

Spotlight

Sedgwick's brand protection spotlight features insight and perspective from our strategic partners across industries on safety issues that have potential to influence a company's view on product-related crises.



Welcome to the latest edition of spotlight. Spotlight is our way of sharing insights and perspectives from our strategic partners – lawyers, insurers, risk managers and crisis communications experts across industries – on product safety issues that have the potential to influence a company's view on in-market incidents and crisis management.

In this edition, we are joined by Nicola Smith, Director, Squire Patton Boggs who shares her insight into legislative changes impacting food safety, labelling and consumer health.

About Nicola Smith

Nicola Smith specialises in regulatory compliance. Her expertise covers food and feed law; and general product compliance, safety and recall. As part of Squire Patton Boggs' environment, safety and health group, she has specific understanding and expertise in the food and drink sector, through acting for clients over many years, in services that include food manufacturing, brewing, distribution, retailing and hospitality.

Nicola advises on all aspects of food and drink laws, including information and allergen rules, labelling, food and feed safety, hygiene, claims, notification obligations, recall and all aspects of criminal investigations, prosecutions and other proceedings relating to food and drink laws and product liability matters. Nicola also frequently presents and trains on topical food law issues to clients and others, such as members of the Food and Drink Federation. She has presented twice to representatives of the Chinese Food and Drug Enforcement Agency visiting the UK to understand the application of medicines and food and drink laws; and has written for the Food edition of the American Bar Association (ABA) publication on recalls due to labelling errors.

The scope of food safety is expanding in the EU and the UK.

Where food safety was once focused on longstanding risks like foreign materials or bacterial contamination, governments and regulators are increasingly focused on tackling bigger human health concerns like obesity. Businesses should be aware of not only the potential operational impact of this health-based approach to food legislation, but also the impact on brand and reputation. Because in the end, consumer perception may change as a result of increased ingredient and nutrition disclosures mandated in the EU and UK.

Natasha's Law

"Natasha's Law" officially came into force in the UK on 1 October 2021. The law introduces amendments to food information regulations, now requiring foods 'prepacked for direct sale' to be labelled with an ingredient list, with any specified allergens used in the manufacture or preparation of the product clearly indicated on the label. With many businesses firefighting Brexit and COVID, some may not have adequately prepared for this. In fact, [press reports](#) indicated low levels of compliance in October. Even without full compliance though, the change is resulting in an increased focus on allergen labelling across various sectors of the food industry. This includes precautionary, or 'may contain,' labelling which is not impacted by Natasha's Law (although is now the subject of an FSA consultation, launched in January 2022). This increased focus is likely to result in growing pressure on suppliers to provide accurate ingredient and allergen information to their customers in business-to-business sales, including in circumstances where there are recipe changes or ingredient substitutions due to supply chain issues.

Dual quality directive

In the EU, other labelling legislation is being proposed. The EU-wide 'dual quality' directive seeks to effectively blacklist food products that are marketed in different countries identically front-of-pack, but are 'significantly different' in composition or characteristics. There are some exceptions, for example, where composition must be different to comply with local legal requirements. The beer purity laws in Germany are one example. Member States had until November 2021 to publish their measures to comply with the Directive, and until 28 May 2022 to implement the measures. At that point, Member States may impose fines or other sanctions, depending on local laws, against companies for marketing deemed a 'misleading commercial practice.'

National Food Strategy

In the UK, part 2 of the National Food Strategy shows a continued focus on measures intended to address the obesity crisis, with proposals ranging from taxation on sugar and salt, to mandatory reporting for large companies on the make-up of food that they sell. Calorie labelling will be mandatory for large hospitality businesses (250 or more employees) in the UK from April 2022. Among other things, businesses will need to list the energy content in "kcal" and the size of the portion to which the energy content relates next to the price. In most circumstances, a statement should also be included to show that adults need around 2,000 calories a day.

EU front-of-pack labeling standard

There may be a uniform front-of-pack labelling system for nutrition across the EU by the end of 2022. Numerous front-of-pack systems are used currently, and we have yet to see if there will be a compromise or 'mutual agreement' to use the Nutri-Score, the Nutrinform, the Scandinavian Keyhole, or the UK Multiple Traffic Light system.

Press reports earlier in 2021 indicated that the labelling framework most likely to get the nod from the Commission would be the colour-coded Nutri-Score, developed and backed by France. However, there have also been reports that Italy would ban products with the French Nutri-Score (the Nutri-Score converts the nutritional value of products into a code consisting of five letters, from A to E, each with its own colour, but it is seen as penalising some of the core products of the Mediterranean diet). In any event, it is not clear who would control the correct Nutri-Score labelling outside France.

Enforcement

When it comes to food safety, regulators and courts were not afraid to pursue enforcement action in 2021, or to impose significant fines. In one case, a UK retailer was fined £7.5m for selling food past its use-by date. Expert evidence that the food was in fact safe was dismissed as inadmissible by the High Court in England following an application for Judicial Review by the retailer. In a separate case, a distributor of fresh and frozen food was fined almost £800,000 in relation to a safety incident where a worker was trapped by a mixing machine. Businesses should expect more and larger fines for food safety and health and safety offences in 2022 and beyond.

New areas of legislation mentioned above will be an area to watch for potential enforcement action.

About spotlight

Brand and reputation are the most valuable and vulnerable assets a business has. Brands embody and encapsulate everything a business does, and its customers expect. Nothing says more about a company's commitment to its customers than its efforts to uphold promises of safety, quality and service. However, too often, recall and remediation management is treated as a low priority, only to be applied – or even discussed – when a product needs to be withdrawn from the market. We seek to change that.

Sedgwick's brand protection spotlight is our way of sharing perspectives from our strategic partners – lawyers, insurers, risk managers and crisis communications experts across industries – on product safety issues that have the potential to influence a company's view on in-market incidents and crisis management. In some cases, the connection is obvious but the perspective is new. In others, we will raise questions that you may have never considered in the context of recall and remediation management. That's our intent.

To learn more about our recall, remediation and retention solutions, contact:

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To learn more about our brand protection solutions,
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