

The Impact of Contractual Clauses to stop Animal Testing while launching a New Cosmetic Product^{1, 2}

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ABSTRACT

Since many years, animal testing is considered as the method to prove that a new cosmetic product is not toxic to consumers health before being marketed. The safety test is a legal requirement from authorities.

However, the use of animals is not required, but it's always easier for cosmetic companies to do what has ever be done.

Nevertheless, more and more cosmetic companies have decided to stop animal testing and be cruelty-free, but this cannot be a worldwide promise as some countries still require this practice by law when it comes to sale foreign cosmetic products in their own countries.

To identify and understand what the best solution would be to replace animal testing for cosmetics, several tools such as root cause analysis, as well as qualitative and quantitative analysis. The results coming out from these studies will help us to understand why cosmetic companies should implement some new alternatives to animal testing when it comes to launching a new cosmetic product.

Keywords: Cosmetic industry, testing cosmetics, testing cosmetics on animals, consumer's safety.

INTRODUCTION

It is official: L'Oréal will launch its first brand created internally in 2019 in the United States, the first global subsidiary of the company. Seed Phytonutrients is a haircare, facial care, and body care brand, made from natural ingredients but what is important to note

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is that seven of the world's dangerous poisons are all from plants. The use of natural ingredients does not exclude the safety test when it comes to launch a new cosmetic product.

Nowadays, new cosmetic products can't be marketed without having been tested beforehand for the safety of the consumers. According to Article 3 of the Cosmetics Regulation: "A cosmetic product made available on the market shall be safe for human health when used under normal or reasonably foreseeable conditions of use."³ In this context, L'Oréal is legally responsible for ensuring that its new product (and its ingredients) performs the safety evaluation to prove that it is not toxic to human health when consumers use it according to the directions written in the labeling. The Food and Drug Administration (FDA) can take action against the manufacturer if certain information shows that a cosmetic does not meet the legal requirements to protect consumers.

However, these tests involve the use of animal studies to determine toxicology. According to Cruelty Free International, the organization working to put an end to animal testing methods around the world: "at least 115 million animals may be used in safety tests worldwide each year"⁴. And even if more and more cosmetic companies claim that they are "committed to the elimination of animal testing"⁵, this method is still implemented worldwide due to the differences in legislation between countries. Cosmetic companies do tests on animals where it is required by law as they sell their products in China.

Nevertheless, more and more governments are passing a ban in their own country to stop animal testing for cosmetics. 2018 is an important date in the animal testing ban history: it has already been five years since the animal testing ban for cosmetics is implemented in European Union. The objective of the ban was reached: there is no animal testing for cosmetics in the EU and, imported products and ingredients tested previously on animals before being sold in the EU was eliminated. It was a big step in cosmetics regulation, and it has been impactful around the world as many countries follow the path. The European Parliament is currently discussing a global ban on animal testing. But for now, other jurisdictions have just followed European Union legislation like California. As you might know, we won't find beauty products tested on animals on the California market anymore. The "California Cruelty-Free Cosmetics Act"⁶ was passed unanimously (80-0) by the California State Assembly on August 31, six months after its introduction by Senator Cathleen Galgiani. This measure bans the sale of cosmetics tested on animals and will take effect from January 1, 2020.

³ Cosmetics Europe, A practical guide. 2016 "Compliance with regulation 1223/2009 on cosmetics products: Roles and Responsibilities along the supply chain"

< https://www.cosmeticseurope.eu/files/9314/7306/9079/Compliance_with_regulation_1223-2009_new.pdf >

⁴ Cruelty Free International (NA). "Facts and figures" < <http://www.crueltyfreeinternational.org/why-we-do-it/facts-and-figures-animal-testing> >

⁵ Laughlin, A. 2018 "30 Makeup Brands that still test on animals in 2018", Cruelty-Free Kitty, < <https://www.crueltyfreekitty.com/cruelty-free-101/makeup-brands-that-test-on-animals/> >

⁶ Demotivateur (2018). "Cosmétiques: La Californie devient le premier état à bannir les tests sur les animaux" < <https://www.demotivateur.fr/article/cosmetiques-la-californie-devient-le-premier-etat-a-bannir-les-tests-sur-les-animaux-14352> >

From a project management perspective, when a cosmetic company wants to launch a new brand on the market, the new brand is regarded as a portfolio of assets as the company is using “projects as the means to an end to acquire, create, update, maintain, expand and eventually dispose of organizational assets, their measurement of success is based not so much as whether the project was successful but whether the product the project was undertaken to achieve was successful”⁷. All the creation and testing of products of a new cosmetic brand passes through a Multi-Project program if we consider that each product of the new brand constitutes a project and if we look at the following definition “a multi-project program achieves synergies from projects with common traits such as shared resources, similar clients or product technology. There is a relative interdependence of constituent projects and benefits are expected from synergy.”⁸ When the products have been created and, the safety tests were successful, the new brand is ready to be marketed and all the products become new assets for the company if we consider that « an asset can be described as being a tangible or intangible resource with economic value that an individual, corporation or country owns or controls with the expectation that it will provide future benefit”⁹.

Identifying the causes leading to animal testing for new cosmetics can be an interesting manner to resolve the roots of the problem.

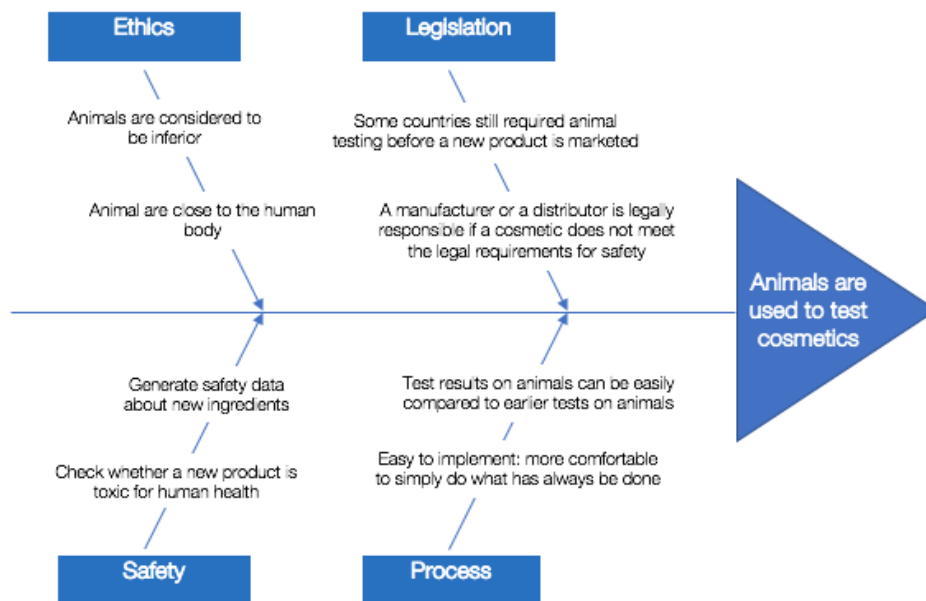


Table 1 – The Root Cause Analysis: Fishbone Diagram¹⁰

⁷⁶⁷ Planning Planet (2015). “Guild of Project Controls Compendium and Reference”
 <<http://www.planningplanet.com/guild/gpccar/introduction-to-managing-project-controls>>

¹⁰ By Author

To summarize, the purpose of this research paper is to put forward and analyze the following questions:

- In which way can contracts and legislation stop animal testing?
- How can contractual requirements protect consumers about new cosmetics products?

METHODOLOGY

1. Problem definition

As stated previously, the creation of a new cosmetic generates for most cases, a safety test on animals.

In order to find the appropriate solution to stop animal testing, it would be interesting to list the two major causes:

- Legislation:

As governments around the world don't have the same law on this question, it becomes difficult for a cosmetic to launch a product worldwide and at the same time, claim to be cruelty free. For instance, the Chinese government requires by law animal tests on all cosmetic products imported and sold in the country. Therefore, if a cosmetic company doesn't usually test their products or ingredients on animals, if they want to sell their products in China, they cannot be considered cruelty-free.

- Process:

When cosmetic companies want to develop or use new, untested ingredients in their cosmetic products, companies conduct new animal tests to prove the safety of these fresh ingredients. Companies may view animal testing at the easiest way to have their products approved. It's easier to do what has always be done than to implement a new alternative to animal testing because scientists can't compare with previous results. Whereas test results on animals can be easily compared to earlier tests on animals.

2. Feasible alternatives and attributes

To put an end to the testing methods using animals, the study of several articles concluded that the following alternatives might avoid the previous problem.

A safety test without going through animal testing implies to reconsider existing contracts and establish new ones. That's why contract management becomes an essential part of this project. The project of creating and testing a new cosmetic product needs to go through some reforms which could potentially be:

- Companies can use established ingredients to prove the safety of their products¹¹
- Encourage each government to pass a ban in their own country¹²
- Encourage companies to use new techniques for testing cosmetics¹³
- Implement an international ban for testing cosmetics on animals¹⁴

To compare and analyze these alternatives, the following attributes will be used:

- Acceptance¹⁵ – The solution needs to be accepted internationally. As differences in legislation between countries is one of our leading causes, the solution has to cover as many countries as possible
- Ease to implement¹⁶ – The chosen alternative needs to be easily applied not to dissuade different stakeholders to establish it
- Durability – The final answer needs to last long in time to discourage stakeholders to return to their old habits
- Speed – The selected solution needs to be implemented quickly to stop animal testing as soon as possible

3. Development of the feasible alternatives

- Companies can use established ingredients to prove their products are safe

By using established ingredients that were already declared as safe, companies can claim their products are not toxic for human health. There are, according to the HuffPost, “almost 20,000¹⁷ ingredients in the European Union’s database for which safety data is already available”.

There is no need for testing cosmetics to be sure it is safe for these ingredients. The wrong side to such a practice is that companies can’t innovate and find new combinations because they have a limited choice of ingredients.

¹¹ Cruelty Free International (NA). “Ending cosmetics testing on animals”
<<http://www.crueltyfreeinternational.org/what-we-do/our-campaigns/ending-cosmetics-testing-animals>>

¹² Humane Society International (NA). “Animal Testing For Cosmetics”
<https://hsi.org.au/go/to/1118/animal-testing.html#.W_AeFy17S5w>

¹³ PETA (NA). “Animals are not ours”
<<https://www.peta.org/issues/animals-used-for-experimentation/alternatives-animal-testing/>>

¹⁴ Unilever (2018). Unilever supports calls for a worldwide animal testing ban on cosmetics
<<https://www.unilever.com/news/press-releases/2018/unilever-supports-calls-for-a-worldwide-animal-testing-ban-on-cosmetics.html>>

¹⁵ ChemicalWatch (2018). Global ban on animal testing hard to achieve, industry says
<<https://chemicalwatch.com/65539/global-ban-on-animal-testing-hard-to-achieve-industry-says>>

¹⁶ Cruelty Free International (NA). Alternatives to animal testing
<<http://www.crueltyfreeinternational.org/why-we-do-it/alternatives-animal-testing>>

¹⁷ Cruelty Free International (NA). “Ending cosmetics testing on animals”
<<http://www.crueltyfreeinternational.org/what-we-do/our-campaigns/ending-cosmetics-testing-animals>>

- Encourage each government to pass a ban in their own countries

In 2009, the European Union set up a ban on animal testing for cosmetic ingredients, and in 2013, extended the ban to all imported cosmetic products.

Humane Society International highlights progress around the world “Cosmetics animal testing and/or trade bans are now in place throughout the European Union, Israel, Norway, India, New Zealand and Turkey, with similar legislative measures under development in the United States, Brazil, Canada, Taiwan, Argentina and Russia, and removal of some animal testing in South Korea and China.”¹⁸

But it is challenging to make every country to pass this law. For instance, the Beauty Without Blood source shows that China represents a huge market for “many American and European cosmetics brands. Last year alone, the cosmetics market in China was worth over 26 billion – and the sales are rising quickly. This makes it very attractive for companies,”¹⁹ and unfortunately this market still requires by law animal testing for any cosmetics that enter into the country.

Humane Society International launched the global **#BeCrueltyFree** campaign in 2012 and, the campaign aims to convince governments to introduce a ban to animal testing. The campaign has the support of consumer to ban animal testing wherever it still takes place in the world. The wrong side is that there always will be differences between countries if some governments don’t want to pass the ban to forbid animal testing.

- Put forward new techniques for testing cosmetics

As safety tests experimented on animals are cruel, most of the time, don’t predict enough human reactions and are very expensive; many scientists are developing and promoting new alternatives for testing products that replace animals and that are more relevant to human health. These new alternatives include pieces of Human skin, eyes, a lining of the throat are now used in test tubes from donated human cells (also known as in vitro methods). In other cases, tests are run virtually, by using computers and simulation software. And for some tests, people have replaced animals: volunteers get micro doses of potential drugs that can be analyzed, but there is no danger for their health.

To claim to be “cruelty-free”, many cosmetic companies are spending money to contract research at laboratories that are specialized in new alternative techniques. For instance, L’Oréal, the gigantic French cosmetics, has spent more than \$800 million²⁰. According to the New York Times, “the company was dealing to buy Episkin and SkinEthic, two

¹⁸ Humane Society International (2017). Australian Federal Budget commits funding to ban cosmetics animal testing and trade <http://www.hsi.org/news/press_releases/2017/05/australian-federal-budget-cosmetics-animal-testing-051117.html>

¹⁹ Beauty Without Blood (2016). “Animal should be loved and cherished, not tortured in labs for makeup” <<https://beautywithoutblood.wordpress.com/about/>>

companies that make alternative tests.”²¹ There is a real willing from cosmetic companies to switch to these new methods and stop animal testing. Especially since they know that new alternatives predict better human reactions than animal testing and are cheaper and quicker and more effective.

- Implement an international ban for testing cosmetics on animals

The NGO Cruelty Free International, which is dedicated to putting an end to animal testing for cosmetics, is currently leading the most significant global campaign around the world. In the age of globalization and global trade, it is crucial for all countries to ban animal testing for cosmetics. Otherwise, companies will continue to test cosmetics by merely moving around the world to countries where it is not forbidden yet. Many companies are tired of dealing with countries that have different regulations and different types of animal testing bans. This campaign is made to call on governments around the world to ban animal testing for cosmetics worldwide. This movement went into thousands of the Body Shop stores across 65 countries around the world. Since they have launched the **#ForeverAgainstAnimalTesting** slogan for their campaign in 2017. The Body Shop who goes hand in hand with Cruelty Free International on this fight has gathered 7 million signatures from people who wish the end of animal testing practices. It's with the power of those million voices that the company and NGO hope they can change mentality and opinions at the United Nations and introduce a global ban.

4. Selection Criteria

To evaluate the alternatives expressed above, we will use the Multi Attribute Decision Making (MADM) Process. This method aims to assess the alternatives with the acceptance criteria previously developed. The alternatives will be graded 0 (low), 1 (medium), 2 (high) and the colors from red to green will represent the positivity of the alternatives: red is negative and green is positive. We will not accept alternatives with a total inferior to 4.

Multi-Attributes Decision Making	Use of established ingredients	Passing a ban in each country	Use of new alternatives	International ban
Acceptance	1	1	1	0
Durability	0	2	2	2
Ease to implement	2	1	1	0
Speed	2	0	2	0
TOTAL	5	4	6	2

Table 2 - Multi Attribute Decision Matrix²²

²¹ The New York Times (2007). Saving the Animals: New Ways to Test Products
<https://www.nytimes.com/2007/09/12/technology/techspecial/12animal.html>

²² By Author

Considering this matrix, the alternative “international ban” to stop animal testing can already be eliminated with the minimum score.

Then, we will only consider the use of established ingredients, passing a ban on animal testing in each country and the use of new alternatives to animal testing.

FINDINGS

To analyze our alternatives, we will use the table below to specify our graduation system from three to five levels to be more accurate in the assessment process.

Low	0
Medium-Low	0,25
Medium	0,5
Medium-High	0,75
High	1

Then we will use the quantitative values above to assess one more time the three alternatives we decide to study to resolve the problem.

MADM	Use of established ingredients	Passing a ban in each country	Use of new alternatives
Acceptance	0,25	0,5	0,75
Durability	0	1	1
Ease to implement	1	0,25	0,75
Speed	1	0,25	1
TOTAL	2,25	2	3,5

Table 3 – Relative weighting of the alternatives – quantitative analysis²³

From the quantitative table above, we can eliminate the second alternative “passing a ban in each country”, which has the minimum score. We can now compare the first and third alternatives which are: the use of established ingredients and the use of new alternatives, with the attributes that are significative to cosmetic companies when they want to launch a new and cruelty-free cosmetic product worldwide.

To determine the best alternative among the two last ones, and their efficiency to put an end to animal testing, an additive weighting model is needed. In this technique, we will rank the different attributes according to their importance. There are 4 attributes; 4 is the most important, and 1 is the least important.

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Attributes	Ranking	Weighting	Use of established ingredients		Use of new alternatives	
Acceptance	4	0,4	0,25	0,1	0,75	0,3
Durability	1	0,1	0	0	1	0,1
Ease to implement	3	0,3	1	0,3	0,75	0,225
Speed	2	0,2	1	0,2	1	0,2
SUM	10	1	SUM	0,6	SUM	0,825

Table 4 – Additive weighting method²⁴

Step 6 – Ranking and selection of the preferred alternative

From relatively weighted technique shown in Table 3, the third alternative “use of new alternatives” is better than the first one “use of established ingredients”. Considering $3,5/2,25 = 1,55$ and $1,55 * 100 = 155\%$.

The third alternative is 155% times better than the first one.

Now, if we take into account the importance of the specified attributes and use Table 4 with the additive weighted technique. Considering $0,825/0,6 = 1,375$ and $1,375 * 100 = 137,5\%$, we may identify the third alternative as better than the first one, by 137,5%, this time.

According to both tables, the third alternative, “the use of new alternatives to animal testing”, is recommended to solve our problem.

After analyzing these results, even if the third alternative is preferred, we can provide a final ranking of alternatives:

Rank order	Alternatives
1	Use of new alternatives
2	Use of established ingredients
3	Passing a ban in each country
4	Passing an international ban

Step 7 – Performance monitoring post evaluation results

We previously concluded that using new alternatives to animal testing may considerably help to stop animal testing when new cosmetics are marketed while making sure that they are not dangerous for human health when used under normal conditions. To track the performance of that solution, different strategies exist:

²⁴ By Author

- The comparison with human reaction prediction realized by new alternatives techniques and animal testing. New alternatives predict better human reactions than animals.
- The comparison with the different processes to perform a safety test. Alternatives to animal tests are often cheaper, quicker and more effective.
- The sales of cosmetic companies will increase as they could now enter in markets that were previously testing their new products on animals.

CONCLUSION

The paper aimed was to answer the following two questions:

- In which way can contracts and legislation stop animal testing?

More and more governments pass a ban in their country to stop animal testing. The full implementation of the EU animal testing ban for cosmetics is celebrating the 5th anniversary this year and since many states have followed the path. All cosmetic products and ingredients that are tested on animals are eliminated in countries that passed a ban. But as some countries still require animal testing on new products, the only solution to stop animal testing all around the world would be to pass a global ban. For this to happen, all governments have to prove new alternatives are available and reliable to predict all the effects of the toxicology of a cosmetic product on the human body.

- How can contractual requirements protect consumers about new cosmetics products?

Cosmetic products for sale must be evaluated safe and, it is the responsibility of cosmetic companies to ensure that their new products and their ingredients undergo scientific safety tests to prove that they are not toxic to human health. There is a legal requirement for cosmetic safety. For instance, The US Food & Drug Administration is “responsible for assuring that cosmetics are safe”²⁵. Their mission is supported by the implementation of the Federal Food, Drug and Cosmetic Act (FD&C Act). But what is important to notice is that the FD&C Act does not specifically requires companies to use animals in safety tests. Their role is to advise manufacturers to use the best method to prove the safety of their products. Now their role is to put forward the fact that new alternatives predict better human reactions than animal testing and can better protect consumers about new cosmetic products. Indeed, Cruelty Free International informs us that “crude skin allergy

²⁵ FDA US Food & Drug Administration (NA). Animal Testing & Cosmetics
<<https://www.fda.gov/cosmetics/scienceresearch/producttesting/ucm072268.htm>>

tests in guinea pigs only predict human reactions 72% of the time whereas a combination of chemistry and cell-based alternative methods has been shown to human reactions 90% of the time accurately”.

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