

Managing consumer litigation before it gets started

By George Salmas
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LOS ANGELES, Calif. — Every company that sells consumer products covets brand recognition. Companies that accomplish this need to have a plan to deal with something else

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that comes with the territory: consumer complaints. An esteemed brand name that tells consumers who you are, what you do and how your products differ from those of their competitors will also serve as an invitation to consumers to bypass the retailer and bring any complaints they have about your products directly to you.

These run-of-the-mill reports of product dissatisfaction can

be classified as "single-consumer complaints" because they involve a discrete incident that affected the individual registering the complaint and perhaps several family members or close associates. In contrast to a report of product tampering or a problem that has affected more than one customer and may require a product recall, a single-consumer complaint should not have significant repercussions for your company, if it is handled properly. A mishandled single-consumer complaint, on the other hand, can easily lead to a lawsuit. A simple strategy for managing single-consumer complaints before they get out of hand can prevent that from

happening.

If your company receives single-consumer complaints about your products, you should keep three separate goals in mind as you address them. You want to avoid presenting a claim to your insurer so that your liability rates won't increase. You want to discourage the consumer from filing a lawsuit, which would compel you to bring in your insurer and could result in an increase in your rates. And you want to make your customer happy.

It may not be easy to reconcile all three goals since consumers may be convinced that their complaint is legitimate even if it isn't. Based on my 20 years of experience practicing food law, I would estimate that more than 95 percent of single consumer complaints alleging that a food product from a modern food processing facility made them ill are just plain wrong. Consumers with such complaints must be treated respectfully anyway.

All company personnel who deal with customers must be trained to treat them with respect starting with the receptionist, since your company's first contact with the consumer can often set the tone for the relationship.

If a customer calls to complain that someone got sick from eating one of your products, the receptionist should calmly and politely direct the caller to the appropriate supervisor, taking care not to leave the caller on hold for long and promising a call back by a certain time if a supervisor is not immediately available.

The receptionist and all other company officials who will deal with the disgruntled customer must have the right temperament for the job. They must be polite, patient, empathetic and willing to listen. The supervisor who takes the complaint, in particular, should have a cooperative attitude and should let the aggrieved customer talk as long as they want. The supervisor should listen, get as much of the story written down as possible and should neither dispute nor agree with the substance of the complaint. At this point, the supervisor must stay focused on gathering the basic facts, starting with where and when the item was purchased and whether the customer still has the receipt. The supervisor also should determine how the product was prepared and consumed,

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• Artificial

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be repeated throughout the entire 24-hour day. However, the night turning may be eliminated as long as there is a late evening and an early morning turning. Eggs should be turned at least four times during each 24-hour period. In large commercial machines turning is mechanically done, controlled by a time clock.

The eggs should be turned through a 90-degree plane as gently as possible. Turning should continue until one to three days prior to hatching and or until the eggs have pipped. Position and turning will then have no effect on hatching.

• Ventilation

Since the developing embryo receives oxygen from the atmosphere and releases carbon dioxide, the capability for ventilation must be incorporated in the incubator. The more eggs in the incubator compartment and the older the embryo, the more oxygen is required.

• Embryonic development

Embryo development from the single fertilized cell to the self-sustaining animal in a relatively short span is an interesting but complex process. Because of various incubation periods for different avian spe-

cies, characteristic elements in the developing embryo occur at slightly different times.

Times for embryonic development include:

Prior to oviposition — Cell division starts. Three hours after fertilization the fertilized embryo in an egg will have divided several times and will contain many cells by the time the egg is laid.

Between oviposition and incubation — A period of dormancy or inactive state, as long as the eggs are kept below embryonic zero (approximately 70 degrees F).

During incubation, first day — A resemblance to a chick embryo, with the distinct differentiation into specialized systems, i.e., extra embryonic membranes, alimentary tract, vertebral column, nervous system, head and eyes.

Second day — Heart begins to beat and ear differentiation occurs.

Third day — Nose, legs, wings as well as blood circulation can be seen.

Fourth day — Tongue begins to form.

Fifth day — Formation of reproductive organs and sex differentiation.

Sixth day — Beak formation starts.

Eighth day — Feathers begin to appear.

10th day — Beak begins to harden.

13th day — Appearance of scales and claws.

14th day — Orientation of the embryo for hatching with the head toward the large end of the egg.

16th day — Scales, claws and beak become firm.

19th day — Yolk sac begins to enter the body cavity through the umbilicus or navel.

20th day — Yolk sac is completely within the body cavity. This material may be used by the chick to sustain life for several days after hatching. Chick begins to breathe and often can be heard to "peep" even before the shell is broken.

21st day — The "egg-tooth" or extremely hard tip of the beak penetrates the eggshell. Continued muscular action cuts the top of the shell off and with a final struggle kicks out of the shell, leaving the extra embryonic membranes within the shell.

• Mortality

Eggs can fail to hatch for many reasons. Among these are inadequate diet of the hen, incorrect environment within the incubator, and malposition of the embryo within the egg.

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Report: 98 percent of farms are family farms

ARLINGTON, Va. — In May 2006, USDA's Economic Research Service released a report that showed 98 percent of farms in the U.S. are family farms. The report titled "Structure and Finances of U.S. Farms: 2005 Family Farm Report," defined family farms as proprietorships, partnerships or family operations that do not have hired managers.

Though contracting has grown at a "slow and steady rate" over the years, the report indicated that the share of total agricultural production under contract grew by only 5 percentage points between 1994 to 1995 and 2003.

Average operating profit margins and average rates of return on assets and equity were negative for small

farms, the report found, but positive for large, very large and non-family farms. Small farm households typically receive substantial off-farm income, the report said. The report also indicated that large and very large farms relied on average off-farm income of \$30,000 a year to provide for their livelihood.

The study also discovered that 61 percent of all farms did not participate in any farm program in 2003. This finding indicates that only a minority of farmers receive agricultural subsidies.

A final important finding of the report was that after combining farm and off-farm income, the median farm household income of \$47,600 in 2003 was 10 percent greater than the median income

of \$43,300 for all American households.

More information can be obtained from the Animal Agriculture Alliance at <http://www.animalagalliance.org>.

MPF announces changes in exhibit management

BUFFALO, Minn. — Exhibit management services for the Midwest Poultry Federation 2007 and 2008 conventions will be coordinated by the Minnesota Turkey Research and Promotion Council.

The change was announced by the MPF board of directors.

"Since MPF's inception in 1971, the MTRPC has been responsible for attendee registration, educational pro-

gramming and much of the 'behind the scenes' meeting planning," said Dave Thompson, MPF president.

By awarding MTRPC the added responsibility of exhibits management, "the board believes this move will streamline the MPF's operations, capitalize on staff expertise, maximize customer service for exhibitors and improve the financial bottom line for the organization,"

Thompson noted.

The 2007 MPF convention will be March 13-15 and the 2008 convention will be March 18-20. Both will be held at the Saint Paul RiverCentre in St. Paul, Minn. More information can be obtained by contacting the MPF office, 108 Marty Drive, Buffalo, Minn. 55313; 763-682-2171; info@midwestpoultry.com; <http://www.midwestpoultry.com>.

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and whether any of it, including the wrapper or container, has been preserved. Too, ask for any lot/batch codes that might be on the container. If so, the supervisor should find out whether the company can send someone to pick it up for testing.

If the customer states that an emergency room doctor concluded that your product caused the problem, ask for a copy of the medical report. Most likely, the doctor in fact did not form a conclusion about the cause of the illness but simply reported that the customer said she ate the product and later became sick.

Once you have gathered evidence about the incident, you will need to consult with your attorney and form an opinion about whether your product caused the customer's illness. If you conclude that your product was not to blame, the supervisor who took the complaint should contact the consumer, explain how the claim was evaluated and how it was determined that there is no scientific evidence linking the illness to the product.

If the customer seems resigned to not getting any money, offer to send some coupons as a token of appreciation for their business. If the customer accepts the offer, enclose a brief letter with the coupons reiterating that the complaint was investigated and was found to be without any connection to your product and thanking the customer for their continued support. A vast majority of single-consumer complaints can be put to rest in this manner.

In some cases, however, the customer's attorney (or someone pretending to be an attorney) will contact you with demands for compensation for alleged injuries. The supervisor should field such calls and repeat the finding that no connection to the illness was found. If the attorney persists in asserting that the company is liable, the matter should be referred to the company's legal staff.

At this point, the company's attorneys should reiterate the results of the internal investigation of the complaint, confirming any phone conversations with opposing counsel with short letters recapping what was said.

Even when a complaint reaches this stage and is in the hands of your lawyers, they too, should continue to convey the idea that your company is genuinely concerned about the problem and is always willing to look at additional evidence, if the consumer has any. You never close the door to further discussion, but you always stick to your position that without scientific evidence linking the problem to your product, there is no basis to make a payment to the complaining customer. This operates to put the consumer's attorney in a negotiating box from which it is difficult to escape.

Projecting a willingness to listen, can also increase the chance of negotiating a settlement, if that is your preference. If not, you can always send the claim to your insurer.

Your goal, however, is to prevent the complaint from progressing because once the consumer's attorney contacts your insurer, the carrier may treat the complaint as a "claim," even if no money is ultimately paid. That will affect your insurance rates and the number of carri-

ers willing to compete for your business at renewal time.

Disgruntled consumers may try other means of pressuring a company for a monetary settlement. The consumer may assert that they have a relative on the news desk of a local newspaper or television station, and if you don't pay up, you'll be seeing yourself on the evening news. You should not yield to such threats. The truth is, single-consumer complaints of food-caused illness are usually not newsworthy. You can listen and politely respond that the facts demonstrate that there is no connection between the illness and your product.

Always show sympathy and

take the position that you are on their side — you believe them that they were sick and they think your product caused the illness — but without evidence, there is nothing more you can do. This way, you are not arguing with them or disputing their position, and you stay on neutral ground.

Each complaint, and each unhappy consumer, will differ in almost every case. The best strategy is to treat the complaint with concern and basic respect. If you play it right, you should be able to defuse most single-consumer product complaints in-house and will not need to report the incidents to your insurer or fight it out in court.

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