

APPAREL RECALLS: WHERE FASHION, FUNCTION AND SAFETY INTERSECT

The pandemic changed the clothing and textile industry in both predictable and unexpected ways, many of which show no signs of reversing.

In particular, the clothing and textile industry's efforts to pivot its operations to produce Personal Protective Equipment (PPE) and face coverings for public use during the COVID-19 pandemic should be applauded. Even more impressive is the industry's ability to deliver these critical materials despite disrupted global supply chains.

A number of trends have arisen over the course of the pandemic. We have seen faster than anticipated growth of digital retail, which will no doubt continue. The fast fashion majors are seeing a corresponding boost. At the same time many consumers are seeking out sustainable brands.

Regulatory requirements and consumer expectations are rapidly evolving, and businesses would be wise to devote resources to ensuring compliance and mitigating risk before a product safety or reputational crisis hits.

Pandemic-driven pivot

Although pandemic-driven restrictions are likely to be steadily lifted across Europe, demand is expected to remain whilst COVID-19 continues to circulate. As a result, PPE production by the clothing industry is here to stay for the foreseeable future.

As numerous businesses continue to produce items such as masks, aprons, surgical gowns and other protective clothing, it will be critical that they remain on the right side of regulators. Many of these products fall into different

regulatory categories, so care needs to be taken to ensure compliance with the requirements of the relevant regimes. For example, masks intended to protect patients are regulated under medical devices legislation as Class I medical devices. Masks intended as PPE, to protect the wearer, must comply with EU Regulation 2016/425 on PPE as implemented in the UK by the Personal Protective Equipment (Enforcement) Regulations 2018 and require verification by a EU or UK Notified Body. Masks used as face coverings by the general public, however, will not fall under the PPE or medical device requirements and must not be sold or donated as such. These must comply with the General Product Safety Regulations 2005. Failure to navigate, apply and comply with the correct regulatory requirements may result in a recall, as evidenced by second quarter recalls.

The EU's Safety Gate rapid alert system reported 55 serious recalls of masks for failure to comply with Personal Protective Equipment Regulations or the relevant European standard EN 149. Looking closer at enforcement actions in the UK provides insight into the risks for businesses and consumers.

In June 2020, the UK's Trading Standards disclosed that, since the start of the pandemic, more than 6.5 million face masks had been seized at Heathrow Airport for failing to meet the requisite requirements. Many of these masks were labelled with false claims or fake safety certificates. About 4.25 million required label amendments and were ultimately released, but 2.25 million were found to be in irreparable breach of safety standards.

These actions by UK regulators demonstrate the need for businesses to:

- have solid quality control systems in place;
- carry out due diligence on the supply chain;
- ensure chosen suppliers attach correct labelling (in the required languages); and
- ensure the product's features, components, cleaning requirements and capabilities are not misrepresented.

A focus on supply chains

The COVID-19 pandemic resulted in unprecedented supply chain disruption, leading to increased costs, reputational damage and loss of business for many. In some cases, supply chains collapsed entirely and had to be rebuilt.

In response, the European Commission updated its industrial strategy for the EU as outlined in "A New Industrial Strategy for Europe" released March 2020. In May 2021, the Commission revised the strategy to place an emphasis on lessons learned from the COVID-19 crisis. Most notably, the pandemic exposed the interdependence of global value chains, issues arising from border restrictions, lack of availability of essential goods and disruption of demand. The updated strategy focusses on strengthening the Single Market's economic resilience and supporting its open strategic autonomy, for example, by monitoring strategic dependencies, diversifying international partnerships and launching industrial alliances.

The implementation of the revised New Industrial Strategy may result in fewer recalls, not only in the apparel industry,

but generally across all industries. Businesses nonetheless need to be ready to recall. This is of critical importance for businesses that sell internationally, and particularly UK businesses post-Brexit. Businesses will need to have considered, planned and prepared as best as possible for any difficulties with border crossings.

The ethical consumer

Out of what we hope are the ashes of the pandemic, a more discerning consumer is rising, with a nuanced and ethical approach to their purchasing decisions. There is increased scrutiny of the environmental impact of manufacturing as well as a focus on social justice issues including pay and working conditions. Businesses will be expected to meet both regulatory and consumer expectations.

Manufacturers and suppliers will need to ensure particularly stringent testing of, and carry out regular risk assessments on, newly created eco fabrics and materials that are not commonly used in the industry. Perceived greenwashing will be challenged, particularly in today's call-out culture. Litigation against large corporates in relation to social issues such as climate change and worker exploitation is on the rise across industries. Businesses at every level of the supply chain should proactively examine how regulatory obligations are being met, ensure due diligence is conducted with regard to supply chain partners, and review marketing and product materials to avoid inaccurate or misleading claims.

A proactive approach to risk mitigation before a crisis remains one of the best ways to protect your business and reputation.

