

Product Liability - Greece

Who is qualified to bring an action for product liability claims and on what basis?

Contributed by [KGGI Law Firm](#)

March 15 2012

[Introduction](#)

[Facts](#)

[Decision](#)

[Comment](#)

Introduction

According to Article 1, Paragraph 4(a) of the Consumer Protection Law (2251/1994, as amended by Law 3587/2007), a 'consumer' is a legal or natural person to whom products or services offered in the market are addressed, and who is an end user of those products or services. Protection under the law is thus granted to a consumer who is the end user of products or services. A person obtaining products or goods in order to transfer them, assign their use or even use them for the account of another party is not considered a 'consumer' and thus does not enjoy the special protection of the Consumer Protection Law.⁽¹⁾

Furthermore, according to Article 6, Paragraph 1, the producer of a defective product is liable for any damage caused to a consumer when making use of the product. Article 6, Paragraph 6 also provides for the damages which are recoverable in case of a defective product.

More specifically, damage caused by a defective product, for which the producer is liable, includes damage due to death or bodily injury and damage to or destruction of any asset of the consumer caused by the defective product, provided that the cost of such damage or destruction exceeds €500 and the product was used by the person harmed (for private use or consumption only) and according to the nature of the product.

In case of violation of Article 6, the plaintiff may also claim monetary satisfaction due to moral harm.

A consumer who has suffered damage due to a defective product may bring an action against the product producer, on the basis of either the special provisions of the Consumer Protection Law or the tortious liability provisions of the Civil Code (Articles 914, 925 and 932, in conjunction with Articles 288 and 298). Moreover, according to Articles 57 and 59 of the Civil Code, where the plaintiff has suffered an unlawful offence to his or her personality, he or she is entitled to claim for the cessation of such an offence, as well as its non-recurrence in the future. At the request of the person harmed, taking into account the nature of the offence, the court may order the defendant (ie, person liable) to remedy the moral harm suffered by the plaintiff.

Facts

In a recent judgment the court rejected a plaintiff's lawsuit against the producer of a product which was allegedly unfit for use, since it considered that the plaintiff did not qualify as a consumer under the Consumer Protection Law. In addition, the case could be grounded on neither the provisions on tortious liability nor the provisions on the protection of personality of the Civil Code.

The plaintiff, the owner of a canteen, claimed that he had purchased a quantity of refreshments from the defendant - a company which produced and distributes beverages - in order to sell them on to his customers for profit. A few months later, he took a bottle out of the box to place it in his refrigerator, at which point, as per his allegations, he realised that there was a piece of cigar paper in the bottle. The plaintiff did not open the bottle and notified the defendant of the incident.

The plaintiff filed suit against the producer, claiming that the defective product was due to negligence of the defendant's employees during the bottle selection and washing process. The plaintiff further claimed that the trustworthiness and reputation of his

Authors

[Anthony Hadjioannou](#)



[Aggeliki Moutafi](#)



business had been harmed because of the incident, since many customers had seen the particular bottle and would therefore believe that the plaintiff sold products which were unfit for human consumption. In addition, the plaintiff claimed that his personality had been harmed, since his personal health and safety were endangered (he further claimed in the lawsuit that he could have been a consumer of the product), and because his customers' health and safety were jeopardised due to potential consumption of the product.

The plaintiff claimed an amount of money to remedy the moral harm he had allegedly suffered.

Decision

On reviewing the case file, the court ruled that:

"Under the above historical background, the lawsuit cannot be grounded on the provisions of Law 2251/1994, as it is in force, given that, as far as the definition of a consumer is concerned, the plaintiff, who obtains (purchases) goods to meet the needs of his business and with the sole intention to sell them further, identical or following further processing, to third parties and is not the end user thereof, shall not qualify as a consumer, so that to apply the aforementioned law in the case at hand."

The court further ruled that the plaintiff's attempt to ground the lawsuit on the tortious liability provisions, as well as on the provisions for the protection of personality towards offences, was unlawful. The court based this ruling on the fact that:

"there is no causal link between the alleged tortious behaviour of the defendant, which consists in the production and selling of a defective product, and the alleged damage caused to the plaintiff – alternatively the unlawful offence on his personality (defamation of his business), given that the production of this particular standardised product, as mentioned in the lawsuit, is not objectively adequate and appropriate to cause the harmful effect, according to common experience and the normal course of things, and more particularly the reduction (fall) of the business reputation of the plaintiff."

Furthermore, the court took into account that the refreshments were produced under a standard procedure and noted that the product in question was unopened, unused and had not been offered by the plaintiff to a customer for consumption. This being the case, customers could easily ascertain the origin of the bottle and understand that the plaintiff had no involvement in its production. Therefore, the customers would not blame the canteen owner for the product's condition, since they could easily identify that he had not participated in the production of the allegedly defective product, and therefore no link between the incident and the alleged damage to his reputation could be made.

To the extent that the lawsuit was grounded on the provisions for the protection of personality towards offences, the court ruled that the conditions set out in Article 57 of the Civil Code had not been met. More particularly, the plaintiff grounded the lawsuit on these provisions since he alleged that his health and safety had been endangered due to potential consumption of the unfit product. Article 57 presupposes an unlawful offence in order for the relevant claim to be born, which condition (unlawful offence) was not met in this case, given that:

"the plaintiff did not make use of the product and consequently he did not suffer any health damage, while the possibility to use the unfit product and thus risking his health alone, does not constitute an unlawful harm of his personality."

The court thus rejected the lawsuit in its entirety.

Comment

In order to reach its conclusion, the court took into account three factors:

- The plaintiff did not qualify as a consumer under the Consumer Protection Law, as he was not the end user of the product.
- There was no causal link between the alleged tortious behaviour of the defendant and the damage suffered by the plaintiff. A consumer who has suffered damage due to a defective product may bring an action against the producer on the basis of either the special provisions of the Consumer Protection Law or the tortious liability provisions of the Civil Code (Articles 914, 925 and 932 in conjunction with Articles 288 and 298). In order to establish liability for the restoration of any damage caused due to tort, the law requires the existence of a causal link between the unlawful act (or omission) and the damage suffered. According to the principles of common experience, a causal link is established where the unlawful act or omission is adequate (appropriate) to cause the harmful effect, under the normal course of things and under the special circumstances of each particular case. In this way, tortious liability is somehow limited, since the law does not restore all damages, but excludes those which, although they causally linked to a particular behaviour, are unlikely to occur and do not fall within the normal course of things.

- The law requires the damage to have been caused following the use of the defective product, a requirement which was not met in this particular case. The mere possibility or intention of future use is not protected by the law. Likewise, a plaintiff's personality is not affected merely because he saw a foreign body in a product without making use of that product.

For further information on this topic please contact [Anthony Hadjioannou](#) at *KGDI Law Firm* by telephone (+30 210 8171 500), fax (+30 210 6856 657-8) or email (a.hadjioannou@kgdi.gr)

Endnotes

(1) See Professor Ioannis Karakostas, *Consumer Protection Law (Law 2251/1994, as it is in force following Law 3587/2007)*, 2008 edition, page 78.

The materials contained on this website are for general information purposes only and are subject to the [disclaimer](#).

ILO is a premium online legal update service for major companies and law firms worldwide. In-house corporate counsel and other users of legal services, as well as law firm partners, qualify for a free subscription. Register at www.iloinfo.com.

Online Media Partners



© Copyright 1997-2010 Globe Business Publishing Ltd