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Department:
Trade, Industry and Competition
REPUBLIC OF SOUTH AFRICA



2024 WORLD FOOD SAFETY DAY

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“THE NCC ROLE IN FOOD PRODUCT RECALLS”

Presenter

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Presentation Outline

- 1. General: NCC Mandate in relation to foodstuff**
- 2. Food Product Recalls – NCC role**
- 3. Product Recall Process – Main Steps**
- 4. Lessons learnt**
- 5. Conclusion**

1. General: NCC Mandate in relation to foodstuff

1.1. Preamble to the Consumer Protection Act (Act 68 of 2008) – suggests that it was enacted to, *inter alia*:

“... protect consumers from hazards to their well-being and safety ...”

1.2. The vehicle for – said hazards is “Goods”, and – CPA defines them as including:

“... anything marketed for human consumption ...”

1.3. Section 24(6) of – CPA extends the scope / definition of “Goods”, in the context of Labelling & Trade Description, to also include:

“... genetically modified ingredients or components of ... goods
...”

2. FOOD PRODUCT RECALLS – NCC ROLE

- In SA Consumer protection space, various standard setting bodies, including SABS, NRCS, various government departments, entities etc promulgate standards that Goods – supplied to consumers must meet
- Same are in standards, compulsory specifications, legislation, permits etc
- Section 55(2)(b) & (d) of the CPA provides every consumer the right to – Goods that “... are of good quality, ... and free of any defects; and “... comply with any applicable standards set under the Standards Act, (now Act 8 of 2008), or any other public regulation ...”



... NCC ROLE ...

- What invokes CPA Product Recall provisions, in relation to “Goods” is their failure to meet CPA or other standards
- If Foodborne Pathogens such as *E. coli*, *listeria*, *Salmonella* etc in e.g. imported Meat exceed limits set out in Import Permit issued i.t.o. the Meat Safety Act or equivalent prescript, & “Heat Treatment” is not possible, then the CPA “Product Safety Recall” provisions “kick in”
- If the product is Groundnuts or Peanuts or products derived therefrom, and there are higher levels of Aflatoxins than permitted in terms of the FCDA of 1972 or its 2004 Regulations, same applies:
 - “... the following foodstuffs are hereby deemed to be contaminated, impure or decayed:
 - (a) Peanuts intended for further processing, which contain more than 15 pg/kg of aflatoxin (total);
 - (b) all foodstuffs, ready for human consumption, which contain more than 10 pg/kg of aflatoxin, of which aflatoxin B, is more than 5 pg/kg ...”

... NCC ROLE ...

- **Apple Juice Concentrates which are incidentally regulated in terms of the FCDA the 2004 Regulations**

“... the following foodstuffs are hereby deemed to be contaminated, impure or decayed:

(e) apple juices and apple juice ingredients in other beverages containing more than 50 pg/l of patulin ...”

- **NCC does not have capacity to test – relies on Test Results of suppliers i.e. Internal / Independent Laboratories**
- **What NCC misses during prosecution – written statement / affidavits from primary regulator(s) confirming compliance requirements**
- **Value of such Confirmatory Affidavit – independently confirms standards that should have been met (entity with direct interest and knowledge of compliance requirements)**

3. Product Recall Process – Main Steps

- Process is governed by Section 60 of the CPA

Product Recall Notification Form

- First step is Recall Notification Form – specific fields to be completed
- Recall Notification Guidelines – elaborate on process, leave nothing to chance
- In the case of Food, NCC uses approach applicable to FMCG (Fast Moving Consumer Goods) – makes use of Media, in conjunction with supplier and other stakeholders

Progress Reports / Periodic Assessment

- Supplier / business recalling – provide periodic updates, that NCC reviews

... Main steps ...

- Often during review – NCC picks need to investigate
- Once such decision is taken – parallel, simultaneous processes (Recall // Investigation)
- Remove the product + establish culpability, which NCC does very rarely
- NCC seeks to reward proactive recalls instead of being punitive –(Unintended consequence of criminalizing “Suicide”)

Close Out Report

- Once recall has reached optimum levels, and risk to consumers - mitigated

... Main steps ...

Destruction

- **NCC involvement ends with destruction**
- **Section 59 of the CPA, Environmental Management legislation, by-laws etc**
- **Supplier – details of Plan i.t.o. Quantity, Accredited Destruction Facility, Method, Date, Location**
- **Destruction Certificate**

4. Lessons Learnt

- Need to work closely, and close ranks amongst stakeholders (always room for improvement)
- Good intentions / bona fides and only motive - to protect consumers
- Same approach with Food – applies to beverages, alcoholic and non-alcoholic (they are also consumed / ingested)
- Each party in value chain of Food (import / production) – exercise vigilance, and keep records



5. Conclusion

- **Need to work together, even where we irritate each other, cannot be overstated**
- **No substitute for cooperation: often joke made that enforcers of laws live in secluded Ivory Towers, whilst transgressors have internationalized (are boundary less)**
- **Need to overcome territoriality / hegemonism – and join hands**



Thank you!

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