

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 thoughts on how the recall landscape is changing for food and beverage companies operating in Europe and the United Kingdom.

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.

What's driving the increase in food recalls in the EU?

Food-related product recalls in the EU and the UK are on the rise and are increasing in scale. This is mainly driven by tougher regulation, increasing complexity in global supply chains and the concentration of certain ingredients with a smaller number of suppliers. These factors combined can create a chain reaction where a single recall can impact numerous manufacturers, brands and consumers across several countries, leading to reputational damage and large financial losses.

But what are the specific risks or forces that are expected to drive the increased recall and enforcement activity in 2022?

Pesticide contamination

The Rapid Alert System for Food and Feed (RASFF) annual report for 2020, published in August 2021, showed a significant increase in alerts over recent years. Not surprisingly, the presence of ethylene oxide (an unauthorised pesticide) in nuts, nut products and seeds was the most frequently reported issue; followed by pesticide residues in fruits and vegetables. One major reason for these numbers was a significant food contamination issue in September 2020 when Belgium reported high levels of ethylene oxide in sesame seeds originating from India. According to the Report, this single event resulted in unprecedented activity, with RASFF becoming an information exchange for ethylene oxide findings as companies identified affected batches of products and traced their distribution.

What remains to be seen is whether there will be a continued focus on levels of pesticides in foods, particularly given growing concerns as to the impact of agriculture on the environment.

Packaging concerns

Also noteworthy, the French Competition Authority issued a 'Statement of Objections' that effectively served as a charge sheet against suspected cartel participants. The document targeted more than 100 companies and trade associations for alleged collusion regarding the use of Bisphenol A in food packaging, principally food cans/tins. The French Competition Authority alleges these companies failed to disclose the presence of this chemical, which is banned in France, in food packaging.

This investigation, which appears to equally target suppliers and purchasers of such packaging, supports a view that food contact materials of all kinds could be under close scrutiny in coming years, potentially leading to an increase in recalls of food packaging.

Environment and sustainability

As environmental protection moves higher up the list of priorities for governments, further new laws will be introduced to tackle climate change, waste and unrecycled products, among other issues.

For one, the European Green Deal was presented in December 2019. In it, the European Commission stated that it would follow up on the Plastics Strategy and focus on implementing new legislation. These include targets and measures for tackling over-packaging and waste generation, legal requirements to boost the market for secondary raw materials with mandatory recycled content, requirements to ensure that all packaging in the EU market is reusable or recyclable in an economically viable manner by 2030 and introduce a regulatory framework for biodegradable and bio-based plastics. These schemes are in force or are due to come into force across Europe by 2024.

This trend is also seen in the UK, with new laws on plastic packaging coming into force across the UK and EU and the potential for recyclability labelling requirements to be implemented in the future.

Combined with a Europe-wide crackdown on 'greenwashing' - misleading claims as to the eco-friendliness of a product - the food industry may find itself confronting new reasons to withdraw or recall a product from the market (as such issues may have commercial implications, even if a recall is not legally required because the product is not unsafe).

Consumer influence

Finally, do not overlook the power consumers have in the market, even when it comes to recalls. There is increased focus among consumers

on how businesses respond to defective or contaminated products. They are increasingly driving the agenda through purchasing decisions and social media. And the more influential the person is, the more attention is paid to what they say online. They do not need to be celebrities to cause reputational damage, they just need to be capable of gaining traction through Twitter, Facebook, etc. This could also lead to more non-safety related recalls - for example recalls due to revelations about the alleged origin of a food or details relating to the supply chain, such as the alleged use of child labour or lack of fair trade.

The bottom line is that we are likely to see more recalls and at a larger scale in the future as the strain on supply chains grows and the law and consumer awareness continue to develop.

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:

P. US: 888.732.3901 | International: +44 (0)333 300 0901
E. brand.protection@sedgwick.com

To learn more about our brand protection solutions,
visit [SEDGWICK.COM/BRANDPROTECTION](https://www.sedgwick.com/brandprotection)