

Product Recall : An Evaluation Of Few Issues

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INTRODUCTION

The new millennium witnessed many a number of product recalls by corporate giants like Cadbury, Dell, Ford, Lenovo, Sony Inc., Toyota, etc. The uninterrupted product recall queue commencing from the year 2000 has put the whole consumer community in a dilemma about the safety of the products they were using. Ultimately and unfortunately, consumers are forced to be benevolent towards the manufacturers recalling their products with a great desperation that, to err is human! However, blighted consumers contend by accepting the remedial measures such as repair, refund and recall of the unsafe products. But as pointed out by R. Desikan, a consumer columnist, if industrialization is progressing towards civilization, our consumers must be prepared to demand excellent quality products, which will ensure safety for the user. We should strive hard to make sure that only safe products are produced and sold to the consumer and not accept the injuries and death due to an unsafe product as a fact of life and silently forgive the producers.³

In today's modern market environment, the business community is well-organized and has professional skills, whereas the consumers representing the whole of the society are unorganized and amateur. Besides, most of the modern goods are technological gadgets about which consumers know very little or many a time, nothing. Hence, it is obvious that, unlike producers, the consumers are put to partial or total ignorance about the quality, technology and safety of their choice of product or service. This environment forces the consumers to depend upon the producers and/or service providers' knowledge and expertise. In the process, though the consumers deserve to obtain a reasonable value for their hard-earned money, they become the victims of the hazards of products or deficient services whose safety or efficiency is suspected later by the producer/service provider. This (i.e., the use of unsafe products by consumers before they are being withdrawn from the market by their producers) results in the death of, or causes minor to major injuries besides mental agony to, the users. However, forced to make the things sustainable, producers, after realizing the defects in their goods and services, resort to product recalls.

PRODUCT RECALL

Withdrawal from the market of a batch or the entire production run of a product by its manufacturer on account of safety concerns, design defects, labeling errors, etc. is termed as product recall. This process of recalling products from the sales channels or from consumers may be termed as reverse logistics as this process involves tracing backward the product distribution process from the consumers to the manufacturers. Of course, this is more painful for the manufacturers than the normal distribution forward.

There are two types of recalls viz., *Voluntary Recall* by the producers and *Compulsory Recall* in accordance with the order issued by the product safety agencies of the country. *Voluntary Recalls* sustain consumers' confidence in the producing company in the long run, whereas *Compulsory Recalls* compels the producers to take back the products which may result in erosion of public confidence in the product as well as its company. It may be noted here that some of the past and current cases of product recalls are either for replacement or refund or simply for repair or replacement of defective part/s not meeting the standards, or as it is not safe.

The voluntary recall of baby food powder, Farex by the Glaxo Laboratories during 1977, due to some problem in the composition of powder in some batches, and the intensity of Glaxo staffs' colossal efforts to ensure the products that went down the channel of distribution were returned is still in the minds of the consumer community. Since the threat was immense to the lives of babies, Glaxo Laboratories took the drastic step to recall the product voluntarily during those days when there were no wide communication media or network bearing enormous costs for recall, which

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reflected the ethical and social responsibility of the company.⁵ Recall of 46 million batteries of mobile handsets by Nokia India, pursuant to customer complaints about the handsets getting overheated and bursting during charging, seems to be the largest product recall in India, which was satisfactorily attended to by the company by replacing the defective batteries with the new ones.

SOME MORE CASES OF PRODUCT RECALL

No recall is probably so much closely associated with other than food, drugs and automobiles. These industries have proven how fatal would be the negligence of the manufacturers in manufacturing safe products for the consumer community at large. A look at the product recalls of these industries substantiates this opinion.

1) Toyota, one of the automobile giants, whose recall history commenced from 26th September, 2007 with the recall of 55,000 Camry and ES350 cars in United Nations for defective all weather floor mats continued the recall of its many cars either for brake override or faulty accelerator pedals or potential brake tube problems or software updates till recent recall of 1.13 million Corolla, and Corolla Matrix produced between 2005 and 2008 due to improper manufacture of Engine Control Modules on 28th August, 2010.⁹

2) Ford, another automobile giant, added recall of 14.1 million cars in 2008 due to a faulty cruise control switch that could catch fire.

3) February 2010 made Maruti Udyog Limited, India's automobile giant, to grieve for the recall of one lakh units of its flagship export 'A Star' cars due to faulty rubber gasket in fuel pump of the cars.

4) The voluntary recall of 43 over the counter children's medicines was announced by McNeil Consumer Healthcare, a subsidiary of Johnson & Johnson on 30th April, 2010, which included liquid versions of Tylenol, Tylenol plus, Mortin, Zyrtec and Benadryl due to the non-compliance of the required manufacturing specifications, which affected 12 countries.

5) Reese Pharmaceutical Company announced the voluntary nationwide recall of certain over the counter Cold Relief Products that were mislabeled on 9th December, 2010.

6) The voluntary recall of lots of Roloids Extra Strength Soft Chews, Roloids Extra Strength Plus Gas Soft Chews by McNeil Consumer Healthcare took place on 9th December, 2010.

7) The Tropical Nut and Fruit of Charlotte, NC announced nationwide voluntary recall of Walnut Products because of a possible health risk on 10th December, 2010.

8) All Dentyl PH-Dentamint and Store Own Brand mouthwash products manufactured by Robert McBride Ltd. were recalled on 4th April, 2009 due to biological contamination in the factory.

9) Wal Mart Stores Inc., recalled about 2.2 million electric heaters sold from December 2001 to October 2009 after receiving reports of burn injuries and property damage from fire.

10) Vancouver based Yie Ming Ltd. voluntarily recalled its Sweet Glutinous Corn, a vacuum packed corn imported product from China on CPSC's (Consumer Product Safety Commission) warning for containing botulism causing toxins on 18th December, 2010. The product was sold across British Columbia.

Thus, the product recall list grows to an unlimited end. Baby toys, cribs, baby suits, canned meat, canned fish, etc., too are not free from the clutches of recall. Product recalls drive not only the consumers into a corner, but the manufacturers, wholesalers and retailers too.

PRODUCT RECALL – ISSUES AND THEIR EVALUATION

The decisions of the companies to recall the defective products after introducing them into the market and after realizing the defects lead to many questions.

1) It is regrettable that majority of the product recalls the new millennium witnessed are the results of the complaints and legal suits lodged by the users against the manufacturers for the hazards and injuries suffered by them from the use of such products. Apart from this, the government agencies like US Consumer Product Safety Commission issues warnings, in their newsletters, about the consumer products recalled either voluntarily or compulsorily by the

manufacturers. Naturally, many questions arise in the minds of people as to why these product quality failures (whether technical or functional) occur in spite of the quality control tests conducted by the technical and quality control departments of the companies. It also leads to question the very efficiency of the quality control departments of the companies. Some of the questions that are raised by the consumers are as follows :

- 2) Whether the manufacturers are under stiff competitive pressure from their competitors to launch new gadgets without sufficient quality testing processes? Is the usual warranty period of 6 – 12 months sufficient for a user to try out the product purchased to prove it to be defectless?
- 3) In the case of prescription products like drugs, capsules, tablets, etc., it should be noted that the greater the opportunity to market and sell them worldwide, the greater should the responsibility to ensure **(a)** the introduction of only those products which are free from all defects, and **(b)** the ability to recall them when the companies are compelled to do so. If companies fail to implement a timely worldwide recall of prescription products, can one estimate its devastating effects on the consumers?⁶
- 4) Is the negligence on the part of manufacturers which results in the accident or damage or hazards or injuries caused to the users of defective products due to the manufacturing or design or warning defects? Is it acceptable when a negligent manufacturer launches his defective products in the market by pledging the lives of the consumers, who are technically ignorant of the quality and design of the products? Then the issue is who should think of the *product liability responsibilities* - the manufacturer or the consumer?
- 5) Another issue about the recall of the defective or unsafe products from the market on the receipt of complaints from the users is that, do the companies have an effective reverse logistics system either to replace or refund or repair so as to protect the interests of their consumers from using the defective products? as any delay in the recall may be fatal for the consumers in certain products like electrical appliances, automobiles, food items and medicines.
- 6) Product recalls not only damage the reputation of the companies, but also drag them into legal suits for costly settlements. And these costly settlements and persisting financial burdens certainly cause indirect loss to the stakeholders of the companies, including the consumers. Therefore, the question is why the customers and/or stakeholders should bear the costs of lapses on the part of the manufacturers?
- 7) In spite of the technological advancements in the communication and transport systems, are the companies better equipped to handle such product recall situations as in the case of disaster management?
- 8) What about the deficiency in services such as medical, engineering, etc. which cannot be brought under *product recall* by which the consumers of these services are frustrated?

These are, among others, some of the issues that are to be addressed seriously by all and more particularly, by the manufacturers and the government agencies. This is because of the reason that the loss of life or injuries to the customers on account of using the defective product cannot be compensated by any amount of monetary compensation.

PRODUCT LIABILITY LAWS AND PRODUCT RECALL

Product Liability Laws govern the liability of manufacturers, wholesalers, distributors and vendors for injury to a person or property caused by the use of dangerous or defective products. These laws protect consumers from dangerous or defective products while holding manufacturers, wholesalers, retailers, etc. responsible for putting them into the market place. Almost all the countries have enacted laws pertaining to product liability.

In India, the civil product liability is governed by The Consumer Protection Act, 1986; The Sale of Goods Act, 1930; The MRTP Act and the Law of Torts. Besides, a bunch of some more pieces of legislation such as Food and Safety and Standards Act, 2006; The Drug and Cosmetics Act, 1940; The Indian Penal Code, 1860; The Standards of Weights and Measures Act, 1956; The Agricultural Product (Grading and Marketing) Act, 1937; The Indian Standard Institution (Certification Marks) Act, 1952; The Bureau of Indian Standards Act, 1986, etc. impose criminal liability in the case of non-compliance with the Provisions of these Acts.

Recently, the laws relating to product liability in India have been constantly evolving to become one of the most important socio - economic legislations for the protection of consumers. Hence, the courts have adopted a pro-consumer approach by awarding compensation and damages, which are more punitive than compensatory in nature.⁷

AGENCIES FOR CONSUMER PRODUCT SAFETY AND PRODUCT RECALL

The United States is the first to establish a separate government agency to list the defective products and notify them to the public from time to time. The Consumer Product Safety Commission (CPSC) and National Highway Traffic Safety Administration (NHTSA) manage a 24-hour helpline for consumers to report defects and register their complaints. Apart from these, the US Food and Drugs Administration Agency has an exclusive website¹⁰ with an A-Z product-wise list of recalled products with up-to-date information. Recently, in the United States, Consumer Reports, National Parent-Teacher Association and National School Board have opened a new website for the sake of school going children and their parents to make information known about the recalled products. The entire exercise is to provide information about the recalled products into the homes of school-going/aged children so that their parents too can know about the recalled products.⁴

In Japan, the government has constituted the Consumer Product Safety Association, which administers a safety goods mark or SG Mark programme for certain classes of products together with a related consumer compensation programme. However, even Japan's Product Liability Law does not contain specific provisions that explicitly obligates a manufacturer to recall or repair a product found to be defective in a product liability suit.¹¹

In India, though there is no single consumer product safety law as in US or Japan, Consumer Protection Act, 1986 serves the same purpose without derogating the provisions under other laws prevailing in the country. At the same time, these laws impose civil as well as criminal liability for the non-compliance with the Provisions of these Acts. Unfortunately, no provision is made for the mandatory recall of the defective product by the manufacturer. No government agency is established exclusively for pooling and providing the information regarding the defective and unsafe products for the sake of consumers.

The first meeting of the ISO Project Committee held at Kuala Lumpur in May 2009 to develop an international standard providing a code of good practice for establishing, implementing and managing efficient, flexible and responsive consumer product recall programmes including corrective actions announced the findings of ineffective product recalls of damaged or unsafe products, which resulted in millions of people being injured, sometimes fatally or becoming ill. These new-product recall standards enable organizations to manage timely and cost effective product recalls following design flaws, manufacturing defects or inadequate warning labels or instructions – whether the products are still in the manufacturers or distributors' inventory or retail shelves or in the hands of consumers. It is also expected to provide guidance on corrective actions, including repair, replacement, repurchase and public notice helping organizations to minimize legal risks, and contributing to customer satisfaction and loyalty.⁸

PRODUCT RECALLS AND THE BANDWAGON EFFECT

It is common that people pass on the defects they come across in the products they buy to their friends, relatives and neighbors. Naturally, the buyers of the same products psychologically feel that the products bought by them are also flawed with the same defects. This is a phenomenon observed primarily within the fields of Micro Economics, Political Science and Behaviorism, which is designated as the *Bandwagon Effect*. It is also called *Herd Instinct* as people often do and believe things merely because many other people do and believe the same things. Some experts opine that some manufacturers become the victims of Bandwagon Effect who are directed by the Consumer Product Safety Agencies to recall their products on receiving the heaps of complaints regarding products from the consumers. Hence, several media publications of US have suggested the US Safety Regulators, who have launched an investigation into Corolla steering complaints to consider the possibility of the *Copycat Complaints*² with potential complainants seeking to capitalize on the possible settlement money or are affected by the *Bandwagon Effect*.¹

MANUFACTURERS AND PRODUCT RECALLS

No manufacturer can be happy with the recall of his products. Product recall process (reverse logistics), if unplanned, becomes as much painstaking as the manufacture of the products. Of course, the manufacturer is bounded by the duty of care, product liability laws and moreover, by the socio-ethical responsibility to protect the interests of both his consumers as well as the society by producing safe and healthy products. The whole production process is a team work, which confers individual responsibility on each involved in it to maintain the quality as to the safety in the products. The negligence of anyone may bring the whole lot of the products down the distribution chain, leading to reverse logistics, which pushes the manufacturing company into financial burden and loss of brand image. This loss is finally

transferred to investors and consumers. The reverse logistics is not at its rampant speed in India so as to safeguard the consumers from the hazards and injuries. To protect themselves from this awkward situation, the manufacturers should think of the quick reverse logistics system along with the introduction of their products into the market. Strict quality control measures should be introduced to protect against defects in products. At the same time, the threat of recall can be tackled by them by seeking cover from Product Recall Insurance, which was introduced in the Indian Market as an extension under the Product Liability Insurance.

CONCLUSION

Product recall is a nightmare for a manufacturer. To avoid such a scenario, a manufacturer needs to be vigilant on his part to comply with the provisions of product liability laws and other consumer oriented laws prevailing in the countries. It is the socio - ethical responsibility of the manufacturers to protect their customers from the defective and hazardous products flowing into the distribution channels. As the developed countries have established separate bodies for the identification and recall of the unsafe and hazardous products from the market, there is an immediate need for India to march in this direction to protect the consumers. Stringent laws should be brought against the unscrupulous manufacturers and/or distributors who still distribute the unsafe and defective products. The voluntary consumer organizations should extend their helping hand to educate the consumers about the recalled products along with the efforts of the governments. Media should reach out to the consumers through education programmes. Besides, consumers are to be educated voluntarily for their own safety and welfare.

NOTES

¹ *Bandwagon Effect*, Wikipedia search engine, <http://en.wikipedia.org/wiki/Bandwagon> effect accessed on January 20, 2011.

² *Copycat complaints* often occur in the wake of widely publicized events, especially of defective or tampered products where rational thinking merges. Typically, one or two high-profile "*index cases*" appear in the public's eye, leading a few other people who bought the same product to think, that could have happened to me too and pretend that it did.

³ Desikan, R., '*Product Safety: a Long Way to Go*,' in the Special issue with the Sunday Magazine from the publishers of *THE HINDU*, *Hindu Folio*, Sunday, Consumer, 31st October, 1999, accessed on April 6, 2010, <http://www.hinduonnet.com/folio/fo9910/99100180.htm>

⁴ Gregory Karp, *Websites allow consumers to check for product recalls* in *The Seattle Times*, 16th December, 2010, accessed on January 20, 2010, http://seattletimes.nwsourc.com/html/homegarden/2013698421_recallsite16.html

⁵ Gupta, R. K, Senior Consultant and Professor, Aravali Institute of Management, Jodhpur, '*Product Recalls: Marketing Failure and Implications*' accessed on January 1, 2010: http://www.indianmba.com/Faculty_Column/FC636/fc636.html

⁶ James M. Wood, Areta L. Kupchyk, '*International Prescription Product Recalls A Practical Guide*' : FDLI Monograph Series, Volume 1, Number 4, Washington DC, accessed on May 23, 2010 at 12.40 pm IST, www.fdpi.org

⁷ '*Product Liability law in India: Liability for Manufacturing or Distributing a Defective Product in India*', accessed on February 25, 2010, www.sethassociates.com/1749.html

⁸ *Product Recall - ISO/PC 240* accessed on February 25, 2010, <http://ISO/NP10393.blogspot.com>

⁹ *Toyota Vehicle Recalls 2009-2010*, accessed on March 9, 2010, http://en.wikipedia.org/wiki/2009%E2%80%932011_Toyota_vehicle_recalls

¹⁰ US Food and Drug Administration on Recalls, Market withdrawals and Safety alerts accessed on January 25, 2011, <http://www.fda.gov/Safety/Recalls/default.htm>

¹¹ Yugi Ogiwara and David E. Case in *International Comparative Legal Guide Series Publications - Product Liability 2009 in Japan* www.iclg.co.uk pp. 197-203.

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