International Product Liability Review

Issue 64

September 2016

About our Product Litigation and Compliance Practice

Hogan Lovells has the leading international product litigation and compliance practice covering all aspects of product liability, compliance and mass torts. We focus on acting for clients around the world covering all product sectors including food and beverages, pharmaceuticals and medical devices, cars, tobacco, mobile phones, cosmetics, electrical and electronic products, chemicals and hazardous substances, toys and children's products, sporting goods, aircraft and machinery. Hogan Lovells product litigation and product safety lawyers are supported by a dedicated Science Unit and Project Management Unit.

If you would like more information about Hogan Lovells product litigation and compliance practice, please visit our website at www.hoganlovells.com or contact the Product Litigation and Compliance Group Leader, Rod Freeman, at rod.freeman@hoganlovells.com or any of the lawyers listed on the back page of this publication.

About International Product Liability Review

In December 2000, Lovells (as it then was) launched its quarterly *European Product Liability Review*, the only regular publication dedicated to reporting on product liability and product safety developments in Europe for international product suppliers, and others interested in international product issues. Over the next ten years, this unique publication featured hundreds of articles, from authors across our network, covering issues in Europe and, increasingly, further afield. Reflecting the growing globalisation of product risks, and following the creation of Hogan Lovells through the combination of Lovells with Hogan & Hartson in May 2010, the publication was renamed *International Product Liability Review* in March 2011.

Hogan Lovells *International Product Liability Review* continues to be the only regular publication dedicated to reporting on global developments in product litigation and product regulation. It is distributed worldwide free of charge to our clients and others interested in international product issues. If you would like additional copies of this publication, please return the form enclosed with this edition, or contact a member of the editorial team by e-mail:

Rod Freeman
rod.freeman@hoganlovells.com

Valerie Kenyon
valerie.kenyon@hoganlovells.com

Cécile Burgess
cecile.burgess@hoganlovells.com

Anthea Davies
anthea.davies@hoganlovells.com

Sarah-Jane Dobson
sarah-jane.dobson@hoganlovells.com

Ellie Pszonka
ellie.pszonka@hoganlovells.com

Thomas Caldwell
thomas.caldwell@hoganlovells.com

With thanks to Samantha Tharle

This issue of *International Product Liability Review* is produced with the support of our International Co-ordination Panel:

Jacopo Bartolomeo (Milan)
jacopo.bartolomeo@hoganlovells.com

Cécile Burgess (London)
cecile.burgess@hoganlovells.com

Pauline Faron (Paris)
pauline.faron@hoganlovells.com

Brenna Nelinson (Baltimore)
brenna.nelinson@hoganlovells.com

Laura-Jean Van De Ven (Amsterdam)
laura-jean.vandeven@hoganlovells.com

Eugenio Vázquez (Madrid)
eugenio.vazquez@hoganlovells.com

Vera Wichers (Munich)
vera.wichers@hoganlovells.com

Phoebe Yan (Shanghai)
phoebe.yan@hoganlovells.com

Meet the team

We are pleased to introduce two of the authors who have contributed to this edition of *International Product Liability Review*: Phoebe Yan (Shanghai) and Gabor Fellner (London).

Phoebe Yan

Senior Associate – Shanghai

phoebe.yan@hoganlovells.com

When clients are faced with product liability issues product recalls, FCPA investigations, trade secret and labour law disputes they turn to Phoebe for her assistance. She has a wealth of experience representing multinational companies in anti-bribery and product quality related government investigations and company audits in the automobile and consumer products industries. She also assists in many product quality and product safety related campaigns for multinationals in China, including voluntary recall actions before the China General Administration of Quality Supervision, Inspection, and Quarantine.

Prior to joining Hogan Lovells, Phoebe worked at a top-tier Chinese law firm. She gained strong researching and analysing skills as well as in-depth knowledge of Chinese civil law and court system from the training she received.

Phoebe holds a JD from the University of Iowa, College of Law. She earned her bachelor's degree from Peking University and she is qualified in both New York and China.

See page 2 for Phoebe 's article "*Consumer products in China: new recall regulations*"

Gabor Fellner

Associate - London

gabor.fellner@hoganlovells.com

Gabor is an Associate in the Product Litigation and Compliance team of the London office at Hogan Lovells. He has experience advising clients on a broad range of product-related advisory, commercial and compliance matters, as well as dispute resolution (including ADR). He has advised clients around the world on complex compliance issues relating to innovative consumer electronics, textiles and apparel, motor vehicles and chemicals.

Gabor has coordinated advice relating to new product launches in multiple jurisdictions for market leading brands. He has worked closely on behalf of clients with test houses, external technical consultants, certification organisations and industry experts to advise clients on practical compliance solutions which suit their commercial needs.

Gabor also works with clients on major international product withdrawals, recalls and other corrective actions, communicating with national authorities, coordinating advice from local counsel and managing the reporting process in affected jurisdictions.

See page 9 for Gabor's article "*REACH into the future: recent developments in the EU chemicals regulation*"

In this issue…

Overview

The regulation of medical devices has been under scrutiny at a policy level for some time in Europe. In this issue, we report on the latest development – the finalisation by the EU of the text of two new Regulations to overhaul the regime for the regulation of medical devices (page 6). The upcoming changes will have wide ranging effects on existing medical device manufacturers and distributors, as well as on those who manufacture and supply products that will be caught for the first time by regulation in this sector. More broadly, the changes being implemented for medical devices might, over time, serve as something of a blueprint for the regulation of other safety-critical products in the EU.

Regulatory change is also being implemented in China. In our feature article in this issue we report on some significant changes that affect the conduct of product recalls and other actions in the context of potentially dangerous products (page 2). These new rules mark a further step forward in bringing China well into line with the level of regulation and supervision of product recalls that exists in other parts of the world, such as the United States and the EU. We are yet to see the way in which these new regulations will be enforced by the Chinese authorities. At this stage international product manufacturers and suppliers need to understand these new obligations, and ensure that they comply with them when dealing with potentially unsafe products that have been placed on the Chinese market.

In the United States, we see an important development in the consideration of the obligations of suppliers of potentially hazardous raw materials (page 26). The Californian Supreme Court has extended the potential application of the so-called "sophisticated intermediary doctrine" to suppliers of raw materials. However, it has imposed some strict conditions on the application of that doctrine in that context, which suppliers of raw materials should pay attention to.

Back in the EU, we provide an update on the policy-level consideration of the regulation of the Internet of Things (page 12). This is an issue that ultimately will affect virtually every product sector. The approach taken to the regulation of related technology will have a significant impact on how the technology can be commercialised, as well as on the liabilities of those in the supply chain for "connected" products. This is a significant topic for international product manufacturers.

The regulation of new technologies will be a major focus of the European Commission at the upcoming International Product Safety Week, to be held from 14 to 18 November 2016. Part of this programme will be the Annual International Conference of ICPHSO (the International Consumer Products Health and Safety Organisation). For more information about this programme, which will include high level speakers from around the world, visit www.icphso.org.

Rod Freeman
London
rod.freeman@hoganlovells.com