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Cosmetic Giants Hit With \$100M Animal Testing Suit

By **Dietrich Knauth**

Law360, New York (February 29, 2012, 3:05 PM ET) -- Estee Lauder Inc., Avon Products Inc. and Mary Kay Inc. were targeted Tuesday in a \$100 million class action accusing the cosmetics companies of falsely claiming that their products were not tested on animals.

The complaint alleges that the companies began animal testing in order to sell their products in China, while continuing to advertise their cosmetics as "cruelty free" and not tested on animals. The complaint seeks over \$100,000,000 in punitive and compensatory damages.

Plaintiffs' attorney Michael Avenatti of Eagan Avenatti LLP said the companies had sold out their values so they could reap hundreds of millions of dollars in overseas sales.

"While it may make economic sense for a company to pursue sales in China, those sales should not occur at the expense of fundamental principles," Avenatti said. "Estee Lauder, Avon and Mary Kay should have been open and honest with the American public and told the truth — that sales and profits were more important to them than refusing to conduct animal testing."

People for the Ethical Treatment of Animals removed the three companies from their list of cruelty-free companies on Feb. 16. PETA said the Chinese government requires animal testing before cosmetics can be marketed there and that the companies caved to the demands rather than helping push China towards alternate testing.

"While we understand that China is an enormous market that these companies aren't willing to ignore, we had hoped they would take action to eliminate this requirement or push for non-animal test methods to be accepted," PETA said on Feb. 16. "Mary Kay had taken some steps to work with officials in China and, at our urging, promised to continue this effort — but Avon and Estee Lauder appear to have gone along with the painful animal tests without objection."

PETA gave members a form letter to send to the companies to express disappointment in their "backsliding."

The three companies enjoyed financial rewards from PETA's support, taking in hundreds of millions of dollars from consumers who would not otherwise support them because of ethical concerns over animal testing, according to the complaint. A recent poll found that 72 percent of U.S. consumers believe animal testing is unethical and 61 percent believe the practice should be illegal, the complaint said.

The companies allegedly issued no disclosures or issued inadequate disclosures once they

changed their policies.

In addition to monetary damages, the suit seeks an injunction that would force the companies to change their allegedly unfair and deceptive advertising.

"If you advertise that you are not conducting animal testing, then you shouldn't be conducting animal testing — it's that simple," said Filippo Marchino of The X-Law Group PC, who also represents the plaintiffs.

Avon spokeswoman Jennifer Vargas said she couldn't comment on the suit, but said that Avon does not test its products on animals unless required by local law, and then only after attempting to persuade the requesting authority to accept non-animal test data.

"When those attempts are unsuccessful, Avon must abide by local laws and comply with that government's testing requirements," Vargas said. "Nothing has changed, and we have been transparent on the issue regarding our requirement to adhere to local laws in countries where we do business. "

A Mary Kay spokeswoman similarly said that Mary Kay remained committed to ending animal testing, calling it "a passionate issue for us."

The five named plaintiffs are California residents who purchased cosmetics from one or more of the three companies.

Estee Lauder was not immediately available for comment Wednesday. Counsel information for the defendants was not immediately available.

The case is *Beltran v. Estee Lauder et al.*, case number 12-cv-00312, in the U.S. District Court for the Central District of California.

--Editing by Cara Salvatore.