

# Collaboration with the sales network in managing a product recall

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## Recall in distribution networks

- Recalls on the rise – but causing few (known) legal disputes within distribution networks.
  - **Global trend** [2024 State of the Nation Recall Index report](#)
- Issues vary depending on type of network.
- The role of Value-added resellers (VARs), original equipment manufacturers (OEMs) and aftermarket manufacturers.
- Regulatory framework differ (see backup slides).
  - Need to assess and take into consideration country specific issues.
  - But “practicalities” mainly follow similar pattern.
- In practice most situations are handled by/through the producer and insurance companies.
  - The two may have different approach – who should oversee the process?
  - A recall may (or may not) include product liability issues.
- Parties in distribution network often have a common interest. But conflicts may arise if:
  - Contracts are unclear
  - Communication or administration are not properly handled.
  - Producer (or others) are late/reluctant to act.
  - A recall involves high costs.

# Preparation

- **IDI OCCASIONAL INTERMEDIARY CONTRACT AND AGENCY AGREEMENT:**
  - No provision regarding recalls.
- **IDI DISTRIBUTION CONTRACT.**
  - 15.5 (*Safety and Recall*). *If Distributor becomes aware of an issue relating to quality, safety or other risk, Distributor must immediately notify the Supplier. In case of product recall whenever requested by the Supplier or by any competent authority, the Distributor shall trace any batch of product and the relevant quantity and inform the Supplier within 48 hours. The Distributor shall actively support the Supplier and cooperate with him and, if requested, with the competent authorities, in order to limit damages.*
- **FRANCHISING.**
  - Rarely specific provisions in the franchising agreements
  - Manuals/ underlying agreements often have detailed instructions on how to act/inform/cooperate
- **TRAINING AND COORDINATION.**
  - “We don't rise to the level of our expectations; we fall to the level of our training” (Archilochus 600 BC.)

# The recall process

- **Establish the facts.**
- **Determine the (level) of risk.**
- **Establish strategy/ plan.**
- **Decide on which kind of corrective action to take**
- **Inform/include the relevant authorities.**
- **Decide on which kind of corrective action to take**
- **Decide on communication channels/message**
- **Perform corrective actions**
  - Retrieve products from consumers and the supply chain
  - Provide remedies
  - Deal with retrieved products
  - Adjust and/or continue actions until the corrective actions have been successful)



## Recall in a distribution network (Example 1<sup>\*</sup>)

1. Automotive network
2. Biggest safety recall: Takata airbags; 100 Mio cars involved from all big OEMs over 10 years; > 30 deadly accidents
3. Relationship OEM – distributors:
  1. Contractual terms (obligation to repair, contact customers, reporting)
  2. IT-systems (DMS; communication platform; monitoring)
4. Despite major publication in press and VIN traceability, many owners were/are not traced, especially for older cars:
  1. no connected cars
  2. maintenance outside the network
  3. slow operation of Car Registration Authorities
5. Sometimes owners are informed but refuse to have the repair done (waiver to be signed)
6. Many vehicles are still unrepaired. Continued liability risk for the OEMs.
7. OEM has no recourse against Takata (bankrupt in 2017 ); most are not insured either
8. Take aways

## Recall in a distribution network (Example 2\*)

A Swiss manufacturer ("SF") distributed its Viktor air purifier in Scandinavia through a Danish Company. The Danish Company appoints a Norwegian sub distributor – which again sell Viktor through multiple retail chains.

In January 2012 SF was informed about fires possibly caused by Viktor. Several thousand units had been sold worldwide. Internal and external analyses were carried out. Lawyers pushed SF to recall. A German laboratory was retained to solve the "problem".

SF informed Denmark it was working *"full time on a solution"* that the EU authorities was informed through RAPEX and that there was currently no need for members of the distribution chain contact their own authorities.

Denmark passed the information on to Norwegian distributor, which sent a letter to its customers. ("Stop selling Viktor and remove products from shelves). The Norwegian Authority was informed of a low-level risk and that *"Withdrawal from store and consumer" and Information to consumer, to retailer/outlet as well as correction of defect.*" The Authorities closed the case and published the recall on their web site.

For cost reasons SF demanded that the distributors should repair all recalled units.

Most units were sold over the counter. Around 51% of units sold were returned/repaired.

Late 2012 a Viktor took fire and caused substantial damages to a building complex in eastern Norway. Claims raised against the Norwegian and the Danish distributors as well as the producer SF.

## Lessons learned – distribution.

1. **Inadequate Communication:** Failing to maintain clear and timely communication with stakeholders, including customers, suppliers, and regulatory authorities, can lead to confusion and delays.
2. **Delayed Responses:** Delay in initiating the recall process can exacerbate the impact on consumers and damage the brand's reputation.
3. **Incomplete Documentation:** Proper documentation is essential for tracking the recall process and ensuring compliance with regulatory requirements. Incomplete or inaccurate records can complicate the recall.
4. **Lack of Root Cause Analysis:** Without identifying and addressing the root cause of the issue, the same problem may recur. Comprehensive root cause analysis is vital for preventing future recalls.
5. **Insufficient Preparation:** Lack of training/coordination can lead to mistakes and inefficiencies.
6. **Poor Crisis Management:** Inefficient cross-functional cooperation and unclear (under law and contract) crisis response duties can make the stakeholders appear apathetic to affected customers and the media.

## Recall in a franchising network (1)

### **1. Limited Franchisee Control and Franchisor's Supply Role**

Franchisees and franchisors typically don't inspect products pre-delivery

Exception: Franchisor-operated commissaries with direct distribution

Perishables are often shipped directly to franchisees to preserve freshness

The franchisor often selects suppliers and sets distribution methods

Franchisor negotiates supply contracts used system-wide

### **2. Brand Risk & Food Handling Standards**

Recalls can harm both franchisor and franchisee (impact on brand, e.g., Chipotle)

Franchisor policy may restrict how food is prepared/shared between twinned concepts

Proper food handling standards are essential — inspections are needed to ensure compliance

Franchisees handling errors can complicate containment and traceability



## Recall in a franchising network (2)

### **3. Liability and Risk Allocation**

Franchisees expect the franchisor to bear responsibility if the problem stems from the supply chain

Franchisors must vet suppliers and maintain a safe chain of distribution

Contractual terms should require franchisees to carry business interruption insurance

Contamination may shut stores down for extended periods, disrupt supply

### **4. Communication and Crisis Control**

Franchisees should not speak publicly or on social media about issues

Franchisors must retain control of public messaging, especially where insurers are involved

Crisis policy must direct the franchisees on whom to call and what to do

Franchisors should have a trained media spokesperson and a crisis plan

## Recall in a franchising network (3)

### 5. Regulatory and Investigative Duties

- Franchisors must investigate the source: farm → transportation → customs → transportation → storage → distribution → franchisee → customer
- Franchisors coordinate with insurers and may be required to notify regulators and be involved in the recall process
- Heavy penalties for failing to report or manage a recall properly

### 6. Insurance and System Design

- Strong insurance broker essential — must understand end-to-end risks
- Contracts should clearly allocate risk/responsibility among parties
- Franchisors must ensure traceability and crisis readiness in system design

## Recall in a franchising network – (example).

*A restaurant franchisor designated a supplier from which its franchisees must purchase selected vegetables directly for use in its menu items.*

*The supplier sources part of its supply from a farming co-op in a different country and arranges for a third party carrier to transport the product by truck, clear customs and deliver the product to its central warehouse from where it distributes the product.*

*A customer of a franchised restaurant becomes ill, and it is determined that the product is tainted with listeria. The customer posts the fact of the incident online. The source of the outbreak is being investigated. What are the obligations and responsibilities and best practices for anticipating and managing the problem within the franchise system?*

## Lessons Learned - Franchising

- **Example:** Class Action
- **Listeria incident:**
  - Franchisor's supplier at fault, franchisees were closed until replacement product secured, franchisor lost royalties
  - Supplier went public with a PR push but used leverage to avoid liability
- **Social media extortion:**
  - Customer falsely claimed maggots in pizza
  - Pre-existing expert report supported false claim; limited social reach made ignoring the best tactic
  - Takeaway: good crisis management planning

# Back up slides.

- Recall regulation in EU/Canada/US and Pakistan
- Summary Borgarting Appeal Court LB-2017-149386



# EU/EEA

- Comprehensive legal framework for product recalls, primarily governed by the General Product Safety Regulation (GPSR) but also sector-specific regulations (See [Product safety](#)).
- When a product recall is necessary, economic operators must issue a **recall notice** that is clear, transparent, and describes the hazard at stake. The notice should contain mandatory information as outlined in Regulation (EU) 2023/988
- Consumers must be adequately informed about the recall, including the nature of the risk and the actions they need to take
- EU provides a standardized template for recall notices to ensure consistency and clarity across member states
- Responsibilities:
  - Economic Operators: **Manufacturers, importers, and distributors** must act swiftly to remove unsafe products from the market, inform consumers, and notify EU authorities
  - Market Surveillance Authorities (MSAs): MSAs have the power to order recalls and oversee the recall process to ensure compliance
- Ensuring traceability of products is crucial. Economic operators must maintain records that allow for the identification of products and their distribution channels

# Canada



- **Process:** Voluntary recalls guided by Health Canada (consumer products/cosmetics).
- **Agencies:** Health Canada under the CCPSA (non-food), CFIA (food); the Health Minister can order mandatory recall where voluntary steps are not taken or are inadequate.
- **Requirements:** Warning notices, product removal, corrective actions, traceability (esp. food).
- **Example:** Air purifier recalls – notices to consumers & retailers, government liaison assigned.
- **Regulations:** "A guide for voluntary recall of consumer products or cosmetics in Canada", reporting forms/logs found at: <https://www.canada.ca/en/health-canada/services/consumer-product-safety/reports-publications/industry-professionals/recalling-consumer-products-guide-industry.html>

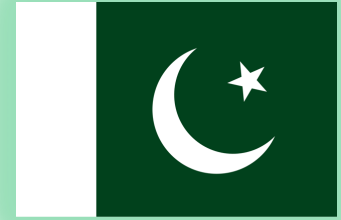
# USA



- **Agencies:** CPSC (consumer goods), FDA (food/medical), EPA (environmental).
- **Platforms:** Recalls.gov consolidates notices from six federal agencies.
- **Process:** Notify CPSC/FDA, stop sales, quarantine/dispose product, update firm website indefinitely.
- **Importer Obligations:** Must check if products are recalled, notify platforms (e.g., Amazon rules), cooperate with regulators.
- **FDA Classes (for food):**
  - *Class I:* Risk of death/severe harm
  - *Class II:* Temporary/significant health issues
  - *Class III:* Regulatory violations only
- **Examples:** Daikin recalls Air Purifiers due to fire hazard.



# PAKISTAN



- **Process and Agencies:** Drug Regulatory Authority of Pakistan (DRAP) along with provincial health departments (pharmaceutical products/drugs);  
Provincial food authorities such as Sindh Food Authority or Punjab Food Authority (food).
- **Requirements:** Warning notices to hospitals, pharmacies and general public, product removal, corrective actions (pharmaceutical products/drugs)  
Product recall by order in writing of the Director of the provincial food authority (food).
- **Examples:** Multiple recalls of unsafe batches of pharmaceutical drugs;  
recall of packaged snacks by Sindh Food Authority.
- **Regulations:** DRAP's Guidelines on Recalls:  
<https://www.dra.gov.pk/wp-content/uploads/2024/11/Recall-Guidelines-Edition-2-V1-1-Final-08-10-2024-1-2.pdf>

Provincial food authority product recall regulations (eg Punjab)

<https://food.punjab.gov.pk/system/files/7.%20PFA%20%28Food%20Recall%29%20Regulations%202017.pdf>

## Borgarting Court of Appeal

2018-12-18. LB-2017-149386. -.

Related sources

Key words: Tort law. Product liability. Recall of a dangerous product. Recourse. Product Liability Act §§ 2-1 and 1-3 no.1, Product Control Act § 3, Damages Act §§ 2-1 and 5-3 no.2

*Summary: The case concerned recourse settlements between insurance companies following a house fire caused by a technical defect in an air purifier. The product had been recalled from the market a few months prior to the fire. **The liability insurance company of the Swiss manufacturer had settled with the homeowner's insurance company and claimed recourse from the Danish importer, the Norwegian distributor and their liability insurers.** The Court of Appeal found that both the importer and the distributor were liable to the injured party, so that the conditions for recourse were present under Section 5-3 (2) of the Damages Act. In allocating liability, the Court of Appeal found that the manufacturer had to bear most of the loss, as the manufacturer is closest to bearing liability if a safety defect in the product leads to injury. Moreover, the **manufacturer had downplayed the risk in its communication with its customers.** However, the importer and the distributor also had to cover some of the loss **as the implementation of the recall had been inadequate.** Their share was set at NOK 1 million each.*