DOWNEYBRAND

Proposition 65

Downey Brand's attorneys have substantial expertise with California's Proposition 65, and the challenges that this law poses to doing business in California. Our attorneys provide strategic compliance advice and litigation defense to manufacturers, retailers, dischargers, and businesses throughout the supply chain and across all affected industries that are subject to Proposition 65's requirements.

Our goal is to help our clients understand the risks posed by Prop 65, and to manage those risks effectively and creatively, while still operating a profitable business in the State. Downey Brand's presence in Sacramento provides us with access to the key agencies and decision makers involved with Prop 65. We work closely with business, advocacy, and trade groups on legislative and regulatory issues and reforms related to Prop 65 and its regulations and policy impacts.

Proposition 65 Litigation & Citizen Suit Defense

We have defended and resolved numerous Prop 65 citizen suit matters, from the pre-litigation notice phase through – when necessary – formal litigation. We have experience with the plaintiff citizen groups that target certain industries and chemicals in their lawsuits, and with the chemicals and industries trending as key targets in Prop 65 citizen suits. We provide honed and experienced advice on the technical intricacies of the statute and understand the scientific arguments that win Prop 65 administrative and litigation matters.

We have defended clients in high-profile and contentious Prop 65 lawsuits alleging exposure to lead in ginger baking products and snack foods, cocamide DEA and titanium dioxide in cosmetics products, di(2-ethylhexyl) phthalate (DEHP) in children's toys and exercising equipment, TDCPP in children's products and furniture, DEHP and DiNP in kitchen and garden products and power tools, mercury in seafood, natural and introduced chemicals in soil, and lead in multiple products across industries, including, but not limited to brass lead in glass ware, lead in hardware, and lead in automotive tools and supplies.

We also have experience with alleged discharges to sources of drinking water and have successfully settled cases involving leaking underground storage tanks and alleged discharges to land and groundwater.

Compliance

Downey Brand attorneys also assist our clients in developing compliance programs for doing business in California. We are well-versed in the supply chain nuances that arise when a client first learns of Prop 65 exposure and begins managing its risk. We advise clients on indemnity arrangements and concerns between suppliers, manufacturers, and retailers, as well as on communications between our clients and customers/vendors, to provide protection from the statute's onerous provisions.

Our clients include oil field produced water disposal facilities along with product manufacturers, distributors and retailers in the following industries: automotive, cleaning products, cosmetics, furniture, food and beverage, HVAC, lead hardware, power tools, forest products, food processing, groceries, pest control, fertilizers, medical

devices, notebooks, sports equipment, glassware, kitchen supplies, and lawn and garden products.

Selected Experience

- Represent California League of Food Processors and numerous member retailers and suppliers in Proposition 65 regulatory matters.
- Represent product manufacturers and retailers of consumer goods in defending and settling Proposition 65 matters, both at the pre-litigation notice phase and in litigation across a wide range of industries, including but not limited to, cosmetics, food and beverage, apparel, lead hardware, power tools, notebooks, sports equipment, glassware, and cleaning products.
- Advise clients on Proposition 65 compliance programs and supply chain management issues resulting from Proposition 65 compliance decisions.
- Advise clients on indemnity concerns and supply chain communications following Proposition 65 compliance programs and litigation claims.
- Advised and represented multi-national consumer products/electronics manufacturer in Proposition 65 action for alleged failure to warn on lead exposures in consumer products.
- Advised and represented regional grocery store chain in multiple Proposition 65 claims for alleged failure to warn in conjunction with sale of products.
- Served as co-counsel in successfully defending a national food company against Proposition 65 and unfair competition claims.
- Defended manufacturers, suppliers, and retailers in defense of Proposition 65 actions regarding acrylamide, phthalates, and lead.

Trade Groups

- Association of Food Industries
- California Grocers Association (CGA)
- California League of Food Processors (CLFP)
- California Manufacturers & Technology Association (CMTA)
- Specialty Food Association (SFA)