Court of Justice EU, 7 July 2022, Fennia v Philips

TRADE MARK LAW

Trademark proprietor liable as producer under Product Liability Directive for branded products

- **Article 3(1) of Directive 85/374 must be interpreted as meaning that the concept of 'producer', referred to in that provision, does not require that the person who has put his name, trade mark or other distinguishing feature on the product, or who has authorised those particulars to be put on the product, also present himself as the producer of that product in some other way.**

25 In the first place, it should be noted that, according to the actual wording of Article 3(1) of Directive 85/374, '"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'.

26 Thus, Article 3(1) of Directive 85/374 contains, in essence, an alternative, only the first part of which 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.

27 It is therefore apparent from the clear and unambiguous terms of that provision that the involvement of the person who presents himself as a producer in the process of manufacturing the product is not necessary in order for such person to be classified as a 'producer' within the meaning of that provision.

28 Furthermore, it is apparent from the Court's case-law that the class of persons liable against whom an injured person is entitled to bring an action under the system of liability laid down by Directive 85/374 is defined in Articles 1 and 3 of that directive and that, in view of the fact that that directive seeks to achieve complete harmonisation in the matters regulated by it, its determination in those articles of the class of persons liable must be regarded as exhaustive (judgment of 10 January 2006, Skov and Bilka, C-402/03, EU:C:2006:6, paragraphs 32 and 33).

29 Accordingly, that determination of the class of persons liable cannot be made subject to the setting of additional criteria which do not follow from the wording of Articles 1 and 3 of Directive 85/374.

30 Since the definition set out in the second part of the alternative in Article 3(1) of Directive 85/374 does not include any additional criterion, it is clear from the wording of that provision that it is the affixing of distinguishing features by the person whom such features identify or by an authorised person which forms the basis of the status of 'producer' within the meaning of that provision.

Source: **ECLI:EU:C:2022:536**

Court of Justice EU, 7 July 2022
(I. Jarukaitis, M. Ilešič en Z. Csehi)
JUDGMENT OF THE COURT (Tenth Chamber)
7 July 2022
(Reference for a preliminary ruling – Directive 85/374/EEC – Liability for defective products – Article 3(1) – Concept of 'producer' – Any person who, by putting his name, trade mark or other distinguishing feature on the product, or having authorised those particulars to be put on the product, presents himself as its producer)
In Case C-264/21,
REQUEST for a preliminary ruling under Article 267 TFEU from the Korkein oikeus (Supreme Court, Finland), made by decision of 22 April 2021, received at the Court on the same day, in the proceedings
Keskinäinen Vakuutusyhtiö Fennia
v
Koninklijke Philips NV,
THE COURT (Tenth Chamber),
composed of I. Jarukaitis, President of the Chamber, M. Ilešič and Z. Csehi (Rapporteur), Judges,
Advocate General: T. Ćapeta,
Registrar: A. Calot Escobar,
having regard to the written procedure,
after considering the observations submitted on behalf of:
– Koninklijke Philips NV, by T. Seikkula and M. Welin, asianajajat,
– the Finnish Government, by H. Leppo, acting as Agent,
– the Czech Government, by S. Šindelková, M. Smolek and J. Vláčil, acting as Agents,
– the German Government, by U. Bartl, M. Hellmann and J. Möller, acting as Agents,
– the European Commission, by G. Gattinara and M. Huttunen, acting as Agents,
having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,
gives the following
Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 3(1) of Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products (OJ 1985 L 210, p. 29), as amended by Directive 1999/34/EC of the European Parliament and of the Council of 10 May 1999 (OJ 1999 L 141, p. 20) ('Directive 85/374').

2 The request has been made in proceedings between Keskinäinen Vakuutusyhtiö Fennia ('Fennia'), an insurance company, and Koninklijke Philips NV concerning compensation for damage resulting from a fire caused by a coffee machine.

Legal context

European Union law

3 The fourth and fifth recitals of Directive 85/374 read as follows:

'Whereas protection of the consumer requires that all producers involved in the production process should be made liable, in so far as their finished product, component part or any raw material supplied by them was defective; whereas, for the same reason, liability should extend to importers of products into the Community and to persons who present themselves as producers by affixing their name, trade mark or other distinguishing feature or who supply a product the producer of which cannot be identified;

Whereas, in situations where several persons are liable for the same damage, the protection of the consumer requires that the injured person should be able to claim full compensation for the damage from any one of them'.

4 Article 1 of that directive provides:

'The producer shall be liable for damage caused by a defect in his product.'

5 Article 3(1) of that directive states:

'"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.'

6 Article 5 of Directive 85/374 provides:

'Where, as a result of the provisions of this Directive, two or more persons are liable for the same damage, they shall be liable jointly and severally, without prejudice to the provisions of national law concerning the rights of contribution or recourse.'

Finnish law

7 Paragraph 5 of the tuotevastuulaki (694/1990) (Law on product liability (694/1990); 'the Law on product liability'), in the version applicable to the facts of the dispute in the main proceedings, which implements Article 3 of Directive 85/374 in Finnish law, provides, in subparagraph 1 thereof, that the obligation to pay compensation for damage lies, in the first place, with the person who produced or manufactured the defective product and, in the second place, with the person who marketed, as his own product, the product which caused the damage, if his name, trade mark or other distinguishing feature was affixed to the product.

The dispute in the main proceedings and the questions referred for a preliminary ruling

8 Fennia compensated a consumer for damage caused by fire in the amount of EUR 58 879.10 under a home insurance policy. The day before the fire, the consumer had purchased a Philips Saeco Xsmall HD8743/11 coffee machine from a dealer. An accident report drawn up by the fire department found that the coffee machine at issue caused the fire which broke out.

9 That coffee machine was manufactured in Romania by Saeco International Group SpA, a subsidiary of Koninklijke Philips. The Philips and Saeco logos, which are trade marks registered by Koninklijke Philips, were affixed to that coffee machine and to its packaging. In addition, the coffee machine bore a CE marking which included the Saeco logo, an address in Italy and the words 'Made in Romania'. Koninklijke Philips has a subsidiary in Finland, Philips Oy, which markets in the latter Member State household appliances bearing the Philips trade mark, including the coffee machine at issue.

10 Fennia, which is subrogated to the rights of the consumer after having compensated the latter, brought an action against Koninklijke Philips seeking compensation on the basis of liability for defective products. Koninklijke Philips contended that that action should be dismissed, maintaining that it was not the producer of the coffee machine at issue.

11 The käräjäoikeus (District Court, Finland) held that Koninklijke Philips had marketed in Finland the coffee machine at issue bearing its trade mark and that it was liable for the damage caused by a defect in that product.

12 The hovioikeus (Court of Appeal, Finland), before which Koninklijke Philips brought an appeal against the judgment at first instance, ruled that it had not been shown that Koninklijke Philips had marketed that coffee machine in Finland as its own product. That court held that Koninklijke Philips was not liable for the damage caused by the product at issue and dismissed the action.

13 Hearing an appeal brought by Fennia against the decision of the hovioikeus (Court of Appeal), the referring court, the Korkein oikeus (Supreme Court, Finland), allowed that appeal to proceed concerning the question whether Koninklijke Philips is liable, under the Law on product liability, for damage caused by a coffee machine bearing its trade mark and manufactured by its subsidiary.

14 The referring court is uncertain as to how the expression *'any person who, by putting his name, trade mark or other distinguishing feature on the product presents himself as its producer'*, contained in Article 3(1) of Directive 85/374, is to be understood. In particular, it asks whether, in addition to the affixing of the trade mark, additional criteria must be fulfilled in order for the trade mark proprietor to be regarded as having presented himself as the producer of the product in question, or whether certain factors that would exclude liability may be taken into account, such as the fact that the particulars affixed to that product indicate that the manufacturer is a different undertaking from the trade mark proprietor. It considers that the producer is 'the person best placed' to ensure that similar damage caused by a product is avoided.

15 In those circumstances, the Korkein oikeus (Supreme Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Does the concept of producer within the meaning of Article 3(1) of [Directive 85/374] presuppose that a person who puts his name, trade mark or other

distinguishing feature on the product, or who has allowed them to be put on the product, also presents himself as the producer of the product in some other manner?
(2) If the answer to the first question is in the affirmative: based on what considerations is his presentation as a producer of the product to be evaluated? Is it relevant to that evaluation that the product was manufactured by a subsidiary of the trade mark proprietor and distributed by another subsidiary?'

Consideration of the questions referred

Admissibility

16 Koninklijke Philips submits, in essence, that the questions referred for a preliminary ruling are inadmissible on the ground that they are not relevant for the purposes of resolving the dispute in the main proceedings, since compensation on the basis of liability for defective products requires, under Paragraph 5(1) of the Law on product liability, the marketing of the product by the proprietor of the trade mark or of any other distinguishing feature. Koninklijke Philips argues that no such marketing has been demonstrated at all in the dispute in the main proceedings.

17 In that regard, it should be noted that, in accordance with settled case-law, in proceedings under Article 267 TFEU, which are based on a clear separation of functions between the national courts and the Court of Justice, the national court alone has jurisdiction to find and assess the facts in the case before it and to interpret and apply national law. Similarly, it is solely for the national court, before which the dispute has been brought and which must assume responsibility for the forthcoming judicial decision, to determine, in the light of the particular circumstances of the case, both the need for and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of EU law, the Court is in principle bound to give a ruling (judgment of 26 May 2011, Stichting Natuur en Milieu and Others, C-165/09 to C-167/09, EU:C:2011:348, paragraph 47 and the case-law cited).

18 Since the national court alone has jurisdiction to find and assess the facts in the case before it, the Court must in principle confine its examination to the matters which the court or tribunal making the reference has decided to submit to it and thus proceed on the basis of the situation which that court or tribunal considers to be established, and cannot be bound by suppositions raised by one of the parties to the main proceedings (judgment of 2 April 2020, Coty Germany, C-567/18, EU:C:2020:267, paragraph 22 and the case-law cited).

19 The Court is not bound to give a ruling, in particular, where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose or where the problem is hypothetical (judgment of 26 May 2011, Stichting Natuur en Milieu and Others, C-165/09 to C-167/09, EU:C:2011:348, paragraph 48 and the case-law cited).

20 That is not so in the present case.

21 As is apparent from the order for reference and as noted in paragraphs 11 and 12 above, the käräjäoikeus (District Court) held that Koninklijke Philips had marketed in Finland the coffee machine bearing its trade mark, whereas the hovioikeus (Court of Appeal) ruled that it had not been shown that Koninklijke Philips had marketed that coffee machine in Finland as its own product. Since there is no consensus between the competent judicial authorities regarding the assessment of the facts under national law, and the referring court is of the view that Koninklijke Philips' liability for the defective product at issue is not excluded, it is not obvious, at least not clearly so, that the questions referred are hypothetical in the light of the assessment which the national court is called upon to make in the dispute in the main proceedings.

22 Consequently, the request for a preliminary ruling must be regarded as admissible.

Substance

The first question

23 By its first question, the referring court asks, in essence, whether Article 3(1) of Directive 85/374 must be interpreted as meaning that the concept of 'producer', referred to in that provision, requires that the person who has put his name, trade mark or other distinguishing feature on the product, or who has authorised those particulars to be put on the product, also present himself as the producer of that product in some other way.

24 According to settled case-law, in interpreting a provision of EU law, it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part (judgment of 17 December 2020, CLCV and Others (Defeat device on diesel engines), C-693/18, EU:C:2020:1040, paragraph 94 and the case-law cited).

25 In the first place, it should be noted that, according to the actual wording of Article 3(1) of Directive 85/374, '"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'.

26 Thus, Article 3(1) of Directive 85/374 contains, in essence, an alternative, only the first part of which 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.

27 It is therefore apparent from the clear and unambiguous terms of that provision that the involvement of the person who presents himself as a producer in the process of manufacturing the product is not necessary in order for such person to be classified as a 'producer' within the meaning of that provision.

28 Furthermore, it is apparent from the Court's case-law that the class of persons liable against whom an injured person is entitled to bring an action under the system of liability laid down by Directive 85/374 is defined in Articles 1 and 3 of that directive and that, in view of the fact that that directive seeks to achieve complete harmonisation in the matters regulated by it, its determination in those articles of the class of persons

liable must be regarded as exhaustive (judgment of 10 January 2006, Skov and Bilka, C-402/03, EU:C:2006:6, paragraphs 32 and 33).

29 Accordingly, that determination of the class of persons liable cannot be made subject to the setting of additional criteria which do not follow from the wording of Articles 1 and 3 of Directive 85/374.

30 Since the definition set out in the second part of the alternative in Article 3(1) of Directive 85/374 does not include any additional criterion, it is clear from the wording of that provision that it is the affixing of distinguishing features by the person whom such features identify or by an authorised person which forms the basis of the status of 'producer' within the meaning of that provision.

31 In the second place, as regards the context in which Article 3(1) of Directive 85/374 occurred and the objective pursued by that directive, it is apparent from the fourth and fifth recitals of that directive and from Article 5 thereof that the EU legislature intended to adopt a broad interpretation of the concept of 'producer' in order to protect the consumer.

32 According to the fourth recital of Directive 85/374, protection of the consumer requires that any persons who present themselves as producers by affixing their name, trade mark or other distinguishing feature to the product should be made liable in the same way as the actual producer. Furthermore, it follows both from Article 5 of that directive and from the fifth recital thereof that the liability of a person who presents himself as a producer is on the same level as that of the actual producer, and that the consumer may freely choose to claim full compensation for damage from any one of them, since they are liable jointly and severally.

33 It thus appears that the purpose of Article 3(1) of Directive 85/374 is to ease the burden of having to determine the actual producer of the defective product in question. In that regard, it is apparent from the explanatory memorandum relating to Article 2 of the Commission's proposal for a directive of 9 September 1976, which gave rise to Directive 85/374, taking into account that that article became, without substantive amendment, Article 3 of that directive, that the EU legislature considered that the protection of the consumer would be insufficient if the distributor could 'refer' the consumer to the producer, who might not be known to the consumer.

34 Furthermore, it should be noted 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.

35 Moreover, as the Czech Government rightly submits, since, first, several persons may be regarded as producers and, secondly, consumers may bring claims against any one of them, the search for a single liable person, that is to say, 'the most appropriate person' against whom consumers should assert their rights, is not, contrary to what the referring court suggests, relevant.

36 It follows that it cannot be required that the person who has put his name, trade mark or other distinguishing feature on the product, or who has authorised those particulars to be put on the product, also present himself as the producer of that product in some other way in order to be regarded as a 'producer' within the meaning of Article 3(1) of Directive 85/374.

37 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.

38 In the light of the foregoing considerations, the answer to the first question is that Article 3(1) of Directive 85/374 must be interpreted as meaning that the concept of 'producer', referred to in that provision, does not require that the person who has put his name, trade mark or other distinguishing feature on the product, or who has authorised those particulars to be put on the product, also present himself as the producer of that product in some other way.

The second question

39 In view of the answer given to the first question, there is no need to examine the second question.

Costs

40 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Tenth Chamber) hereby rules:

Article 3(1) of Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products, as amended by Directive 1999/34/EC of the European Parliament and of the Council of 10 May 1999, must be interpreted as meaning that the concept of 'producer', referred to in that provision, does not require that the person who has put his name, trade mark or other distinguishing feature on the product, or who has authorised those particulars to be put on the product, also present himself as the producer of that product in some other way.