



« DLA Piper's Media, Sport & Entertainment Hub launches!

GLOBAL: How to protect brand reputation and sales from the risks associated with a product recall

 [Sports General](#)

by [Benjamin Simon](#) | November 17, 2014

By **Teresa Hitchcock**

In the past decade or so, manufacturers in the developed world that would previously have created their entire product in their own country now outsource manufacture to other parts of the world. This has had significant economic advantages where the overseas partner has been able to create a high-quality product at lower cost. However, problems have also arisen. Developed countries have high safety standards to which not only manufacturers, but also the importers of goods manufactured abroad can be held. Heavy criminal or financial sanctions can be imposed if an unsafe product is placed on the market in an EU member state or another developed country in breach of product safety requirements. Market controls are being streamlined, as for example with the Product Safety and Market Surveillance package currently being further developed at EU level.

Regulatory authorities now have significantly increased powers to order product recall of goods. In one recent year product recalls involving consumer goods from China are thought to have increased by almost 20% over the course of a 12-month period. Nor is this a "one-off" problem relating to a particular country. The global market is currently characterised by increasing diversity of overseas suppliers. Product recalls are not only costly and inconvenient but can cause major reputational, and hence also financial, damage for a brand. Moreover manufacturers are increasingly being encouraged to take on a more active role, as part of what is called product stewardship, to minimise the environmental effects of products overseas. Pressure for this is increasingly applied through public-sector and larger private-sector procurement contracts. Manufacturers and importers may need to take a similarly active role to ensure product safety, to avert more direct risks.

What steps can be taken to protect the business?

Prevention is better than cure, and advance preparation can significantly mitigate the risks, either by preventing them materialising or by reducing their effect. For example if the company can quickly turn to alternative sources of supply for goods that present an issue, that will reduce the commercial and reputational damage.

Moreover, if the issue comes to the attention of the regulatory authorities, but it is evident that the company is well-prepared and has good systems, it is much less likely that the regulator will consider prosecution. Conversely, evidence of a failing being systemic rather than an isolated incident, is likely to push the regulator in the opposite direction.

It is well worth while reviewing the company's systems and the risks they are designed to address, with a particular focus on the risks attaching to these products that are business-critical or are subject to a particular likelihood of regulatory intervention. One example arises from the public sensitivities attaching to products for children.

The team responsible for such a review should be multi-disciplinary, including production personnel, technical experts, marketing and design personnel, and even lawyers.

Points to consider

The questions which need to be asked include:

- Is there an adequate system with appropriately trained staff?
- Does the system ensure that feedback will be acted on?
- Do the safety data represent the current state of knowledge and the legislation?

An assessment of the likelihood of compliance in the producer country need to be undertaken. Although the risks of long supply chains are increasingly balanced by new regulation in some producer countries (for example the Restriction of Hazardous Substance legislation in China) to meet market requirements, both of foreign customers and the increasingly affluent and demanding home consumers, that does not apply to all.

An important safeguard where products are supplied by others, is to carry out sample testing of those products.

It is sensible to review contractual obligations with suppliers and distributors. Apart from anything else these may draw the supplier's attention to the customer's requirements. Beyond this, however, how enforceable and effective are they? Do they impose specific requirements for compliance with legislation and standards? What are the requirements regarding quality control, notification of claims to draw attention to potential problems and record systems to ensure traceability (a particular requirement of the proposed new EU market surveillance regime)?

The business itself needs to have a document management system and a retention policy. (Retention for ten years is a proposed EU requirement). Records are of key importance so that you do not merely comply, but are in

ABOUT THIS SITE

DLA Piper's Media and Sport Group delivers topical updates and analysis from across the globe.

Subscribe

Your email:

CATEGORIES

[Advertising](#)

[Contract](#)

[Copyright](#)

[Data](#)

[Defamation & Privacy](#)

[Doping](#)

[E-Commerce](#)

[Film](#)

[Gambling](#)

[Gaming](#)

[Internet](#)

[IP](#)

[Media](#)

[Music](#)

[Publishing](#)

[radio](#)

[Sponsorship](#)

[Sport Regulatory](#)

[Sports General](#)

[Sports Regulatory](#)

[Tax](#)

[telecom](#)

[Television](#)

[Theatre](#)

[Video](#)

[World Events](#)

[World Events](#)

TAG CLOUD

a position to show you complied, and that if a safety issue were identified, it was considered and appropriate action taken. Good systems can rebut any claim that documents have been destroyed to conceal evidence.

To guard against the increasing risk of a compulsory product recall, and to provide for the many cases where it is in the best interests of the business to carry out a voluntary recall, a need will arise for recall and crisis arrangement plans.

These will need to include personnel, including key outsiders (for example insurers, lawyers and PR advisers) with their contact details, as well as actions.

It should not be forgotten that sensible risk management includes prioritisation, and preventative measures should be proportionate to the risks.

Improvements in quality

Some colleagues may be reluctant to take sensible measures (inevitably at a cost in time and money) to guard against risks that have so far not materialised. It should however be borne in mind that control measures to protect against risk are also likely to lead to improvements in product quality. Investment in these measures may also lead to considerable future benefits in brand reputation and sales.

This post has no tag

Copyright

© 2014 Sports, Media and Entertainment Online.

#Defamation #libel **advertising** Aereo
agcom Anti-Corruption Australia **betting**
broadcasting **copyright**
Data Privacy **Data**
Protection defamation Doping e-
commerce EU Europe European
Commission Film **football** France
Gambling Gambling; online;
advertising gaming Germany Google
intellectual property **Internet**
italy liability Match Fixing **media**
music NCAA **New Media** NHL NHLPA
Olympic Games Publishing
Regulatory Sochi Olympics **Spain**
Sport Sports tax **Television**

SPORTS, MEDIA AND ENTERTAINMENT INTELLIGENCE

View the monthly e-newsletter from the global
Media and Sport Team

 [Subscribe via RSS](#)