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DLA Piper's Consumer Goods, Food and Retail Sector team is recognized for advising many of the world's leading organizations in the consumer goods, food and beverage and retail sectors. For businesses looking to expand into new product lines or territories, protect their brand and IP, understand the consequences of changing consumer spending habits, or comply with the regulatory regimes in all the jurisdictions where they have a presence, DLA Piper can help.

Consumer Goods, Food and Retail lawyers are based in offices across the Americas, Asia Pacific, Africa, the Middle East and Europe. We leverage our vast on-the-ground experience and global platform to work seamlessly across borders, supporting you wherever you do business.

We regularly advise companies in these industries:

- Food and beverage
- Grocery
- Health, beauty and personal care
- Household care products
- Investors and funders
- Retail and fashion

As the power of the consumer continues to rise, changing shopping behaviours, never has the consumer had more to say in the battle for customer centricity. This brings with it a number of challenges of which our lawyers regularly advise on, including:

- Wellness and wellbeing
- Sustainability
- Product and supply chain integrity
- Waste and accountability
- The rise of technology
- The use and ownership of customer data
- Distress on the high street
- Direct to consumer
- New ventures and acquisitions
- Crisis management

To find out more about our Consumer Goods, Food and Retail team, please contact either of our Global Co-Chairs.

Sustainability and ESG

主要联系人

Stefanie Jill Fogel

合伙人
波士顿
电话: +1 617 406 6053
stefanie.fogel@dlapiper.com

Noel Haywood

合伙人
伯明翰
电话: +44 (0)121 262
5953
noel.haywood@dlapiper.com

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Lawmakers, investors, shareholders and governments around the world are pressuring businesses to incorporate Sustainability and Environment, Social and Governance (ESG) practices into their operations and strategies, and this focus is only going to grow. Moreover, consumers are weighing in, sharing their experiences and opinions about companies via social media and then making buying decisions accordingly. Social responsibility, reputation, leadership and corporate transparency have never been so important. Consumer goods, food and retail companies must be prepared with an ESG strategy that demonstrates their values as responsible corporate citizens and ensures that these values are implemented in a transparent and auditable way across the supply chain.

ESG covers a wide spectrum of matters expanding beyond environmental issues: among them, diversity in employment, workplace practices, and transparency in accounting, as well as end-to-end supply chain accountability, including product sourcing, manufacturing and product life-cycle management, routes to market, final mile logistics, and waste management and reduction. There is a great deal to consider.

Although there may be a perceived dichotomy between ESG issues and the demands to increase profitability and improve margins, the market atmosphere and consumer buying behaviour has begun to narrow the gap between these two goals. As a result, ESG issues must be fully understood by businesses and integrated into the business model and strategy if they are going to remain profitable. Companies that fail to address these issues risk exposing themselves to litigation (particularly in global jurisdictions where class actions are on the increase), regulatory breaches, and reputational damage, as well as impacting the bottom line and investment opportunities.

CONSUMER GOODS

Many consumer goods businesses view this emerging way of thinking as an opportunity and are not waiting for regulatory forces to drive change. They appreciate the cost savings resulting from energy efficiencies and the reduction of carbon output at all stages of the supply chain. They are decreasing their dependency on fossil fuels and using renewables; they are also using LEAN operational methods to reduce waste, which can slash costs and improve long-term sustainability. Further, they are turning to new technologies, like artificial intelligence and the Internet of Things, which can drive environmental and cost benefits by supporting greater efficiency and facilitating more effective predictive demand forecasting as well as capacity sharing for warehouses and logistics. Consumer goods brands are now facing scrutiny for the ways they manage their product life cycle. Consumers want retailers to show them how items are made and what materials are used. This transparency can be achieved by implementing blockchain solutions to create a digital ledger of transactions which cannot be altered. This technology has the potential to be transformative for the consumer goods sector, by reducing barriers and increasing visibility, trust, and interoperability between different parties in the supply chain. Many businesses are also now implementing closed loop value chains to manage waste, reduce environmental hazards, and promote recycling. For example, consumer durables, such as kitchen appliances, have a high environmental impact: at the end of their useful life, they may go straight to landfill rather than being recycled; they often contain harmful chemicals which will be released when not correctly disposed of. Closed loop value chains applied to such products encourage safe disposal and effective recycling. Waste management and recycling are increasingly important aspects of business strategy in this sector.

FOOD AND BEVERAGE

For the food and beverage sector, probably the most publicized aspect of ESG arises from the sharpening focus on health issues. A clear example: the worldwide problem of obesity, which the World Health Organisation has dubbed a global epidemic. More than 650 million people are now recorded as obese, and the ramifications for societies – shorter life spans, an array of related health problems such as heart disease and diabetes – are considerable. Food and beverage businesses are being called upon to demonstrate their commitment to helping address this crisis by making their ingredients healthier, addressing the pricing of healthier foods, and restricting marketing of unhealthy foods. Governments are also developing new ways to reduce obesity which include educating people on their choices, introducing taxes for products like sugary beverages, and changing labelling regulations.

There is also a growing trend towards “healthification” and being a “conscious consumer”: the pursuit of a healthier and more environmentally sensitive lifestyle, particularly among young adults, which includes reducing meat intake, drinking less alcohol (or none at all), and consuming products that are not just organic but ethically sourced. It is these trends that are influencing the investment and development of new products like low-alcohol seltzers and meat-free alternatives. The main drivers behind conscious consumerism are:

- Health worries, on a personal and societal scale
- Ethical concerns/animal welfare
- Environmental impact of meat consumption and international shipment of foodstuffs
- Food security

- And, most recently, COVID-19 and potential future pandemics.

Because a significant part of conscious consumerism concerns ingredients, and provenance, we are likely to see blockchain embraced as a means of creating a permanent, immutable, transparent record of each link in the supply chain, including ingredient sourcing and monitoring of factory, warehouse and transport conditions. Using blockchain to track and record the life of a product will also make product recalls easier and more efficient.

Another aspect of ESG that is relevant for food and beverage businesses is food labelling and packaging. For many years, prominent members of the industry have urged legal reforms that would ensure food labels and packages are standard across the industry and are clear and understandable for consumers as they seek to make healthy decisions

Product life-cycle management is another focal topic for the food and drinks industry. For years now, the industry has relied heavily on single-use plastics, but governments and consumers alike are now decrying this, demanding that plastics be reliably recycled and even not used in packaging at all. Many retailers have been taking this into account, and mass reduction in the use of plastic has been seen across the industry.

RETAIL

Waste is a leading sustainability concern for the retail sector. Perhaps the most top-of-mind aspect of this is so-called fast fashion. Clothing brands rely on marketing seasonal products to consumers eager to stay on trend. But often, at the end of a season, these products are simply discarded, creating enormous waste and clogging landfills. Consumers are becoming more aware of their purchasing habits and the environmental consequences of throwing away entire wardrobes at the end of each season. Fashion and retail businesses will need to find a way to address this issue and balance it with the competing downward pressure on price and margin.

Waste is not just limited to cheap fast fashion brands: luxury brands too have issues with waste. For instance, the pattern cutting process can leave behind large amounts of waste. We are also seeing negative attention focused on luxury brands which are accused of burning unsold stock to maintain their perceived exclusivity.

All of this has led to a wider consumer concern about ESG issues in retail. Consumers want to know where items are from and how they are made. They also want to know how brands treat their employees, including employees of their sub-contractors and of their suppliers. Consumers expect brands to follow ethical practices, to ensure the occupational health and safety of their workers, to ensure their workers earn a living wage, and to take broad responsibility for ESG practices not just in their storefronts but throughout the supply chain. NGOs, moreover, often champion the interests of workers in factories where practices are unethical and see it as their moral duty to shine a light on these issues. Companies are expected to take responsibility for every aspect of their production, and those who fail to measure up in a transparent way may face the repercussions –social media notoriety, consumer boycotts, regulatory action, and lasting reputational and commercial impact.

The issue of how the consumer receives the product is also key. The move to online shopping has been accelerated by COVID-19. ESG issues around logistics and particularly waste generated in the delivery process and the environmental impact of inefficiencies in the final mile are more visible to the public and, as a result, are subject to greater scrutiny. This is an issue which the industry has been grappling with for several years from a cost efficiency perspective, but which now is also being examined from the ESG perspective. Use of electric vehicles in the final mile, particularly in urban areas, is becoming increasingly prevalent, and we also predict an increase in the use of technology to aid dynamic delivery scheduling and capacity sharing within vehicles. Similarly, the issue of single-use plastics for deliveries is also increasingly prevalent – brands are under increased pressure to reduce plastic packaging and to use fully recycled (and recyclable) materials.

Finally, another key aspect of ESG in the retail space arises from the use and security of consumer data. The online shopping experience makes it easier for consumers to buy a retailers' products, but also exposes companies, and consumers, to the risk of cyberattack. Furthermore, some companies have sought to monetize consumer data, raising further issues of privacy. Companies with transparent data handling practices and transparency around how they handle security breaches are more likely to gain and keep consumer trust.

To discuss the implications of these issues for your business, please contact our ESG leaders.