

## ELECTRONICS SURGE MAY PROVE PROBLEMATIC

In June 2021, the UK's National Audit Office published a report on protecting consumers from unsafe products. It found that 90% of UK internet-using adults have used online marketplaces. This is not surprising in the current climate where consumers are less keen to browse aisles and retail tourism has taken a downturn.

According to a 2019 survey referenced in the report, worryingly, only 17% of consumers were reported to have considered product safety in a recent purchase. The main factor considered on purchase was price. This was followed closely by quality and then by brand name, ease of purchase and style/fashion. However, product safety was more of a factor than the speed of delivery, online reviews and running costs.

While this data precedes the global pandemic, it is likely that COVID-19 has made product safety even less of a factor in consumer decisions. It is cause for concern for electronics companies as overseas manufacturing and e-commerce make an array of previously inaccessible consumer electronics available to the masses – introducing a range of new and sometimes unforeseen risks to consumers.

### The online marketplace

As consumer confidence grows, there is likely to be an increased demand for consumer electronics. Consumers are likely to face higher exposure to safety issues online than they would through traditional purchases. With the increase in online sales and consumers hunting for deals, often seemingly without a good engagement with product safety considerations, disputes are likely to arise.

In the United States, the Consumer Product Safety Commission filed a complaint against a major online marketplace platform pursuant to consumer product safety legislation. The complaint seeks “public notification and

remedial action to protect the public from the substantial product hazards presented by certain consumer products” sold on the online marketplace and distributed through its fulfilment program. This action represents a shift for the regulator, which now wants to force companies up and down the supply chain to be responsible for recalls.

It has not yet been established under which conditions an online marketplace might be found liable for unsafe or defective products on its platform in the UK. Certain major marketplaces have signed up to the Product Safety Pledge, committing to act expeditiously in response to notifications of unsafe products. There are, however, calls from consumer organisations for the UK to take a more proactive approach.

The Consumers' Association's *Which?* is active in this conversation, calling for:

- online marketplaces to be required to ensure that consumer products offered for sale on their platforms are safe;
- enforcement powers, resources, skills and intelligence for the policing of online marketplaces; and
- greater seller transparency obligations.

Until there is clarification through regulatory guidance, legislation or case law as to when platforms may face liability, consumers and regulators are bound to confront serious challenges in ensuring safety standards have been met and in taking action and enforcing any order or judgment against companies and individuals overseas.



### Data, security and privacy

Given the prevalence of smart devices which collect, analyse, hold and upload consumer data, manufacturers also need to understand data privacy obligations in all jurisdictions where products are sold. Similarly, manufacturers should have effective and efficient systems in place to prevent, detect and respond to cyber security issues.

We expect an increasing number of recalls to directly reference data, security and privacy issues. Healthcare-related electronics in particular will be under the magnifying glass given their increased significance during the pandemic. As we see increased adoption of remote health monitoring, manufacturers must be quick off the mark on notice of device issues, and in particular those which could put consumers at risk or which allow for the release of sensitive personal information.

### Home working brings new liability risks

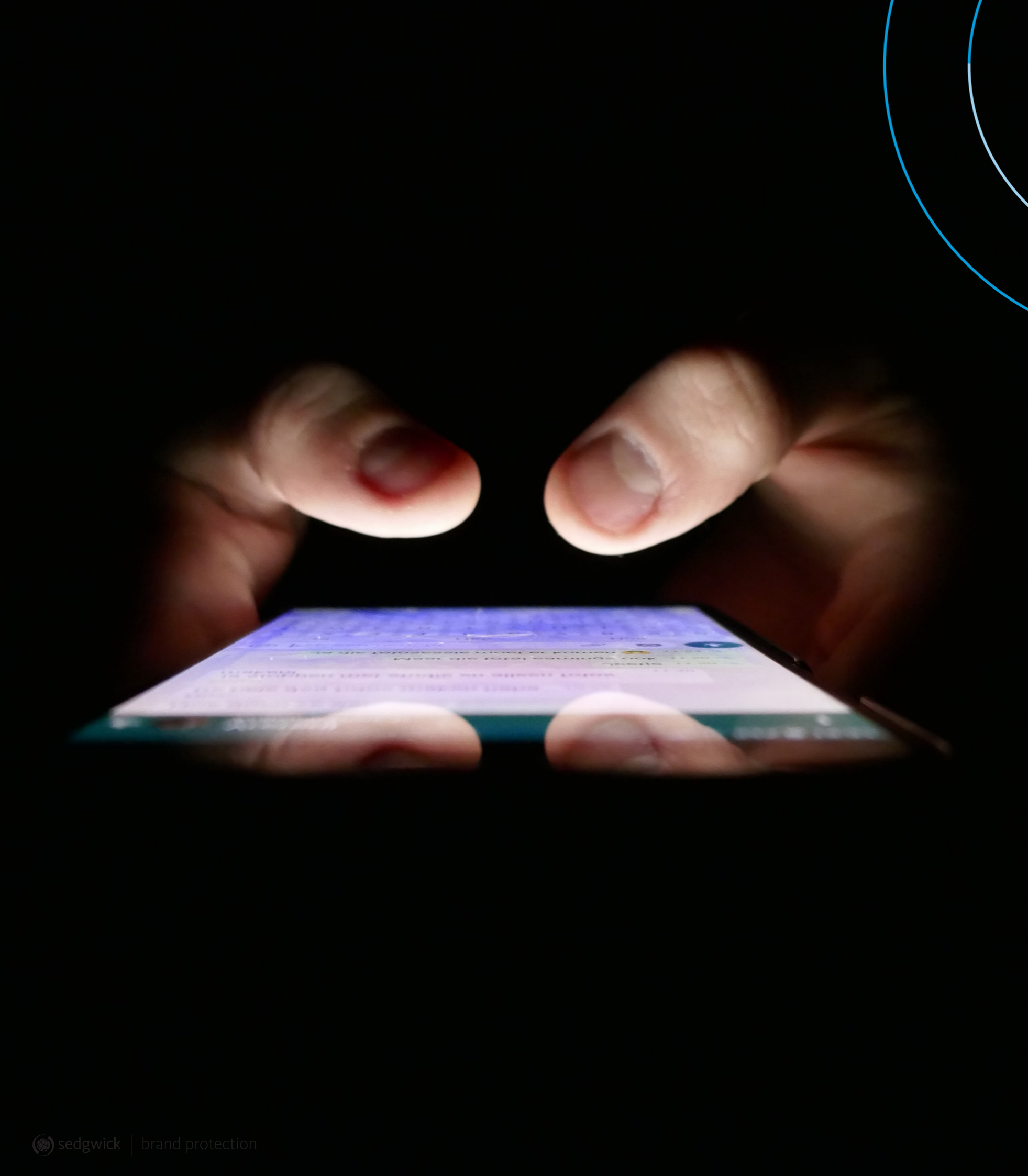
With consumers having worked from home for so many months due to the COVID-19 pandemic, and many set to continue to do so on a permanent basis, home electronics are seeing unprecedented, regular usage. Some of these goods may not have been produced with this scope of usage in mind, be that daily and light, heavy and intense, or simply more frequent.

Consider that goods which were traditionally used on a limited basis may now be used for longer, extended periods for business-related purposes. This could lead to a range of potential product safety, insurance and liability disputes. Manufacturers should examine the potential for change in frequency of use of their products and take steps to assure themselves that their products can tolerate, and ideally shine, under different usage frequencies and schedules. Both quality issues, such as early end-of life and safety issues, such as overheating, should be considered.

### Ecodesign considerations

On 1 July 2021, new rules came into force in England, Wales and Scotland requiring manufacturers to make spare parts available to purchasers of electrical appliances. These rules are part of a package of measures relating to electrical goods which are found in the Ecodesign for Energy-Related Products and Energy Information Regulations 2021 (the Regulations). By way of this legislation, the Government is striving for energy and carbon savings as part of its efforts to reach net zero by 2050.

Among its objectives, the legislation aims to tackle premature (also known as planned or built-in) obsolescence where products are allegedly made with intentionally short lifespans with a view to obtaining repeat business. Among these products are electronics that are simply not manufactured to last for such long periods of time.



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Depending on a manufacturer's business model, the rules could cause a serious setback to profitability in light of foreseeable reduced sales and the cost of creating spare parts for goods even if they are no longer produced. More concerning, however, is the potential increase in product liability and safety issues arising from the continued use of these electronics past what might otherwise have been their end of life.

In civil matters, the 10 year "long stop" provision under the UK's Consumer Protection Act/the EU Product Liability Directive, which extinguishes the right to bring a strict liability claim 10 years after a product is placed on the market, is likely to see increased use. Expert evidence will certainly be required to demonstrate the level of safety persons are entitled to expect in "old" products and, as is so often the case with products claims, there may well be conflicting views as to where liability lies as between manufacturers and repairers.

Consumer purchase and use of electronics changed dramatically during the pandemic. The regulatory environment is poised to catch up to protect consumers. Companies should take steps now to not only comply with new regulations, but position themselves as safety-first businesses.