

Minimizing Products Liability When Retooling to Produce COVID-19 Supplies

Manufacturers have jumped to the aid of their communities, re-tooling existing manufacturing facilities to produce desperately needed supplies such as hand sanitizer, face masks and ventilators. These acts of corporate citizenship are to be commended, yet businesses that produce emergency product lines must take care to minimize the risk of future product liability claims. Such claims could present in several ways:

- I. *Claims of Defective Product Design.* For example, in the case of a hand sanitizer product, if the product lacks sufficient potency to kill viruses at an appropriate level, an injured party may argue that the design of the product itself is defective. Care should be taken to ensure that the product is designed to accomplish the intended purpose.
- II. *Claims of Defective Product Manufacture.* In the hand sanitizer example, a manufacturing process that inadvertently reduces the content or potency of a key component (alcohol, for example) could constitute an actionable manufacturing defect. In these cases, the design of the product is not the issue – the problem is a faulty manufacturing process.
- III. *Claims of Improper or Incomplete Product Labelling.* A product supplier should make reasonable efforts to warn the end user of the limitations of the product and the risks of its use for the intended purpose. For example, face masks that meet the N-95 standard are relied on to remove a high percentage of airborne particulates; a hand-stitched mask made of a standard cotton bandana traps far fewer particulates. Furthermore, a number of products are subject to specific regulatory requirements – for example, many chemical compounds fall under regulation by the Food and Drug Administration. Care should be taken to warn end users of proper product use and product limitations.
- IV. *Claims of Inaccurate Advertising and Marketing.* New York law prohibits “false advertising” in the conduct of any business, trade or commerce or in the furnishing of any service. Under certain circumstances, the New York Attorney General can invoke General Business Law Section 349 to restrain products and deceptive marketing practices. Care should be taken to accurately market the new product line.
- V. *Claims Under the Laws of Different States.* Each state has its own body of law concerning consumer products sold within its boundaries. When manufacturing a new product line, care should be taken to conform to the laws of any state into which the product would be marketed or sold.

If you have any questions about this Information Memo, please contact [Richard L. Weber](#) or the attorney at the firm with whom you are regularly in contact.



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