



Product liability update

February 2019

Product Safety Marking in the event of a “no deal” Brexit

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Consultation on food labelling

The high profile inquest of Natasha Ednan-Laperouse, who died as a result of an allergic reaction to the content of on-site prepacked food at a Pret a Manger, drew focus to current legislation with regard to food labelling. [more>](#)

Apple faces lawsuit over FaceTime bug

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Social media and product advertising

Hit Netflix documentary “Fyre: The Greatest Party That Never Happened” has brought attention to the power of “influencers” and the ability of producers to market their goods through social media platforms such as Instagram. [more>](#)

Any comments or queries?

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Product safety marking in the event of a “no deal” Brexit

The Government has published its plan for a new safety marking, UKCA (UK Conformity Assessed), in the event of a “no deal” Brexit.

The current CE marking indicates conformity with health, safety, and environmental protection standards for products sold within the EU. Under the plan, if Britain leaves the EU without a deal, products sold in Great Britain and Northern Ireland will no longer be able to carry the CE marking and will instead have to show the new UKCA symbol.

However, UKCA marking will not be recognised in the EU, meaning products requiring marking will also need to obtain CE marking if they are to be sold in the EU. This would entail some goods having to be tested and marked twice.

Post Brexit, existing EU harmonised standards will become UK designated standards, so the actual standards against which products are assessed will not change. However, there will be an additional cost if a product requires testing and marking twice where producers wish to market their goods both at home and within the EU.

There will be a grace period during which products already made and carrying the CE mark can still be sold legally in the UK, although it is not yet known how long this period will last.

A no deal Brexit could mean large costs for British manufacturers as they will need to amend packaging, advertising, product labelling and possibly even aspects of the product itself to introduce the new UKCA marking.

Consumer group Which? believes this change should be used as an opportunity to overhaul the current system and is calling for an independent, consumer-focused product safety regulator to be established to address what they describe as a “broken enforcement system that means action to remove unsafe products from the market is far too slow”.

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Consultation on food labelling

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Currently foods which are prepacked for direct sale fall within the same category as non-prepacked food made on the premises where they are sold. As such those prepacked foods are not required to carry labels.

The Government has launched a consultation requesting comment upon proposed changes as to how allergen information is to be given on prepacked foods.

Defra, the Food Standards Agency (FSA) in England, Wales and Northern Ireland, Food Standards Scotland (FSS), and the Department for Health and Social Care (DHSC) are working together in reviewing the current legal framework for allergen information for foods which are prepacked for direct sale. A number of policy options have been developed to improve the provision of allergen information.

Food businesses and allergy sufferers are being invited to respond to a consultation on four options put forward to change the way information is provided on packaging, including:

- full ingredient list labelling
- allergen-only labelling on food packaging
- “Ask the staff” labels on all products, with supporting information for consumers available in writing
- promoting best practice around communicating allergen information to consumers.

The consultation runs until the 29 March 2019. A link to the consultation can be found [here](#).

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Apple faces lawsuit over FaceTime bug

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According to documents filed at the state court in Houston, Texas, lawyer Larry Williams filed a complaint claiming that the intrusion happened when he was taking sworn testimony during a client deposition.

It is alleged that by exploiting the bug in Group FaceTime a caller can eavesdrop on a person’s audio conversation even if that person does not accept the call. Camera access is also granted if the recipient clicked either the power button or one of the volume controls.

The BBC reported that a mother and her 14 year old son made several attempts to contact Apple to warn them when they discovered the bug, but they say their attempts were ignored.

The mother wrote: “I have letters, emails, tweets and msgs sent to Apple for 10+ days reporting the Group FaceTime bug that lets someone listen in. My teenager discovered it! Never heard back from them.”

Apple has a “bug bounty” programme that pays computer users for finding new bugs in its products. It has been predicted that Apple is likely to face a large number of bug reports as a result. Resourcing its complaints team to avoid a repeat of the delay reported in this instance will be a challenge.

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Social media and product advertising

Hit Netflix documentary “Fyre: The Greatest Party That Never Happened” has brought attention to the power of ‘influencers’ and the ability of producers to market their goods through social media platforms such as Instagram.

Billy McFarland, who is now serving six years in prison for fraud, enlisted the services of several hundred social media influencers to promote the now infamous festival.

Many of the influencers failed to declare their connection with the organisers as required by the marketing rules governing social media. Few used the necessary “#ad” hashtag, and those who did often tried to hide it amongst use of other hashtags.

There are huge amounts of money involved in social media advertising. US celebrity Kendall Jenner was reportedly paid \$250,000 for her endorsement. One Instagram post from her will be received directly by more than 100 million people.

Where such endorsers are paid or rewarded to promote a product in their social media feeds, consumer protection law requires them to disclose that they have been paid or incentivised to endorse a brand. Otherwise, they risk giving a misleading impression that a post represents their personal view. Influencers should therefore declare that this is a business transaction, either by including the hashtag “#ad” in a prominent position, or by using a tag specially created by Instagram which labels the post as paid partnership, and mentions the brand below the influencer’s username.

Historically, little attention has been given to these regulations by influencers.

However, regulators (at least in the UK) are now starting to take notice. On 23 January 2019, the Competition and Markets Authority (CMA) announced that they had secured formal commitments from 16 celebrities to ensure they will now declare clearly if they have been paid or received any gifts or loans in respect of products which they endorse.

As producers increasingly turn to social media to advertise their products we are likely to see an increase in the amount of regulation being introduced in this regard. How such regulations are then policed is a different question.

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