

Formulating CPSC-Compliant Responses to Consumer Complaints Raised on Social Media Checklist

A Practical Guidance® Checklist Note by
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This checklist provides best practices and considerations for companies producing or marketing products that are subject to a product recall by the U.S. Consumer Product Safety Commission (CPSC) when the recall notice to consumers will be publicized via social media. This checklist is industry neutral and based on federal laws and regulations.

Social media has revolutionized the way companies interact with their customers. However, navigating social media interactions—particularly those related to potential consumer product safety concerns—can present unique challenges.

It is therefore crucial to proactively develop a plan for responding to consumer concerns raised on social media. Doing so can help a company build trust with consumers, protect its reputation, and remain in compliance with federal regulations that require companies to report certain consumer product safety concerns, such as the mandatory reporting requirements set forth in Section 15(b) of the Consumer Product Safety Act (CPSA) (codified at 15 U.S.C. § 2064(b)). See generally, 92 Pub. L. No. 573, 86 Stat. 1207 (codified at 15 U.S.C. §§ 2051–2090)).

For comprehensive information about consumer products, see [Consumer Products Resource Kit](#).

For additional guidance on product recalls and product liability issues, see [Effect of Social Media on Recall Notice Requirements](#), [Social Media Consumers Recall Notice](#), [Product Recalls](#), [Product Liability Claims, Defenses, and Remedies](#), [Product Liability Claims Preemption and Mitigation](#), and [Consumer Complaint Handling Program](#).

Although this checklist provides a general guidance for responding to potential product safety concerns raised by consumers on social media, companies should tailor these steps to reflect their particular business needs and address the specific laws and regulations that apply to them.

- **Promptly engage with the consumer.**
 - Engage with consumer concerns raised on social media within 24–48 hours of receipt, or sooner if possible. As a best practice, companies should develop and implement written procedures for monitoring social media to ensure that any product safety concerns are quickly identified, assessed, and resolved.
- **Acknowledge the specific concern.**
 - Acknowledge the consumer’s specific concern.
 - Avoid using generic language. Instead, directly acknowledge the specific concern raised by the consumer to show them that the company is engaged and paying attention.
 - Be careful not to indicate or otherwise imply that the company is responsible for any potential product defects or injuries.

Tip: Although you can include an apology for inconveniencing the consumer, exercise caution in doing

so. If a consumer raises a serious product safety concern or indicates that they have otherwise been injured by a product, issuing an apology for “the inconvenience” may strike the wrong tone.

- **Gather additional information.**

- Ask the consumer for their name and contact information. Contact the consumer afterwards if further investigation is required.
- Ask the consumer for additional information related to their concern, including, but not limited to, the following:
 - The exact product at issue (try to get the model number, serial number, or any other specific identification information that might exist)
 - When the product was purchased
 - When the consumer’s concern arose
 - How the concern arose (i.e., what happened)
 - Whether any other persons were present at the time
 - Whether any injuries occurred and, if so, who was injured, the extent of the injuries, and whether medical attention was rendered

Note: If the consumer’s concern relates to a product that is subject to a recall, you must provide the consumer with a link to the company’s recall announcement, as well as the toll-free telephone number and email address dedicated only to the recall.

- **Provide a way to communicate directly with the company.**

- Invite the consumer to communicate directly with the company rather than through social media. See [‘Social Media Guide for Recalling Companies](#).
- Provide specific contact information for a company representative who can help resolve the consumer’s concern. Avoid giving generic contact information, such as the telephone number for the company’s customer service hotline.

Tip: If the consumer expresses a desire to continue the conversation on social media, it is best to do so. Refusing to further engage on social media could cause backlash and reputational harm to the company.

- **Explain the next steps.**

- Provide the consumer with a brief description of what the company intends to do to solve the consumer’s concern, if possible.

- Provide the consumer with a time frame for resolution or in which they can expect to receive follow-up correspondence from the company, if further investigation is needed before determining the appropriate remedy.

Note: Avoid making any specific promises that may adversely impact the company’s investigation or hinder its ability to prevent further product issues.

- **Record and properly store information related to the concern.**

- Record all facts pertinent to the consumer’s concern in the company’s internal recordkeeping system or database, including, but not limited to, the following:
 - The consumer’s name and contact information
 - The date the consumer notified the company
 - The date of the incident
 - The product at issue
 - All other details regarding the consumer’s concern –and–
 - How the company has responded to date
- Store factual information and relevant documentation electronically and in a way that associates it with the applicable product numbers and/or serial numbers, if possible. Organization and accessibility are key.
- Implement a five-year recordkeeping policy, as the CPSC advises.

- **Promptly investigate the concern to determine whether it triggers a duty to report to the CPSC.**

- Act quickly. Unless an extension is sought, an investigation cannot last more than 10 days.
- Notify the CPSC “immediately”—meaning within 24 hours—if you obtain information that reasonably supports the conclusion that certain product safety concerns might exist. Counsel should notify the CPSC—if your client is a manufacturer, importer, retailer, or distributor—if a “reportable incident” occurs involving its product when the product:
 - Fails to comply with an applicable consumer product safety rule or with a voluntary consumer product safety standard upon which the CPSC has relied under Section 9 of the CPSA (see 15 U.S.C. § 2058)
 - Fails to comply with any other rule, regulation, standard, or ban under the CPSA or any other Act enforced by the CPSC
 - Contains a defect which could create a substantial product hazard –or–

- Creates an unreasonable risk of serious injury or death

See 15 U.S.C. § 2064(b). See also 16 C.F.R. § 1115.3(f), defining “subject firm” as any manufacturer (including an importer), distributor, or retailer of a consumer product.

- Undertake an investigation to determine whether there is a duty to report, but the investigation period should not exceed 10 days unless you can demonstrate why more time is needed and obtain an extension.

Note: Be sure to conduct any investigation in a way that leaves time to draft and submit the report before the 10th business day.

- Conduct an internal investigation to determine the following:
 - Whether the company is the manufacturer, distributor, or retailer of the product at issue
 - Whether there is any indication that another product, person, or factor was involved in the issue raised by the consumer –and–
 - Whether the CPSC database or the company’s internal database shows any similar concerns with the same product This helps determine whether any patterns are developing and allows exploration of whether this type of injury has previously occurred with the same product, especially if the injury appears unusual. (The CPSC’s publicly searchable database of consumer product safety incidents is available [here](#).)
- Contact the consumer to obtain as much information as possible about their concern. At minimum, companies need to know the information listed under Gather additional information above.
- Locate any available fire or police reports related to the concern.
- Conduct online research on the consumer (e.g., Facebook, Instagram, Twitter, TikTok, YouTube, Google, etc.).
- Determine whether there are any media reports regarding the consumer’s concern.
- Determine whether there are any court records showing that the consumer has previously brought lawsuits.

Tip: Companies will often be dealing with more than one incident report at any given time. Consider developing a rapid response “swat team” that stands ready to handle incident reports. The swat team should include individuals from the following departments:

Legal. Designate an in-house legal resource (or else outside counsel) to perform the initial evaluation of whether the concern requires further investigation. If so, alert the swat team, and update the incident report docket.

Product safety. Designate a product safety professional with responsibility for knowing whether other similar incidents have occurred, how to search the CPSC and company databases for similar incidents, and how the company handled prior incidents.

Product specialist. Designate a person with specific knowledge of the product at issue.

Marketing/distribution. Designate a person to answer questions from trade partners, research whether any media reports have emerged regarding the incident and perform research on the consumer.

Investor relations and public relations. Designate a representative from this department who should be routinely alerted to new product safety concerns that may trigger a reporting requirement, and be ready to assist if the problem develops and escalates. **Tip:** Make sure you have backups in place for the swat team in case someone is out sick, on vacation, or otherwise indisposed during the 10-day period. Companies are only permitted a 10-day period to investigate a potential product safety issue.

- **If the concern triggers a duty to report, make a timely report to the CPSC.**
 - If in doubt as to whether a concern triggers a duty to report, note that the regulations encourage reporting. See 16 C.F.R. § 1115.4.
 - Only one person approved by the Legal Department should communicate with the CPSC.
 - Be sure to take all necessary steps to preserve confidentiality. Information a company considers to be trade secret, confidential commercial, or financially (or otherwise) sensitive must be marked as “confidential.”
- **Communicate with interested persons.**
 - Keep customer service representatives and claims department employees informed of the issue and instruct them as to (1) how they should respond to consumer inquiries and (2) the information they should gather from consumers inquiring about a product involved in the scope of the reportable incident or recall.
 - Company relationship managers should also keep the relevant manufacturers, importers, retailers, and distributors informed of the reportable incident as it develops.

- Prepare the company's front-line people on how to handle, or where to route, media inquiries about reportable incidents.

Note: You might want to keep information about the reportable incident confidential in the initial stages and wait to see what action the CPSC requires before releasing information to interested persons.

- **Follow up with the consumer.**

- Finally, don't forget to follow up with the consumer about their concerns.

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John serves as Co-Chair of the firm's Consumer & Mechanical Product Liability Industry Group and has over 30 years' experience representing clients in product liability and commercial litigation in state and federal courts across the country, including as national and regional counsel. He also counsels clients on CPSC, FTC, and FDA regulatory matters and on risk prevention issues.

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Kelly focuses her practice on a variety of complex litigation matters, including commercial disputes, product liability, and international trade proceedings before the U.S. Department of Commerce and the U.S. International Trade Commission. Kelly also assists clients in tackling sophisticated regulatory and compliance issues. She has experience advising on regulations promulgated by the Consumer Product Safety Commission (CPSC), U.S. Food and Drug Administration (FDA), Federal Trade Commission (FTC), and other state and federal agencies. She also has experience with regulatory reporting obligations, government inquiries, product safety programs, and risk prevention issues.

Kelly is a member of the DRI Young Lawyers Steering Committee and is co-chair of the DRI Young Lawyers Publications Committee. Outside of her everyday practice, Kelly is committed to bringing diversity and inclusion to the practice of law. She was a founding member of the Diversity and Inclusion Task Force at her former firm.

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