

**Baker  
McKenzie.**

# **Annual Corporate Compliance Conference 2020**

7 September - 9 October 2020



# The Claims You Make: Case Studies

Wednesday 30 September, 2.00 - 3.00 pm BST



# Speakers



**Graham Stuart**  
Partner (Chair), London



**Francesca Richmond**  
Partner, London



**Aurella Smith-Anthony**  
Senior Associate, London



**Adeel Haque**  
Associate, London

# 01 | Our Series

The background is a dark, deep blue gradient. In the lower right quadrant, there is a curved, glowing trail of teal and light blue particles, resembling a comet's tail or a data stream. The particles are small, bright dots of varying sizes, creating a sense of motion and depth.



### **Our Focus**

The claims, assertions and declarations that companies make about their products and their supply chains, as they face their customers, regulators and stakeholders



### **The Trend**

Companies are being compelled to make more and more such claims, whether by law, for reputational reasons or to respond to stakeholder pressures



### **Our Aim**

To assess what this trend means for businesses and in-house legal teams and how they deal with it effectively

# Our Series – The Claims You Make

## 3 linked webinars



**Day 1** presented an overview of:

- the claims, assertions and declarations that companies make, what is driving those claims and what is their future direction;
- the issues that these claims can create for in-house legal teams, when claims become disconnected to actual reality;
- the measures and tools that legal teams can use to mitigate the risk of negative impacts and increase the likelihood of positive outcomes.



**Day 2:** a deeper dive into claims in practice, case studies, lessons learned and solutions.

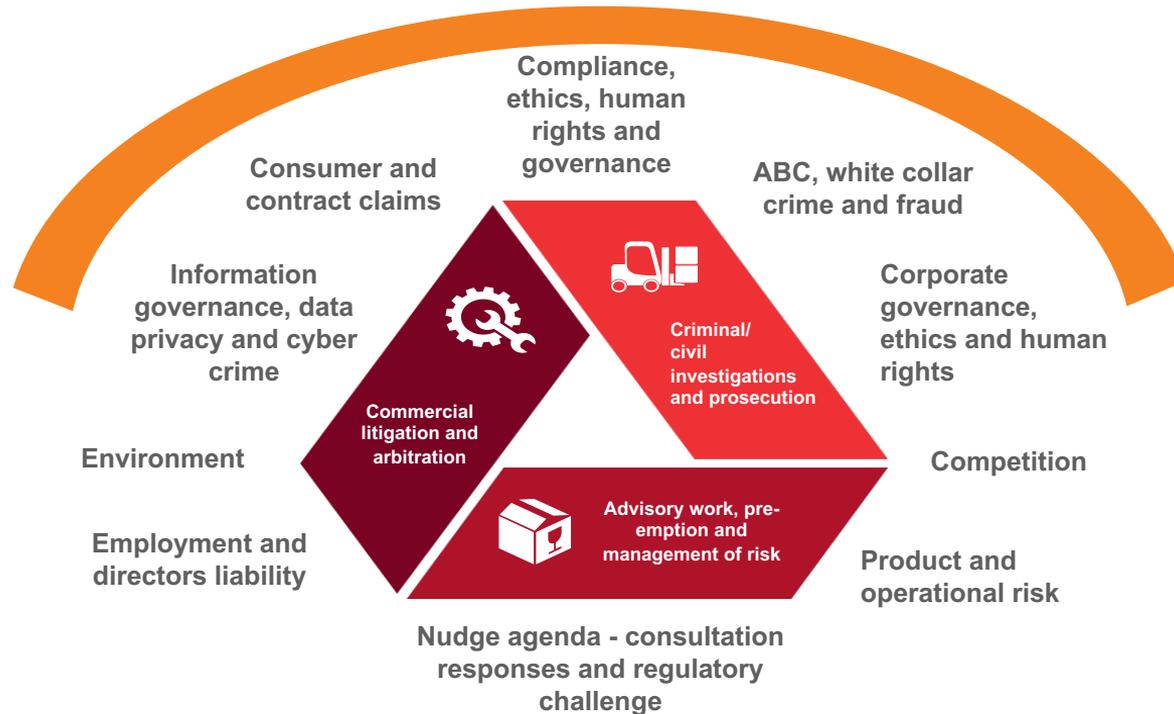


**Day 3:** a panel discussion, with external guests talking about their practical experiences of managing the legal downsides of claims and enhancing their upside.

**02**

**Introduction**

# Supply chain risk management: coordinating compliance and regulatory considerations



- Information gathering across jurisdictions:
  - Privilege;
  - Data processing;
  - Employee rights.
- Regulatory reporting, stakeholder and client engagement
- Crisis and reputation management

# Supply chain compliance

## Why is it relevant to your business?



Core responsibility of compliance and in-house legal departments



Focus at board level as a business issue



Shift from voluntary to mandatory standards - reporting and disclosure requirements



Delivers:

- Purpose
- Growth and brand value
- Lower costs – energy, efficiency, productivity, consumer engagement that supports consistency in demand and price
- Reduced risk – sustainable sourcing and future-proof supply chain
- Trust – employees, consumers, investors, stakeholders

# Regulatory trends and updates

## Sustainable Corporate Governance

-  **Sustainable Corporate Governance** - EC initiative to introduce in 2021 EU legislation and guidance on:
- A mandatory sustainability (e.g. climate change, environmental, human rights) supply chain **due diligence duty** for companies; and
  - **Directors duty** to integrate into the corporate strategy:
    - All stakeholders' interests which are relevant for the long term sustainability of the business or which belong to those affected by it (employees, environment, other stakeholders affected by the business, etc.); and
    - Corporate sustainability risks, impacts and opportunities.
  - Addressed in **European Green Deal**, **2020 Circular Economy Action Plan**, the **Biodiversity** and **Farm to Fork** strategies and the renewed **Strategy on Financing Sustainable Growth**
  - Full public consultation expected Autumn 2020 - <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12548-Sustainable-corporate-governance>



**03**

**Case Study 1**

# Case Study 1

## Setting the scene



Company provides cobalt to battery makers in the electric vehicle industry



2016 Amnesty International report identified human rights abuses in the cobalt mining industry in the DRC



Company admitted lack of awareness of human rights abuses and supply chain risks, including use of child labour in the DRC



**December 2019** - Company named in a US class-action suit filed by International Rights Advocates on behalf of children injured or killed while mining cobalt



Families seeking compensation for forced labour, negligent supervision and intentional infliction of emotional distress

# Case Study 1

## What went wrong?



Failure to conduct human rights DD to an international standard in line with UNGPs on Business and Human rights



Failure to adequately map and trace suppliers



Codes of conduct and internal policies vs. specific investigations and checks



Lack of awareness of human rights abuses and associated risks in the supply chain

# 04 | Case Study 2

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# Case Study 2

## Setting the scene



**December 2012** – Food Safety Authority of Ireland (FSAI) reported horse DNA had been found in burgers in Ireland



**January 2013** – 5 supermarkets informed by the FSAI that they were selling contaminated beef products



"Beef" in frozen bolognese and lasagne made by a French manufacturer and supplied to UK supermarkets was up to 100% horsemeat



Findings led to widespread recalls and subsequent EU investigations across retail and food service markets



Company market value fell by **EUR 360 million**

# Case Study 2

## What went wrong?



Failure to conduct adequate supply chain due diligence



Dealing with unanticipated risk -  
circumvention of systems and controls by  
a third party supplier



Lack of supply chain traceability



Broader impacts on brand and  
shareholder value

# 05 | Case Study 3

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# Case Study 3

## Setting the scene



Product recall due to defective equipment in the motor vehicle industry



Issues with brakes, accelerator pedals and floor mats causing uncontrollable car acceleration



Cost of three separate recalls of over 10 million vehicles between November 2009 and January 2010 approximately \$2 billion



Company paid \$1.2 billion after a 4-year inquiry into its reporting of safety issues and \$66 million in civil penalties



Significant press scrutiny and coverage – impact on reputation

# Case Study 3

## What went wrong?



Misrepresentations by the company, apparently in order to conceal fraudulent actions



Lack of transparency and disclosure, including after issues first reported



No corporate culture around compliance



Audits and checks were not calibrated to prevent or catch circumvention of systems and controls by internal team

# 06 | Other Case Studies

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# Case Study 4

## Audit, transparency and disclosures: a proactive approach



Company has partnered with the Danish Institute for Human Rights since 2010



Also engages with stakeholders to receive feedback on its practices



It has implemented a human rights DD programme and regularly undertakes and publishes human rights impact assessments



Proactive, transparent approach, despite the scrutiny this brings

# Case Study 5

## Audit, transparency and disclosures: a reactive approach



UK-based online fast fashion manufacturer and online retailer



Company shares dropped by 10% the next day and clothing line was dropped by other major retailers that week



Labour practices subject to NGO and press scrutiny for years



Significant press scrutiny and loss of brand reputation



Indirect suppliers paying below the minimum wage and not observing COVID-19 related safety precautions



Independent audit commissioned: criticised as “too little, too late”; report found poor practices and years of internal audit findings not followed



# 07 | Best Practice Requirements

# Best practice requirements

**Organisation  
structure / supply  
chains**

**Policies and  
procedures**

**Due diligence  
processes**

**Risk assessment  
and  
management**

**KPIs**

**Training**

The image features a white speech bubble on the left side, containing the word "Questions" in a bold, dark blue font. The background is a dark blue gradient with a glowing teal particle trail that curves across the bottom right. The overall aesthetic is clean and modern, suggesting a focus on inquiry or technology.

**Questions**

# Our Series – The Claims You Make

3 linked webinars

 **Day 1:** Product and Supply Chain Compliance: The Claims You Make

 **Day 2:** The Claims You Make: Case Studies

 **Day 3:** Trends in Environmental, Human Rights and Sustainability Claims and Supply Chain Due Diligence

- A panel discussion, with external guests talking about their practical experiences of managing the legal downsides of claims and enhancing their upside.
- Thursday 1 October – 2.00 – 3.30 pm BST

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