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Judgment of the Court in Case C-157/23 | Ford Italia

### **Liability for defective products: a supplier may be considered to be a producer if his or her name is the same as the trade mark put on the product by the manufacturer**

*In order to ensure the protection of the consumer, the supplier and the actual producer of the defective product may be made jointly and severally liable even if that supplier has not himself or herself put his or her name, trade mark or other distinguishing feature on that product*

In July 2001, a consumer purchased a Ford car from Stracciari, a dealer of that brand in Italy. The vehicle had been manufactured by Ford WAG, a company established in Germany, and then supplied to the dealer through Ford Italia, which distributes Ford vehicles in Italy. In December 2001, the consumer was involved in an accident in which the airbag failed to work. The consumer therefore brought an action against the dealer and Ford Italia seeking compensation for the damage suffered as a result of the defect in the vehicle. Ford Italia claimed that it was not liable for the airbag's defect because it had not manufactured the vehicle.

The Italian Supreme Court of Cassation is uncertain as to the interpretation of the definition of the concept of 'producer' given by the Directive on liability for defective products. <sup>1</sup> It asks the Court of Justice whether the supplier of a defective product must be considered to be a 'person who ... presents him[- or her]self as ... [a] producer', within the meaning of that directive, even if that supplier has not physically put his or her name on that product but the trade mark which the manufacturer has put on that product and which corresponds to the name of that producer is the same as a distinctive element of the name of the supplier.

The Court points out that the concept of 'person who ... presents him[- or her]self as ... [a] producer', provided for by the Directive, refers not only to the person who has physically put his or her name on the product, but **must also include the supplier, if his or her name or a distinctive element thereof corresponds to the name of the manufacturer and to the name, trade mark or other distinguishing feature present on the product.** In both cases, the supplier uses that similarity in order to present himself or herself to the consumer as the person responsible for the quality of the product and to obtain the confidence of the consumer, as if the product had been sold directly by the producer. If that second category were not included in the concept, that would restrict the scope of the concept of 'producer' and compromise the objective of the Directive, in particular the protection of the consumer.

The Court adds that, in order to ensure the protection of the consumer, the EU legislature ensured that **'any person who ... presents him[- or her]self as ... [a] producer' should be made liable in the same way as the 'actual' producer.** In addition, the consumer must be able to freely choose to claim full compensation for damage from any one of them, since they are jointly and severally liable. 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.

**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of EU law or the validity of an EU act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text and, as the case may be, an abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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<sup>1</sup> Council [Directive 85/374/CEE](#) of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products. The Directive allocates liability to the producer for damage caused by defective products. The term 'producer' means the manufacturer of a finished product and a component part, as well as the producer of any raw material. Furthermore, the term includes 'any person who ... presents him[- or her]self as ... [a] producer' by putting his or her name, trade mark or other distinguishing feature on the product.