



# Capsulas

## Who is the apparent producer?

*Judgment of the Provincial Court of Santa Cruz de Tenerife of 24 February 2023.*

Litigation related to certain medical devices is generating interesting judgments that bring clarity to the concepts that serve to define the liability of economic operators involved in the manufacture and marketing of a product.

### Apparent producer concept

One of these concepts is that of the apparent producer of a product.

Legislation defines an apparent producer as an economic operator who, without actually being the producer of a product, presents himself to the market as its producer, by putting his name, trade mark or other distinguishing feature on the product.

The apparent producer of a defective product is just as responsible as the producer and, therefore, it is important to clearly define the characteristics to identify it.

### To be presented as producer

The judgment analyses the claim made in relation to a prosthesis that was implanted in the claimant.

The claimant filed the lawsuit against a distributor of the product to whom, however, he attributed the status of apparent producer. The claimant did so despite knowing that this company had only acted as a distributor of the product and that the producer was another company within its group of companies.

The Provincial Court dismissed the claimant's claim and emphasized that merely having a company's name, brand or distinctive sign on the product packaging is insufficient to establish it as an apparent producer. The company must identify itself as the producer of the product, even if it is not actually the producer.

The mere mention of the company name, trade mark or other distinctive sign on the product, without more, is not sufficient to confer the status of apparent producer.

### Reference to the companies' group trademark

Additionally, the Provincial Court recalls that, if the prosthesis label and packaging indicate that the producer is part of a corporate group, this information cannot be used to sue another company of within the same companies' group which presents itself to the market only as a distributor of the product.

Consequently, the figure of the apparent producer cannot be used to file a claim against the distributor of a product on the grounds that it belongs to the same corporate group indicated on the label and packaging of the product