



“Good lawyers don’t just think of themselves as pure legal advisers – they understand your business and can anticipate.”

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What are the patterns in the disputes or risks facing Nestlé?

We don’t litigate a lot in the UK and Ireland. We’re a very big company, so we do get into disputes – with suppliers, for example – but those tend to get resolved at a commercial level. Similarly, with our customers, it’s almost inconceivable we would get into litigation with a [large supermarket]. But Nestlé is a very brand-driven company, so if anyone starts to infringe our brands, we are willing to fight where required. We’ve had examples where, on their own-label products, customers will copy our packaging. In terms of other things, we have about 8,500 people in the UK in 12 factories, so there are employment disputes. We have been involved in some big disputes, but they are more ad hoc. The best-known example was a case that’s gone through the European courts involving our Kit Kat packaging and there’s been a very protracted dispute over 10 years around whether we have intellectual property over the shape of our four-finger Kit Kat.

In heading off disputes quickly, what’s Nestlé’s approach?

It often gets resolved before it even hits the legal department. If it’s a dispute with the supplier, our procurement team or head of purchasing will have a talk about the importance of the relationship and they come to a solution. Until it’s really going to get contentious, often it’s unhelpful to have lawyers in, because everyone gets much more conservative about what they can say and it’s not as easy to reach a solution.

What kind of disputes or risks concern you the most?

Employment, trademarks, as mentioned. Data protection is an area we need to be increasingly careful: the rules are getting stricter, the ICO is stronger in enforcing and potentially we’re becoming more exposed because the world is becoming ever-more digitised. Speak to the marketers, it’s all about personalisation. From a marketing perspective, that makes sense, but you suddenly have to ensure you’ve got systems to look after people’s data. Anything that would expose you to an antitrust action would also be very worrying, because the fines and reputational risk is huge.

A lot of GCs cite concerns about cyber security – is that high on your agenda?

We have a massive team constantly guarding our systems, but from time-to-time, there is a risk people can break in. That is definitely a worry.

How much disruption did Covid-19 cause your business?

A lot, but compared to many companies, we fared relatively well. People continue to buy food, but there were elements of the business that struggled over 2020. On a business level, we’ve done reasonably well. On an operational and personal level, it was initially pandemonium, but the immediate concerns were just keeping operations running. We had 12 factories in the UK, we had to make sure people could work safely. The big worry was the factories would come to a grinding halt, which would be a disaster. We’ve put in

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place some very strict processes, we’ve put in place lots of innovations over the year that have helped people work over a more remote setting. For example, you can send one engineer down to the factory floor with a camera and they can do things that would have previously required a team on the spot.

Early in the pandemic, there was a lot of panic buying. We did a lot to ensure products got on shelves. There was the whole question of furlough. Though there were many people at Nestlé that had to be sent home and couldn’t work, we chose not to take advantage of the programme because the business was doing reasonably well and we didn’t think that was the right thing to do.

Latterly, we’ve realised some of our suppliers and customers have been struggling, so we don’t always enforce our terms of payment because we know that sometimes we could take somebody out of business.

We’ve been conscious we should do our bit for society, so we’re working with food banks. We had old iPads lying around that we gave to the NHS so people could connect with their loved ones. We’re constantly looking at ways of having a positive impact on society, and if that causes our results to be not quite as good as they otherwise would be, so be it.

A number of GCs are citing reputational issues becoming a bigger factor when considering disputes. Is that your perspective?

Nestlé has always been like that. If something can be resolved without a big dispute in court, that’s our preference because of the reputational implications. We are always conscious of our reputation and very conscious about doing the right thing for society. Now shareholders are asking about environmental policies in a way they weren’t even five years ago. One of the big problems at the moment is with plastics, we’re doing all sorts of things to address that. In many ways, litigation and law now comes very secondary to reputation. The initial thought is the impact on reputation and, “what is the right thing to do?”

How much of a challenge has Brexit represented for your business?

It’s big. We were very worried just before Christmas, because we were thinking: “Bloody hell! There isn’t going to be a deal!” That would have cost us a significant amount of money in the UK. It would have possibly led to a change in models of business. The supply chain has obviously been impacted. We are importing and exporting all of the time, and being subject to tariffs or border constraints...that’s a big problem for us. That’s not as bad as it looked a month ago, but there is a lot of red tape we’re still trying to digest. Losing free movement of people has staff implications for us. Regulatory issues, time will tell. If the UK starts to diverge from the EU from a legal regulatory point of view, what does that mean? We’ll just have to watch this space.

Do you see Brexit firing disputes?

There are going to be huge teething problems. For example, problems on the border, customs. That’s in no-one’s interest, so I suspect that will get resolved over time, because it will be a commercial imperative to sort it all out.

How do you feel about London as a place to litigate?

The courts in the UK are excellent, but the litigation process is bloody expensive and it’s difficult to budget for. It’s how long is a piece of string.

How should external advisers be evolving their service for the future?

The good lawyers are the ones that understand your business and can anticipate and not just think of themselves as pure legal advisers but be seen as partners. If I win a piece of litigation, my chief executive will say: "Well done, Mark." I know full well it wasn't me, it was the external law firm. I'll take the credit, but when things go badly, I can't say: "It wasn't my fault, it was them." We're part of the same team. I look to external lawyers as partners.

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