

CHAPTER LEARNING OUTCOMES

After studying this chapter, you should be able to:

- 1 Describe and discuss the two major product/service issues—quality and safety.
- 2 Explain the role and functions of the Consumer Product Safety Commission (CPSC).
- 3 Explain the role and functions of the Food and Drug Administration (FDA).
- 4 Outline business's responses to consumer stakeholders, including customer service programs, and quality initiatives such as Total Quality Management (TQM), Six Sigma, Lean Six Sigma, Kaizen, and ISO 9000.

Sam Walton, founder of Walmart, got it right when he said, “There is only one boss. The customer. And he can fire everybody in the company from the chairman on down, simply by spending his money somewhere else.” This is why important new books such as *The Customer of Tomorrow* (2016) are gaining in popularity. As the authors point out, customers today have more access to information and, at a click or a swipe, they may make their decisions.¹ Therefore, the consumer is more empowered than they have ever been before to weigh in on the quality and safety of products.

Product information, as discussed in the previous chapter, is a pivotal issue between business and consumer stakeholders, but product and service issues such as *quality* and *safety* are more central to consumers' concerns. In other words, the product or service *itself* is a more compelling issue than information about it. The quest to improve product and service quality has been driven by the demands of a competitive global marketplace and an increasingly sophisticated consumer base. With product safety, an additional driving force has been the threat of product liability lawsuits and the damage these can inflict upon both the balance sheet and the reputation. The marketers' challenge has been to meet these market-driven needs as well as the social and ethical expectations consumers have of them.

Two recent cases illustrate how the issue of product safety can become urgent to consumers and costly to companies. First is the case of Takata air bag ruptures, and, second is the case of Johnson & Johnson's talc powder being implicated in cancer cases.

Japanese auto supplier, Takata, has not historically been a high-profile name known to the average consumer. But, now it is becoming so. Many of today's autos are equipped with Takata manufactured air bags, which have taken on monumental importance because of the safety issues involved. The defective air bags have been seen to be at risk of rupturing violently in collisions and throwing fiery shrapnel into drivers and passengers.² In early 2016, bursting air bags were linked to 10 deaths (9 in the United States) and dozens of injuries worldwide.³ First, 29 million air bags were implicated and recalled. Then, another 40 million rupture-prone air bags were ordered to be recalled. The Takata recall is being called the biggest in U.S. history.⁴

In a recent analysis of the Takata crisis, Knowledge@Wharton observed that Takata has a “broken safety culture.”⁵ The National Highway Traffic Safety Administration is estimating that 24 million vehicles are affected by the recall involving more than 14 different auto makers. In short, we are now talking about a large percentage of the air bags in the U.S. vehicle population possibly being recalled as dangerous and needing replacement. The escalating

numbers of recalls are causing experts to say that Takata's corporate survival is at stake.⁶

Lawsuits against Johnson & Johnson's talc powder seem to be increasing as well. J&J is appealing two lawsuits in which a total of \$127 million in jury verdicts have been awarded to women who have blamed their ovarian cancer on the use of the company's iconic baby power.⁷ Though still under appeal, the verdicts point to the possible linkage between use of the product and ovarian cancer. The link to date has yielded mixed results, but when juries get the evidence presented, they often are inclined to side with the alleged injured party. In May 2016, J&J reported that it is facing 1,400 lawsuits involving its baby power. For J&J, the threats that have been posed by current and future lawsuits are significant. Though the company has long had a record of outstanding corporate social responsibility, the recent lawsuits are coming on the heels of other product liability lawsuits involving off-label prescription drug marketing, faulty hip and knee parts, and consumer product recalls of children's Tylenol.⁸

The Takata and J&J cases illustrate vividly how a company's products can cause serious life and health consequences for consumers and financial and reputational harm to the company that may take years to overcome. And, most relevant here, it was all because of quality and safety issues in their widely respected products.

Consumers face many issues with companies, their products, and their marketing, but this chapter focuses the discussion on product quality and safety issues. Product quality is both a business and an ethical issue. In connection with safety, we examine the product liability issue and the ongoing calls for tort reform. The Consumer Product Safety Commission (CPSC) and the Food and Drug Administration (FDA) are the government's primary regulatory bodies with respect to these issues and they are also discussed. Finally, business's responses to consumer stakeholders regarding the manufacturing and marketing issues introduced both in Chapter 13 and in this chapter are considered.

14.1 Two Central Issues: Quality and Safety

The two central issues—quality and safety—in this chapter represent the overwhelming attention given to product and service issues over the past decade. As the Takata and J&J examples so clearly suggest, quality and safety are not separate concepts—safety is one aspect of quality. Its importance, however, merits separate attention.

14.1a The Issue of Quality

The concept of *product* quality means different things to different people. Some consumers are interested in the composition and design of a product. Others are more concerned with the product's features, functionality, and durability. All are essential aspects of quality. In general, quality is considered the totality of characteristics and features of a product and may embrace both reality and perceptions of excellence, conformance to specifications, value, and the degree to which the product meets or exceeds the consumer's expectations.

With respect to *service* quality, customers are typically concerned that the service is performed the way expected or advertised, that it is completed on time, that all that was promised has been delivered, that courtesy was extended by the provider, and that the service was easily obtained and consistent from use to use. Some of these issues involve personal judgment and perception, and so one can see how difficult it often is to judge quality.

There are several important reasons for the current and ongoing obsession with product and service quality. A concern for quality has been driven by the average consumer household's family income and consequent demand for good value. With both adults often working outside the home, consumers expect a higher lifestyle. In addition, no one has surplus time to hang around repair shops or wait at home for service representatives to show up. This results in a need for products to work as they should, to be durable and long lasting, and to be easy to maintain and fix.

The Internet, and social media in particular, has also made it possible for customers to communicate immediately with other customers about their satisfaction, or dissatisfaction, with a product, and this has heightened consumers' exchange of information and expectations. Companies such as TripAdvisor, Yelp, and Citysearch depend heavily on consumer reviews as part of their quest to keep quality up and to inform consumers interested in other customer's experiences. One downside to this has been revelations that an industry of fibbers and promoters has arisen to sell positive recommendations and raves for a price.

Closely related to rising household expectations is the global competitiveness that has dominated business transactions for the last decade or more. Businesses now compete in a hypercompetitive landscape in which multinational strategies have given way to global strategies, and the solutions that once worked no longer will.⁹ As firms jockey for position in these hypercompetitive markets, they vie to attract customers by increasing the value of the product or service.

Value can be a subjective calculation, but it typically refers to a comparison of the quality received for the price spent. A set of Bose Quiet Comfort Noise Cancelling Headphones that sell for \$399 at some shops are expected to be of proportionally higher quality than the Monster Inspiration Noise Cancelling Headphones sold at Walmart for \$75. To increase value, firms try to provide higher quality than their competitors for the same price, offer the same quality at a lower price, or some combination of the two.

Each time a competitor raises the quality and/or lowers the price, other competitors scramble to catch up, and the bar is raised.¹⁰ The greater the competition, the more firms will be jockeying for position and the more often the bar will be raised. Firms that do not continually improve their quality are certain to be left behind. The above-mentioned stories about Takata and J&J show how quickly, in this highly competitive atmosphere, well-respected companies can derail. Once derailed, it is difficult to catch up because of a lag in reputations. Chipotle's food contamination case discussed earlier in the book illustrates clearly how long it can take for a company to snap back from a product safety or quality crisis. Often, consumer perceptions of quality do not catch up to actual changes in quality for years after the quality improvements have been made.¹¹

Service Quality. It should be underscored that our discussion of quality here includes service as well as products. However, we will discuss service quality as a separate issue as well. The United States and many developed nations have visibly become more service-based in their economies, and poor quality of service has become one of the great consumer frustrations of all time. The American Customer Satisfaction Index measures customer satisfaction with purchasing, and this index has declined noticeably between 2013 and 2015 with the future uncertain.¹²

If we rely on anecdotal evidence, there seems to be more complaining about service quality than ever before. Obviously, this varies by industry sector but very few comments about excellent service quality seem to be heard today. In one outrageous case of customer dissatisfaction, an irate man returned his cell phone to the store where he bought it after he had proceeded to shoot it full of holes as he was angered over the store's unwillingness to fix a cracked screen that they said was not covered in his service plan.¹³

When returning his shot up phone, the customer could not get anyone to wait on him, so he left his phone in a bag on the counter, left the store, and sat and watched to see what would happen next. The store called the police, they came, and the customer admitted it was a stupid thing to do but he was upset and mad at the store for their lack of service.¹⁴ No charges were filed.

On the front line of the new economy, service—fast and customized—is now the ultimate strategic business imperative. Consumers today often swap horror stories about poor service as a kind of ritualistic, cathartic exercise. Consider the following typical examples: repeated trips to the car dealer; poor installation of refrigerator ice makers, resulting in several visits from repair people; poor customer service from the cable company; fouled-up travel reservations; poorly installed carpeting; no clerk at the shoe department of your favorite department store; and on and on. Shoddy service comes at a price. One study showed that 54 percent of the people interviewed would lose all loyalty to a company that had rude or unhelpful staff. One in ten said they would walk away if a company did not seem to listen.¹⁵

When business executives are asked about the quality of their customer service, they generally indicate they think they are doing a good job, but only about 20 to 30 percent think they are doing an excellent job.¹⁶ According to a 2015 *Forbes*' survey, a few of the key findings in the arena of customer service were as follows¹⁷:

- Modern customer service is entrenched in most companies—and many think they are doing it really well, better than their peers.
- At the same time, serving customers is not given the weight it deserves. Organizations may not be fully grasping its full importance and impact as part of a corporate strategy beyond customer retention.
- Companies may be reluctant to move outside their customer service comfort zone.
- Companies are using newer technologies and striving to provide a seamless multi-channel experience, but still feel most comfortable with traditional channels.

The survey's findings seem to suggest there is a gap between how companies think they are performing and how the consumer thinks they are responding. One "blind spot" pointed out in the report itself was that the companies report a contradictory desire to learn about customer needs while at the same time spending as little time with them as possible.¹⁸

ETHICS IN PRACTICE CASE

The Pirated Popcorn

Last year, I worked in a local movie theater to earn money during the summer. Part of my job was to clean the theater between showings, collecting discarded cups, napkins, and popcorn tubs. I thought it was odd when my manager asked that I empty and then bring him discarded popcorn tubs that were in fairly good shape. He would then reuse them—refilling them with popcorn for unsuspecting customers.

I soon learned that the theater paid for its popcorn concession by the number of tubs it used. By reusing the tubs, the theater was able to lower its costs.

However, I was fairly certain that customers would have been upset if they knew what was happening (I knew that I would be).

1. How would you characterize the practice in which the movie theater engaged? Does this practice represent fair customer service? How are customers hurt or adversely affected?
2. Should I have followed my manager's orders and gone along with his request? Was it really such a terrible thing to do?

Dimensions of Quality. At least eight critical dimensions of product or service quality must be understood and acted upon if business is to respond strategically to this factor.¹⁹ These include (1) performance, (2) features, (3) reliability, (4) conformance, (5) durability, (6) serviceability, (7) aesthetics, and (8) perception. *Performance* refers to a product's primary operating characteristics. For an automobile, this would include such items as handling, steering, and comfort. *Features* are the "bells and whistles" of products that supplement their basic functioning. *Reliability* reflects the probability of a product malfunctioning or failing. *Conformance* is the extent to which the product or service meets established standards.

Durability is a measure of product life. *Serviceability* refers to the speed, courtesy, competence, and ease of repair. *Aesthetics* is a subjective factor that refers to how the product looks, feels, tastes, and so on. Finally, *perceived quality* is a subjective inference that the consumer makes on the basis of a variety of tangible and intangible product characteristics. It should be emphasized that these quality dimensions are not distinct. Depending on the industry, situation, type of contract, or specification, several dimensions may be interdependent.²⁰ To address the issue of product or service quality, a manager must be astute enough to appreciate these different dimensions of quality and the subtle and dynamic interplays among them.

Ethical Underpinnings. An important question is whether quality is a social or an ethical issue or just a competitive factor that business needs to emphasize to be successful in the marketplace. For many consumers, quality is seen to be something more than just a business issue although it is definitely a business issue. Three ethical theories based on the concept of duty that informs our understanding of the ethical dimensions of quality include (1) contractual theory, (2) due care theory, and (3) social costs view. The **contractual theory** focuses on the contractual agreement between the firm and the customer. Firms have a responsibility to comply with the terms of the sale, inform the customers about the nature of the product, avoid misrepresentation of any kind, and not coerce the customers in any way. The **due care theory** focuses on the relative vulnerability of the customer, who has less information and expertise than the firm, and the ethical responsibility that places on the firm or its sales person. Customers must depend on the firm providing the product or service to live up to the claims about it and to exercise due care to avoid customer injury. The third view, **social costs view**, extends beyond contractual theory and due care theory to suggest that, if a product causes harm, the firm should pay the costs of any injury, even if the firm had met the terms of the contract, exercised all due care, and taken all reasonable precautions. This perspective serves as the underpinning for strict liability and its extension into absolute liability, which is discussed later.²¹

14.1b The Issue of Safety

Business clearly has a duty to consumer stakeholders to sell them safe products and services. The concept of safety, in a definitional sense, means “free from harm or risk” or “secure from threat of danger, harm, or loss.”²² Practically speaking, however, the use of virtually any consumer product or service entails some degree of risk or some chance that harm will come to the consumer who uses the product or service. Today, it is thought to be important that even financial services do not cause damage or financial harm. It is for this reason that the Consumer Financial Product Bureau discussed in Chapter 13 was passed. An important question that never goes away is “how safe” should a product be made? Difficult judgments about this question often thrust the issue of safety into the ethical category by many consumers.

Sustainable Products Meet Long-Term Market Needs

Companies today are seeking to develop sustainable products. Sustainable products are made to last for an indefinite period and have the least damaging effects on the environment. They are products providing environmental, social, and economic benefits as compared with other commercial products. An excellent example are the Levi's® Eco jeans by Levi Strauss Europe designed to tap into the consumers' interest in organic and sustainable products. Levi's also brought out a line of RECYCLED blue jeans.

Another example of a company that is promoting its sustainable products is Unilever. Unilever's *Sustainable Living Brands* are promoted as having both purpose and

product in action. Unilever says that its program provides more growth, less cost, less risk, and more trust. Examples of products that the company promotes as sustainable brands include Dove soap, one of the first brands to offer compressed aerosol deodorants that reduce carbon food print; Knorr sauces, soups, and seasonings that use 100 percent sustainable sourcing; and Lipton teas that are sourced from Rainforest Alliance Certified estates. Unilever is striving to embed sustainability into its products, and the company is counting on its *Sustainable Living Brands* to drive current and future growth. Unilever has led its sector in the Dow Jones Sustainability World Indexes for 13 consecutive years.

Sources: "Levi's RECYCLED Blue Jeans," Maidsoftampa Blog, <http://maidsoftampa.wordpress.com/2010/04/21/levis-recycled-blue-jeans/>. Accessed May 8, 2016; Greenliving, "Levi's Recycled Blue Jeans," <http://www.greenlivingonline.com/article/levi%E2%80%99s-recycled-blue-jeans>. Accessed May 8, 2016; Unilever, Embedding Sustainability, <https://www.unilever.com/sustainable-living/the-sustainable-living-plan/our-strategy/embedding-sustainability/>. Accessed May 13, 2016; Sustainable Brands, "Unilver," <http://www.sustainablebrands.com/solution-providers/unilever>. Accessed May 13, 2016.

Throughout most of history the legal view that prevailed has been *caveat emptor* (“let the buyer beware”). The basic idea behind this concept was that the buyer had as much knowledge of what she or he wanted as the seller and, in any event, the marketplace would punish any violators. The *caveat emptor* doctrine gradually lost its favor and rationale, because it was frequently impossible for the consumer to have complete knowledge about manufactured goods.²³ In addition, the explosive increase in the number of lawyers and the emergence of a litigious society ensured that those harmed by products would have their day in court. Today, businesses are held responsible for all products placed on the market. Thus, we have the doctrine known as *caveat vendor* (or *caveat venditor*)—“let the seller beware.”²⁴

Through a series of legal developments as well as changing societal values, business has become increasingly and significantly responsible for product safety. Court cases and legal doctrine now hold companies financially liable for harm to consumers. Yet this still does not answer the difficult question, “How safe are manufacturers obligated to make products?” It is not possible to make products totally “risk free”; experience has shown that consumers seem to have an uncanny ability to injure themselves in novel and creative ways, many of which cannot be anticipated. The challenge to management, therefore, is to make products as safe as possible while at the same time making them affordable and useful to consumers. And consumers today expect that if products are found to be unreasonably dangerous, they will be removed from market.

Figure 14-1 presents the top ten ways companies can emphasize safety and avoid product recalls.

Today the public is concerned about a variety of potential or perceived hazards, such as the rise in genetically modified foods and the dangers of living near toxic waste dumps or nuclear plants. Food and drug scares, both real and imagined, have occupied much of the public’s attention in the past several years as questions have been raised about food safety all over the world.

FIGURE 14-1 Top Ten List of Product Safety Principles

The following product safety principles are straight-forward. These principles can be used by corporate decision makers and officials to give direction to their employees who have responsibility for product safety. These principles may also provide impetus to middle managers and all employees to suggest creative safety improvements for their company.

The Top Ten Product Safety Principles are:

1. Build safety into product design.
2. Do product safety testing for all foreseeable hazards.
3. Keep informed about and implement latest developments in product safety.
4. Educate consumers about product safety.
5. Track and address your products' safety performance.
6. Fully investigate product safety incidents.
7. Report product safety defects promptly.
8. If a defect occurs, promptly offer a comprehensive recall plan.
9. Work with the Consumer Product Safety Commission (CPSC) to make sure your recall is effective.
10. Learn from mistakes—yours and others'.

Source: U.S. Consumer Product Safety Commission, "Top Ten Product Safety Principles," <http://www.cpsc.gov/en/Newsroom/News-Releases/2001/CPSC-Chairman-Ann-Brown-Unveils-Product-Safety-Initiative/>. Accessed May 8, 2016.

Food Safety. In the United States, food safety issues, especially tainted or contaminated foods, have dominated the news for years recently and have been the safety issue most troubling to consumers.

In 2009, salmonella in peanut butter was blamed for nine deaths and Peanut Corporation of America (PCA) was charged with crimes linked to an alleged cover-up. In 2015, Stewart Parnell, the former CEO of PCA, received a 28-year prison sentence for his role in the salmonella-peanut case. The judge said the defendant broke the trust society places in food companies to assure that consumers are safe.²⁵ This was the toughest punishment in U.S. history for a food-borne illness case.²⁶ Since then, food recalls involving salmonella in eggs, listeriosis linked to cantaloupes, and peanut butter tainted by salmonella poisoning have been in the news.

One of the most recent and highly visible food recalls occurred with Blue Bell Creameries after a deadly listeria outbreak forced a massive recall of ice cream. As of 2016, the company claims that it only partly knew what went wrong. Blue Bell has stated that it now has programs in place to effectively control for the bacteria.²⁷ On top of these reports, Chipotle has been struggling to survive a food safety nightmare for quite some time now and its efforts to get back on track have been highly visible.²⁸

In a special report titled "Contamination Nation," it has been stated that food-borne illness still gets 49 million consumers sick each year and this is costing the food industry billions of dollars annually.²⁹ The annual cost of treatment, lost productivity, and mortality has been estimated to be \$56 billion. There has been a significant increase in both meat and nonmeat recalls in the past couple years. The main reasons for the recalls have been microbiological contamination, labeling issues, processing defects, physical contamination, chemical contamination, and unapproved ingredients.³⁰

The government's regulation of food safety is primarily driven by the **Food Safety Modernization Act (FSMA) of 2011**, the most sweeping reform of U.S. food laws in 70 years. The FSMA is enforced by the FDA. The purpose of the legislation is to ensure that the food supply is safe by shifting from responding to contaminations to preventing them.³¹ After a two-year delay in getting approvals, the FDA in 2015 tightened its food safety rules so that the above-mentioned FSMA could be more fully implemented.³² The rule tightening focused on requiring companies to create and implement written plans for keeping food safe. Companies will have to identify hazards in manufacturing, create

measures to reduce the risk of contamination, and design methods to verify that the controls are working. If they do not comply, then the FDA is authorized to access a company's plans and take action.³³

Food safety advocates have complimented the new rules of the FDA because they attempt to transform a regulatory system that used to be mostly reactive to one that is focused on prevention of food contamination. The new rules were announced shortly after the Blue Bell ice cream company resumed sales following its recall earlier in the year. According to FDA records, Blue Bell did not have in place safety practices that might have prevented the listeria outbreak, including the implementation of a comprehensive food safety program that food manufacturers will now have to have in place because of the tighter FDA rules.³⁴

In spite of the new FDA rules, it has been argued that the new regulations alone will not completely solve the problem because of the following four major issues³⁵:

- Health officials can identify only a fraction of those who get food poisoning.
- Regulators have new tools but industry does not trust them.
- The consumer's food pantry is global and so are the chances for contamination.
- It is partially the fault of the consumers, too.

One writer on public health has argued that the rise in food contamination reports is actually a good thing because it means that the more we hear about it, the more the food supply will be getting safer.³⁶ The speed with which outbreaks have been identified, along with public notifications, has risen significantly. This is partially attributable to advances in the government's pathogen-tracking system, known as *PulseNet*. *PulseNet* has allowed regulators to get information faster and more accurately. The Blue Bell outbreak was only one of a number of different contaminations that were speeded up because of *PulseNet*. Previously, some contaminations took much longer or were not solvable without the new technology.³⁷

Figure 14-2 lists some of the food safety issues that have been in the news. In some cases, these products were recalled voluntarily.

Other Safety Issues. Manufacturing is a high-profile industry for which product safety is of paramount concern, as the Takata and J&J recalls discussed earlier illustrate.

FIGURE 14-2 Food Safety Issues in the News

Company/Product	Food Safety Issue
Peanut Corporation of America	Deadly salmonella outbreak
Chipotle Mexican Grill	<i>E. coli</i> outbreak
Blue Bell Ice Cream	<i>Listeria</i> infections
Husi Foods (Shanghai meat supplier to many U.S. restaurants)	Repackaging expired meat (beef, chicken) products and selling to restaurants
Multiple suppliers	Arsenic in rice, juice, and beer
Pilgrim's Pride	Chicken contamination with multiple materials
Twin City Foods	Frozen organic peas and mixed vegetables possibly contaminated with <i>Listeria</i>
CRF Frozen Foods	Frozen fruits and vegetables contaminated with strains of <i>listeria</i>
4 Frenz Beef Jerky	Possible undercooking; possible bacteria
General safety issues	Foodborne illnesses, food contaminants, pesticide exposure, antibiotic resistance, environmental effects

ETHICS IN PRACTICE CASE

Was “Pink Slime” a Victim of Social Media Frenzy?

The “pink slime” case has been called a cautionary tale of what can happen to a company that gets involved in a hot button issue when challenged by a contingent of online tweeters with social media accounts.

In the early 1990s, Eldon Roth started a meat processing company named Beef Products, Inc. (BPI). The company would buy tons of fatty meat scrap that was left over after cattle were carved into steaks and roasts. Roth developed a centrifuge that would spin the fat away. The remaining product was then treated with a puff of ammonia hydroxide as a safety measure to kill bacteria. Then he would quickly freeze the remaining meat into a pink pulp that when mixed in with ground beef made it leaner. This product became known as “lean finely textured beef” or LFTB in the industry. Roth’s company would then package the product in the form of frozen bricks and sell them to companies as an additive to ground beef, making the resulting beef leaner and cheaper. Among others, McDonald’s, Burger King, Taco Bell, Kroger, and Wal-Mart would then use the product.

Roth’s company was so successful that it opened plants in Kansas, Texas, Iowa, and Nebraska, employing about 1,500 workers. In fall, 2011, Roth was inducted into the Meat Industry Hall of Fame. Roth had been called a genius who ran a company that was on the vanguard of food safety.

In March 2012, someone labeled Roth’s product “pink slime” and a food blogger launched an online petition to have it removed from the federal lunch program. ABC News and other media jumped on the story and soon the product was being assailed as unsafe and gross as the story went viral on the blogosphere. On Twitter, uses of the term *pink slime* rapidly occurred and went on for several months. As the social media

frenzy increased, many customers quickly abandoned his product and Roth was forced to suspend production at three plants and lay off half his workers. After the ABC News reports, BPI initiated an extensive PR campaign seeking to get the truth out. BPI also filed a \$1.2 billion lawsuit against ABC News and the reporters. The company claimed over 200 false or disparaging statements were made about BPI.

In the United States, pink slime eventually came back in favor as beef prices soared and retailers began seeking cheaper trimmings.

For the record, LFTB is not an unsafe product even in the eyes of food safety advocates. It is an ingredient we have all eaten many times. The USDA insisted the product was safe but would let schools choose whether to buy meat with or without the textured beef. Iowa Governor Terry Branstad, whose state hosts a BPI plant, said he would call for a congressional investigation of the “smear campaign” against BPI.

1. How can a product that has been characterized as “lean” and less expensive be treated in this way?
2. Do you think LFTB and Roth’s company has been treated fairly? Has this product gotten a bad rap by overzealous social media critics?
3. Should those who labeled the product “pink slime” and questioned it unfairly be disciplined in any way? Or, is this just the social media “market at work” and nothing should be done?
4. What should Roth and his company do now? What further action should the USDA, state governors, or other officials take to ensure fair treatment?
5. Should Beef Products, Inc., ramp up its online presence and become more adept at social media defense before this happens again?

Sources: “‘Pink slime’ uproar overshadows more serious food safety threats,” *USA Today*, April 17, 2012, 8A; “Was a Food Innovator Unfairly Targeted?” *Bloomberg Businessweek*, April 16–April 22, 2012, 18–20; Josh Sanburn, “One Year Later, the Makers of ‘Pink Slime’ Are Hanging on and Fighting Back,” *Time*, March 6, 2013, <http://business.time.com/2013/03/06/one-year-later-the-makers-of-pink-slime-are-hanging-on-and-fighting-back/>. Accessed May 9, 2016; Jacob Bunge and Kelsey Gee, “Pink Slime Back in Favor as Prices Soar for U.S. Beef,” *The Wall Street Journal*, May 24–25, 2014, A1; Kristin Runge, “Pink Slimed: The Beef Industry Learns the Importance of Social Media Literacy,” Wisconsin Public Radio, March 23, 2016, <http://www.wpr.org/pink-slimed-beef-industry-learns-importance-social-media-literacy>. Accessed May 9, 2016.

Other recent recalls have involved medical-device flaws such as defibrillator wires, surgical vaginal mesh, and metal hip joints.³⁸ Manufactured products create hazards not only because of unsafe product design but also as a result of consumers being given inadequate information regarding the hazards associated with using the products. Consequently, in product liability claims, it is not surprising to find charges based on one or more of several allegations. First, may be the charge that the product was *improperly manufactured*, wherein the producer failed to exercise due care in the product's production, which contributed directly to the accident or injury. Second, could be the charge

that, though manufactured properly, the product's *design could have been defective*, in that alternative designs or devices, if used at the time of manufacture, may have prevented the accident. Third, could be that the producer failed to provide *satisfactory instructions and/or warnings* that could have helped avert accident or injury. Fourth, may be that the producer failed to *foresee a reasonable and anticipated misuse* of the product and warn against such misuse.³⁹

To appreciate the "big picture" of dangerous products, it should be noted that the Consumer Product Safety Commission keeps track of injuries treated in hospital emergency rooms and has identified the following categories of consumer products as being the most frequently associated with hospital-treated injuries⁴⁰:

- Sports and Recreation
- Toys and Children's Products
- Fuel, Lighters, and Fireworks
- Furniture & Décor
- Home Maintenance and Construction
- Kitchen & Dining

Whether we deal with consumer products (where there is potential for harm following accidents or misuse) or with food products (where not-so-visible threats to human health may exist), the field of product safety is a significant responsibility and a growing challenge for the business community. No matter how careful business is with regard to these issues, the threat of product liability lawsuits has become an industry unto itself and intimately linked with product safety discussions. Therefore, we now turn our attention to this vital topic. Product liability has been a monumental consumer issue in the United States for many decades.

14.1c Product Liability

In recent years, the product liability issue (sometimes called products liability), has been one of the most important legal and ethical responsibilities businesses have faced. What is at stake is the responsibility for harm caused by products. **Product liability**, as a legal concept, includes the liability of any or all parties in the chain of manufacture and sale of a product and for any damage caused by that product. This includes the manufacture, assembly, wholesaling, and retailing of the product. Products containing defects that result in harm to a consumer or someone to whom the product was loaned or given are the subjects of product liability lawsuits.⁴¹

Reasons for Concern about Product Liability. Product, or products, liability has become a major issue because of the *sheer number of cases* involving products that have resulted in illness, harm, or death. More than in other countries, U.S. residents tend to file lawsuits and pursue litigation when faced with situations in which they are harmed or dissatisfied.

Another cause for concern has been the *size of the financial awards* that have been given by the courts. Some of the largest U.S. product liability cases in recent years have included the following well-known companies. General Motors, in response to several of its automobiles being manufactured with faulty ignition switches leading to accidents and deaths, has faced liability lawsuits exceeding \$400 million and is still involved in one class action lawsuit that is asking for \$10 billion.⁴² Another huge product liability lawsuit was against Philip Morris, now known as Altria Group. The company was sued for \$28 billion by a woman claiming its cigarettes had caused her sickness and that her tobacco addiction was the company's fault. The company settled for \$28 million after fighting the case for nine years.⁴³

Dow Corning reached a settlement in which it agreed to pay \$2 billion as part of a larger \$4.5 billion class action lawsuit filed by customers who claimed their silicone breast implants were rupturing, causing bodily injury, bodily damage, scleroderma, and death.⁴⁴ It has been estimated that litigation's *cost to society* is over \$250 billion per year, more than half of which goes to legal fees and costs, some of which could be spent to hire more teachers, police officers, and fire fighters.⁴⁵ The cost of litigation to companies has been said to represent approximately 30 percent of a stepladder's price, 50 percent of a football helmet, and 95 percent of the price of a childhood vaccine. The problem is largely confined to the United States, which is a litigious society.⁴⁶ One major study showed that the money firms now pay on lawsuit settlements, damage awards, insurance lawyers, and legal defense costs is money they no longer have available to spend on improvements in their processes and products. This *decrease in innovation* due to tort litigation carries lasting consequences for competitiveness.⁴⁷

Doctrine of Strict Liability. Though one should consult law books and lawyers for all of the intricacies and complexities of legal concepts, it is useful to have an overview of what the basic concepts mean. The key legal concept in product liability cases is the **doctrine of strict liability**. In its most general form, the doctrine of strict liability holds that anyone in the value chain of a product is liable for harm caused to the user if the product as sold was unreasonably dangerous because of its defective condition. This applies to anyone involved in the design, manufacture, or sale of a defective product. Beyond manufacturing, courts have ruled against plaintiffs from a broad array of functions, such as selling, advertising, promotion, and distribution.⁴⁸

As an example, the department of transportation (DOT) holds warehouses liable for violations of hazardous materials regulations even when the warehouse relied on information provided by the customer (the depositor) when documenting the shipment.⁴⁹ In short, there is no legal defense for placing on the market a product that is dangerous to a consumer because of a known or knowable defect, unless the strict liability is imposed by a statute that allows for an argument of due diligence.⁵⁰ To prove due diligence, a company must take every possible precautionary step and follow all industry standards.

The doctrine of strict liability and the expansion of this concept in the courts have been at the heart of the litigation explosion in the United States. As mentioned previously, the social costs view of product quality underlies the concept of strict liability and its extensions. In addition, some hold the strict liability view as utilitarian; that is, society has made a determination that it is better to hold persons responsible for certain actions even without a showing of negligence because the benefits derived (e.g., safety, improved products, accountability) outweigh the burden placed on the defendant in a strict liability lawsuit. In the area of consumer product development, strict liability laws have fostered meaningful safety developments that have prevented innumerable deaths and injuries. Strict liability is not without its cost, however, and the price of consumer goods today reflects this cost-shifting consequence.⁵¹

Extensions of Strict Liability Rule. Courts in several states and certain countries have established a standard that is much more demanding than strict liability. This concept is known as **absolute liability**. The ruling that established this concept was handed down by the New Jersey Supreme Court in *Beshada v. Johns Manville Corporation* (1982). The plaintiffs in the Beshada case were employees of Johns Manville and other companies who had developed asbestos-related diseases as a result of workplace exposure.⁵² The court ruled in this case that a manufacturer could be held *strictly liable* for failure to warn of a product hazard, even if the hazard was scientifically unknowable at the time of manufacture and sale. Therefore, a company cannot use as its defense the