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**Intellectual Property**  
**Trademark owners liable for defective**  
**products, according to CJEU**

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## Intellectual Property

## Trademark owners liable for defective products, according to CJEU

With its judgment of 7 July 2022 in *Fennia v Philips* (Case C-264/21), the Court of Justice of the European Union (hereinafter ‘the Court’ or ‘CJEU’) acknowledged that a strict liability regime applies to trademark owners for defective products under the **Product Liability Directive** (Directive 85/374/EEC, ‘the Directive’), even if the latter are not involved in the manufacturing process. The Court has clarified that the **concept of ‘producer’** under the Product Liability Directive is **broad**, including any person who affixes its name, trademark or other distinguishing feature on the product, or has authorised those particulars to be affixed on the product, **without any further criteria being required to assume product liability, such as actual marketing of said product.**

### Background of the case

The dispute arose in Finland, after an action for damages was brought by an insurance company, Fennia, subrogated to the rights of the injured consumer, against Philips. The insurer sought compensation for the damage resulting from a fire caused by a coffee machine which was manufactured by Saeco, a Romanian subsidiary of Philips, but bore the trademarks of both Philips and Saeco. The Finnish court of first instance held that Philips was liable for the damage caused under the Finnish Law on product liability implementing, in essence, the Product Liability Directive.

The decision was overruled on appeal by Philips, contending that it had no liability since it could not be considered as the producer of the defective coffee machine.

The case ultimately reached the Finnish Supreme Court, which referred questions to the CJEU, seeking an interpretation of the concept of ‘producer’ under the Directive.<sup>1</sup> More precisely, the Supreme Court sought to ascertain whether the mere affixing of the trademark to the product sufficed for the product liability of the trademark owner to be incurred, or whether said concept requires that the latter also presents itself as the producer of the defective product in some other way.

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<sup>1</sup> According to Article 3(1) of the Directive, “*producer’ means the manufacturer of a finished product, the producer of any raw material or the manufacturer of a component part and any person who, by putting his name, trade mark or other distinguishing feature on the product presents himself as its producer.*”

## Findings of the CJEU

The CJEU ruled that:

*“[the concept of ‘producer’] contains, in essence, an alternative, only the first part of [the definition] concerns the person who is at least partially involved in the process of manufacturing the product. By contrast, the second part of the alternative refers to a person who presents himself as a producer by putting his name, trade mark or other distinguishing feature on the product”* (paragraph 26 of the judgement).

The Court held that the terms of the concept of ‘producer’ were clear and unambiguous and there was no requirement for the ‘*person who presents himself as a producer*’ to be involved in the manufacturing process in order to be classified as such within the meaning of the Directive, therefore being liable for the damage caused by a defect in its product solely by affixing its trademark on it.

It further unequivocally clarified that:

*‘[...] by putting his name, trade mark 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**’* (paragraph 34 of the judgement).

According to the Court, the EU legislator intended that the concept ‘producer’ is interpreted broadly, to protect consumers. **A division of liability between Philips and Saeco 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 the damages.**

## Concluding remarks

The CJEU was given the opportunity to pronounce itself for the first time on the issue of trademark owners' product liability to the consumers, corroborating what was previously presumed, but never explicitly confirmed by the Court's jurisprudence. The ruling confirms the broad responsibility of trademark owners prescribed in the Directive, given that by affixing their name, trademark or other distinctive sign to the product, they effectively fall within the meaning of 'producer' under the Directive and are, therefore, liable for damage caused by a defect in their product. At the same time, it guarantees that consumers, who often rely and focus on the trademark, can claim damages from the trademark owner, who is fully liable, without the need determine who is the actual producer of the defective product.

In view of the above, it is highly advised that trademark owners licensing their trademarks closely monitor the quality of the products their licensees produce. If possible, they should ensure that the quality control and product liability are duly regulated in the agreements concluded with said licensees to prevent the risk of assuming liability for product defects.

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**Konstantinos Logaras, Dimitrios Nikolaidis**

T. +30 210 36 27 222

E. [k.logaras@logaraslaw.com](mailto:k.logaras@logaraslaw.com)

## Logaras & Associates

4 Vissarionos Street  
Athens, 106 72 Greece  
[www.logaraslaw.com](http://www.logaraslaw.com)

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