

Advertising & Media Alert

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Tariff Refund Litigation May Be Next Major Wave of Consumer Class Actions Against Brands and Retailers

Increased prices lately?

The growing wave of tariff refund lawsuits against consumer brands and retailers is quickly evolving into something much larger than a series of isolated disputes over trade policy, and brands that have increased prices recently, whether expressly because of tariffs or not, may be at risk.

Plaintiffs are increasingly using tariff-related price increases as the basis for consumer fraud, unfair competition, deceptive practices and unjust enrichment claims against brands across a wide range of industries. The pace of filings, the variety of industries targeted and the expanding theories being asserted suggest that this may become the next major wave of class action litigation against consumer-facing companies. These lawsuits are not limited to companies that actually applied for tariff refunds. Recent filings make clear that plaintiffs are now pursuing companies regardless of whether they sought reimbursement from the government.

The Core Theory Driving the Cases

Most of the lawsuits arise from tariffs imposed under the International Emergency Economic Powers Act (IEEPA). According to the complaints, companies raised prices, imposed tariff-related charges or otherwise passed increased tariff costs on to consumers. After the U.S. Supreme Court later concluded that IEEPA did not authorize those tariffs, importers began pursuing refunds from the government.



Plaintiffs now argue that companies should not be permitted to retain amounts allegedly passed through to consumers while also recovering tariff refunds from the government.

Many of the complaints frame this as a “double recovery” theory. Plaintiffs contend that consumers ultimately bore the economic burden of the tariffs and therefore should receive the benefit of any refund obtained by the importer.

No Separate Tariff Fee Required

One important point emerging from the current filings is that plaintiffs are not limiting these cases to situations where companies charged consumers a separately identified tariff fee or surcharge.

In many cases, plaintiffs instead allege more broadly that companies increased prices because of tariffs and passed those increased costs through to consumers in the form of overall pricing decisions. In other words, the theory is often not that the company charged a specific tariff line item but rather that tariffs became part of the company's broader pricing structure.

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That issue is likely to be highly fact specific and may differ significantly from company to company.

Relevant considerations may include whether the company itself was the importer of record, whether tariff costs were actually incurred, whether the retailer communicated price increases generally, of which tariffs were only a single factor, whether the company publicly discussed tariffs as a basis for price increases, whether tariff-related statements appeared in customer communications or investor disclosures, whether the company imposed express tariff-related charges and whether the company later pursued tariff refunds from the government.

Those factual distinctions may ultimately become important in evaluating both litigation risk and potential defenses. Potential defenses may also be drawn from analogous litigation involving claims that product pricing was based on allegedly unlawful or artificially inflated costs.

The Cases Are Expanding Quickly

The litigation has spread rapidly across industries including apparel, footwear, food and beverage, home goods, e-commerce, logistics, automotive and retail. Cases have now targeted companies across a broad range of consumer industries, and the filings continue to increase in both state and federal courts around the country. Illinois has emerged as one particularly active jurisdiction, although similar cases are appearing nationwide.

Several plaintiffs' firms also appear repeatedly in the filings, suggesting coordinated efforts to test and expand these theories against additional industries and business models.

Cases Are in Extremely Early Stages

Despite the growing number of filings, the litigation remains in its infancy. At this point, there do not appear to be substantive rulings addressing the underlying merits of the claims. In many of the cases so far, defendants have not yet answered the complaints. Where defense counsel has appeared, the primary activity has largely involved extensions of time to either answer or move to dismiss.

That posture is important because many of the central legal and factual issues remain unresolved. For example, plaintiffs may face challenges proving that particular price

increases were actually caused by tariffs as opposed to inflation, supply chain pressures, inventory costs or ordinary pricing decisions. Even where tariffs contributed to pricing decisions, quantifying any alleged pass-through to individual consumers may prove difficult.

Defendants are also likely to argue that consumers paid the disclosed purchase price for the products they received and that no actionable deception occurred absent specific representations concerning tariffs or refunds.

Not Applying for a Refund May Not Prevent Litigation

One of the more significant recent developments is that companies may face these lawsuits even if they never pursue tariff refunds from the government.

Recent filings suggest plaintiffs are broadening the theory beyond refund applications and focusing more generally on whether consumers allegedly paid higher prices tied to unlawful tariffs. In other words, the litigation risk may not depend on whether a company actually sought a refund from the government.

This development is important because early commentary surrounding these cases often focused on the idea that companies were obtaining a "double recovery" by both charging consumers and seeking refunds from the government. Plaintiffs now appear to be advancing broader theories aimed at tariff-related pricing decisions themselves.

Companies therefore may not necessarily avoid litigation simply by declining to pursue refunds.

Promotions and Customer Credits Present Separate Risks

The litigation trend also raises practical issues for brands considering customer goodwill programs tied to tariffs or tariff-related price increases.

Some companies have explored offering customers credits, discounts, gift cards or similar benefits tied to purchases made during the tariff period. Those programs can create their own litigation risks if not structured carefully. Language describing a promotion as a refund, reimbursement or repayment of prior overcharges may later be cited by plaintiffs as evidence that earlier pricing was improper. A customer appreciation program or

goodwill promotion may create a different record than a program expressly framed as returning prior tariff overcharges.

At the same time, carefully structured customer credit programs may also help reduce litigation exposure. As a practical matter, plaintiffs pursuing consumer class actions generally must establish some form of economic injury or damages. Companies that proactively offer consumers credits, gift cards, refunds, discounts or similar remediation tied to tariff-related pricing may be in a stronger position to argue that consumers were not damaged, have already been compensated, or cannot establish the type of injury necessary to support class-based claims. Whether those arguments ultimately succeed will likely depend on the structure, scope and disclosures associated with the program, but proactive remediation efforts may become an increasingly important consideration as these cases continue to develop.

What Companies Should Be Watching

For now, the most important takeaway may simply be that these lawsuits are continuing to proliferate despite the absence of any merits rulings.

Any consumer brand or retailer that publicly discussed tariffs, increased prices during the tariff period, imposed tariff-related fees or addressed tariff-related pricing in investor or customer communications should be monitoring these developments closely.

Given the volume of filings and the pace at which new theories are emerging, we expect the plaintiffs' bar to continue testing these claims aggressively against additional industries and business models in the months ahead.

In response to the rapid growth of these cases, we have established a team dedicated to tracking developments, monitoring filings, maintaining a comprehensive database of complaints and advising clients regarding the evolving litigation and regulatory risks associated with tariff-related pricing and refund issues.

We also maintain a [database of tariff refund complaints](#) filed to date, where you can review the complaints and track new filings.

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