "fur product" in the state of California. The law also makes it unlawful to manufacture for sale a fur product in the state.

The statute defines "fur" as any animal skin or part thereof with hair, fleece or fur fibers attached thereto, either in its raw or processed state, and "fur products" includes any article of clothing or covering for any part of the body, or any fashion accessory, including but not limited to handbags, shoes, slippers, hats, earmuffs, scarves, shawls, gloves, jewelry, keychains, toys or trinkets, and home accessories and decor, that is made in whole or in part of fur. The definition includes some notable exclusions, including animal skin or part that is to be converted into leather, which through processing will have the hair, fleece or fur fiber completely removed; cowhide, deerskin, sheepskin or goatskin with hair attached; pelts or skin preserved through taxidermy; fur for religious purposes; and fur used for traditional tribal, cultural or spiritual purposes by a member of a Native American tribe recognized by federal or California law.

In contrast to the treatment of exotic skins under AB 1260, AB 44 also exempts "used fur products," which include those in any form that have been worn or used by a consumer. Thus, California businesses selling used fur products will not risk violating this law when seeking to resell or repair previously owned fur items.

In lieu of criminal prosecution, as a misdemeanor, the state department, the Attorney General, or the city attorney of the city or the district attorney or county counsel of the county in which the violation occurred may bring a civil action to recover up to \$500 for the first violation, \$750 for a second violation that occurs within one year of the previous, or up to \$1,000 for a violation that occurs within one year of a second or subsequent violation. Each fur product will be treated as a separate violation. Additionally in an action brought under the law, the costs associated with investigation, attorney's fees and expert witness fees may also be recovered.

The language of the amendment provides that any activity expressly authorized by federal law is also

excluded. As with the exotic skins ban, it remains to be seen whether there is a viable argument that this law is preempted by federal law.

New York City and Hawaii both considered similar legislation this year, signaling that California's fur ban could be only the beginning. This legislation follows a rising industry trend to go "fur free." Many luxury brands — including Chanel, Gucci, Burberry and Prada — have announced fur free policies; and the Fur Free Alliance, a global coalition of animal and environmental protection organizations, has over 1,000 retailers in its Fur Free Retailer initiative.

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