



International Distribution Institute

Workshop 3

**Managing non conformity and other products' claims, in coordination  
with the sales network**

# **Facing product liability claims**

***« The worst nightmare »***



International Distribution Institute

## ***Panelists***

**Leslie Thiele**, Whiteman Osterman & Hanna, Albany, New York; IDI agency & distribution country expert for U.S.A.

[lthiele@woh.com](mailto:lthiele@woh.com)

**Lawrence Guo**, ZhongLun W&D Law Firm, Beijing; IDI agency & distribution country expert for China.

[guolinjun@zlwd.com](mailto:guolinjun@zlwd.com)

**Nadia El Baroudi-Kostrikis**, Hajji & Associate, Casablanca IDI country expert for agency & distribution in Morocco

[n.baroudi@ahlo.ma](mailto:n.baroudi@ahlo.ma)

**Ignacio Alonso**, Even Abogados, Madrid IDI country expert for agency & distribution in Spain

[ignacio.alonso@evenabogados.com](mailto:ignacio.alonso@evenabogados.com)

# General perspective

- Situation in different jurisdictions: USA, Morocco, China, Spain, EU
- Products/situations covered
- Objective liability vs. Negligence
- Limitation period
- The European Rapid Alert System for Dangerous Products

# Possible remedies/strategies (1)

- Insurance. What does it cover?
  - Compulsory/voluntary insurance
  - Material damages
  - Moral damages
  - Reputation of the manufacturer
  - Tampering
  - Product recall
  - Losses
  - Defence by the manufacturer/insurance company



## Possible remedies/strategies (2)

- Clauses avoiding liability
- Defenses: presentation, reasonable use, put into circulation, not for sale
- Evidence by the affected person; causality
- Evidence by the manufacturer: the non-existence of the defect
- Mandatory technical requirements
- Scientific and technical standards

## Possible remedies/strategies (2)

- The participation in the manufacturing
- Identification of the manufacturer
- Transfer of liability in the network
- Liability of the affected person
- Liability of market players
- Quality control
  - Origin
  - Traceability
  - Compliance

## Possible remedies/strategies (3)

- How to prepare/manage the crisis
  - Choice and court/juries/arbitration system: would that help?
  - Other ADR: mediation in business / mediation with consumers.
  - Consumers and marketing. Crisis management.

# EU Legal texts and references (1)

## PRODUCT SAFETY: GENERAL RULES

**Directive 2001/95/CE [DIR 2001]** on general product safety It requires firms to ensure that items on sale are safe and to take corrective action when that is found not to be the case. It introduces an EU rapid alert system for dangerous non-food products. This enables national authorities to share information promptly on any measures taken to withdraw such products from sale.

Comment: <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=LEGISSUM:I21253&from=ES>

Text: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32001L0095>

**Regulation 765/2008** setting out the requirements for accreditation and market surveillance relating to the marketing of product

<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32008R0765>

**Regulation 596/2009** adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC with regard to the regulatory procedure with scrutiny

<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32009R0596>

## LIABILITY FOR DEFECTIVE PRODUCTS

**Council Directive 85/374/EEC** of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products

[https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:31985L0374&qid=1526550054051&from=ESx.europa.eu/legal-content/EN/TXT/?uri=celex:32009R0596)

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# EU Legal texts and references (2)

## MISLEADING AND COMPARATIVE ADVERTISING

[Directive 2006/114/EC concerning misleading and comparative advertising.](#)

It seeks to protect traders against misleading advertising from other businesses (i.e. B2B), which is equivalent to an [unfair commercial practice](#). To this end, it determines the conditions under which comparative advertising is authorised.

Comment <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=LEGISSUM:l32010&from=ES>

Text: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32006L0114>

## THE EUROPEAN RAPID ALERT SYSTEM FOR DANGEROUS PRODUCTS

[https://ec.europa.eu/consumers/consumers\\_safety/safety\\_products/rapex/alerts/repository/content/pages/rapex/index\\_en.htm](https://ec.europa.eu/consumers/consumers_safety/safety_products/rapex/alerts/repository/content/pages/rapex/index_en.htm)

## ECOMMERCE

**Directive** 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce')

<https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1526892597974&uri=CELEX:32000L0031>

# EU Legal texts and references (3)

## TRACEABILITY

**Regulation 178/2002** 28 January 2002. General principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety

<https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1526630740746&uri=CELEX:32002R0178>

## COMPLIANCE

COMMISSION NOTICE: The 'Blue Guide' on the implementation of EU products rules 2016]

[https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52016XC0726\(02\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52016XC0726(02)&from=EN)

## MEDIATION

**Directive 2008/52/EC** of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters. It permits the use of ADR systems to **mediate conflicts between companies**.

<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32008L0052&rid=1>

**Directive on consumer ADR** [2013/11 of May 21, 2013] and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC

<https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1525857786796&uri=CELEX:32013L0011>



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# Thank you!

**Leslie Thiele**

**Nadia El Baroudi-  
Kostrikis**

**Lawrence Guo**

**Ignacio Alonso**