CLOSING THE GAPS: MANAGING OPERATIONAL RISK IN THE CONSUMER PRODUCTS INDUSTRY

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US Litigation and Dispute Resolution Alert

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The most consequential risks facing consumer goods manufacturers rarely originate in the legal department. Instead, they arise upstream in the gaps between what the regulatory team believes state and federal laws require, what procurement actually sources, and what the commercial team ultimately represents on the label. Plaintiffs' firms have become highly sophisticated at identifying and exploiting these gaps. They now assess, before filing, whether regulatory interpretations, sourcing practices, and commercial claims actually line up in practice, capitalize on the expansion of state-level enforcement, and target go-to-market claims that outpace what supply chains can reliably substantiate. The companies best positioned to mitigate and manage enterprise risks are not those with the strongest defense counsel. They are those that find and close the gaps before Plaintiffs' firms do.

REALITY OF 50-STATE ENFORCEMENT RISK

The aggressive expansion of state-level regulation across product safety, environmental standards, consumer protection, and labeling has created a 50-jurisdiction enforcement landscape that is impossible to navigate through federal compliance alone. A company can be fully compliant with every applicable federal regulation and still face substantial litigation exposure at the state level: California,[1] New York,[2] and Illinois[3] each provide robust private rights of action, and the Supreme Court[4] has significantly narrowed federal preemption defenses in product cases.

What Companies Should Do Now

The practical response to 50-state enforcement risk is not to maintain 50 separate compliance programs; it is to build a regulatory intelligence function that monitors state-level developments systematically and maps exposure against the company's actual footprint. At minimum, that means designating ownership for monitoring in California, New York, and Illinois and building a process to translate new state requirements into labeling, formulation, and marketing review checkpoints. Federal preemption should be assessed product-by-product rather than assumed as a default defense. Companies should also review whether existing liability insurance programs cover state regulatory enforcement actions and associated defense costs; many policies do not, and that gap is worth closing proactively.

PRODUCT CLAIMS AND SUPPLY CHAIN VERIFICATION

The risk compounds because commercial pressure to push aspirational claims such as “pure,” “sustainable,” and “Made in USA,” even as global supply chains make those claims increasingly difficult to substantiate at the stock

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keeping unit level. As a result, labeling litigation has expanded well beyond traditional false advertising. Courts have recently upheld claims that challenge:

- "Made in USA" representations where components are sourced offshore, including cases where only a minority of inputs were foreign.[5] A March 2026 executive order has directed agencies to prioritize these cases;[6]
- "Pure," "clean," and "free of" claims where testing turns up trace contaminants, including microplastics or Per- and polyfluoroalkyl substances (PFAS) the manufacturer never intentionally added;[7] and
- "Eco-friendly," "recyclable," "sustainable," and "carbon neutral" claims where the company cannot document the methodology or where practice diverges from it.[8]

In many of these cases, the representation originated in marketing without a fully developed process to link the claim to sourcing data, test results, or production specifications.

What Companies Should Do Now

The central discipline required here is closing the loop between commercial teams and supply chain operations before a claim goes on a label. That means instituting a formal claims substantiation protocol in which every material claim ("Made in USA," "pure," "clean," "sustainable") should be mapped to documented supply chain data, third-party test results, or production specifications before it is approved for use. Marketing and legal should conduct joint review of new claims, and existing claims should be audited against current sourcing realities on a regular cadence, particularly when suppliers or manufacturing locations change. For "Made in USA" claims, companies should understand their exposure under both Federal Trade Commission standards and the March 2026 executive order, which directs agencies to prioritize enforcement.

PFAS AND EMERGING CONTAMINANT EXPOSURE

PFAS litigation has moved well past chemical manufacturers. Companies that use PFAS-containing inputs in packaging, coatings, lubricants, cleaning agents, or manufacturing processes now face claims on multiple fronts, including product liability, Superfund remediation, water contamination, and property transactions. In many cases, those companies cannot readily identify exactly where PFAS compounds appear in their supply chain. As a result, PFAS presents simultaneously as a supply chain issue, a product safety issue, an environmental issue, and a marketing issue for any company making purity or safety claims. Because no single function owns the issue, it often goes unaddressed until litigation forces it into view.

What Companies Should Do Now

Because no single function owns PFAS exposure, the first step is to assign it. Companies should designate cross-functional ownership spanning procurement, research and development, operations, legal, and communications and conduct a supply chain mapping exercise to identify where PFAS compounds may appear, including in packaging, coatings, processing aids, and manufacturing equipment. That exercise should feed directly into a remediation roadmap that prioritizes the highest-volume and highest-visibility inputs first. Where PFAS phaseout is not immediately feasible, companies should develop a documented transition plan, both to demonstrate good faith and to ensure that no product makes a purity or safety claim that the underlying supply chain cannot support. Companies that are or may become potentially responsible parties under Superfund should also evaluate their

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indemnification and contribution rights against upstream suppliers and consult with environmental coverage counsel on whether legacy policies provide remediation cost coverage.

ENVIRONMENTAL, SOCIAL, AND GOVERNANCE (ESG) AND SUSTAINABILITY COMMITMENTS

ESG-related securities and consumer class actions have roughly doubled in two years, increasing from 16% of class actions in 2024 to roughly 30% as of September 2025. Public sustainability commitments, whether made in investor materials, marketing materials, or corporate social responsibility (CSR) reports, establish benchmarks that plaintiffs can test against what a company actually did.

For consumer products companies, the risk is not abstract. Executives may announce commitments without first confirming whether the company can meet them, how progress will be measured, and what records will substantiate performance. When plaintiffs eventually place the commitment alongside the operational record, the gap between the two often becomes the theory of the case.

What Companies Should Do Now

The discipline ESG commitments require is the same discipline that governs any representation made to investors or consumers: as discussed above, do not make a claim you cannot substantiate and build the recordkeeping to prove substantiation before a commitment is announced, not after litigation demands it. In practice, that means establishing a pre-clearance process for public ESG commitments—one that includes legal review, a defined measurement methodology, and a documentation plan—before executives make statements in earnings calls, CSR reports, or marketing materials. Existing commitments should be audited against current operational performance. Where gaps exist between commitment and practice, companies face a choice: close the gap operationally, revise the commitment, or disclose the variance. The riskiest position is to leave a known gap unaddressed and undisclosed. Companies should also evaluate their directors and officers and securities liability programs to confirm that coverage extends to ESG-related securities actions, which are now a material and growing category of exposure.

CPSC REPORTING OBLIGATIONS

Section 15 of the Consumer Product Safety Act requires manufacturers, distributors, and retailers to report to the Consumer Product Safety Commission (CPSC) whenever they obtain information that reasonably supports the conclusion that a product contains a defect creating a substantial hazard.[9] The statutory trigger is *information*—not incidents, not injuries, and not a formal defect determination. Recent enforcement actions make clear that the CPSC and the Department of Justice are willing to pursue significant civil penalties and, for the first time, criminal charges against executives who fail to report.[10]

The problem is structural. Information that should trigger a Section 15 review typically originates from customer service, quality assurance, warranty processors, and retail partners—functions that are rarely integrated into a legal escalation protocol. The information exists, but the pathway to act on it often does not. That gap now carries criminal exposure, not just civil liability.

What Companies Should Do Now

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The structural fix for Section 15 compliance is a formal information escalation protocol that connects the functions where safety-relevant information originates—customer service, quality assurance, warranty processing, retail partners, and field sales—to the legal or regulatory function responsible for making reporting determinations. The protocol should define the categories of information that trigger escalation, the timeline for review, and the individuals accountable for decisions. It should be tested periodically against live data flows to confirm it is capturing what it is designed to catch. Companies should also conduct a current-state audit of how customer complaints and warranty claims are classified and retained, because that documentation will be among the first things a government investigator or plaintiffs' counsel requests. Equally important: ensure that legal holds and document preservation protocols extend to these operational functions, not just traditional legal and finance records.

Our Consumer Goods and Services industry group advises clients across the regulatory lifecycle, helping them build durable compliance systems before issues arise and defending those systems when they are tested. We have counseled many of the world's leading consumer brands on claims substantiation, supply chain risk, CPSC reporting obligations, PFAS exposure, ESG-related securities and consumer litigation, and insurance coverage review. With an integrated international platform, we are positioned to scale across jurisdictions as state enforcement continues to expand. We welcome the opportunity to discuss how these developments may impact your business.

FOOTNOTES

[1] Consumers Legal Remedies Act, Cal. Civ. Code § 1750.

[2] N.Y. Gen. Bus. Law § 349.

[3] Consumer Fraud and Deceptive Business Practices Act, 815 Ill. Comp. Stat. 505/10a.

[4] *See Wyeth v. Levine*, 555 U.S. 555 (2009); *Merck Sharp & Dohme Corp. v. Albrecht*, 587 U.S. 299 (2019).

[5] *See, e.g.*, *Washington v. Reynolds Consumer Prods. LLC*, No. 1:24-cv-02327, 2025 WL 673615 (S.D.N.Y. Mar. 3, 2025).

[6] Exec. Order No. 14392 (2026).

[7] *See, e.g.*, *Haschemie v. Cinco Spirits Grp., LLC*, No. 1:25-cv-23864 (S.D. Fla. 2025); *Plastic Pollution Coalition v. PepsiCo, Inc.*, No. 2025-CAB-002131 (D.C. Super. Ct. 2024).

[8] *See, e.g., Rawson v. ALDI, Inc.*, No. 21-cv-2811, 2022 WL 1556395 (N.D. Ill. May 17, 2022).

[9] 15 U.S.C. § 2064

[10] *See, e.g., U.S. v. Chu*, No. 2:19-CR-193 (C.D. Cal. 2025).

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