



The distributor of a defective product might be exempted from liability without identifying the manufacturer

The judgement of the Court of Appeal of Barcelona of 12 June 2019 clarifies how to act when the consumer can identify the manufacturer of a defective product

Damages caused by a defective product

As we have previously commented in our Capsulas newsletter, the strict liability regime for defective products foreseen in Royal Legislative Decree 1/2007 (“RLD 2007”) states that the only one responsible for the damages caused by a defective product should be the so-called “producer” of the same. Such “producer” being understood as (i) the manufacturer or the importer of the product in the European Union, or (ii) whomever presents himself as manufacturer or importer by indicating its name, brand or other distinctive sign on the product. If the “producer” cannot be identified, responsibility then falls with the supplier unless, within a period of three months, such supplier indicates to the harmed party the identity of the manufacturer or the provider of the product.

Background

In the present case, a patient who was implanted an allegedly defective hip prosthesis sued the distributor of such prosthesis under the RLD 2007 strict liability regime.

Previously, the patient addressed an out-of-court complaint to the distributor of the product, which responded by identifying itself as distributor and requesting additional information about the allegedly defective

prosthesis in order to carry out the appropriate verifications. In the response, the distributor did not identify the manufacturer or the supplier of the product.

On the basis of such lack of identification, the Court considered the distributor as “manufacturer” of the product and ordered it to pay the amount claimed by the patient.

The identification of the manufacturer is not always necessary

The case reached the Court of Appeal of Barcelona which revoked the first instance judgement and acquitted the distributor.

The Court of Appeal, in view of the documents provided with the claim, considered that the patient had the capacity to know who the manufacturer was without the distributor identifying it. For this reason, the Court of Appeal considered that the claim should have not been directed against the distributor.

The Court of Appeal also highlighted that the fact that the distributor showed interest for the incident, requesting additional information about the allegedly defective product, did not imply the assumption of any type of liability. Also, the distributor subsequent refusal to respond was not a violation of the doctrine under which one cannot act contrary to its previous conduct.