ADVERTISING & PRODUCT RISK MANAGEMENT

Our EU Advertising & Product Risk Management practice helps clients to maximize their business growth and minimize risk by identifying and complying with legal requirements for products manufactured and distributed in the European Union. We support businesses throughout their product's lifecycle: from design to disposal.

Product Design

Before commencing production, businesses need to be sure that the production process and the product's inherent characteristics will lead to optimal profitability. We help our clients identify the applicable EU and member state legislation and product safety standards; identify which countries offer the most favorable customs treatment and classify the product within the customs nomenclature; register product components, *e.g.,* under the REACH and Biocides Regulations; and consider potential end-of-life obligations.

Product Launch

We coordinate all steps prior to the effective launch of a product on the EU market, or to its export to third countries. These include:

- Developing product liability risk profiles with reference to regulatory obligations and product liability litigation.
- Reviewing marketing materials and obtaining appropriate marketing authorizations.
- Drafting and negotiating distribution contracts.
- Protecting intellectual property rights.
- Negotiating pricing and reimbursement.
- Ensuring compliance with privacy regulation.

Aftermarket Issues

Once a product has been placed on the EU market, our team advises on regulatory and enforcement issues and potential product liability litigation. We help our clients assess risk and develop their post-market strategies. We assist where a recall or corrective action is warranted, and work across different member state jurisdictions (we can rely on an extensive network of trusted local counsel where necessary). For example, we:

- Coordinate corrective actions, including recalls and the negotiating of alternative measures.
- Advise on the communication of price modifications relating to price-regulated products.
- Advise on consumer research.

Advertising

We advise our clients on the rules relating to the advertising of their products and services, and on all regulatory aspects relating to the marketing of their products, so as to ensure that their advertising materials are compliant with the relevant rules and codes of conduct. We also help clients assess the legality of their competitors' marketing materials and represent our clients in litigation related to misleading, aggressive and/or comparative advertising and unfair commercial practices. For example, we:

- Advise on restrictions with regards to promotional offers.
- Perform internal audits for our clients and review company guidelines.
- Represent clients in the event of misleading, aggressive and/or comparative advertising.

Public Policy

We monitor evolving EU legal and regulatory obligations that affect our clients' products. We regularly work with our public policy group, Crowell & Moring International, LLC, and with trusted lobbyists, to help our clients navigate the intricacies of EU legislation and the rule-making process. This enables clients to influence developing legislation and potentially limit its impact on their business and products.

- Challenging the validity of legal restrictions.

- Intervening in the EU legislative process (*e.g.,* organizing events with key stakeholders).
- Assisting in drafting responses to public consultations organized by the European Commission.

Our Team

Our Brussels office lies in close proximity to the EU institutions and our multinational team gives us direct contact with local authorities in various jurisdictions. We work closely with our Crowell & Moring U.S. colleagues and this enables us to help our multinational clients develop a unified, global strategy. Our lawyers form an interdisciplinary team linking important experience from our corporate, commercial, antitrust, IP and trade practices.

Representative Matters

Advice & Counseling

- Assisted a U.S. electric vehicle manufacturer with the launch of a new model in the EU, including advice on end-of-life obligations; on authorized advertising through websites and on warranties and representations towards consumers and credit providers.
- Assisted U.S. and EU toy manufacturers regarding the authorized chemical composition of their products.
- Advised various drug manufacturers on advertising restrictions in the pharmaceutical sector.
- Conducted risk assessment for personal care products sold in the EU.
- Advised a cable operator and a U.S. TV production company on the organization of promotional campaigns/contests.
- Provided guidance to a footwear distributor, and to a special-events costumes online platform, regarding legal requirements for products under the General Product Safety Directive, REACH, and member state law.
- Advised a tobacco manufacturer on the legal framework relating to the manufacturing, labeling, sale and advertising of tobacco products.
- Assisted an EU clothing manufacturer in the set-up and roll-out of its online ordering process.
- Advised a consumer electronics producer on product labeling and testing, including RoHS and WEEE requirements, for sale in the EU.

Corrective Actions & Litigation

- Coordinated corrective actions in the EU, including recalls and the negotiating of alternative measures for various types of product, including personal care products, toys and automobiles.
- Represented various clients in litigation relating to misleading advertising, comparative marketing, and unfair commercial practices in the telecommunications and pharmaceutical sectors.

CONTACTS

Thomas De Meese
Partner
T: +32 2 282 18 42
E: tdemeese@crowell.com

Salomé Cisnal de Ugarte
Partner
T: +32 2 214 28 37
E: scisnaldeugarte@crowell.com