

Frozen Donuts: The Importance of a Legal Audit **When Transforming Production and Manufacturing Processes**

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Tim Hortons co-founder Ron Joyce recently addressed the company's "secretive" move from in-store baking to par-baked frozen donuts. Yet when Tim Hortons made this shift to frozen donuts, it is questionable whether the company, whose trademarked motto continues to be "Always Fresh," undertook an adequate legal audit to secure the integrity of its business operations against future legal assault.

When companies modify their production or manufacturing processes, they must be keenly aware of its legal impact upon related elements of their business. Trying to maintain a veil of secrecy over the transformation and confining one's analysis to that single process, with the expectation that increased profit margins will be the exclusive result, is a dangerous approach. Substantive production and manufacturing changes have a tendency to require further associated changes. Things simply don't happen in a vacuum and this is particularly true in the legal context.

The goal of a legal audit is to identify potential problem areas and risks emanating, directly and indirectly, from the proposed transformation. Audits generally review the impact of the transformation upon overall operations, corporate/partner affairs, employee relations, competition law, consumer protection, intellectual property rights and other areas of concern identified by the company and its lawyers. Once issues are identified, they can be addressed before they become serious problems.

For this reason, it is important for companies to engage in an impartial legal audit of any substantive production or manufacturing transformation and ascertain their legal obligations, if any, to ensure compliance with the law. By being proactive on the legal front, companies can prevent potential disputes from becoming lawsuits, bring their entire operation into regulatory compliance instead of being hauled into court and correct minor ethical breaches before they become front-page scandals.

Returning to the "secretive" transformation of Tim Hortons' production process to frozen donuts, we are left with numerous lingering questions as to the adequacy of their legal audit, with the foremost question being: Does the "presale rethermalization" of frozen donuts result in baked goods that are "Always Fresh"? If it doesn't, then the company may be unknowingly running afoul of food and drug laws, consumer protection laws and false advertising legislation. This is compounded when a company operates in multiple jurisdictions, each having its own set of laws with substantive discrepancies in their interpretation of key principles. Regulations pertaining to transportation and logistics also need to be canvassed to ensure continued compliance. Freezing one's products is thus not merely a scientific process but also a complex legal exercise that can lead to quite some heat if an adequate legal audit is not initiated at the outset of transforming production and manufacturing processes.

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