

# Closing the Gaps: Reforming Cosmetic Product Liability for Enhanced Consumer Safety in Malaysia

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## ABSTRACT

This article examines the necessity for reforming the cosmetic product liability framework in Malaysia by observing its legal evolution and highlighting specific gaps that compromise consumer safety. The analysis begins with a review of the historical evolution of product liability law in Malaysia, which is grounded in three legal principles: (i) contract law, (ii) negligence, and (iii) strict liability. Breach of contract and negligence demand evidence of fault or breach, whereas strict liability provides a more consumer-orientated standard by holding manufacturers responsible for harm resulting from defective products, regardless of their intent. The paper further examines the elements of strict liability, specifically the presence of a defect, the consequent damage, and the causal relationship between them. These components are crucial for determining liability, especially in the context of cosmetics, where the effects may be subtle or delayed. The focus shifts to identifying the flaws and risks inherent in cosmetic products, such as contamination, mislabelling, a lack of safety testing, and illegal or unregistered ingredients. This concern is further aggravated by inadequate monitoring of the online marketplace and the growing number of imported cosmetic products. These weaknesses present significant risks to consumers, including skin irritation and potential long-term health consequences. The study subsequently examines how defective cosmetic products cause consumer injuries, and the challenges encountered in establishing a link between the harm and the product, which arise from evidentiary requirements and insufficient medical evidence. The article further discusses the legal challenges faced in cosmetic product liability cases in Malaysia, including regulatory fragmentation, limited access to justice, and insufficient statutory guidance. In conclusion, the paper calls for a comprehensive reform of the cosmetic product liability structure in Malaysia. It proposes more comprehensive statutory definitions, the need for the implementation of strict liability with a reversed burden of proof, and improved enforcement mechanisms to increase consumer protection.

**Keywords:** Cosmetic Product Liability, Strict Liability, Legal Reform, Consumer Injuries, Malaysia

## INTRODUCTION

Over the past few years, the Malaysian cosmetic industry has witnessed rapid growth because of the widespread availability of products through e-commerce platforms, the influence of social media marketing, and the increased demand from consumers (Chuah et al., 2023; Wong et al., 2025). The regulatory landscape has been significantly altered by the recent increase in cosmetic consumption, which has exposed Malaysian consumers to a diverse selection of products. Many of these products are imported, unregulated, or marketed with unsubstantiated claims. Although cosmetics are frequently perceived as relatively low-risk consumer goods, the growing number of incidents involving prohibited formulations, inaccurate and deceptive cosmetic labelling, and harmful ingredients has raised significant concerns about legal liability and product safety (Kaushik et al., 2023).

The Consumer Protection Act 1999 is one of the primary sources of legal mechanisms for addressing the harm caused by defective cosmetics. This act instituted the principle of strict liability under Part X. In theory, according to Section 68(1), it enables consumers to file claims against producers, importers, or own-brand distributors for damages resulting from defective products without the necessity of demonstrating guilt or negligence (Mohd

Shukri et al., 2020a; Roslan et al., 2023). Nevertheless, Malaysian consumers encounter substantial challenges when attempting to pursue such claims in practice. These include the challenging task of demonstrating that a product is defective, the restrictions on the extent of recoverable damage, and the complex process of establishing a causal relationship between the injury sustained and the use of the product (Mohd Shukri et al., 2020b). These legal obstacles are further complicated by enforcement challenges, particularly in the context of imported products and cosmetics that are sold through informal online marketplaces. The origin, ingredients, and responsible parties of these products can often be obscured.

In addition, the current product liability framework has not been sufficiently adjusted to account for the nature of harm that is typically associated with cosmetics, which may be subtle, delayed, or psychological in nature, as opposed to immediate and physical. The legal remedy is not available for a significant number of genuine consumer grievances due to the limited interpretation of compensable damage and the reliance on the consumer expectation test to determine defectiveness. Meanwhile, Malaysia's penalties for cosmetic safety violations are relatively low (Mohd Zakuan et al., 2023; Sutriyono et al., 2024), and the Tribunal for Consumer Claims, which serves as a formal pathway to justice, is restricted in its ability to address detailed evidentiary issues and jurisdiction (Zamros & Nasrul, 2024).

The changing patterns of consumer vulnerability and the evolving nature of the cosmetic market only increased the urgency for reform. The regulatory capacity of current legal and administrative frameworks has been substantially eclipsed by the proliferation of direct-to-consumer sales channels, such as influencer marketing and cross-border e-commerce. In the absence of a comprehensive and enforceable liability model, injured consumers are frequently left without meaningful recourse (Aade et al., 2022). The public's confidence in the cosmetic industry and the legal system's capacity to address injury may be compromised if these gaps are not addressed. Consequently, it is paramount that Malaysia reassesses and adapts its product liability framework to guarantee that it adequately mitigates the risks unique to cosmetics.

This article critically evaluates the legal framework that governs cosmetic product liability in Malaysia, detailing its transition from negligence- and contract-based doctrines to the strict liability model. The article later centres on the application and deficiencies of the three fundamental components of strict liability, which include defect, injury, and causation in the context of cosmetics. Authors also identifies the legal, procedural, and enforcement-related challenges that undermine consumer protection by utilising both domestic case examples and comparative insights from jurisdictions such as South Korea and Australia. In doing so, it promotes substantive reform that is designed to enhance liability mechanisms, enhance access to redress, and guarantee that Malaysia's legal framework remains in alignment with the contemporary cosmetic industry.

## METHODOLOGY

This paper utilises a qualitative legal research approach, primarily employing a doctrinal approach to analyse the evolution, constraints, and reform requirements of Malaysia's cosmetic product liability framework. The doctrinal method is a systematic review of key legal sources, including statutes, case law, and regulatory instruments, specifically emphasising Part X of the Consumer Protection Act 1999, which regulates strict liability for defective products. The research analyses relevant clauses of the Contracts Act 1950, Sale of Goods Act 1957 and the interpretations and applications of terms such as defect, damage, and causation within the Malaysian legal context.

This research adopts a comparative legal methodology to enhance the doctrinal analysis, utilising ideas from jurisdictions with more sophisticated product liability frameworks, specifically Australia and South Korea. The selected jurisdictions are based on their comparable common law foundations (Australia) and strong enforcement of consumer protection in the cosmetics industry (South Korea). Australia was picked for its common law tradition and judicial development of product liability concepts, whereas South Korea was chosen for its proactive regulatory enforcement and cosmetics industry relevance. The analysis finds best practices and reform possibilities pertinent to the local legal and regulatory context by contrasting these systems with Malaysian practices. Although advantageous, including the EU or US frameworks would have widened the scope beyond a focused doctrinal investigation and added complexity from their regulatory procedures and federal structures.

Furthermore, secondary legal sources are reviewed, encompassing law review articles, judicial commentaries, academic treatises, government policy documents, NPRA regulatory advisories, and enforcement reports. The materials are examined to evaluate the practical impact of the legislative framework and the obstacles suffered by consumers in obtaining restitution for damage resulting from defective cosmetic items. The research is organised thematically around the three fundamental components of strict liability which include defect, damage, and causal link. It subsequently examines legal and enforcement issues within the Malaysian context. The approach is both normative and prescriptive, aiming to identify flaws in the law and propose reforms that enhance the safety of cosmetic products and make it easier for consumers to obtain justice if harm results from their use.

## FINDINGS AND DISCUSSION

### The Evolution of Product Liability in Malaysia

The historical evolution of product liability in Malaysia is linked to the impact of English common law, especially prior to the implementation of the Consumer Protection Act 1999. In the absence of specific local laws, Malaysian courts followed two primary legal concepts from English jurisprudence, which are contract law and negligence law, each marking a separate stage in the development of product liability (Amin, 1999).

#### 1) Phase One: Contractual Liability and Privity of Contract

In the very first period, claims related to defective products were regulated by contract law. According to this concept, a customer can only seek compensation for harm or damage if they are a direct party to the purchase agreement, a principle referred to as privity of contract. This principle stipulated that only the purchaser, and not any third party that used or consumed the product, had the legal capacity to file a claim.

This limitation is shown in the landmark English case *Winterbottom v Wright* (1842), where a mail coach driver wounded by a defective coach was prevented from suing the individual accountable for its maintenance, as he was not a party to the specific contract. In *Daniels v R White and Sons and Tarbard* (1938), only Mr. Daniels, the purchaser of contaminated lemonade, was entitled to sue for illness, although his wife, who also consumed the product but was not the buyer, was denied compensation owing to the lack of a contractual link. These cases illustrate how the privity doctrine served as an obstacle to justice for numerous aggrieved consumers.

#### 2) Phase Two: Introduction of Negligence Law

During the second phase, the introduction of negligence as a legal basis for product liability was a response to the injustices that resulted from the strict adherence to contract law. Negligence permits consumers to file a claim if they can demonstrate that the defendant had a duty of care, which was breached, thus resulting in actual harm or damage. *Donoghue v Stevenson* (1932) significantly influenced this, as Lord Atkin formulated the renowned neighbour principle, which established that producers had a duty of care to people immediately impacted by their acts or products. The shift towards negligence attempted to broaden access to justice beyond contractual obligations.

Nonetheless, in practice, negligence-based lawsuits continue to impose a significant evidentiary burden on consumers. Plaintiffs were obligated to establish that a duty of care existed and was breached, as well as to prove a direct causal connection between the breach and the damages they incurred. The complexity of technological cases was exemplified by the Malaysian case *Wong Tan Kong & Ors v Asian Rare Earth Sdn Bhd* (1993), where people allegedly affected by radioactive leaks failed to demonstrate a direct causal link between their injuries and the defendant's breach of duty of care. The claim was rejected owing to insufficient causal evidence.

#### 3) Strict liability

The doctrine of strict liability was later established. Strict liability was initially established in the ruling of *Escola v. Coca-Cola Bottling Co. of Fresno* (1944). This case related to a waiter who sustained facial injuries due to the explosion of a Coca-Cola bottle. While most of the court found the defendant negligent, Justice Traynor, in a landmark concurring opinion, argued that manufacturers should be held strictly liable for defective products. He

advocated for bypassing the traditional requirements of proving negligence, such as privity of contract and duty of care, in favour of protecting consumers more effectively. This view laid the foundation for the modern principle of strict liability in product liability law.

### **Strict Liability under Malaysian Product Liability Law**

Part X of the Consumer Protection Act 1999 was the formal introduction of the concept of strict liability under Malaysian law (Amin & Abdul Aziz, 2015; Che Ngah et al., 2018). The objective of this legal framework was to reduce the evidentiary burdens that consumers have historically encountered under the doctrines of contract and negligence. Even in the absence of fault or negligence, producers, individuals who present themselves as producers, or importers may be held liable for the injury caused by defective products under strict liability. The law does not require the injured party to prove that the manufacturer breached a duty of care or acted negligently. Rather, the consumer must show the existence of three fundamental elements, namely that the product was defective, that damage occurred, and that a causal relationship exists between the defect and the resulting damage. Despite their conceptual simplicity, these components still contain inherent flaws that complicate their practical implementation.

#### **1) Defect**

The first element, defect, is defined in Section 67(1) of the Consumer Protection Act 1999 as a condition in which the safety of a product is not such as a person is generally entitled to expect. This relies on the consumer expectation test, which examines whether the product fulfils the safety expectations of the average consumer. As Amin (1999) explains, under the Consumer Protection Act 1999, a product is considered defective if it fails to meet the safety expectations of an ordinary consumer. Although this method appears to be beneficial to consumers, it is known to be inconsistent and vague in its application. The case of *A & Others v National Blood Authority* (2001) is illustrative, as the court ruled in favour of a consumer who contracted hepatitis C from a blood transfusion, establishing that the public had a right to expect uncontaminated blood.

On the contrary, in *Richardson v. LRC Products Ltd.* (2000), the court did not consider a condom that failed and caused pregnancy to be defective, as it suggested that no contraceptive is completely effective. Similarly, in *Foster v. Biosil* (2001), the court rejected a claim concerning a leaking breast implant by ruling that the injury was not caused by the implant's defect but rather by an error during the implantation procedure. These cases demonstrate the consumer expectation test's inconsistent and at times contradictory application. It is impracticable to anticipate that consumers will have the necessary knowledge to assess the safety of modern consumer products, particularly in the cosmetics and health sectors, due to the growing complexity of these products. Therefore, Burton J and other legal scholars propose that the consumer expectation test be replaced with a reasonable expectation test, which will be delivered by judges in their capacity as informed representatives of public values and standards.

#### **2) Damage**

The second element, damage, is normally less contentious and more readily demonstrable. Death, personal injury, and property damage are all included in the definition of damage under Section 66(1) of the Consumer Protection Act 1999. This legal definition offers consumers a clear foundation for proving damage in cases where physical injury or loss has occurred. In the context of cosmetic products, according to Mokhtar et al. (2020), harm can take on various forms, such as infections, allergic reactions, permanent scarring, or other adverse physiological effects. In contrast to the element of defect, which is subject to judicial interpretation and subjectivity, harm can frequently be verified through medical records, photographs, and expert assessments. However, the injury must be clear and accepted by the law. Being unhappy with how a product works or not getting the cosmetic results you were hoping for is not enough to support a claim.

#### **3) Causal link**

The requirement to establish a causal relationship between the defect and the damage is the third and most challenging obstacle in strict liability claims (Ismail et al., 2015). The customer must prove that the product's



defect caused the harm. While strict liability reduces the consumer's obligation to establish negligence, it does not relieve them of the responsibility to establish causation, which continues to be a substantial obstacle to recovery. In cases involving complex or medically sensitive products, this challenge is especially problematic, as the establishment of causation requires scientific expertise and access to technical data. The court in *XYZ & Others v Schering Health Care Ltd* (2002) did not accept the claims of women who developed cardiovascular conditions after taking oral contraceptives. The court cited a lack of evidence that the newer drug posed higher risks than its predecessors.

This was also the case in *Foster v Biosil* (2001), where the court determined that the injury was the result of poor surgical procedures rather than the product itself. The above instances illustrate how the causal link requirement may distort claims, even when the product is arguably unsafe and the harm is evident. Legal scholars, including Hodges, have noted that consumers are rarely provided with the financial and technical resources essential to establishing such connections, particularly when confronted with multinational corporations that have access to scientific defence teams. The challenge of establishing causation becomes more difficult in the cosmetics industry, where adverse effects may be subtle, delayed, or interact with individual physiology.

Che Ngah et al. (2018) suggest that the strict liability framework under the Consumer Protection Act 1999 was designed to help consumers seek remedy for defective items. However, the difficulties of proving causal relationship impair its practical effectiveness. The consumer expectation test is inconsistent and ignores modern product complexity. Damage, however observable, requires proof and the causal link requirements unfairly burden customers, especially in technically difficult circumstances. Reforms are needed for strict liability to protect Malaysian cosmetic consumers (Roslan et al., 2023). These should include court adoption of a reasonable expectation test, consumer presumptions after defect and damage, and greater access to scientific knowledge. Such changes are needed to keep the strict liability system from becoming a symbol of theoretical protection without any real-world solutions.

### **Consumer Exposure to Unsafe and Defective Cosmetic Products**

Rosário and Raimundo (2021) and Ustymenko (2023) suggest that the global and domestic cosmetic industry has experienced significant growth in the past decade, which has been driven by the emergence of e-commerce platforms, aggressive marketing strategies, and changing consumer preferences. However, this expansion has not been without substantial public health concerns, particularly in the context of the safety, authenticity, and quality of cosmetic products currently available to consumers. According to Vieira et al. (2024), there are numerous phases at which cosmetics can develop defects, such as formulation, manufacturing, packaging, storage, and labelling. If these defects remain undetected or undisclosed, they could give rise to adverse health consequences that range from minor hypersensitivity reactions to severe systemic injuries.

The severity of these risk factors has been illustrated by numerous high-profile cases in Malaysia. The Ministry of Health revoked the notification status of five cosmetic products, including Molly Care Night Cream, in March 2025, following laboratory examinations that confirmed the presence of dangerous ingredients, including mercury, hydroquinone, tretinoin, and betamethasone (Business Today, 2025). Malaysian law bans the use of these ingredients in cosmetics, as they are classified as scheduled poisons and have the potential to cause teratogenic effects, endocrine disruption, skin thinning, and renal failure. Similarly, the National Pharmaceutical Regulatory Agency (NPRA) initiated enforcement measures against GB Night Cream Treatment and Anika Night Cream in August 2024, as they had been found to contain similar prohibited compounds (National Pharmaceutical Regulatory Agency, 2024).

A Malaysian social media influencer who marketed unregistered mercury-based skincare products was one of the most extensively reported incidents. The product, which was promoted under the influencer's personal brand, was later linked to serious health issues, including skin damage and alleged cases of miscarriage among users. In response to mounting criticism, the influencer issued a public apology via social media, expressing remorse and promising to take full responsibility. She also offered refunds to affected customers to contain the backlash and restore trust (The Rakyat Post, 2025). The regulatory gaps in the surveillance of cosmetics distributed through digital and informal channels were emphasised by this incident, which garnered extensive media coverage.

These concerns are not confined to Malaysia. Several landmark cases have revealed equally alarming trends on the international stage. Reuters (2025) reported that Johnson & Johnson was faced with a significant amount of litigation in the United States due to allegations that its talcum powder products were contaminated with asbestos. The substance was alleged to have caused ovarian cancer by thousands of women who had used it for extended periods. Despite the company's commitment to product safety, numerous courts awarded plaintiffs substantial damages, underscoring the adverse effects of prolonged exposure to concealed perils.

South Korea's humidifier steriliser tragedy turned into a national scandal when it was found that Oxy Reckitt Benckiser's widely sold product contained dangerous chemicals that people breathed in and died from lung diseases. The company's aggressive marketing strategy and failure to disclose health risks have led to criminal prosecutions and increased scrutiny of consumer safety standards (Reuters, 2017). Similarly, a Belgian study analysed 163 skin-whitening products and found 59% were illegal. Among harmful agents detected were clobetasol propionate and hydroquinone, posing serious health risks (Desmedt et al., 2014). Regulatory intervention and product recalls were initiated because of the irreversible skin erosion, infections, and pigmentation disorders that consumers reported following the use of the product.

The multifaceted nature of cosmetic product defects is illustrated by these domestic and international examples. The defects may be chemical in nature, involving unauthorised or toxic elements, or procedural, such as poor manufacturing practices and contamination. In other circumstances, defects can stem from the omission of critical safety information or misleading labelling. Andira and Muhammad (2024) believe that these risks are further heightened by the widespread availability of unregulated cosmetic products, particularly through online platforms and social media, which frequently places consumers in vulnerable positions without informed consent or reliable recourse.

The Malaysian context is further complicated by limitations on public awareness and enforcement. Zakaria (2015) notes Malaysia's cosmetic regime, while harmonized with EU standards, remains undermined by lack of public awareness about ingredient risks and inadequate enforcement capacity, leaving consumers vulnerable to unsafe products marketed through informal channels. Many products are introduced to the market without having passed rigorous safety evaluations or formal NPRA registration (Othman et al., 2024).

Often, consumers are deceived by unsubstantiated marketing claims, influencer endorsements, or aesthetic promises, ignorant of the potential long-term health hazards. This emphasises the critical nature of precisely identifying risks and flaws in cosmetic products, as such identification is necessary not only for regulatory response but also for the establishment of legal liability in the event of damage. Affected consumers may be unable to pursue remedies under the current legal framework if they lack a clear comprehension of the nature and origin of product defects (Keeton, 1980). Consequently, to mitigate the persistent and evolving risks associated with cosmetic products, it is crucial to enhance product traceability, fortify surveillance systems, and reform liability standards.

### **Establishing Defects in Cosmetic Products: Legal Complexities and Evidentiary Barriers**

The Consumer Protection Act 1999, Section 67(1), defines the term defect in Malaysian law. This definition stipulates that a cosmetic is defective if the safety of it is not such as a person is generally entitled to expect. In practice, the applicability of this provision is complicated, even though it appears to provide consumer-centric protection. In the context of cosmetic products, numerous consumers encounter challenges in determining whether a product is defective, particularly when the defect is not immediately apparent and demands scientific analysis. Cosmetics are frequently marketed without transparent ingredient listings, and a significant number of products, particularly those distributed through social media and online platforms, are not subject to pre-market approval or regular surveillance by regulatory authorities.

In Malaysia, the National Pharmaceutical Regulatory Agency (NPRA) holds the responsibility for overseeing the safety of cosmetics (Gaganashree & Balamurlidhara, 2023). The agency continuously issues alerts and product cancellations in response to the detection of hazardous or prohibited substances. For example, the NPRA revoked the notification status of Ailas Wild Rose Petal Face Cream and Desha Night Cream in July 2024 following the discovery of mercury and tretinoin in laboratory tests. Mercury and tretinoin are prohibited in

cosmetic formulations. The legal procedure for individual consumers seeking remedy remains demanding, particularly when attempting to prove that the specific product they used contained a defect that caused harm, even though such regulatory actions confirm the existence of safety breaches (Roslan et al., 2023).

For a defect to be legally recognised, it must be proved by admissible evidence, which most often involves conducting a chemical analysis of the product. Regrettably, most Malaysian consumers do not have the technical expertise, financial resources, or access to accredited laboratories necessary to perform such tests (Othman et al., 2020). Litigation is frequently discouraged by the expense of obtaining independent toxicological reports, even in cases where the consequences are evidently detrimental. Additionally, the consumer expectation test, as it is currently implemented, may not be appropriate for products that contain latent chemical hazards. The scientific knowledge required to evaluate the safety of cosmetic formulations cannot be accessed by the average consumer, which makes it challenging to ascertain or quantify their expectations in a legal context.

Comparative analysis of legal systems offers important insights into how different jurisdictions handle product liability issues. According to Park et al. (2016), in the high-profile humidifier disinfectant scandal, the courts in South Korea acknowledged trusted organisations (institutional) and scientific studies of populations (epidemiological) to be sufficient to establish product defects. In recognition of the fact that ordinary consumers are unable to reasonably be expected to identify toxic agents in chemical products, the judiciary relaxed the evidentiary threshold. A similar approach has been adopted in Australia, where courts have been more flexible in their acceptance of indirect evidence. The District Court of New South Wales, later affirmed by the Court of Appeal, accepted procedural documentation such as Kmart's internal assistance protocols and expert testimony on store procedures to establish that the product and the systems were defective (Philips et al., 2024; Wallace Lawyers, 2024).

Given these obstacles, Malaysia may wish to improve its legal framework for determining defects in cosmetic product liability cases. One potential reform is the establishment of a statutory presumption that any product listed on the NPRA's recall or revocation register is *prima facie* defective. The burden on plaintiffs would be substantially lightened by this measure, which would transfer the responsibility to manufacturers or distributors to demonstrate otherwise. Also, the accessibility of justice would be improved by permitting authorised public or accredited private laboratories to issue certifications that can be trusted in court (Kelso, 1988).

In summary, while Malaysia's statutory framework allows for strict liability in product defect cases, the evidentiary requirements imposed on consumers, particularly in the context of cosmetics, present substantial obstacles to justice. To guarantee the efficacy of consumer protection in the cosmetics industry, it is paramount to implement a more equitable evidentiary approach that accounts for the technical constraints encountered by claimants while simultaneously implementing safeguards against unfounded litigation.

### **Assessing Legally Recognisable Damage Arising from Cosmetic Use**

The Consumer Protection Act 1999, Section 66, provides the definition of damage for the purposes of strict liability in Malaysian law. This section specifies that recoverable damage includes mortality, personal injury, and property damage. According to Mohd Zakuan and Ismail (2019), determining the extent of damage caused by cosmetic products can be challenging, particularly when psychological injuries and delayed harm are involved. In the context of cosmetics, most claims involve allegations of personal injury, including skin irritation, allergic reactions, or deformities. That said, the claimant's capacity to provide credible and admissible evidence of the harm is a determining factor in the ability to secure legal redress, in addition to the occurrence of the harm.

In several cases, cosmetic users in Malaysia have suffered visible injuries because of using unregistered or non-compliant products, particularly whitening creams that contain banned substances such as mercury, hydroquinone, and steroids. Consumers often lack medical documentation to substantiate their claims (Mokhtar et al., 2020), even though these outcomes frequently lead to substantial psychological distress and physical discomfort. Courts may be hesitant to acknowledge the alleged injury as legally compensable damage in the absence of formal diagnosis, treatment records, or expert dermatological assessments. Under the current evidentiary standards, the reliance on photographic evidence or personal experiences is generally insufficient.

Additionally, the extent of injury that can be recognised under Malaysian law is restricted in comparison to other jurisdictions. Psychological injury, aesthetic disfigurement, and delayed health effects are not consistently recognised as compensable losses. For instance, a consumer who experiences facial scarring because of a prohibited cosmetic product may encounter challenges when demonstrating that the injury meets the legal definition of personal injury, particularly if the scarring is minor or if the consumer did not seek medical treatment. Because of this, many real problems may not be fixed because of technical evidence limitations (Mohd Zakuan & Ismail, 2019).

In contrast, Australian courts adopted a more open-ended definition of legally recognised damage. In a 2022 case in New South Wales, *Jiang v BCDS International P/L t/as Serendipity Miss Beauty* (2019), a woman who sustained facial burns and long-term skin discolouration because of a failed cosmetic procedure was awarded substantial compensation. The court recognised the emotional trauma, loss of confidence, and physical injury that were the consequences of the incident. Furthermore, South Korean courts have acknowledged hidden and widespread harm in cases of product liability, such as breathing problems caused by harmful chemicals in consumer goods. These jurisdictions showcase a more effective approach, in which credible testimony and contextual analysis of the product's impact on the consumer may be used to supplement medical evidence.

Roslan et al. (2023) suggest that to enhance safety for consumers in Malaysia, lawmakers need to make it clearer that personal injury should include both physical and mental harm from using cosmetics. It is recommended that courts be encouraged to take medical evidence from certified clinics and private dermatologists, rather than solely from public hospitals (Lovén et al., 2024). Guidelines on what kinds of non-clinical proof can be used, like high-resolution photos and statements from witnesses, could also help consumers who are poor or live in rural areas get the paperwork they need. In the final analysis, the effectiveness of product liability law is dependent upon the identification of defective products and the identification of the visible harm they inflict.

Consumers who suffer injuries from cosmetic products will continue to struggle with getting justice under the strict liability framework until we have a more comprehensive and adaptive view of damage (Mokhtar et al., 2020). Even Polinsky and Shavell (2009) argue that while product liability can compensate victims for physical injuries, it often fails to address non-economic harms like emotional or mental distress, highlighting its limited effectiveness until reforms expand its view of damage.

### **Proving the Causal Nexus Between Defective Cosmetics and Consumer Injuries**

The third and most complex component of establishing strict liability is the necessity of establishing causation, which involves establishing a direct correlation between the defect in the cosmetic and the consumer's damage. Amin and Abdul Aziz (2015) highlight that in Malaysia, causation is a major evidentiary barrier, especially in cases involving misrepresentation, like false halal labels, which parallels defective cosmetic branding. In Malaysia, this requirement is still bound by conventional common law principles, which necessitate the claimant to demonstrate, on a balance of probabilities, that the injury would not have occurred if the defective product had not been used. Still, this standard proves particularly challenging to meet in the context of cosmetic liability, as the nature of the injury may be latent, gradual, or worsened by external factors.

Delayed or subtle symptoms, including hormonal disturbances, pigmentation disorders, or rashes, are frequently experienced by consumers who use cosmetic products that contain undisclosed or prohibited substances. It is a complex task to determine that these outcomes are explicitly attributed to a particular product and not to other environmental or personal factors. The claim is likely to be rejected due to a lack of causal evidence (Amin & Abdul Aziz, 2015) in the absence of toxicological testing or clinical evaluation that identifies the cause. This problem gets more complex in cases that involve the use of multiple products, as the legality of isolating a single source of damage becomes in doubt. Nonetheless, this judicial reluctance to assume causation in the absence of direct evidence is not exclusive to Malaysia.

Certain jurisdictions, such as South Korea, have implemented a more pragmatic approach in specific situations. In the aftermath of the humidifier steriliser calamity, South Korean courts permitted statistical, epidemiological, and toxicological investigations to establish a causal relationship between respiratory illnesses and inhaled



chemical agents. The courts determined that causation could be inferred without compelling everyone to supply direct scientific evidence when such patterns of damage are apparent across a population of users.

In Australia as well, courts have acknowledged causation when expert medical witnesses can confidently establish a connection between the injury and the use or administration of a particular product or procedure. In one instance, compensation was awarded to a plaintiff after her dermatologist verified that her facial scars were an indication of chemical exposure from a specific brand of skin peel. The court was satisfied that the sequence of events and expert confirmation effectively established a causal link and therefore, it did not require proof of defect in the form of laboratory tests.

To enhance access to justice in Malaysia, reforms should consider permitting courts to infer causation after defect and damage have been reasonably established, particularly in cases where the product has already been subject to a regulatory recall or NPRA warning. In such instances, the evidentiary burden would be shifted to the producer or distributor to refute the connection through the implementation of rebuttable presumptions. This would be in accordance with the objectives of strict liability, which are to safeguard consumers in circumstances where manufacturers are in a superior position to evaluate and manage risks (Maruchek et al., 2011).

Furthermore, it is paramount to promote the utilisation of expert witness testimony, regulatory assessments, and independent scientific studies to establish causation in cosmetic injury cases (Ibrahim, 2007). Courts should be prepared to assess this material without requiring each claimant to submit direct laboratory analysis. This would make things easier for customers and help the law deal with widespread or ongoing cosmetic hazards better. In conclusion, the principle of causation is still fundamental to liability. However, its strict application in cosmetic cases could compromise the protective purpose of the Consumer Protection Act 1999. A flexible and context-sensitive method of establishing a causal connection would more accurately reflect the realities of contemporary cosmetic use and consumer damage.

### **Legal Challenges in Cosmetic Product Liability in Malaysia**

The implementation of cosmetic product liability in Malaysia is dealing with numerous significant obstacles, despite the existence of statutory strict liability under Part X of the Consumer Protection Act 1999. These include the cosmetic industry's structural and regulatory constraints, in addition to the inherent legal obstacles of demonstrating defect, harm and causation. In the context of online commerce and cross-border distribution, the statutory scheme is hampered by weak penalties, restricted interpretations of key terms, and enforcement difficulties, despite its theoretical robustness.

The initial significant concern relates to the definition of defect in Section 67(1) of the Consumer Protection Act 1999. For a cosmetic product to be regarded as legally defective, it must be demonstrated that its safety is below the standard that an individual is generally entitled to expect. In practice, however, a significant number of Malaysian cosmetic products that contain undeclared prohibited substances, such as hydroquinone or mercury, remain undetected by consumers until an injury occurs.

However, courts will only recognise a legal defect if the ingredients in question have been scientifically demonstrated to exist and are directly associated with damage. According to Amin and Abdul Aziz (2015), a defect must be associated with safety in the limited physical sense, excluding other dimensions such as spiritual or psychological harm. This was observed in the context of false halal products. The application of this method to cosmetics establishes a limiting threshold, as the restrictive legal definition of defect permits emotional distress, aesthetic harm, or religious expectations associated with halal cosmetics to be disregarded.

The second obstacle pertains to the legal definition of damage. Only death, personal injury, and property damage are deemed recoverable under Section 66 of the Consumer Protection Act 1999. In general, Malaysian courts have been hesitant to expand this definition and include psychological distress and aesthetic damage, unless they are substantiated by medical documentation and qualify as diagnosable psychiatric illnesses. Nevertheless, cosmetic injuries frequently result in subjective yet severe consequences, including permanent scarring, facial pigmentation, and a loss of self-confidence, that are not readily categorised within these rigid categories. This

doctrinal inflexibility restricts consumer access to redress and establishes a gap between legally compensable damage and the injury experienced by consumers.

The third challenge pertains to proof of causation. The consumer is required to demonstrate that the defect in the product wholly or partially caused the damage in accordance with Section 68(1) of the Consumer Protection Act 1999. It is frequently challenging for consumers to establish a connection between their injury and a specific cosmetic product due to the subtle or delayed effects of dangerous ingredients in cosmetic use. Amin and Abdul Aziz (2015) observe that the establishment of causation is nearly impossible when the connection between injury and defected product used is not immediate in the context of halal product deception.

The same principle is applicable to cosmetics, where the claim is undermined by the absence of toxicological reports or expert evidence, even when consumers experience adverse reactions. Furthermore, consumers frequently employ multiple products simultaneously, which complicates the process of identifying a single source of injury. Amin (1999) notes that although the Consumer Protection Act 1999 introduces strict liability, consumers must still prove defect and causation, both of which are burdensome without technical evidence. Claims that are presented under the strict liability provision are frequently affected by this evidentiary burden.

The weak penal consequences under Malaysian regulatory and consumer laws present a fourth challenge. Fines or administrative penalties that are relatively modest (Mohd Zakuan & Ismail, 2021) in comparison to those imposed by other jurisdictions are frequently imposed on individuals who manufacture or distribute hazardous cosmetic products, even those that have severe health consequences. For instance, in South Korea, criminal sanctions have been implemented in response to high-profile cosmetic scandals, which include prison terms for corporate officers who were involved in product adulteration (Kang & Hong, 2024). In the same vein, manufacturers in the European Union and Australia may be subject to recall obligations and civil penalties that exceed millions of dollars. In contrast, Malaysian enforcement seldom leads to significant financial repercussions or imprisonment. This discrepancy fosters poor deterrence, which in turn diminishes public confidence in consumer protection and allows recurring offences (Amin, 1999).

The fifth and most pressing challenge is the increasing frequency of cross-border importation and online cosmetic sales. The growing number of unregistered cosmetics, many of which circumvent NPRA scrutiny, has resulted from the ease of accessing foreign-made cosmetics through e-commerce platforms. It is extremely difficult to identify the responsible party, even though these products may contain counterfeit labels, use unregulated ingredients, and make exaggerated claims. Saunders and Berger-Walliser (2011) claim that many online platforms do not disclose the actual manufacturer, and vendors are frequently individuals or small-scale agents who lack formal business registration. Tracing the origin of the product or holding foreign sellers accountable under Malaysian law is both legally and practically intricate in the event of injury. Currently, there is no dedicated cross-border framework for product liability enforcement against online cosmetic merchants, which leaves affected consumers with minimal recourse (Wathan, 2023).

Furthermore, the Tribunal for Consumer Claims, which is designed to provide a cost-effective dispute resolution mechanism, is not equipped to handle complex issues such as scientific causation and expert evidence. Its jurisdiction is also limited to claims not exceeding RM50,000 (Mohd Amin et al., 2022). For more serious cases, consumers must turn to the civil courts, where the cost, procedural complexity, and evidentiary requirements can be prohibitive. As a result, the legal system, which is supposed to protect all consumers, often fails in high-stakes or technically complex cases, the very types of cases that frequently arise in disputes involving harmful or defective cosmetic products.

Cosmetic mislabelling also poses significant risks to consumer safety, confidence, and legal accountability. Incorrect ingredient lists, incorrect claims, or deceptive branding might expose people to allergens, harmful substances, or poor formulas (Nobile, 2016). This is especially essential in Malaysia, where many consumers place significant importance on halal certification. Mislabelling a product as halal when it contains non-permissible ingredients, whether intentional or due to oversight, is a violation of both consumer and religious rights. These situations complicate legal remedy, especially when the liable company is unidentified or based overseas, leaving customers with few options for complaint or compensation. Although the consumption of non-

halal substances may cause significant emotional distress to Muslim consumers, such psychological or spiritual harm is often not recognised as 'damage' under conventional product liability definitions.

In brief, cosmetic product liability in Malaysia is still procedurally inaccessible and doctrinally underdeveloped. Consumer rights are significantly restricted by the strict causation requirements, narrow scope of compensable damage, and limitations of defect interpretation. These situations are made worse by the legal vacuum that surrounds the swiftly expanding online cosmetic market and the insufficient penal consequences for offenders. To achieve the protective objectives of the Consumer Protection Act 1999, it is crucial to implement reform that will broaden the definition of injury, align penalties with international best practices, and establish regulatory jurisdiction over imported and online products. The promise of effective legal redress for damage caused by defective cosmetics will remain largely unfulfilled for Malaysian consumers in the absence of such improvements.

### **Proposed Legal Reforms to Strengthen Cosmetic Product Liability in Malaysia**

To overcome the weaknesses of Malaysia's current cosmetic product liability framework, several essential revisions are needed. First, the current reliance on the consumer expectation test to define product defects under Section 67(1) of the Consumer Protection Act 1999 has proven ambiguous and inconsistent. Given that common consumers lack the technical ability to assess the safety of cosmetic formulations, many scholars are advocating for replacing this test with a reasonable expectation test, which judges might apply based on informed public values (Roslan et al., 2023). Additionally, Malaysia should establish a statutory presumption that any product included in the NPRA's recall or revocation register is *prima facie* defective. This adjustment would considerably lower the evidential burden on harmed consumers while increasing manufacturer accountability.

Furthermore, the scope of legally compensable damage under Section 66 should be expanded to encompass aesthetic impairment, psychological injury, and delayed health consequences, all of which are frequently connected with the use of cosmetics (Mokhtar et al., 2020; Roslan et al., 2023). As suggested by Lovén et al. (2024), courts should also be encouraged to consider supporting evidence from private dermatologists, licensed clinics, high-resolution pictures, and credible witness testimony, particularly for claimants living in areas with limited services. In terms of causation, Maruchek et al. (2011) believed the framework should establish a rebuttable presumption of causation if defect and injury are reasonably established. If the defect in a product and the consumer's damage are both reasonably established, the court will conclude that the defect caused the injury until the defendant can rebut (invalidate) this assumption. This would keep reasonable claims from being rejected owing to the high expense or technological difficulty of getting direct toxicological proof.

Philips et al. (2024) advocate for the admissibility of expert testimony, regulatory evaluations, and epidemiological data as valid forms of evidence in establishing product defects and causation. This evidentiary approach aligns with practices adopted in more progressive jurisdictions such as South Korea and Australia. In addition, strengthening enforcement mechanisms is essential. To ensure effective deterrence, Mohd Zakuan et al. (2023) and Sutriyono et al. (2024) recommend increasing penalties for the distribution of hazardous or unregistered cosmetics and introducing criminal sanctions for repeated or serious safety violations.

Furthermore, Malaysia must immediately solve the responsibility gap in online and cross-border cosmetic sales. Wathan (2023) proposed that the legal structure should allow authorities to impose guilt on local distributors or identified agents, even if the manufacturer is foreign or anonymous. Finally, access to justice needs to be improved. The Tribunal for Consumer Claims should be able to handle complex cosmetic liability cases that require expert evidence and higher compensation criteria. Claimants should be able to get credible and low-cost certificates from publicly supported laboratories. These revisions, if fully implemented, will reinforce the protective role of strict liability in cosmetic product legislation and ensure that Malaysian consumers have effective legal remedy against damage.

### **CONCLUSION**

The current cosmetic product liability framework in Malaysia, although based on the strict liability principles of the Consumer Protection Act 1999, is inadequate in addressing the actual harms experienced by consumers. The

legal obligation to establish defect, damage, and causation places a significant burden on customers, especially in instances requiring intricate, delayed, or psychological ailments frequently associated with cosmetic use. The consumer expectation test is ineffective for evaluating contemporary, chemically complex items, and the existing parameters for compensable damages omit certain valid illnesses, including deformity and emotional distress. Moreover, the evidentiary requirements for proving a causal relationship are excessively stringent, particularly in cases concerning products offered via unregulated or foreign online platforms.

Moreover, Malaysia's enforcement framework lacks the deterrence impact shown in other jurisdictions. Sanctions for breaches of cosmetic safety regulations are not significant, and there exists no efficient system for holding foreign or unidentified online vendors accountable. The globalisation and digitalisation of the cosmetic sector intensify enforcement gaps, posing a growing risk to consumer health and legal safeguards.

To address deficiencies in the existing liability framework, Malaysia needs to introduce reforms that encompass statutory presumptions for recalled products, expanded definitions of harm that encompass aesthetic and psychological injuries, improved cross-border enforcement capabilities, and the substitution of a reasonable expectation test from the current consumer expectation standard. These modifications would harmonise Malaysia's legislation with global best practices and guarantee that the law functions not merely as a formal instrument of liability but as an effective mechanism of justice. In the absence of these enhancements, the legal protections would remain predominantly theoretical, inadequately providing recourse for individuals damaged by defective and potentially dangerous cosmetics.

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