

DISCUSS THE ENTITIES OF A RECALL OF DEFECTIVE GOODS

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ABSTRACT:

Defective goods often bring insecurity to users, therefore, they need to be recalled. To recall defective goods, it is required to identify the entities responsible for recovering them. This article gives an overview of the entities of recovery of defective goods, the provisions of Vietnamese law and the practice of implementing the law on recovery of defective goods of responsible entities. The article also outlines some directions to improve the law as well as enhance the effectiveness of law enforcement in this concern.

Keywords: Defective goods, recall, the entities, responsibility to recall defective goods, provisions of laws, practical implementation of the law implementation of the laws, improving the provisions of the laws.

1. Overview of the entities responsible for recalling defective goods

Defective goods are unsafe goods that a normal commodity needs, containing unreasonable dangers that could cause damage or damage to people and property¹. Because of the characteristics that cause consumer insecurity, defective goods must be recalled.

The recall of defective goods is carried out by a certain subject. The determination of the subject is responsible for recalling defective goods based on their direct relationship in making, distributing such goods to consumers because these entities benefit from bringing goods to market and therefore, they have a responsibility to restrict and prevent unsafe goods that cause damage or likely to cause damage to consumers. In the chain of activities, the distribution of goods to consumers may be the activity of one subject, or it may be gathered by many different entities. Therefore, the responsibility to recall defective goods is not only the

responsibility of the individual or organization producing the product, but also the responsibility of the individual, organization supplying or putting goods into circulation is that of an individual, organizations importing, individuals and organizations selling goods.

The laws of many countries around the world recognize that the subject responsible for recalling defective goods includes three groups in the supply chain of goods being manufacturing organizations and individuals; import organizations and individuals; organizations and individuals selling goods². However, in some special cases to ensure the safety of consumers and the community, some countries' laws state that the subject of state management authority will conduct the recall of defective goods³.

2. The situation of legal terms and law enforcement practices on entities responsible for recalling defective goods

The laws of Vietnam have similarities with the

laws of other countries in the world when specialized laws protecting consumers' interests as well as legal documents in specialized fields stipulate that many subjects are responsible for recalling defective goods⁴. However, the Law on Protection of Consumer Rights in 2010 and legal documents in several specialized sectors such as the vehicle safety field only condition that the two entities responsible for recalling defective goods are "Organizations and individuals producing and importing goods". The identification of such a responsible entity is incomplete because there are many players involved in the goods supply chain including two stages: production of goods and supply of goods, how sales are the direct stage. After putting the goods into circulation, the sellers must take responsibility for the goods they supply. On the other hand, sellers benefit from their sales, so they are also responsible for taking measures to prevent the damage caused by defective goods.

Law enforcement practice shows that, in some cases, identifying the entity responsible for recalling faces many difficulties. The first case is the recall of defective goods for portable goods. In 2016, Samsung organized a recall of Galaxy Note 7 globally due to the phenomenon of fire and explosion. According to the notice of the Competition Administration Department (now the Department of Competition and Consumer Protection), the recall program applies to products sold in the Vietnam market, cases of purchase in foreign markets should contact the department for recall or hotline for specific instructions⁵. However, the recall of products in Vietnam only applies to those who have purchased genuine products, and for portable products, a media representative of Samsung Vina said, it will be flexible to handle each case. But the priority is still genuine products released by Samsung in Vietnam⁶. The second case is the recovery of defective goods when the enterprise ceases to exist. Ba Mien jelly with flies from Tan A commercial food industry is a typical example. When consumers in Ha Tinh discovered that Ba Mien jelly with flies, they reflected the Consumer Protection Association of Ha Tinh Province. Then the Consumer Protection Association contacted the company by telephone

and by post but obtaining information is the company dissolved⁷.

The law compliance and implementation by individuals and organizations conducting business activities are still slow, not keeping up with the changes in legal regulations. The Pharmacy Law in 2016 took effect on January 1, 2017, replacing the Pharmaceutical Law in 2005, but drug retailers have not fully understood their responsibilities in recalling substandard drugs. A pharmacist at Truong Lam street pharmacy (Duc Giang ward, Long Bien district) said that the recall of poor quality drugs must be done by the drug distribution company but the pharmacy has no right to withdraw⁸, while according to regulations of the law, drug retailing establishments are one of the entities responsible for recalling substandard drugs⁹.

The recall of defective goods is an expression of the responsibility of individuals and organizations doing business with the goods they make. However, in Vietnam, the awareness of individuals and organizations doing business with the responsibility to collect defective goods is still limited. Disclaimer of recall of goods they provide is one of those limitations. A typical example is the case of Chu Lai Truong Hai Travel Distribution Co., Ltd that denied the recall responsibility for the MAZDA brand pickup truck, the BT-50 model number, the MM7UP4DDXFW418660 chassis number, the dynamic number mechanical P4AT2 019102 that this company imported and sold on the market. When the car broke down due to a problem with water, the company used the excuse of "Vehicle is certified by the Vietnam Registry Department of technical safety" to deny responsibility¹⁰. Or the case that Toyota Vietnam has refused to take responsibility for the recall when the excuse is that it is the fault of the supplier of the equipment and engine, not the fault of Toyota's domestic assembly and production line in Vietnam¹¹. Another limitation is that individuals and organizations "intentionally" do not perform the responsibility to recover the defective goods they produce and supply. According to engineer Le Van Trach, who used to work for Toyota Vietnam, Toyota has a policy of never recalling cars in Vietnam¹².

It is a fact that although the same individuals and

organizations conducting business activities produce and supply the same type of goods when the goods are defective, the notice of global recall is announced in the Vietnamese market. It is not the business that cares enough. In 2015, Mazda in the US had to recall nearly 15,000 Mazda 3 vehicles because of the error in the fuel tank that could brighten the engine warning light. In Vietnam, although THACO PC Company (representative of Mazda brand in Vietnam) receives feedback from customers who are using Mazda 3 vehicles, the 1.5L engine shows the phenomenon of "warning lights needing a dynamic inspection". However, they did not immediately take action to recall the faulty vehicles¹³. It was not until June 2016 that the company officially issued a notice to recall nearly 10,000 Mazda 3 vehicles¹⁴.

In principle, the subject responsible for the recall is the individuals and organizations producing and supplying defective goods. However, the law in the field of food safety and pharmacy stipulates that in some specific cases, the competent state agency shall carry out the recall of defective goods¹⁵. This is not stipulated in the Law on Protection of Consumer Rights in 2010 and some other specialized areas such as vehicle safety, children's toys...

3. Some suggestions to improve the laws and enhance the implementation of laws by entities responsible for recalling defective goods

To improve the effectiveness of the legislative amendment on the responsibility to recover defective goods, it is necessary to complete the legal provisions on this issue. Specifically:

Firstly, to create consistency in the legal documents on consumer protection, and to create compatibility with the laws of other countries, it is necessary to stipulate three entities responsible for recalling defective goods is the "manufacturer, importer, seller" of the Law on Protection of Consumer Rights in 2010 and legal documents in the field of vehicle safety.

Secondly, in addition to the producers, importers, and sellers, "the competent state authority" should also be stipulated in the Law on Protection of Consumer Rights in 2010 and some legal documents. Specialized law is the subject of the recall of defective goods in some cases, such as

goods that are likely to cause serious harm to public health or other emergencies. In case "the competent state agency" organizes the recall, the law should also specify the reimbursement of expenses recovered from the entity responsible for recovering if such subject is identified.

Thirdly, stipulating the subject to withdraw in some special cases such as: recalling hand-carried goods, recalling goods when the responsible person can't be identified due to dissolution, bankruptcy, and recall of goods in cases where individuals or organizations conducting business activities do not fulfill their responsibility to recover or the majority of goods are not recovered. In general, the state is responsible for ensuring the safety of the community in general and therefore, in cases where the responsible entity can't be identified or the responsible entity is identified. Currently, the responsibilities of these entities are not effective, to ensure the safety for consumers, "the competent state agencies" should be defined as the subjects responsible for organizing the recall.

Besides, to enhance the implementation of the law on the responsibility to recall defective goods of individuals and organizations conducting business activities, several measures must be taken:

Firstly, to achieve the highest efficiency in the implementation of the responsibility to recall defective goods, awareness, and legal awareness must be raised for the responsible entities. There are many cases of entities that do not voluntarily recall defective goods. This comes from the awareness and sense of the law of the business. Legal awareness and awareness play a very important role in determining whether or not entities can actively perform their responsibilities when at present "*Many illegal and unethical production and business units are ready because of profits that market fake, shoddy products*"¹⁶. The failure of individuals or organizations to conduct business activities voluntarily and seriously implement the responsibility to recover defective goods, partly because they are not aware or fully aware of their responsibilities as prescribed by law. Besides, there are cases where individuals and organizations are fully aware of their responsibilities, but the results of the recall defective goods are not high or made

available, also due to the fear of losses finance and prestige, reputation. Therefore, it is necessary to enhance the propagation and dissemination of laws on the responsibility of individuals and organizations doing business in the recovery of defective goods to support legal knowledge for individuals and organizations. Thereby, enabling them to voluntarily comply with the law, effectively implementing the responsibility to recover defective goods. Law dissemination and dissemination can be carried out in the following forms: organizing conferences and seminars; publishing legal documents, monographs; building radio and television programs such as talking to experts, alerting and recalling categories.

Secondly, besides promoting the propagation and law dissemination, on the individual, business organization's side, it is necessary to apply synchronously the following measures:

One is, strengthening the inspection,

examination, and supervision of law enforcement by enterprises on the responsibility to recover defective goods.

Two is, conduct strict handling of businesses with non-compliance, in complete compliance with the responsibility to recall defective goods. Also, for businesses that violate the responsibility to recover defective goods, there should be activities to publicize names and violations on the mass media to widely disseminate information to consumers know, so that they can have reaction activities, the boycott of goods of that business. From there, it strikes the psychology and self-discipline of individuals and organizations doing business.

Three is, for organizations and individuals to actively and voluntarily implement, effectively implement the responsibility to recover defective goods, there should be programs, exemplary activities, commend and learning experiences. ■

TÀI LIỆU TRÍCH DẪN VÀ THAM KHẢO:

¹ *Black's Law Dictionary* defines defective goods and products as follows: "The product causes an unreasonable danger (unsafe) under normal use conditions that do not meet the requirements that a user expects, does not conform to the original design standards or has errors in the design and manufacture of products". Accordingly, "unsafe" is the criterion to identify defective goods and products. This criterion is also recognized by many countries in the provisions on defective products and goods: Directive No. 85/374 / EEC of July 25, 1985 of the Council of European Nations (EU), Article 2, Clause 2 of Japanese Product Liability Law, Article 46 of China's 1993 Product Quality Law (amended in 2000), Thailand's Liability for Unsafe Products Act, effective 23 December 2009 uses the term "unsafe product" instead of the term "defective product", Article 97 Consumer Law of the Philippines.

² See Article 4, Article 32 of the Japan Consumer Product Safety Act 2011; Article 48, Article 49, Article 50 of Korea's Consumer Framework Act; Article 31 of the Canada Consumer Product Safety Act 2010; Section 3 of the US Consumer Product Safety Acts.

³ See Article 33 of the Canadian Consumer Product Safety Act; Article 123 (3) Australia's Consumer Law; Article 50 (2) Korean Consumer Framework Act; Section (23) Directive 2001/95 / EC of December 3, 2001, of the Parliament and the Council of Europe.

⁴ See Article 22 of the Law on Protection of Consumer Rights in 2010; Clause 9, Article 10, Clause 12, Article 12, Clause 11, Article 16 of the 2007 Law on Product and Goods Quality in 2007; Point h, Clause 2 Article 7 and Point g, Clause 2 Article 8 of the Law on Food Safety in 2010; Point c Clause 2 Article 42, Point d Clause 2 Article 43, Point a Clause 2 Article 44, Point a Clause 2 Article 46 of the Pharmacy Law in 2016; Clause 12, Article 3 of Circular No. 45/2012 / TT-BGTVT of October 23, 2012, providing for quality inspection of technical safety and environmental protection in the manufacture and assembly of motorcycles and mopeds; Clause 15, Article 3 of Circular No. 30/2011 / TT-BGTVT of April 15, 2011, providing for inspection of quality of technical safety and environmental protection in

the manufacture and assembly of motor vehicles; Clause 2, Article 8 of Circular No. 03/2018/TT-BGTVT of January 10, 2018, providing for quality inspection of technical safety and environmental protection for imported cars subject to Decree No. 116/2017/ND-CP.

⁵ Notice of Competition Administration Department (Ministry of Industry and Trade) about the completion of the Samsung Galaxy Note 7 Product recall and Refund Program, http://www.vca.gov.vn/chitietbvmd.aspx?ID=3478&Cate_ID=449.

⁶ Should stop trading Galaxy Note 7 in Vietnam, <https://dantri.com.vn/suc-manh-su/nien-dung-ngay-viec-giao-dich-galaxy-note7-tai-viet-nam-20161019130053683.htm>

⁷ Discover flies in jelly three regions, <https://dantri.com.vn/kinh-doanh/phat-hien-ruoi-trong-thach-rau-cau-ba-mien-20150916080007208.htm>

⁸ Unable to recover poor quality drugs, <http://www.hanoimoi.com.vn/Tin-tuc/Suc-khoe/913752/nan-giai-thu-hoi-thuoc-kem-chat-luong>

⁹ Point b, Clause 2, Article 64 of the 2016 Law on Pharmacy stipulates that drug wholesalers and retailers have the responsibilities: "Notification and organization of recall, receive drugs recalled by business establishments, supplied or returned by users".

¹⁰ The case: "The newly purchased Mazda has been "dead": "The Registry will review and may request a recall", <http://giaodinh.net.vn/thu-truong/vu-xe-mazda-vua-mua-da-chet-cuc-dang-kiem-se-xem-ve-ta-co-the-yeu-cau-trieu-hoi-20160527091602892.htm>.

¹¹ Engineer Tach: Toyota advocates not to recall defective vehicles in Vietnam, <https://infonet.vn/ky-su-tach-toyota-chu-truong-khong-thu-hoi-xe-loi-o-vn-post2599.info>.

¹² Engineer Tach: Toyota advocates not to recall defective vehicles in Vietnam, <https://infonet.vn/ky-su-tach-toyota-chu-truong-khong-thu-hoi-xe-loi-o-vn-post2599.info>.

¹³ Recalling Mazda 3 in America does not affect Mazda 3 in Vietnam, <http://mazdamotors.vn/mazda-viet-nam/Tin-tuc-hoat-dong/0F820D/trieu-hoi-mazda3-tai-my-khong-anh-huong-toi-mazda3-o-viet-nam.aspx>.

¹⁴ Truong Hai officially recalled nearly 10,000 Mazda 3 vehicles due to "the goldfish" error, <https://thuxe.vn/trieu-hoi-xe/truong-hai-chinh-thuc-trieu-hoi-gan-10000-xe-mazda-3-do-loi-ca-vang>.

¹⁵ See Point d, Clause 5, Article 55 of the Food Safety Law in 2010; Point d Clause 3 Article 63 of the Pharmacy Law in 2016.

¹⁶ Nguyen Hue (2013), "Many inadequacies in protecting the interests of consumers", Customs Newspaper.

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TỔNG QUAN VỀ CÁC CHỦ THỂ THU HỒI HÀNG HÓA CÓ KHUYẾT TẬT

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