

THE FOOD,  
BEVERAGE AND  
COSMETICS  
LAW REVIEW

Editors

Kara L McCall and Elizabeth M Chiarello

THE LAWREVIEWS

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THE LAWREVIEWS

# UNITED KINGDOM

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## I OVERVIEW

Representing 20 per cent of total UK manufacturing and contributing £28 billion to the UK economy in 2020, the food and beverage industry is the UK's largest manufacturing sector.<sup>2</sup> On a marginally smaller scale is the UK cosmetics industry, which, in 2020, was worth £27 billion.<sup>3</sup>

With the exception of advertising, in the UK, separate regulatory regimes apply to food and beverages on the one hand, and cosmetics on the other. Since the expiry of the Brexit transition period on 31 December 2020, the manufacture, sale and marketing of food and beverages in England, Scotland and Wales (Great Britain or GB) is governed by a mixture of domestic law and retained EU law. Retained EU law only applies to GB: businesses operating in Northern Ireland (NI) must comply with the EU law specified in Annex II of the Northern Ireland Protocol.<sup>4</sup>

The Food Safety Act 1990 (the FSA 1990) provides the legal framework for all food legislation in GB. Following its departure from the EU, the UK retained Regulation 178/2002<sup>5</sup> (the General Food Law), which outlines the legal requirements for the production, processing and distribution of safe food. Article 2 of the General Food Law defines food as any substance intended, or reasonably expected, to be ingested by humans and includes drinks. The FSA 1990 adopts this definition and references in this chapter to 'food' should be construed as including drinks, unless otherwise stated.

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1 Ciara Cullen, Ben Mark, Karen Hendy, Tom Purton, Oliver Bray, Dorothy Flower, Lambros Kilaniotis, Gavin Reese and Peter Sugden are partners, Mamata Dutta and Peter Rudd-Clarke are legal directors, Sarah Mountain, Florence Page, Natalie Drew and Melanie Musgrave are senior associates, and Ellie Ward, Harpreet Kaur and Eleanor Harley are associates at RPC.

2 FDF, Facts and stats: <https://www.fdf.org.uk/fdf/business-insights-and-economics/facts-and-stats/> (last visited 26 September 2021).

3 Retail Gazette, 'How the beauty retail market can survive Covid-19' <https://www.retailgazette.co.uk/blog/2021/02/how-the-beauty-retail-market-can-survive-covid-19/#:-:text=The%20UK's%20beauty%20industry%20is,cosmetics%20market%20in%20the%20world> (last visited 28 September 2021).

4 Protocol on Ireland/Northern Ireland: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/840230/Revised\\_Protocol\\_to\\_the\\_Withdrawal\\_Agreement.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/840230/Revised_Protocol_to_the_Withdrawal_Agreement.pdf) (last visited 26 September 2021).

5 Regulation (EC) No. 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety.

The Food Standards Agency (FSA) is the independent government department responsible for food safety, hygiene and business regulation in England, Wales and NI. Food Standards Scotland is the Scottish equivalent.

Turning to cosmetics, following the UK's departure from the EU, cosmetic products placed on the market in GB must comply with Schedule 34 of the UK Cosmetics Regulation<sup>6</sup> (the Cosmetics Regulation), although there are no significant variations between this and the equivalent EU legislation. Cosmetic products placed on the market in NI remain governed by EU Regulation 1223/2009.<sup>7</sup> The Office for Product Safety and Standards (OPSS) is the competent authority responsible for the implementation of legislation and Trading Standards is responsible for its enforcement.

The Advertising Standards Agency (ASA) is the UK's independent regulator of advertising across all media and products, including food, beverages and cosmetics. The ASA applies certain codes (discussed in more detail in Section III), which contain both general and product-specific rules.

## **II YEAR IN REVIEW**

As noted above, Brexit has resulted in a raft of new legislation, albeit much of the substance of the old regimes remains unchanged. For the first time, different rules apply to the manufacture and sale of food and cosmetics in GB and NI. This has caused major distribution issues, with some businesses ceasing to supply to the NI market altogether.

Key changes for the food industry post-Brexit include new food business operator (FBO) labelling requirements and rules on the movement of composite products. As of 1 January 2021, pre-packaged food and casein intended for export to the EU must include on the label an address for a FBO located in either the EU or NI, or the address of the EU or NI importer. For goods sold in GB, businesses can continue to use an EU, GB or NI address for the FBO until 30 September 2022. On 21 April 2021, the rules changed for the movement of composite food products (i.e., products containing a mixture of processed products of animal origin and plant products). Export health certificates and private attestation requirements were also introduced through amendments to EU Animal Health Regulations.

For the cosmetics industry, Brexit meant the introduction of the Cosmetics Regulation. Of note is the new requirement for companies wishing to sell cosmetic products in the UK to establish a 'responsible person' (RP) in the UK, whose name and address must be printed on product labels. The RP is responsible for a product's compliance with the Cosmetics Regulation and for notifying the product on the UK Submit Cosmetic Product Notification portal before sale. For products made outside the UK, the country of origin must also be clearly shown on labels, with 'made in EU' no longer sufficient.

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<sup>6</sup> The Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019.

<sup>7</sup> Regulation (EC) No. 1223/2009 of the European Parliament and of the Council of 30 November 2009 on cosmetic products.

Away from Brexit, sustainability has been high on the agendas of government and industry alike. After launching an investigation into environmental claims in November 2020, the UK's competition regulator, the Competition and Markets Authority (CMA) recently published guidance<sup>8</sup> to help businesses understand and comply with their existing consumer law obligations when making environmental or sustainability claims. The guidance is intended to protect UK consumers from misleading green claims, which have increased with the demand for less environmentally impactful products. The guidance applies to all businesses trading in the UK, and is based on principles of truthfulness, openness and clarity. Before making an environmental claim, businesses must consider the full life cycle of their products and all claims must be substantiated. Non-compliance could result in businesses facing regulatory enforcement action, with the CMA and certain trade bodies having the power to bring court proceedings and impose fines. Retailers and online marketplaces could also be liable for misleading claims included on product packaging by manufacturers and are advised to carry out thorough due diligence before putting products on the market.

Other recent developments of note to food businesses are the forthcoming restrictions on the advertisement of products deemed high in fat, salt or sugar (HFSS). In June 2021, the government confirmed plans to ban all TV and UK on-demand service ads for HFSS products, before a 9pm watershed. From the end of 2022, HFSS TV ads will only be permitted between the hours of 9pm and 5.30am. Additional restrictions regarding the physical placement of HFSS products, in store and online, and price promotions (such as '3 for 2') are also expected.

For both industries, covid-19 has delivered mixed fortunes. While trading conditions have been extremely challenging for the hospitality sector and operators of bricks and mortar stores, the pandemic created substantial demand for food delivery services, skincare and at-home treatments, and shifted consumer shopping preferences online.

### III FOOD AND COSMETIC SAFETY

#### i Food

GB has a wealth of law that protects human health and consumer interests in relation to food. These laws apply to all stages of production, processing and distribution, with a few exceptions.

Before food can be safely placed on the market, the following requirements must be complied with:

- a* traceability of food (each segment of the supply chain must be able to trace all food received and supplied by them);
- b* appropriate presentation of food;
- c* suitable information provided;
- d* prompt recall and withdrawal of unsafe food; and
- e* food imported into GB must comply with applicable food law.

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<sup>8</sup> CMA, Making environmental claims on goods and services: <https://www.gov.uk/government/publications/green-claims-code-making-environmental-claims/environmental-claims-on-goods-and-services> (last visited 29 September 2021).

Responsibility for food information policy and regulation is currently divided between various departments and agencies, including the Department of Environment, Food and Rural Affairs (Defra), the FSA and the Department of Health.

The FSA (and, for Scotland, Food Standards Scotland) has responsibility for general food labelling rules and product-specific legislation. Defra (and the equivalent devolved departments) lead on marketing standards, including labelling measures. The Department for Trade and Industry is the lead Department for labelling rules on net quantity of prepacked foods.<sup>9</sup>

Most legislation is enforced by local authorities, by trading standards officers (TSOs) and environmental health officers. The FSA supervises local enforcement and works with enforcement officers to ensure laws are enforced consistently throughout the production, processing and distribution of food.<sup>10</sup>

## **ii Cosmetics**

OPSS is the UK's competent authority for cosmetic products. Products placed solely on the GB market must comply with the Cosmetics Regulation,<sup>11</sup> while products placed on the NI market must comply with the EU law specified in Annex II of the Northern Ireland Protocol.<sup>12</sup>

In the UK, enforcement is performed by local TSOs, who review the contents of product information files (PIFs), monitor compliance with good manufacturing practice and carry out physical product checks and laboratory analysis, when necessary. A PIF is a dossier of information that must be maintained by the applicable RP when a cosmetic product is placed on the UK market, and must contain certain prescribed information including safety certificates and details of animal testing. Cosmetics made for GB consumption must be notified to the Submit Cosmetic Products Notification Service. A separate process applies in NI.

## **iii Food additives and contaminants**

Regulation (EC) No. 1333/2008<sup>13</sup> is enforced in England by the Food Additives, Flavourings, Enzymes and Extraction Solvents (England) Regulations 2013. Similar provisions apply in Scotland, Wales and NI. The regulation contains a list of approved food additives, conditions of use for food additives and specifications (purity criteria) to be established for permitted food additives.

## **iv Recalls**

In the UK, the process for product recalls differs slightly between food and cosmetics.

If a business has reason to believe that a food that it has imported, produced, processed, manufactured or distributed fails to comply with applicable law, it must take immediate steps

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9 <https://publications.parliament.uk/pa/cm200405/cmselect/cmenvfru/469/46905.htm> (last visited 29 September 2021).

10 <https://publications.parliament.uk/pa/cm200405/cmselect/cmenvfru/469/46905.htm> (last visited 29 September 2021).

11 See footnote 7.

12 See footnote 5.

13 Regulation (EC) No. 1333/2008 of the European Parliament and of the Council of 16 December 2008 on food additives.

to withdraw it from the market and inform the competent authority (the FSA). If food has already reached the consumer, the food business should inform the consumer of its recall decision and reasoning and, if necessary, recall the product.

Businesses must inform the competent authority if they have placed food on the market that may be harmful to human health and outline the steps taken to prevent risks to end consumers. In these circumstances, various actions need to be taken swiftly and suitable recall procedures are therefore vital.

With cosmetics, if the RP has reason to believe that a product is non-compliant, it is their duty to initiate steps to procure compliance, withdraw the product or perform a recall. Primarily, a TSO will look to the RP to take corrective action if they identify a non-compliant product. TSOs have powers to prevent further distribution of products if the RP fails to act within the stipulated time frame, or where immediate action must be taken.

## IV SUPPLY CHAINS

### i Labour and immigration

The Visa and Immigration service governs the right to work in the UK. Broadly, four factors determine the relevant visa:

- a* the person's citizenship;
- b* their reason or reasons for coming to the UK;
- c* their personal circumstances and skills; and
- d* the period they wish to stay for.

In effect, the UK operates a points-based immigration system. There is an emphasis on skilled workers, albeit immigration rules are relaxed to mitigate labour market skills shortages. The type of working visa depends on:

- a* the person's skills and qualifications;
- b* whether they are sponsored and have a job offer;
- c* if they will be joined by their family; and
- d* the work they will perform.

Commonwealth citizens have the right to work in the UK if they have a British grandparent and satisfy other criteria. Irish citizens have an automatic right to work in the UK.

### ii Processing and certifications

The UK requires organic products to be labelled differently, depending on whether they are produced for GB, the EU or third-country markets.<sup>14</sup> Pre-packed foods can only be labelled as 'organic' if at least 95 per cent of the farmed ingredients of agricultural origin are organic.<sup>15</sup>

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14 <https://www.gov.uk/guidance/organic-food-labelling-rules> (last visited 29 September 2021).

15 'Organic farming' can include: (1) avoiding artificial fertilisers and pesticides; (2) using crop rotation and other forms of husbandry to maintain soil fertility; (3) controlling weeds, pesticides and diseases using husbandry techniques and approved materials to control pests and diseases (where necessary); and (4) using a limited number of approved products and substances (where necessary) in the processing of organic food.

To produce or sell food labelled as organic, a company must register with one of the ‘organic control bodies’. Following Brexit, certain statements of agricultural origin are also mandatory on products produced in the UK.<sup>16</sup>

In the cosmetics industry, terms such as ‘natural’ and ‘organic’ are largely unregulated. As such, responsible beauty brands rely on independent bodies to award certifications (and apply trusted logos) in respect of products that satisfy the necessary criteria. The most widely-used certifications in the UK include the ‘Soil Association Organic Standard’ and ‘COSMOS’.<sup>17</sup> The ‘COSMOS Organic’ certification requires products to contain at least 90 per cent organic ingredients,<sup>18</sup> while the ‘COSMOS Natural’ label can be used for products that contain some organic ingredients but also unfarmed ingredients, which cannot, by definition, be organic (such as water or salt). Products may apply the ‘Vegan Trade Mark’<sup>19</sup> where no animal-derived ingredients have been used, no animal-testing is conducted, no GMOs are used involving animal genes and where no non-vegan products have been prepared in the same facility.

### iii Sustainability

Sustainability in the UK food, beverage and cosmetics industries is led by both business initiatives and (more recently) legislation. The UK’s Environment Act<sup>20</sup> extends producer responsibilities by introducing the power to impose enforceable obligations on producers to (1) prevent and redistribute food waste and (2) pay for the disposal costs of their products and materials to incentivise companies to integrate sustainability into their designs. The latter is particularly important for the cosmetics industry. The Environment Act also establishes the power to create deposit return schemes for single-use glass, metal and plastic with many businesses also introducing their own schemes.

### iv Anti-corruption rules

The nature of supply chains is such that there are inherent opportunities for bribery and corruption (ABC). Such risks are heightened by cross-border activity, complex chains and over-reliance on third parties, along with interactions with governmental bodies and public officials. The UK’s Bribery Act 2010 criminalises both active<sup>21</sup> and passive<sup>22</sup> bribery, along with a newer corporate offence of failure to prevent bribery.<sup>23</sup> The Ministry of Justice Guidance sets out six key principles for ABC compliance:

a risk assessment;

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16 While new labels must comply with the new requirements, operators may use up existing labelling in the UK market until September 2022.

17 COSMOS is a not-for-profit independent association that joins five separate entities of different European countries (including the Soil Association from the UK) to create a unified certification for manufacturers of natural and organic products seeking to enter the European Market.

18 ‘Organic’ is defined with reference to Regulation No. (EC) 834/2007, and includes ingredients that have not been genetically modified, or used herbicides or synthetic fertilisers.

19 The ‘Vegan’ trademark logo is owned and managed by the UK-based ‘Vegan Society’, which grants a licence to use the trademark on the basis that the relevant conditions are satisfied.

20 The Environment Act 2021.

21 Section 1 Bribery Act 2010 offences cover the offering, promising or giving of a bribe.

22 Section 2 Bribery Act 2010 offences cover the requesting, agreeing to receive or accepting of a bribe.

23 Section 7 Bribery Act 2010 is a corporate criminal offence whereby a person performing services on the corporates’ behalf (such as an employee, supplier or subcontractor) pays a bribe to obtain or retain a business advantage for the organisation.

- b* proportionality of procedures;
- c* due diligence;
- d* top level commitment;
- e* training; and
- f* monitoring.

‘Adequate procedures’ is the one defence to the ‘failure to prevent’ and is available to organisations able to demonstrate compliance across the six key principles. Larger companies can leverage third-party due diligence platforms to screen counterparties, enabling them to select appropriate risk mitigations.

## **v Due diligence and monitoring**

### ***Deforestation***

The Environment Act will require large businesses to establish and implement a due diligence system to identify any forest risk commodity or a derived product (such as cocoa, soy and palm oil) that has been subject to illegal deforestation. This includes providing an annual due diligence report. In response to the government’s initial consultation, various food retailers signed an open letter arguing that the obligation should apply more broadly than ‘illegal’ deforestation, noting that certain regions facing deforestation may have weak domestic and international legislation. However, the government’s view is that supporting national governments’ own requirements is the ‘best path to long-term sustainability’ and has not widened the obligation.<sup>24</sup> Failure to comply could result in companies being fined in the UK, at levels to be determined.

### **vi Labour**

The UK Modern Slavery Act 2015 has extra-territorial reach outside the UK and requires relevant companies<sup>25</sup> to publish a statement outlining the steps taken to address slavery and human trafficking in their supply chains. This may be enforced by an injunction, punishable with an unlimited fine. In response to the UK’s consultation on transparency in supply chains,<sup>26</sup> the UK will introduce further measures, including mandatory publication of annual statements on a government-run reporting service. The UK government has also published a set of principles<sup>27</sup> to assist businesses in minimising supply chain risks, such as checking suppliers’ tax and legal compliance.

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24 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/933985/due-diligence-forest-risk-commodities-government-response.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/933985/due-diligence-forest-risk-commodities-government-response.pdf) (last visited 29 September 2021).

25 This applies to organisations that: (1) have a total turnover of £36 million or more; (2) supply goods or services; and (3) carry on all or any part of its business in the UK (regardless of where that business is incorporated).

26 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/919937/Government\\_response\\_to\\_transparency\\_in\\_supply\\_chains\\_consultation\\_21\\_09\\_20.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/919937/Government_response_to_transparency_in_supply_chains_consultation_21_09_20.pdf) (last visited 29 September 2021).

27 <https://www.gov.uk/government/publications/use-of-labour-providers/advice-on-applying-supply-chain-due-diligence-principles-to-assure-your-labour-supply-chains> (last visited 29 September 2021).

## V SALES AND MARKETING

### i Regulatory framework

The General Food Law framework and the FSA 1990 require FBOs to ensure that any food placed on the UK market is safe and that its labelling, advertising and presentation is neither false nor misleading. Specific labelling requirements are set out in the Food Information Regulations 2014 (the FIC Regulations). Prepacked food, non-prepacked loose food and food served in restaurants or ordered to take away must state whether any of the 14 allergens listed in the FIC Regulations are present. Since 1 October 2021, all ingredients and allergens must also be clearly labelled on foods that are prepacked for direct sale (PPDS).<sup>28</sup> PPDS refers to foods that are packed, before being sold by the same food business to end-consumers and the new regime applies to permanent and temporary/movable premises (such as market stalls and food trucks).

As well as allergen and ingredient lists, food labels and packaging must also include the: name of the food; net quantity (for foods above 5 grams or 5 millilitres); 'best before' or 'use by' date; name of the business whose name the food is marketed under or the address of the importer; country of origin or place of provenance where not including this could mislead consumers; preparation and cooking instructions (where relevant); and mandatory nutrition declaration (alcoholic drinks are exempt).

Certain foods are governed by product specific regulations that include additional labelling requirements. For example, consumers must be informed if products contain sweeteners or sugars, aspartame and colourings, liquorice, caffeine or polyols.

The use of nutrition and health claims for food and beverages is governed by Regulation 1924/2006<sup>29</sup> and Sections 13, 15 and 18 of the CAP Code.<sup>30</sup> Only authorised nutrition and health claims listed in the GB Nutrition and Health Claims Register (the NHC Register<sup>31</sup>) can be used for products placed on the GB market. Nutrition, fitness and health claims are expressly prohibited for alcoholic beverages containing more than 1.2 per cent alcohol by volume.

Article 19 of the Cosmetics Regulation mandates the following labelling requirements, the: RP's UK address; country of origin (for imported products); declared quantity of contents; date of minimum durability; period after opening, warning statements and precautionary information; product function; batch code; and declaration of ingredients (on product packaging only), including the 26 potential allergens for fragrances annexed to the Cosmetics Regulation.

Claims made about cosmetics should not mislead consumers by implying that products possess characteristics that they do not have. To aid businesses in making justified claims

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28 The Food Information (Amendment) (England) Regulations 2019 also known as 'Natasha's Law', were implemented following the tragic death of Natasha Ednan-Laperouse, who suffered an allergic reaction to a takeaway baguette in 2018.

29 Regulation (EC) No. 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods.

30 ASA, Non-broadcast Code: <https://www.asa.org.uk/codes-and-rulings/advertising-codes/non-broadcast-code.html>.

31 <https://www.gov.uk/government/publications/register-on-adding-vitamins-and-minerals-to-foods/great-britain-register-on-the-addition-of-vitamins-and-minerals-and-of-certain-other-substances-to-foods>.

regarding cosmetics, the Common Criteria for the justification of claims must be followed.<sup>32</sup> The Common Criteria includes legal compliance, truthfulness, evidential support, honesty, fairness and informed decision making.

## ii Consumer protection and false advertising

The UK has a robust consumer protection regime. The Consumer Protection from Unfair Trading Regulations 2008 (UTRs) provide a framework for the protection of consumers from unfair commercial practices. In particular, the UTRs include provisions that prohibit traders from engaging in unfair or misleadingly practices, including a ban on advertising that includes false or deceptive messaging. Failure to comply with the UTRs can result in fines and in serious cases, criminal convictions and custodial sentences.

The spirit of the UTRs is mirrored by two codes, which apply to the advertisement of all products and services in the UK, across all media: The CAP Code, which applies to non-broadcast advertising (such as printed press, online ads (including social media), billboards, etc.) and the BCAP Code, which applies to broadcast advertising (together, the Codes). As noted in Section I, the ASA is the UK's independent regulator of advertising and is responsible for enforcing the Codes.

At a general level, both Codes provide that adverts must not (or be likely to) materially mislead, and require traders to substantiate all claims made in them. Certain product specific rules also apply. Of particular note for advertisers of cosmetic products are Rules 3.7 of both Codes and 12.1 of the CAP Code, which require any claims made in ads to be substantiated by documentary evidence based on available scientific knowledge. If claims imply that a cosmetic product has more than an insignificant physiological effect, they may stray into the realm of 'medicinal claims', which are only permitted in very limited circumstances, where licensed and corroborated by medical evidence.

Food and drink has its own dedicated section in both Codes: Rule 15 in the CAP Code and Rule 13 in the BCAP Code. Of particular note is the requirements that marketing communications must not contain claims that state, or imply, that foods prevent, treat or cure human disease. A number of adverse rulings were issued against advertisers under this Rule at the height of the covid-19 pandemic. The Codes also mandate that marketing communications containing nutrition or health claims must be supported by evidence, showing they meet the conditions specified in the NHC Register. Additional Rules apply to weight-control products.

The ASA investigates complaints made by third parties (including consumers and competitors), as well as proactively monitoring advertisements itself. If an advert is found to breach either Code, the ASA can order its withdrawal or amendment, seek undertakings from the advertiser and publish its ruling on its website. If advertisers persistently breach the Codes, matters can be escalated to other bodies, who can impose fines or take court action. Social media influencers are currently a particular focus for the ASA, with various rulings issued recently against influencers who failed to label posts as 'paid promotions'.

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<sup>32</sup> Commission Regulation (EU) No. 655/2013 of 10 July 2013 laying down common criteria for the justification of claims used in relation to cosmetic products.

## VI PRODUCT LIABILITY

The UK has a robust product liability regime, and manufacturers who fail to comply risk liability for defective products that are placed on the market. Manufacturers can be sued by injured consumers under:

- a common law (negligence);
- b the Consumer Protection Act 1987 (CPA); or
- c contract (based on implied statutory terms that products will be of satisfactory quality and fit for purpose).<sup>33</sup>

Typical claims include that a food or beverage contained an undisclosed allergen or that a contaminant was introduced during production and resulted in injury. Cosmetic manufacturers could face similar claims, particularly where products cause adverse side effects about which consumers were not forewarned.

Importers, retailers and wholesalers could also find themselves liable. In those circumstances, and if the defect arose during the production process, importers, retailers and wholesalers may join the manufacturer to any proceedings, or seek a contribution claim, to pass on all, or some, of the liability. As well as the financial implications of such claims, the potential for reputational damage is also a very real risk and concern to all supply chain participants.

While consumers can pursue claims in contract or negligence regarding injurious products, action under the CPA is more likely. This is because the CPA imposes a strict liability regime, under which the claimant does not need to establish that the manufacturer was at fault in supplying a product, only that the product was ‘defective’ because its safety ‘is not such as persons generally are entitled to expect’.<sup>34</sup>

Where a consumer brings a claim under the CPA, the court is obliged to take into account ‘all the circumstances’ to determine if the product is defective.<sup>35</sup> This will include how the product is marketed, any instructions or warnings accompanying the product and what might reasonably be expected to be done with the product. For more information on labelling and marketing requirements, see Sections III (Food and cosmetics safety) and V (Sales and marketing).

Recent case law<sup>36</sup> suggests that the court will weigh up the risks and benefits presented by a product, whether the risk was avoidable and the cost burden of taking extra safety measures. In addition, the court will give weight to evidence that a product was placed on the market in compliance with regulations designed to make it safe (such as the PPDS allergen labelling requirements referred to in Section V).

Subject to the court’s discretion, personal injury claims must be brought within three years of the date on which the cause of action accrued or, if later, the date the injured person

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33 Consumer Rights Act 2015, Sale of Goods Act 1979.

34 Section 3(1) Consumer Protection Act 1987; claimants may also have a claim where a producer has breached safety regulations made under Section 11(1) of the Consumer Protection Act 1987.

35 Section 3(2) Consumer Protection Act 1987.

36 *Wilkes v. DePuy International Limited* [2016] EWHC 3096 (QB); *Gee v. DePuy International Limited* [2018] EWHC 1208 (QB).

came to have knowledge.<sup>37</sup> Claims under the CPA are also subject to a 10-year ‘longstop’, meaning that an action cannot be brought after 10 years from when the product was placed on the market.<sup>38</sup>

## VII INTELLECTUAL PROPERTY

When used effectively, intellectual property (IP) is a vital tool, which helps food, beverage and cosmetics businesses to stand out from what, in the UK, is a crowded market. For businesses operating in these industries, the key IP rights are typically trademarks or passing off, copyright, design rights and, for some, trade secrets and patents. Before Brexit, UK and EU IP law was harmonised. They remain predominantly so now but will likely diverge over time.

A trademark can consist of any sign that can be represented clearly and precisely.<sup>39</sup> While shapes, colours and sounds are all capable of registration, trademarks usually consist of brand names, logos, product packaging and slogans. A trademark’s key function is to allow consumers to identify a product’s origin. They allow their owners to prevent third parties from using the same, or similar, marks that might confuse consumers by, among other things, suggesting an association between two brands. Trademarks that have a ‘reputation’ in the UK are afforded an enhanced degree of protection. Regardless of whether they have a trademark registration, businesses that have generated goodwill in the UK can also sue under the common law tort of passing off, where third parties misrepresent their goods or services as those of the business (such as lookalike products).

Copyright arises automatically and protects (among other things) original written, pictorial and photographic works, including product packaging, logos, marketing materials and website content. Copyright does not need to be registered, and generally subsists for 70 years from the end of the year in which its creator dies.<sup>40</sup> Owners can use their copyright to prevent the unauthorised copying of their work and the distribution of substantively similar materials.

Design rights typically protect functional products, provided they are novel,<sup>41</sup> although protection can also extend to two dimensional items, such as patterns, layouts and logos. Both registered and unregistered design rights exist in the UK and both provide their owners with the exclusive right to produce products to the design.

Trade secrets have both statutory protection, under the Trade Secrets (Enforcement, etc) Regulations 2018, and common law protection, as a specific type of confidential information. To be capable of protection, information must be secret and have commercial value, because of its secrecy. Of the types of information capable of protection, secret formulae and recipes are likely to be most relevant to the food, drink and cosmetic sectors.

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37 Section 11A(4) and Section 33 Limitation Act 1980.

38 Section 11A(3) Limitation Act 1980.

39 Trade Marks Act 1994, Section 1(1).

40 Copyright, Designs and Patents Act 1988, Section 12(2).

41 Registered Designs Act 1949, Section 1B(1).

Patents generally protect technical ‘inventions’, for example a new technology that allows a food or cosmetics manufacturer to make products faster or using an improved process. The registration process can be lengthy and expensive but, once granted, patents provide a 20-year monopoly<sup>42</sup> and consequently, a significant competitive advantage to their owners.

Food and drink products that originate from recognised geographical areas and are produced using traditional methods can also be protected in the UK as geographical indications (GIs). The similar EU scheme previously extended protection to the UK but, following Brexit, a new local scheme<sup>43</sup> applies for businesses wanting to protect their products through GIs in the UK. The new UK scheme protects three designations of GI products, each of which possess their own unique logo, namely:

- a protected designation of origin, for example, ‘Cornish clotted cream’;
- b protected geographical indication, for example, ‘Traditional Cumberland sausage’; and
- c traditional speciality guaranteed, for example, ‘Traditional Bramley Apple Pie Filling’.

Food, drink and cosmetics brands typically regard the UK as a key jurisdiction for protecting their IP and are active at enforcing their rights. In recent months, a number of brands have taken action against discount supermarkets,<sup>44</sup> following the sale of lookalike products. In the UK, the leading discount supermarkets are known for stocking largely (or even entirely) own-brand products. This can make certain trademark infringement and passing off arguments difficult (namely, likelihood of confusion and misrepresentation) and it will be interesting to see how the various ongoing cases play out.

## VIII TRADE ORGANISATIONS

Various trade associations operate in the UK food, drink and cosmetic industries. Some, like the British Soft Drinks Association and Chilled Foods Association, represent specific subdivisions whereas others, notably the Food and Drink Federation (FDF) and Cosmetic, Toiletry and Perfumery Association, represent their sectors, as a whole.

Trade associations often play an active role in lobbying the government on matters that impact their members. Recently, after a government-commissioned report was published calling for the introduction of a sugar and salt tax, the FDF warned this could lead to price increases for consumers and would put additional pressures on manufacturers, who are already reformulating products in anticipation of the upcoming HFSS advertising restrictions noted in Section II.

There are many benefits of joining trade associations, including insight into legal and other industry developments, potentially increased influence over policymakers, best practices and standards and networking opportunities. Participation may be particularly

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42 Patents Act 1977, Section 25.

43 Agricultural Products, Food and Drink (Amendment etc.) (EU Exit) Regulations 2020/1637.

44 *Philip Warren and Son Ltd v. Lidl Great Britain Ltd* [2021] EWHC 1097 (Ch), *William Grant & Sons Irish Brands Ltd v. Lidl Stiftung & Co Kg and others* [2021] CSOH 55 (25 May 2021). In April 2021, Marks and Spencer Group plc, which operates a chain of high-end supermarkets, threatened proceedings against German discount supermarket, Aldi, in relation to the former’s ‘Colin the Caterpillar’ cake and the latter’s ‘Cuthbert the Caterpillar’ alternative.

helpful for overseas companies looking to expand their activities into the UK. However, by their very nature, trade associations bring competitors together, so it is important to ensure that this interaction is only for legitimate purposes and in compliance with competition law.

The CMA has previously taken enforcement action against trade associations where they have overstepped the boundaries of legitimate cooperation.<sup>45</sup>

UK competition law largely mirrors the European regime, prohibiting both anticompetitive arrangements, decisions and concerted practices (the Chapter I prohibition<sup>46</sup>) and abuse of dominant positions (the Chapter II prohibition<sup>47</sup>). There are potentially serious consequences for both companies and individuals who infringe. As well as reputational risks and the potential for private damages actions, businesses can be fined up to 10 per cent of their worldwide turnover. Directors of UK companies can face disqualification for up to 15 years<sup>48</sup> and disqualifications are on the rise. In the UK, individuals involved in a cartel<sup>49</sup> risk prosecution and up to five years in prison, or a fine, or both.<sup>50</sup>

Before joining a trade association, businesses should check their membership rules and practices. These should be transparent, objectively justifiable and non-discriminatory and, crucially, should not contain any recommendations that could hinder competition.

## IX FINANCING AND M&A

M&A activity in the UK retail sector generally has seen a rebound from the covid-19 induced lull of 2020, with transactions in the food and beverage market in the period of January 2021 to August 2021 surging to a 10-year high.<sup>51</sup> Several interesting trends become apparent when analysing the narrative behind the resurrection of M&A activity in 2021 and the prospects for 2022 and beyond.

First, there has been a significant amount of private equity interest in UK companies, particularly from US sponsors keen to deploy their significant stockpiles of unallocated capital on UK assets where valuations have been depressed by Brexit uncertainty, the pandemic and a comparatively weak pound. This has manifested in several highly competitive bid situations for UK companies such as Morrisons, the UK's fourth biggest supermarket chain. Other large supermarkets and national food and beverage chains may well be next.

Second, in sectors as large as the food and cosmetics industries, with their myriad participants and stakeholders, businesses had very different experiences of the risks and opportunities posed by the pandemic. Many high-street food and beverage retailers were extremely badly affected and there was a spate of consolidation and restructuring as many

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45 e.g., the Showman's Guild of Great Britain for exclusionary practices, a private eye surgeons' membership organisation for exchange of commercially sensitive information and price recommendations, the Association of Model Agents for price fixing and a local estate agents' association for limiting competition between its members.

46 Competition Act 1998, Section 2: This prohibition relates to agreements, decisions or concerted practices between undertakings and associations of undertakings that may affect trade in the UK and that have as their object or effect the restriction, prevention or distortion of competition within the UK.

47 Competition Act 1998, Section 18.

48 Enterprise Act 2002, Section 204.

49 i.e., an individual agrees with at least one competitor to fix prices, limit or prevent production or supply price, share customers or markets or rig bids.

50 Enterprise Act 2002, Section 188.

51 Oghma Partner, October 2021.

chains with large estates were forced to reduce their portfolio size and focus on the most profitable sites and brands. One particular trend prevalent earlier in the pandemic was the structuring of these transactions using insolvency procedures, including acquisitions out of pre-pack administration, which allow buyers to 'cherry-pick' assets. During 2021, there have been far fewer formal insolvency proceedings driving deals. This is largely due to the support packages put in place by the government and we would expect this trend to reverse after March 2022, when the rent moratorium ends.

By contrast, market participants with strong balance sheets have raised funds with the specific intention of going shopping. In the cosmetics space, The Hut Group, which went through an IPO in 2020, raised an additional US\$1 billion in 2021 to fund an acquisition spree. Beauty generally has continued to be attractive as a bolt-on, and many large UK retailers have used M&A to expand into this space.

The year 2021 also saw the passing of The National Security and Investment Act, which will come into force on 4 January 2022. The purpose of the legislation is to give the Secretary of State for Business, Energy and Industrial Strategy powers to review and intervene in business transactions that might reasonably raise national security concerns. The legislation is not directed specifically at the food and beverage or cosmetics industries; however, it is broad in scope and with the increasing regularity with which foreign buyers are acquiring cornerstone UK retail assets, it is certainly possible that we could see big-ticket M&A activity in the sector become the subject of political debate and possibly intervention.

As with many industries, the food and beverage and cosmetic sectors are also being increasingly forced to confront the importance of Environmental, Social and Governance (ESG) issues, with valuation premiums regularly seen for assets that have a coherent ESG strategy and depressed valuations for those that do not.

## **X SPECIAL ISSUES FOR CERTAIN PRODUCTS**

### **i Alcohol**

In the UK, anyone wishing to sell alcohol must be licenced by the applicable licensing authority, with the Licensing Act 2003 being the key legislation. Premises selling alcohol must also be licensed and businesses selling alcohol to the public must ensure that the wholesalers supplying them have been approved by HMRC, under the Alcohol Wholesaler Registration Scheme. In 2020, licensing laws were temporarily modified<sup>52</sup> to facilitate the sale of alcohol for off-site consumption by hospitality businesses, following the temporary closure of establishments during covid-19 related lockdowns.

The UK has robust advertising rules, with alcohol assigned its own sections of the Codes.<sup>53</sup> Among other things, the Codes prohibit ads that encourage excessive drinking. Marketing communications must not be directed at people under the age of 18 and people shown drinking in ads must neither be, nor seem to be, under 25 years old. Comparisons may be made between alcoholic products of varying strengths, but the Codes expressly prohibit

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52 Section 11 of the Business and Planning Act 2020.

53 Rule 18 of the CAP Code: [https://www.asa.org.uk/type/non\\_broadcast/code\\_section/18.html](https://www.asa.org.uk/type/non_broadcast/code_section/18.html) and Rule 19 of the BCAP Code: [https://www.asa.org.uk/type/broadcast/code\\_section/19.html](https://www.asa.org.uk/type/broadcast/code_section/19.html) (both last visited 4 October 2021).

health claims (express or implied) in relation to beverages containing more than 1.2 per cent ABV. This has been a particularly pertinent consideration in recent years, as businesses determine how best to lawfully market increasingly popular lower alcohol alternatives.

Strict labelling laws also apply. For spirits, only those that meet the requirements of a category of 'spirit drink' prescribed by the Spirit Regulations,<sup>54</sup> for example whiskey or vodka, can be named after that category. Similarly, for wines, a product can only be named as such, or as a specific category, for example, 'sparkling wine', if it meets the requirements specified in the Wine Regulations.<sup>55</sup> While beverages containing more than 1.2 per cent ABV are exempt from the requirement, under the FIC Regulations, for product packaging to bear an ingredient list and nutrition declaration, products with an ABV of 1.2 per cent or less are not. 'Low-alcohol', 'de-alcoholised' and 'alcohol-free' products must also comply with specific descriptors.

## ii Foods and food supplements as 'borderline products'

A food product or supplement may fall within a category that is somewhere between food and medicine (for example, 'nutraceuticals'<sup>56</sup>). This may result in confusion around the appropriate classification and therefore regulation of the product.

In the UK, the body responsible for the regulation of medicinal products is the Medicines and Healthcare products Regulatory Agency (MHRA). The MHRA determines whether a product satisfies the definition of, and therefore falls to be regulated as, a 'medicinal product'.<sup>57</sup> In making its determination, the MHRA will consider various factors, such as: claims made about the product; its composition, function, marketing and promotional materials; and the possible risks associated with its use.<sup>58</sup> A product that is determined to be a 'medicinal product' must comply with the Human Medicines Regulations 2012, unless an exception applies.<sup>59</sup>

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54 Regulation (EU) 2019/787 of the European Parliament and of the Council of 17 April 2019 on the definition, description, presentation and labelling of spirit drinks, the use of the names of spirit drinks in the presentation and labelling of other foodstuffs, the protection of geographical indications for spirit drinks, the use of ethyl alcohol and distillates of agricultural origin in alcoholic beverages.

55 Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products.

56 'Nutraceuticals' may include a range of health products or supplements. There is no agreed standard definition for the term; however, in June 2021 the UK's Taskforce on Innovation, Growth and Regulatory Reform (TIGRR) published an independent report that included a proposal that this be addressed. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/994125/FINAL\\_TIGRR\\_REPORT\\_\\_1\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/994125/FINAL_TIGRR_REPORT__1_.pdf) (last visited on 23 September 2021).

57 'Medicinal product' is defined in Article 1 of Directive 2001/83/EC of the European Parliament and Council of 6 November 2001 on the Community code relating to medicinal products for human use.

58 MHRA Guidance Note 8 'A guide to what is a medicinal product' March 2020: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/872742/GN8\\_FINAL\\_10\\_03\\_2020\\_\\_combined\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/872742/GN8_FINAL_10_03_2020__combined_.pdf) (last visited on 23 September 2021).

59 Human Medicines Regulations 2012 [SI 2012/1916].

### iii CBD

Cannabidiol, more commonly known as ‘CBD’, is one of the many active compounds naturally produced in cannabis. Certain criteria must be met for CBD products to be lawfully made available for human consumption under the Misuse of Drugs Regulations 2001.<sup>60</sup>

The majority of CBD products are sold as oils and food supplements; however, in 2016, the MHRA decided that CBD products that are used for a ‘medical purpose’ should be regulated as medicines.<sup>61</sup> More recently, the MHRA cautioned that the regulatory status of some CBD products (not currently deemed to be medicines) may change, such that they may, in future, be classified and regulated as ‘medicinal products’.<sup>62</sup>

In January 2019, CBD extracts were granted ‘novel food’ status, meaning they were added to the Novel Foods Catalogue (a list of foods which have not been made widely available for public consumption, in the UK or EU, before May 1997).<sup>63</sup> Before being placed on the market in GB, a novel food must obtain the requisite pre-market authorisation, which includes an assessment of its safety.<sup>64, 65</sup>

## XI OUTLOOK AND CONCLUSIONS

The UK’s food, beverage and cosmetics industries have stood resilient in the face of both Brexit and covid-19 related turbulence. However, reverberations will continue to be felt as the industries manoeuvre supply chain disruption and increasing red tape, while attempting to reclaim pre-pandemic growth levels. For the food and beverage sector in particular, opportunities in non-EU markets could provide a much-needed boost but workforce and fuel shortages and the rise in commodity prices are a pressing and very real concern, with various retailers issuing warnings about their ability to service Christmas 2021 demand levels as early as August this year. It is also likely that, at least in the short term, we will see price increases in consumer goods The UK’s animal welfare<sup>66</sup> and food safety standards,<sup>67</sup> which

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60 See Home Office Guidance ‘Drug licensing factsheet: cannabis, CBD and other cannabinoids’. Updated 17 June 2021: <https://www.gov.uk/government/publications/cannabis-cbd-and-other-cannabinoids-drug-licensing-factsheet/drug-licensing-factsheet-cannabis-cbd-and-other-cannabinoids> (last visited on 23 September 2021).

61 ‘MHRA statement on products containing Cannabidiol (CBD)’. Last updated 20 December 2016: <https://www.gov.uk/government/news/mhra-statement-on-products-containing-cannabidiol-cbd> (last visited on 23 September 2021).

62 MHRA Guidance Note 8 ‘A guide to what is a medicinal product’ March 2020: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/872742/GN8\\_FINAL\\_10\\_03\\_2020\\_\\_combined\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/872742/GN8_FINAL_10_03_2020__combined_.pdf) (last visited on 23 September 2021).

63 Food Standards Agency ‘CBD products linked to novel food applications’: <https://www.food.gov.uk/business-guidance/cbd-products-linked-to-novel-food-applications> (last visited on 22 September 2021). See also Food Standards Agency ‘Cannabidiol (CBD) guidance’ Last updated 11 March 2021: <https://www.food.gov.uk/business-guidance/cannabidiol-cbd> (last visited on 23 September 2021).

64 See footnote 61.

65 Food Standards Agency ‘Novel foods authorisation guidance’. Last updated 31 December 2020: <https://www.food.gov.uk/business-guidance/regulated-products/novel-foods-guidance#process-for-authorisation-of-a-novel-food> (last visited on 23 September 2021).

66 <https://api.worldanimalprotection.org/> (last visited 29 September 2021).

67 <https://foodsecurityindex.eiu.com/index> (last visited 29 September 2021).

are among some of the highest in the world, also look set to be an ongoing battleground, requiring the UK to consider how much (if at all) it is willing to compromise to secure international trade deals with key nations post Brexit.

Sustainability looks certain to remain a key focus for both industries over the coming year as environmental issues continue to permeate and influence global politics and consumer spending habits. Compliance with the Green Claims Code will be crucial with food, beverage and cosmetics businesses expected to be firmly on the CMA's radar, given heightened consumer and regulatory concern about misleading claims from advertisers within these sectors. A dual public and government focus on health and wellbeing means that the forthcoming regulation of HFSS products will also be monitored closely, with many within the food and beverage industry bracing themselves for the impact of additional proposed advertising restrictions, which may come to fruition. Regulation of nutraceuticals and novel foods such as cannabidiol is also anticipated.

In terms of more general trends, we anticipate that e-commerce spending will see continued growth, especially in the cosmetics space as consumers turn to social media influencers and online marketplaces. While post-pandemic high street footfall statistics show that there is still very much a demand for the bricks and mortar store shopping experience among UK consumers, the role of the physical store appears to be shifting towards a hybrid strategy, with nearly a quarter of consumers purchasing a retail product online while in a physical store in 2021.<sup>68</sup> What's more, big e-commerce players are beginning to tap into the bricks and mortar space; for example, Amazon has opened a number of Amazon Fresh and Amazon Go grocery stores in the UK this year.

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<sup>68</sup> <https://www.retailconomics.co.uk/retail-strategy/10-trends-for-uk-retail-2021-outlook> (last visited 19 October 2021).

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## **CIARA CULLEN**

*RPC*

Ciara is an IP and technology specialist who is recognised as a next generation partner for retail and consumer, and intellectual property (*The Legal 500*). Ciara co-heads RPC's food and drink group and has enjoyed advising several global brands in the food & beverage sector and the alcohol industry for several years. Ciara also leads RPC's retail and consumer pillar with clients ranging from luxury cosmetic brands to high-street retailers, e-commerce platforms and FMCG companies.

Ciara assists clients with the resolution of disputes through mediation, arbitration and litigation. As well as advising clients across the full range of IP rights, including trademarks and passing off, copyright, patents, design rights, breach of confidential information and IP licence disputes, Ciara assists clients with the resolution of distressed digital and technology projects. Ciara also supports clients on brand protection and counterfeit issues, sponsorship and endorsement arrangements, and IP projects and licensing. Ciara has a particular interest in sustainability and the consumer regulatory landscape and assists clients with advice and workshops on green claims compliance. She also provides specialist regulatory advice on food and drink labelling issues and is passionate about the No / Low alcohol category.

Ciara has been published in several leading journals and publications including *Managing IP*, *e-Commerce Law and Policy*, *LexisNexis*, *The Distillers Journal* and *The Brewers Journal* and regularly speaks at industry events, such as Retail Week GC Summit and The Gin Guild annual conference. Clients say she ‘stands out for being a true business partner’ (*The Legal 500 UK 2022*) and describe her as ‘technically excellent and a fantastic client lawyer’ (*The Legal 500 UK 2022*).

## **BEN MARK**

*RPC*

Ben co-heads RPC’s food and drink (F&D) group and is a partner in RPC’s intellectual property team.

Ben advises on all aspects of IP protection and enforcement and licensing, with a focus on trademarks, passing off, copyright, designs and confidential information. Having acted in disputes before the UK High Court, Court of Appeal and Supreme Court as well as the Intellectual Property Office, Ben has significant litigation experience across the full range of IP rights, including acting for FTSE 100 F&D companies.

Ben regularly lectures and publishes articles on IP and sits on the INTA Anti-Counterfeiting Committee and is a member of the Law Society Intellectual Property Law Committee. Ben is recognised as a Next Generation Partner for IP in *The Legal 500* (2021) and is the 2021 winner of the Lexology Client Choice Awards for IP: Trade marks, UK. Ben’s clients say he is ‘super-responsive; he has extensive knowledge with respect to IP matters; and he is very pragmatic’. Clients also noted Ben as ‘providing clear, decisive opinions and advice. He is user friendly and can adapt his style as necessary, making use of clear business language. Ben is a proactive, conscientious and thoughtful professional.’

## **SARAH MOUNTAIN**

*RPC*

Sarah is a senior associate in RPC’s IP & technology team and is a core member of the firm’s F&D Group. An intellectual property specialist, Sarah’s particular focus is on trademarks, copyright, passing off, designs and confidential information but she routinely supports clients on technology and commercial matters too.

Sarah has acted for F&D clients on a broad range of matters including a cross-border dispute involving the infringement of copyright in product packaging perpetrated in various jurisdictions and a trademark infringement and passing off claim regarding the distribution of copycat snack products. On the non-contentious side, Sarah advises on licensing and franchise agreements, as well as providing IP clearance support to clients in connection with new product lines.

Sarah regularly authors articles on both F&D and IP matters and has been published in the *Entertainment Law Review*, F&D industry publications *The Distillers Journal* and *The Brewers Journal* and in *New Food Magazine*.

## **ELLIE WARD**

*RPC*

Ellie is a core member of RPC's F&D Group. She advises clients on a range of contentious and non-contentious commercial, IP and technology matters. Ellie's contentious experience includes advising on alleged infringement of intellectual property rights, particularly in the retail sector. On the non-contentious side, Ellie advises clients on brand protection and licensing as well as advising on various commercial contracts such as framework agreements and confidentiality agreements. Ellie has recently been advising an international drinks brand on its core contractual documents. Ellie regularly authors blogs and articles on both IP and F&D matters.

## **HARPREET KAUR**

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Harpreet Kaur is an associate in the IP and technology team at RPC and advises clients on a range of contentious and non-contentious IP, technology and commercial matters. Harpreet is a member of RPC's top ranking retail and consumer group and often authors blogs of interest to the retail sector. She is also a core contributor to RPC's F&D Group, frequently drafting client facing documents on key food and drink developments.

## **KAREN HENDY**

*RPC*

Karen Hendy is co-head of RPC's retail and consumer group and is ranked as a leading individual by *The Legal 500* for M&A and for retail and consumer. Described as 'an insightful and pragmatic partner', Karen has an extensive skill set and supports clients undertaking a broad range of corporate transactions, including public and private M&A, joint ventures, stock exchange listings and capital markets transactions. She also provides advice on corporate governance and securities-law issues. Karen has a love of, and particular expertise in, the retail, manufacturing and technology sectors.

## **TOM PURTON**

*RPC*

Tom is a core member of RPC's retail and consumer group. He is also head of the firm's market-leading commercial, technology and outsourcing practice and combines over 25 years of experience, business acumen and legal expertise in a broad-based commercial practice. Tom is ranked as a leading individual in *The Legal 500 UK (2022)* for commercial contracts and RPC's commercial contracts practice is ranked as Tier 1. Tom has extensive experience across multiple sectors including retail, leisure and hospitality, real estate, financial services and business support services. He also uses his commercial expertise to support M&A and other deals on transformation and separation projects.

## **OLIVER BRAY**

*RPC*

Olly is senior partner and closely supports many of RPC's key clients, including global technology companies, household brands, retailers and innovative online businesses, as well

as advertising and digital agencies. He has market-leading expertise in commercial contracts, digital, consumer, advertising and marketing, data protection, regulatory and content issues. A regular industry speaker, Olly is chairman of the City of London Law Society Commercial Law Committee. He is ranked as a 'Super Lawyer' and is recognised by Acritas for outstanding client service. He has also been recognised as leading individual for commercial contracts by *The Legal 500* UK (2021–2022) and by the legal directories as a 'leader in his field' in commercial contracts and advertising and marketing.

## **DOROTHY FLOWER**

*RPC*

Dorothy Flower leads RPC's medical and life sciences team; she is one of the leading UK lawyers in medical devices and pharmaceutical product liability, and in medical malpractice (having been recognised for many years in *The Legal 500* (hall of fame) and *Chambers & Partners*). She has defended numerous civil claims involving cosmetic devices such as breast implants and facial fillers, including group and class actions brought by hundreds of claimants. Dorothy has an in-depth knowledge of the cosmetics industry, and the associated regulatory regime; she has advised clients on approved body certification and Medicines and Healthcare products Regulatory Agency (MHRA) licensing. She works alongside RPC's food and drink team, as ranked by *The Legal 500*.

## **LAMBROS KILANIOTIS**

*RPC*

Lambros Kilaniotis heads RPC's competition practice. He is a solicitor advocate with higher rights of audience and represents clients in oral hearings before regulators, tribunals and courts. Practising all aspects of EU and UK competition law, Lambros has considerable experience in contentious competition matters such as market investigations, cartel investigations (including dawn raids) and competition litigation (including follow on damages actions).

## **GAVIN REESE**

*RPC*

As a core member of RPC's food and drink team as ranked by *The Legal 500*, Gavin is a specialist in general liability, product liability and health and safety. Gavin has been advising insurers and corporate clients for over 30 years. He is recommended in both *Chambers Directory* and *The Legal 500*. He has been described in *The Legal 500* as 'totally unflappable' and a 'savvy player in a competitive marketplace'.

## **PETER SUGDEN**

*RPC*

Peter is a corporate and M&A partner within RPC's retail and consumer group. He has extensive experience in the food, drink and cosmetics industry and acts for some of the biggest companies in the sector including one of the world's biggest brewers and a well-known high-street restaurant group.

## **MAMATA DUTTA**

*RPC*

Mamata is a member of RPC's retail and consumer group and is ranked by *The Legal 500*. Her work covers defence of regulatory proceedings involving enforcement authorities across a variety of sectors as well as the defence of claims involving product liability and personal injury. This includes claims that span across those specialisms, including claims involving injuries caused by the consumption of contaminated food or the use of consumer products alleged to be defective as well as the regulatory and commercial aspects associated with claims in the food and drink and retail sectors. She has been recognised as a rising star for health and safety by *The Legal 500 UK* (2021).

## **PETER RUDD-CLARKE**

*RPC*

Peter, who is recommended in *The Legal 500 UK* (2022), specialises in the life sciences and consumer products sectors. He advises clients on regulations and defends manufacturers against liability claims, acting in both unitary claims and litigation under a group litigation order. He has acted for life sciences companies, software producers, lifestyle device manufacturers and their insurers. Peter's regulatory experience includes advising on the regulation of medical devices and *in vitro* diagnostic devices, CE marking, clinical trials, consumer products and ongoing compliance matters. He advises insurer clients on coverage, contribution claims and responding to third-party claims.

## **FLORENCE PAGE**

*RPC*

Florence is a senior associate in RPC's medical and life sciences team. Florence advises insurers and insureds on a broad range of medico-legal issues. She specialises in medical malpractice and product liability (medical products) claims and has experience in working with hospitals, private clinics, and medical device manufacturers. Florence's litigation experience includes the defence of complex cross-jurisdictional group litigation.

## **NATALIE DREW**

*RPC*

Natalie has extensive experience acting on a broad range of cases with a medical or injury element. She specialises in medical devices product liability, clinical trials and medical malpractice claims. Natalie has acted for pharmaceutical companies, medical device manufacturers, hospitals, private clinics and their insurers, and has significant expertise in dealing with complex, large-scale litigation, including claims subject to group litigation orders. She also acts for health service providers in the UK in relation to pharmaceutical competition litigation.

Natalie has acted for individual practitioners, investigated by their regulatory body, and has significant experience in Court of Protection challenges.

## **MELANIE MUSGRAVE**

*RPC*

Melanie Musgrave specialises in UK and EU competition law issues. She advises a wide range of clients, including those in the FMCG and restaurant sectors, on the competition aspects of their commercial arrangements and practices, including advising on distribution, agency and franchise agreements. She works with clients on their individual compliance programmes and requirements, as well as conducting compliance audits for clients. Melanie helps clients deal with cartel and antitrust investigations by competition authorities, including dawn raids. She also acts for clients in connection with market investigations and sector inquiries, such as the European Commission's e-commerce sector inquiry. Melanie also advises on competition law damages from both a defendant and claimant perspective.

## **ELEANOR HARLEY**

*RPC*

Eleanor is an associate in the commercial, technology and outsourcing team. She is part of the retail and consumer group, as ranked by *The Legal 500* and practises in RPC's commercial contracts team, which is ranked as Tier 1 in *The Legal 500*. Eleanor has a broad-based commercial practice, covering a wide range of commercial contracts, and advising on matters relating to intellectual property, brand management and licensing, data protection and mergers, acquisitions and separations (particularly with a technology focus). Eleanor's experience ranges across different sectors, including retail, software, media, hospitality, entertainment, advertising, pharmaceuticals, gaming and real estate.

an LBR business

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