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Trademark Owner Liable to Consumer for Product Defect, European Court of Justice Rules

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A case that originated in Finland concerned liability for a defective product and the concept of "producer" under EU trademark law. A coffee machine (the Philips Saeco Xsmall HD8743/11) manufactured by Saeco, a Romanian subsidiary of Philips, caught fire. The machine contained trademarks of both Saeco and Philips. The unlucky consumer that got a fire instead of coffee decided – through its insurance company – to seek liability damages against Philips.

The Supreme Court of Finland referred questions to the European Court of Justice (ECJ) and asked whether a trademark owner that puts its trademark to a product should also be considered a "producer" pursuant to Article 3(1) of the EU Directive 85/374 on liability for defective products.

Philips argued it was not liable because it was not involved in actual production, and therefore could not be considered a "producer". The ECJ, which is the highest Court in Europe and can overrule national European courts, disagreed:

(…) it should be noted that, by putting his name, trademark or other distinguishing feature on the product at issue, the person who presents himself as a producer gives the impression that he is involved in the production process or assumes responsibility for it. Accordingly, by using such particulars, that person is effectively using his reputation in order to make that product more attractive in the eyes of consumers which, in return, justifies his liability being incurred in respect of that use.

Furthermore, the ECJ ruled that:

Accordingly, contrary to what Koninklijke Philips maintains, it must be held that, in the case in the main proceedings, a division of liability between that company and Saeco International Group has no effect in relation to consumers, who must specifically be relieved of the burden of having to determine the actual producer in order to bring claims for damages.

So, trademark owners are liable to consumers for a product defect and moreover, consumers should not have to figure out who is the actual producer of their defective product to claim damages. However, this does not mean the respective internal reciprocal liability between trademark owner and

actual producer – or manufacturer – is the same.

Key Takeaway

In their contracts with manufacturer licensees, trademark owners should ensure that liability for defects is governed properly or, if such agreement on mutual liability is not agreed upon, owners should strictly monitor the quality of the products their licensees produce to reduce the risk of being held liable.

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