

# EU developments in IP, Data & Technology

## Affixing trademark creates product liability for defects

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In July 2022, the European Court of Justice (ECJ) has further clarified what it means, from a product liability perspective, to have your name, trademark or other distinguishing feature on a product when you are not in fact the producer of the product.

### Summary of the case

The case concerned a coffee machine that had caught fire. It was made in Romania by Saeco and marketed in Finland. Next to the trademark “Saeco” on the coffee machine and its packaging was also the trademark “Philips.”

In a court action in Finland on the damages incurred by the customer that had bought the coffee machine from a dealer, the owner of the Philips trademark, Koninklijke Philips N.V., argued that it was not involved in the machine’s manufacturing process. The ECJ rejected this defense and clarified that the **Product Liability Directive** defines a “producer” as any party that puts its name, trademark or other distinguishing feature on the product at issue, the reasoning being that such party is presenting itself as a producer and gives the impression to the consumer that it is involved in the production process or assumes responsibility for it. By putting its name on the product, the ECJ found that Philips was effectively using its reputation to make that product more attractive in the eyes of consumers, and the court found that this justifies Philips’ liability being incurred in respect of the use in question.

Consequently, a party that affixes or consents to affixing its name, trademark or other distinguishing feature on a product is, from a product liability perspective, liable for damage caused by defects in a product, even if that party plays no role in the production process, nor markets the product as its own.



### What is the aim of the decision?

- Achieve harmonization in matters regulated by the Product Liability Directive.
- To clarify the concept of “producer” as any party that affixes or consents to affixing its name, trademark or other distinguishing feature on a product, and that such producer is liable for damage caused by defects in the product in the same way as the actual producer of the product.



### Who will be affected by this decision?

- Any party that affixes or consents to affixing its name, trademark, or other distinguishing feature on a product.
- Producers that manufacture products branded under the trademarks of third parties.
- Consumers of defective products.



### What are the key takeaways for companies?

- Any division of liability between producers, distributors and the trademark owner has no effect in relation to consumers, who must specifically be relieved of the burden of having to determine the actual producer to bring claims of damage. Consequently, it is important for producers, distributors and tradename and trademark owners involved to contractually agree on the division of liability among each other, for example, in license agreements.
- This judgment stresses the importance of quality control provisions in (license) agreements whenever a trade name and/or trademark owner authorized the use of its trade name and/or trademark on a product produced by a third party.
- This judgment also stresses the importance for a trade name /trademark owner to contractually deal with the possibility to terminate a (license) agreement in the event of a defective product and how to deal with damage to the reputation and or goodwill of the trade name/trademark involved.



### Key contacts

Dentons helps companies grow, protect, operate and finance their business through digital transformation. The Amsterdam IP, Data & Technology team is one of the largest in the Netherlands and is very experienced in coordinating Europe-wide and global IP, data and tech projects. It stands out for its pragmatic data protection advice, technology contracting, trademark portfolio management, international IP transactions, and complex cross border IP litigation.

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