



Liability for defective product: the importance to inform about the identity of the manufacturer or importer

Judgment of the Provincial Court of Santa Cruz de Tenerife, of 18 March 2013, which dismisses the claim by a consumer against the suppliers of the product

Background

A consumer, keen on practicing frontenis, went to the famous sports store "Decathlon" to purchase some glasses from the brand called "lkus", made from polycarbonate highly resistant to the impacts generally received by those who practice this sport. For some reason, the consumer suffered a damage, according to him produced by such defective glasses, and decided to claim the corresponding compensation for damages. To such purpose, he addressed his claim against the seller body of the glasses (Decathlon) and also against the company that distributed them in Spain (Ditisport). The courts dismissed the claim of the consumer both in first instance as well as in second instance.

Subjects responsible for the damage

After confirming that the applicable law in the case at issue is the General Law for the Defense of Consumers and Users (Royal Legislative-Decree 1/2007), the Court underlines that according to such Law the party responsible for the damage produced by a defective product is the "producer" of such item, that is, its manufacturer and, where appropriate, the importer of such item. Only in the case that the producer cannot be identified, the supplier of the product will be held responsible for the damage (either the seller or the distributor), although in this case the supplier will be able to exempt himself from liability if he communicates the identity of the manufacturer or importer of the product to the consumer within the period of three

months from the moment he gains knowledge of the claim.

Identification of the producer

The Court considers that in this case neither the seller nor the distributor can be sued, because both the manufacturer as well as the importer of the glasses are identified.

With regard to the importer of the glasses lkus, both Decathlon and Ditisport informed the consumer about its details, so neither the seller nor the distributor must be considered responsible for the allegedly caused damage.

With respect to the manufacturer of the glasses, the Court highlights that its name and address appeared expressly both on the packaging of the glasses as well as in the instructions of use. Moreover, the Court considers that the consumer had to know for sure who the manufacturer of the lkus glasses was, since they are the only glasses endorsed by the sports federation to which he belongs.

In short, the judgment reiterates the principle established by law and the European Union rules: when a supplier receives a claim from a consumer for alleged damages caused by a product that he has supplied, he can be exempted from liability by communicating the name of the manufacturer and/or the importer of the allegedly defective product to the consumer.