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Rodan + Fields' insurer claims they aren't financially responsible for court costs or claims ... [+] involved in class action lawsuits for Lash Boost. photo by RunPhoto/Getty Images Embattled multilevel marketing skincare company Rodan + Fields—already facing a series of challenges in the form of two class action lawsuits over its Lash Boost eyelash growth serum—has a new problem on its hands: Its insurer wants to jump ship. In a 19-page complaint filed in a California district court on July 1, Ironshore Specialty Insurance Co., a subsidiary of Liberty Mutual, alleges that Rodan + Fields broke state and federal laws through its marketing and distribution of Lash Boost, which means the insurer should not have to pay for the skincare firm's legal defense or shell out for claims from the class action's plaintiffs. The first Lash Boost class action—still ongoing—was brought in 2018 as consumers complained that the serum, which retails for \$155, caused irritation and swelling, among other unwanted side effects. Rodan + Fields denied any wrongdoing, saying it provides instructions to users, including those who experience irritation. Ironshore also alleges that Rodan + Fields didn't uphold its side of the policy agreement because the company failed to notify Ironshore that another insurer was also defending them, withheld numerous court filings and failed to submit invoices for its legal defense in a timely manner. "Rodan + Fields is aware of and reviewing the lawsuit filed by our insurance company, Ironshore, regarding an insurance coverage dispute related to the pending Lash Boost matter," company spokesperson Franny Mulberg told Forbes over email. Ironshore's lawsuit is the latest blemish to pop up for Rodan + Fields. The company, cofounded by dermatologists Katie Rodan and Kathy Fields, began life as a department store brand in 2002, and was purchased by Estée Lauder the following year for an undisclosed sum. Unhappy with the brand's marketing, the cofounders bought their namesake brand back from Estée Lauder in 2007. They soon pivoted to multi-level marketing (also referred to as direct selling) to sell their goods. In multi-level marketing, everyday people sign up as consultants to sell products. Consultants, sometimes called distributors, earn commissions from product sales and for recruiting more people to sign up as consultants. It's notoriously difficult to earn significant income as a distributor—in 2019, the median monthly income for 67% of Rodan + Fields consultants was \$227. But the move turned out to be a hit. Revenues flourished, growing from \$24 million in 2010 to \$1.2 billion in 2018. By October 2020, things were heading south. The cofounders lost their status as billionaires amid declines in both revenues and the number of independent sales consultants—the army of everyday people who sign up to sell Rodan + Fields' products. Moody's downgraded the firm's credit rating on \$600 million of debt in April 2020, and remains bearish on the business. Despite Rodan + Fields' "good brand name recognition in niche markets," an April 2021 Moody's report said it maintained a negative outlook due to continued revenue declines, with sales dropping to \$1.077 billion in 2020 from \$1.3 billion the year prior, along with further reductions in the number of independent sales consultants. The Lash Boost class action lawsuits threatened sales for one of Rodan + Fields' most popular products. Some consumers said using the eyelash serum caused itchy eyes, eyelid drooping, infections, visual impairment, and even changed iris color. There were other problems. Consumer goods behemoth Procter & Gamble filed a Better Business Bureau complaint against Rodan + Fields in 2018 over allegedly deceptive claims that a Rodan + Fields Vitamin A serum was significantly more effective than one made by Olay, a P&G brand. Rodan + Fields sued Procter & Gamble in response, ultimately dropping the case in August 2018; P&G put their BBB complaint on hold. The Federal Trade Commission admonished Rodan + Fields in a 2020 letter for what it says were misleading claims from independent sellers on social media tied to the coronavirus pandemic; Rodan + Fields said they ensure consultants follow FTC guidelines, and do not tolerate false or misleading claims. Now the company's insurer is piling on, too. Ironshore's lawsuit isn't unusual, according to two insurance experts reached by Forbes. "It's basically a request by the attorneys for the judge to interpret Ironshore's policy rather than go through a litigation process," says David Stegall, a former longtime insurance executive based in Alabama and an expert witness in these kinds of legal cases. He says Ironshore wants the judge to say what the policy means and hand down a decision quickly, allowing the insurer to avoid drawn-out court proceedings. Whether Ironshore is Rodan + Fields' main insurer remains unclear. Rodan + Fields is due within the next two weeks to file a response in court. Liberty Mutual, Ironshore's parent company, declined to comment, saying it doesn't publicly address legal disputes. The insurance battle centers around Rodan + Fields' use of a synthetic ingredient, isopropyl cloprostenate, in Lash Boost. It's known as a prostaglandin analog by the Food and Drug Administration, which requires products containing that class of compounds to be labeled as a drug. Isopropyl cloprostenate is also believed to be the culprit behind the swelling, irritation and other adverse reactions experienced by consumers, according to the class action suits. Ironshore's complaint says there are, in total, two California class actions involving Lash Boost (one federal and one state-level) and at least three additional personal injury lawsuits. If the courts in the class actions find that Rodan + Fields should have sought FDA approval for Lash Boost as a drug, Ironshore says it is not financially obligated to cover Rodan + Fields' court costs or pay damages to plaintiffs. "You can't buy insurance for something that's illegal," says insurance expert Stegall, referring to the FDA's rules on isopropyl cloprostenate. Currently, there is only one FDA-approved eyelash growth medication on the market: Latisse, which is produced by Allergan. (Its active ingredient, bimatoprost, was first developed to treat glaucoma, and like Lash Boost, is a prostaglandin analog. Eyelash growth was an unintended side effect, but the discovery of it led to Latisse.) Some of Latisse's known side effects (redness, itchiness) are similar to those of Lash Boost. An archived October 2019 version of the Lash Boost product page accessed by Forbes includes product warnings, but consumers would need to click through a menu underneath the purchase button to see them.The latest product page for Lash Boost, in contrast to the 2019 version, places the warning about itchiness and side effects more prominently beneath the button to purchase the product. Even if the courts decide Lash Boost doesn't need to be labeled as a drug, Ironshore believes it is not obligated to cover Rodan + Fields' legal costs or claims for plaintiffs. The insurer's complaint says Rodan + Fields failed to communicate with them fast enough about the class action lawsuits, negating their coverage. It took the company over a year to provide documents about a second, unnamed insurer that is also defending them in the class actions, says Ironshore. Although the first class action was brought in 2018, Ironshore also claims that Rodan + Fields waited until March 2021 to submit invoices for their legal defense. Rodan + Fields' actions "jeopardizes their coverage," says insurance expert Stegall. "It's a condition of practically any policy [that] they have to cooperate with the insurance company." A settlement hearing for Rodan + Fields California state class action lawsuit is scheduled for August 3. Its federal class action may be nearing an end: The company is currently negotiating a settlement. Mulberg, the Rodan + Fields spokesperson, says "we are close to reaching resolution of this matter."

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