



# The Fad Effect:

When New Product Craze Outpaces Regulation

# Background

Whether it's a popular toy, a cutting-edge gadget, or an advanced appliance, exciting new products that hit the market frequently create a buying frenzy.

More often than not, both passing fads and long-standing trends surface quickly without serious consequences. But what happens when a new product craze presents possible dangers – while outpacing the regulation that governs it? The result is typically confusion and chaos for everyone involved, including manufacturers, distributors, retailers, and consumers.

# Hot Products Spread Like Wildfire

A prime example of this phenomenon began late 2015 and continues to this day – the wild popularity of so-called “hoverboards.” As the holidays approached, consumers scrambled to gift the hottest new product for their loved ones.

In the weeks following, the topic of hoverboards swept the media as reports of the product catching fire emerged across the globe. Public transportation systems, airlines, and colleges and universities quickly moved to ban hoverboards due to safety concerns, namely fall and fire hazards.

Regulatory agencies launched an investigation, but acknowledged there were no specific rules in place surrounding the product. With little regulatory ground to stand on, agencies placed the burden on retailers and consumers themselves, advising sellers to question the safety protocols of their suppliers and offering tips to help users avoid risk as much as possible<sup>1</sup>.

Following a months-long investigation, agencies strongly urged manufacturers, importers, and retailers of “self-balancing scooters” to comply with voluntary safety standards from UL, a global independent safety science company, and stated that lithium batteries must meet requirements under

<sup>1</sup>cpsc.gov • <sup>2</sup>cpsc.gov • <sup>3</sup>foxnews.com

UN/DOT 38.3. Compliance with these standards could have prevented many of the reported product fires the agency has received, and the injuries and property damage that resulted from them.

The potential consequences can't be overstated. Recalls are being issued in the U.K., and the U.S. is likely to follow suit. Many major retailers have stopped selling the product altogether, and fakes are flooding the market. In January, customs agents seized thousands of counterfeit hoverboards in Chicago, prompting U.S. Customs and Border Protection Director of Field Operations, William Ferrara, to note that concerns go beyond safety issues. Ferrara stated “...they also threaten our economic security by hurting legitimate businesses who invest significant amounts of resources into development and protection of their brands<sup>3</sup>.”

“[Hoverboards] also threaten our economic security by hurting legitimate businesses who invest significant amounts of resources into development and protection of their brands.<sup>3</sup>”



# Flying into the Future

While hoverboards are currently the most prominent example of a new product outpacing regulation, they are not alone. Since 2013, sales of unmanned aircraft known as drones have reached nearly one million<sup>4</sup>.

There is no federal legislation surrounding the use of unmanned aircraft. This has opened the door for hazardous or illegal activities, such as interference with firefighting, transporting narcotics, and near collisions with airplanes on hundreds of occasions. In April 2016 a drone hit a British Airways plane as it prepared to land at Heathrow Airport, although this was the first known case of its kind we can only expect more stories of this kind.<sup>5</sup>

As the popularity of drones took off, many agencies along with local governments, scrambled to develop new rules governing them, creating a regulatory patchwork in the process. As of March 2015, The House of Lords EU Committee has called for the registration of all commercial and civilian drones. Although there are no current regulations for drones

weighing less than 20kg, you must fly the aircraft “within sight” which means you can’t go above 400 feet in altitude or further than 500 metres horizontally without first seeking permission from the Civil Aviation Authority (CAA).<sup>5</sup>

Many legal experts believe that despite regulatory uncertainty, drone-related injuries will likely lead to lawsuits naming product defects and inadequate warning labels as the culprit. The potential for recalls remains as murky as the laws themselves, but consumers must prepare for the likelihood of evolving regulations and possible pitfalls that could result in harsher consequences.

<sup>4</sup>latimes.com • <sup>5</sup>telegraph.co.uk



# Blurring the Regulatory Lines

With a market predicted to grow in 2016, wearable devices are sweeping the globe<sup>6</sup>. Some track steps, while others communicate text messages and the weather.

These devices are increasingly being used to store and monitor sensitive health information, which could blur the line between consumer product and medical device. Some employers are even offering incentives for employees who wear devices to monitor their activities but beware, this data falls under the defence of the Data Protection Act.

Research has found that 55% of the approximately 4,000 people questioned would happily permit their data, such as sleep patterns, exercise regimes and heart rate information, be used to recommend medication. There are also those who believe that under European General Data Protection Regulation (GDPR) and better data protection rules will

strengthen citizens' rights and help to restore their confidence in how their personal data is treated – particularly online.<sup>7</sup>

As the technology behind wearable devices evolves, so too will the regulations guiding them. But with the exponential rate of advancement, it is unclear whether the regulation of these devices will fall to one or multiple regulatory bodies, or how this distinction will impact the products' recall environment. One thing is certain, however. As cybersecurity issues with medical devices – and healthcare in general – continue to make headlines, privacy concerns should be top-of-mind with consumers.

<sup>6</sup>economictimes.indiatimes.com • <sup>7</sup>telegraph.co.uk

