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PRODUCT RECALLS: BETTER SAFE THAN SORRY

Rutger is an experienced and seasoned lawyer, holding a master degree in both civil and tax law. He has been Head of Legal of Shimano Europe B.V. for almost 17 years. He also headed the rowing division of Shimano Europe for 7 years, allowing him to gain valuable commercial and supply chain experience. As of April 2021, Rutger started his own venture RecallDesk, which is specialized in product recalls. The WFSGI and Rutger go back a long way. Rutger has been an active member of the WFSGI Legal Committee for many years. Rutger has been Vice-Chair of the Legal Committee for several years.

RecallDesk is a proud partner of the WFSGI.

Sports equipment, including bicycles and bicycle parts, is high on the list of most frequent product recalls. According to the OECD Global Recalls Database, there have been around 2000 product recalls in the sporting goods industry in the past 10 years. That means for sporting goods alone almost 4 recalls are reported every other week. Based on these numbers, sports equipment is ranked 5th on the OECD list of global recalls. The bicycle industry, which is included in the OECD's sports equipment category, represents a large number of these recalls.

Introduction

Whether big or small, recalls are complex projects and need to be managed properly. A recall requires a lot of resources and may hit a company's P&L badly. Whilst some companies may be perfectly equipped to manage a product recall by themselves, many others may not. But in any case, consulting an expert may add value, whether it is to lead or complete a recall team.

RecallDesk is unique in offering a combination of services that can be tailored to the needs of a client-facing a (potential) recall. RecallDesk offers legal, risk management and operational support.

In this article we would like to share some best practices that touch upon the following questions:

- How to mitigate the risk of having a recall?
- How to be prepared for a recall?
- How to manage a recall?
- How to ease the burden of a recall?

How to mitigate the risk of having a recall

Product safety as a primary concern

The best thing about recalls is not having one. Fortunately, there are many things you can do to mitigate the risk of having a recall. Ultimately, and as obvious as it may sound, it comes down to the commitment of your organization to

only supply products that are safe and compliant with relevant product requirements.

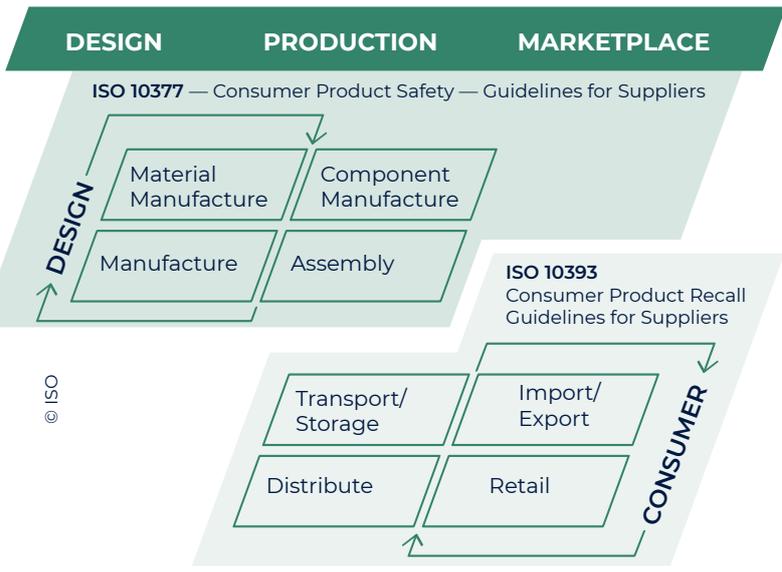
For companies selling their products on a global scale, it may be challenging to keep abreast of all the relevant product requirements in each country. Compliance & Risks' C2P platform, as well as the WFSGI Compliant Labelling Requirements Database, are excellent tools for companies to get access to relevant product and labelling requirements. However, it will still be important to have resources in place that can understand and translate product requirements to the actual product design and labelling.

Embedding a product safety culture

For companies that would like to bring their product safety processes to the next level, 2 ISO standards are worth mentioning: ISO 10377 on consumer product safety and ISO 10393 on consumer product recall. The key message of these standards is that design and production defects are highly preventable.

RecallDesk has developed a QuickScan that is largely based on these standards and helps companies to identify quick wins in their supply chain from the viewpoint of product safety, compliance and recalls.

The product safety process described by ISO 10377 and ISO 10393



How to be prepared for a recall?

A recall always happens when it is least expected or convenient. So the best thing you can do is to be prepared. Having a recall plan and recall team in place are things that would come first in mind. A recall plan should be drafted in such a way, that it guides you through the recall process tailored to your organization. Ideally, it includes a contacts list and communication templates. It will save you a lot of time and stress if a crisis hits you.

Another useful preparation is to make a 'recall journey': ask yourself the question how you are going to take back the products from the market and really think this through from a practical and operational point of view. It will give insight into what recall infrastructure is needed for your company, products and supply chain. Making this 'recall journey' before a recall happens can be tremendously helpful.

How to manage a recall?

Managing recalls is something you do not learn from the books, but mainly by doing. No recall is the same and yet certain steps or milestones are similar for each recall. These include e.g. product testing, making a risk assessment, liaising with and notifying market surveillance authorities, communication towards stakeholders and retrieving the affected products.

There is no such thing as a 'perfect recall'. Mistakes will be made and things will happen that are unexpected or not anticipated.

Risk assessment

A few more words on risk assessment, since it is such a crucial element of a (potential) recall. A recall is a last resort remedy. Typically, at least in the EU, a risk assessment is a starting point and identifies the risk level, which is formed by the combination of the severity of the injury and the probability. Risk levels can be low, medium, high or serious. The type of corrective action depends largely on the risk level. If the risk level is high or serious, you can be certain that your product needs to be recalled from the end-user. If the risk level is medium or low, other corrective actions may be sufficient. A risk assessment should be approved by the relevant market surveillance authority and is a crucial element in managing a recall.

How to ease the burden of a recall?

In the unfortunate case your company is hit by a recall, there are various things you can do to ease the burden. First of all, the sooner you are aware of a potential product issue, the better. Secondly, the fewer products are involved, the better. And thirdly, make sure the burden is taken where it should. Here are some best practices on each of these 3 points:

- **On the first point:**
 - a. Keep abreast of product requirements.
 - b. Do not only test before market launch¹. Continue testing and auditing of products, tools and moulds.
 - c. Continuously monitor the marketplace.
- **On the second point:**
 - a. Have a recall infrastructure readily available.
 - b. Have a solid product identification and traceability system in place.
- **On the third point:**
 - a. Stipulate sound contractual arrangements with your suppliers and distributors with regards to product compliance, safety, testing and recalls.
 - b. Check your product liability insurance. In several jurisdictions, certain recall costs can be claimed under your standard product liability insurance, including your legal/consultancy fees.

Concluding remarks

The best thing about a recall is not having one, but ignoring the risk is not a good strategy. Fortunately, there are many things you can do to avoid a recall. Product compliance is key. Design and production defects are highly preventable. But even so, a recall may hit your company, so make sure you are prepared. You only have one chance to do it right. Beware that a well-conducted recall will likely increase your customers' trust. Also, there is a variety of ways to ease the burden of a recall.

More information on the services of RecallDesk can be found at www.recalldesk.com. For questions or advice, please contact RecallDesk at info@recalldesk.com. ■