

## Product Liability - Greece

Hard to stomach: manufacturer's defence in product liability claim

Contributed by [KGDI Law Firm](#)

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### Introduction

Under Article 6(1) of the Consumer Protection Law (2251/1994), the manufacturer of a defective product is liable for any damage caused to the consumer. However, under Article 6(8), a manufacturer may be exempt from liability if it can prove that certain 'negative' conditions set out in the law have been met.

The burden of proof rests on the victim (ie, the consumer) to prove:

- that there was a defect in the product;
- that such defect resulted in the damage (caused by regular/normal use of the product); and
- the causal link between the defect and the damage.

On the other hand, the manufacturer will be exempt from liability if it can prove that:

- it did not circulate the product in the market;
- the defect did not exist at the time that the product was circulated (ie, at the time that it left the production facility);
- it did not manufacture the product with the intention of distributing it and did not distribute the product as part of its business activity;
- the defect was due to the fact that the product was manufactured in accordance with mandatory legal requirements; or
- at the time when the product was circulated in the market, the existing scientific and technical standards did not allow for the manufacturer to diagnose the defect in the product.

### Facts

In a recent judgment a manufacturer was released from liability after proving that its production method was organised in such a way that no defects could occur before the product had left its facility.

The plaintiffs (consumers) – a mother and daughter – claimed that they had purchased a carton of fruit juice from a supermarket in their neighbourhood. As per the plaintiffs' allegations, the juice had been displayed on a supermarket shelf (not in the chilled section) and the plaintiffs placed it in their refrigerator at home once they had purchased it. That same afternoon, the mother and daughter consumed some of the juice.

Two hours later, the plaintiffs claimed, they experienced strong stomach discomfort. Thereafter, when the mother tried to drink some more juice, she noticed that it was discoloured. This aroused her suspicion that the juice was spoilt and that it was causing the stomach discomfort that they were suffering. She opened the carton and found a voluminous solid mass inside.

As per the plaintiffs' allegations, their condition worsened and they experienced acute abdominal pain, along with vomiting and diarrhoea. They visited a doctor, who diagnosed alimentary poisoning and recommended medical treatment.

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The next day, the mother took the carton to the Health Department. A few days later, the juice was subjected to chemical analysis and it was found that there was a voluminous mass of mould at the bottom of the carton. Consequently, the product was considered harmful. Under those facts claimed, the plaintiffs filed a lawsuit against both the manufacturer and its lawful representative, as well as against the product vendor, seeking compensation from all three as being jointly liable.

The first instance court rejected the action to the extent that it was addressed against the manufacturer and its lawful representative, while accepting the case against the product vendor. Both the vendor and the plaintiffs appealed the first instance judgment, seeking its annulment.

### **Court of Appeal judgment**

Upon reviewing the case file, the Court of Appeal ruled as follows:

*"It was evidenced that the production of juices by the first defendant [manufacturer] is rather automatic and massive and meets the rules of the European Union and of Greek Law, as well as the international standards for the consumers' health and safety. At the crucial time, the defect [ie, the mould] did not appear in other juices of the same batch, as the one under judgment, and therefore the defect was not due to a fault caused during the production of the juice. In addition, any fault on the part of the first defendant [manufacturer] caused during the maintenance of the product by it and delivery thereof to the retailers should be excluded, because again any fault would have appeared not only in the juice purchased by the plaintiff, but also in other juices which were maintained and transferred in the same way" (no evidence for this was submitted).*

Furthermore, the court accepted the following, in relation to the manufacturing process of the juice:

*"The production and packaging of juices is aseptic, meaning that it is performed under conditions which do not allow the evolution of micro-organisms, by using closed circuit machines, and consequently no human factor takes part in the procedure. So, the product remains insensitive for many months without adding any conservatives. The material used for the packaging of said juice is of...type, which is widely used for the packaging of many well-known products, such as juices, milk etc. The above packaging material is received by the factory in roll and is kept in a specially formed and protected place. Therefrom, the material is inserted in the filling machine, which automatically unrolls and sterilizes it, by using disinfectant means. Thereafter, the material is dried in warm sterile air of 120 degrees Celsius and from the filling machine it is transferred (disinfected and free of micro-organisms) to the aseptic room, where the filling machines form the...packaging into a box. Through electronic control systems (photocells etc) it is secured that there is not even the slightest slot, groove, or aperture (hole) in the box and that the seaming of the box (sticking of the edges) has become solid. Then, the box is filled up with juice, in the total absence of air. Thereafter, the juice boxes are sealed and transferred, through a special conveyor belt, to the other packaging machines. More particularly, the boxes are placed in kits and they are, in turn, placed in pallets which are covered with waterproof plastic. The pallets are then transferred to the company's warehouses. It should also be noted that, after bottling, the juice remains for 'incubation' for five days. At that time, the packaging and appearance of the product is checked again. In addition, before the juice is loaded on a truck for the promotion to consumers, a check is again conducted by a chemist and thereafter the production batches are transferred (through the producer's own trucks) to the wholesalers and then to the retailers. On the basis of the above, any damage in the juice packaging should have been caused after the juice left the liability sphere of the first defendant [manufacturer]."*

The manufacturer produced convincing evidence (through witness cross-examination, affidavits and multiple certificates) about this step-by-step production procedure, which excluded any possibility of producing defective products. The court took this evidence into consideration when making its judgment.

Taking into account the juice manufacturing process, the court held that:

*"The defectiveness of the juice bought by the plaintiff was not due to a fault on the part of the first defendant [manufacturer] and consequently of the second defendant too [ie, the manufacturer's lawful representative] and any liability from their end for the damages caused to the health of the plaintiff and her daughter from the consumption of said product (juice) should be excluded".*

The court further ruled that the juice became defective at a time after its production and distribution for consumption. In light of the above admissions, the Court of Appeal considered that the action should be rejected insofar as the manufacturer and its lawful representative were concerned (as had been judged at first instance).

In addition, the Court of Appeal concluded that the product vendor bore liability for the defect, which must have occurred while the product was in its store, given that any

liability on the part of the manufacturer and its lawful representative in relation to the cause of defectiveness of the juice had been excluded. Moreover, although the vendor produced evidence that the conditions for maintaining juices in its store were generally appropriate, this did not mean that such conditions had definitely been met in relation to this particular product, since a single fault could possibly have occurred.

The Court of Appeal also ruled that:

*"From the above data it was not evidenced that the third defendant had taken the appropriate safety measures for the said juice packaging in relation to transferring, placing and safeguarding those conditions which might exclude any subsequent damage in the packaging either due to a possible movement of the product by the consumers in the shelves of the store, or due to its employees' negligence, while opening the packages in order to place the boxes of the juices in the shelves of its store. More so, it was not evidenced that the plaintiff contributed to her own damage, as well as to her daughter's damage, since she opened the juice at the same day she purchased it from the store and had no obligation to check the condition of the content thereof before making use of it [given that the juice had not yet expired]"*.

In light of this, the court considered that the action against the vendor should be accepted and ordered the vendor to compensate the plaintiffs for their moral harm.

### Comment

The courts have dealt with similar product liability claims many times, where manufacturers have based their defence on one of the 'negative' conditions set forth by Article 6(8) of the Consumer Protection Law, according to which "the defect did not exist at the time when the product was circulated". To this end, as is evident from this case, manufacturers may produce evidence that the procedures they follow when producing and packaging their products exclude any possibility of fault. This being the case, the production facility organisation and the means of production can play a crucial role and may ultimately lead to the exemption of the manufacturer from any liability, provided that the court is convinced about the effectiveness of the production methods in excluding faults.

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

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