

Consumer Products and Services

Overview

A heightened regulatory environment for evaluating consumer complaints. “No-injury” class actions claiming misrepresentation on product labeling. Ensuring recalls, when they do happen, are handled appropriately.

Our clients face each of these problems day in and day out. Many have mass litigation potential and others are regulatory in nature. But for every matter we take the same approach. We don’t look at the problem in isolation. Instead, we identify and help mitigate the risks--both immediate and those that are not so apparent. We recognize that even a seemingly small or single claim can impact business relationships and litigation risk in meaningful ways.

One Size Does Not Fit All

We scale our litigation approach to suit the type of claim and the potential risk. We are adept at handling cases ranging from individual claims to nationwide class actions. We counsel clients’ non-legal staff in best practices for documenting product changes and consumer complaints. We provide trial or case resolution options in nationwide jurisdictions.

- Product Liability
- Consumer Class Actions
- Product Data Management
- Dealer and Distribution Disputes
- Product Recalls
- Antitrust
- Cybersecurity and Data Privacy Breaches
- Supply Chain Management
- Patent and Trademark Litigation
- False Advertising Claims
- Trade Secrets Litigation

Making Your Everyday Business Work

Schiff Hardin’s corporate and transactional attorneys also provide expertise to assist in the smooth operations of all aspects of the consumer goods supply chain.

- Finance and Restructuring
- Licensing & Commercial Transactions
- Intellectual Property
- Mergers and Acquisitions
- Privacy and Data Security
- Supply Chain Management and Alliances
- Tax

Minimizing Regulatory Headaches

We routinely assist clients in reporting consumer complaints and other data to regulatory agencies, including the CPSC and NHTSA. We counsel clients about interacting with those agencies, and in best practices internally to ensure appropriate procedures are in place.

- Advertising, Product Labeling and Marketing
- Mandatory Reporting
- Government Enforcement Proceedings
- Product Quality and Safety
- Product Recalls

We represent companies and supply chain partners who manufacturer, distribute and sell a full range of consumer products. We are often brought in when companies find themselves with a large potential liability risk or a recall situation. Our clients include the following industries:

- Appliances
- Automotive

- Battery and Energy Generation
- Consumer Packaged Goods
- Small electronics / tablets / smartphones
- Household Products
- Tools, lawn and garden equipment
- Juvenile Products
- Pharmaceuticals
- Toys
- Window coverings
- Beverage equipment and containers

Experience

Regulatory

- **Salvaging an existing product.** An impending CPSC safety standard threatened to effectively outlaw a client's existing product. Through a comprehensive analysis of the impending standard and delicate meetings with CPSC staff, we were able to assert that the client's product was outside the intended scope of the standard, and could still properly be sold.
- **Brand protection in a recall.** A manufacturer of a juvenile product who had agreed in principle to a recall was concerned about a proposed CPSC press release that wrongly implicated the product in the accidental death of a child. We commissioned and presented an expert opinion that persuaded CPSC to revise the press release and remove the references.
- **A combined regulatory and litigation response.** Our consumer product client was facing both a potential CPSC product recall and threatened product liability litigation. We developed a coordinated response to both challenges. The combined litigation and regulatory team advised the client on how to minimize the regulatory impact and prevented plaintiff from taking unfair advantage of the CPSC investigation in a subsequent product liability case. We achieved a defense verdict at trial just months later.
- **Managing a properly structured recall.** Our client recognized the need to undertake a voluntary recall of its product that posed a potential hazard but could not undertake a product replacement program due to its crushing expense. To solve this dilemma, we proposed and developed clear, understandable instructions for consumers to insert a safety shield in the product in their homes. This safety shield eliminated the risk of hazard at a fraction of the cost to replace the units and permitted our client to stay in business.

Class Action Litigation

- We successfully negotiated a nationwide settlement of three class action lawsuits on behalf of a top home and health care corporation. We resolved injury and non-injury claims in a uniquely structured settlement agreement and achieved this result without subjecting the client to a costly, drawn out discovery process. We also worked with the client's consumer services team to develop a coordinated response to consumer complaints and adverse publicity that helped to insure the integrity of the client's product brand."
- **Preventing a litigation-driven recall.** Our consumer products client was facing a trio of no-injury class action lawsuits that sought to compel a nationwide recall of a consumer product with tens of millions of units on the market. In the lead action, we obtained summary judgment and defeated class certification. The other two named plaintiffs voluntarily dismissed their cases.
- **Dodging copy-cat litigation.** We defeated a California class action involving plaintiff's allegations that a stroller was prone to causing amputations based in large part on admissions during the plaintiff's deposition that she had used the stroller thousands of times without incident and never experienced a problem. We then successfully opposed consolidation of several copy-cat actions before the Panel for Multidistrict Litigation. The copy-cat cases were also dismissed in wake of victory on the lead case.

Product Liability Litigation

- **Driving toward solutions, not just more fees.** We act as national coordinating and trial counsel for a leading ladder and household products manufacturer. Over the last few years, Schiff Hardin has obtained defense verdicts in Texas, Washington, and New Jersey, summary judgment in Louisiana, and a direct verdict in Texas. Lawsuit filings involving those products have dropped noticeably ever since.
- **Defending the Hardest Cases.** We are also national coordinating and trial counsel for a leading juvenile products manufacturer. The firm has obtained recent defense verdicts in Philadelphia state court and the Eastern District of Texas in multi-million dollar claims. The Texas case involved a ventilator-dependent child with a \$20M+ life care plan; the jury returned a verdict in under two hours.

Antitrust Litigation

Helping clients find the line between vigorous competition and predatory conduct. Policies related to pricing, advertising, discounting and rebating are an important part of any consumer-focused business. They can also be a source of significant antitrust liability. We counsel clients on all aspects of these complex issues, which continue to be a source of considerable uncertainty as the courts attempt to apply the Sherman Act and state fair competition laws to a world of internet sales and global supply chains. We also represent clients in antitrust and related litigation resulting from disputes between competitors over the legality of advertising or discounting policies.

- Minimum Retail Price or Minimum Advertised Price Policies

- Volume Discount Policies
- Multi-Product Rebates or Discounts

We successfully represented a major wireless telecommunications carrier in a multi-district litigation class action in which plaintiff alleged that the company violated the Sherman Act by conspiring with other carriers to fix the price of certain text messages. After extensive discovery, summary judgment was entered in favor of our client and affirmed by the Seventh Circuit Court of Appeals.

Product and Business Operation Advice

- **Product warning development.** Various clients have taken advantage of Schiff Hardin's litigation and class action expertise to improve their product instructions and warnings and help avoid class action and product liability litigation before it starts.
- **Confidential Product / Incident Assessment.** When a troubling incident or pattern of product failure arises, companies often want and need a confidential, highly-qualified assessment. Companies depend on Schiff Hardin to retain the right experts and compile a comprehensive but also confidential assessment of these issues, to help the company determine whether the reports indicate a true problem with the product, or just an outlier.
- **Document Retention.** Outdated emails and product documentation clog up servers, make searching inefficient, and can unfairly cast aspersions on a company when taken out of context. Schiff Hardin continues to advise several companies on the maintenance and deletion of old and unnecessary documents, while maintaining compliance with regulatory retention requirements.

AWARDS & HONORS

- BTI "Innovation Builder"

We were singled out by corporate counsel as one of only 28 percent of law firms clients view as a BTI "Innovation Builder," which recognizes firms that bring change to the legal market through new technology, services, strategies, or structures.