Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

19 December 2024*

(Reference for a preliminary ruling – Approximation of laws – Liability for defective products – Directive 85/374/EEC – Article 3(1) – Concept of 'producer' – Concept of a 'person who … presents him[- or her]self as … [a] producer' – Conditions – Supplier whose name is the same in part as that of the producer and as the trade mark put on the product by the producer)

In Case C-157/23,

REQUEST for a preliminary ruling under Article 267 TFEU from the Corte suprema di cassazione (Supreme Court of Cassation, Italy), made by decision of 6 March 2023, received at the Court on 13 March 2023, in the proceedings

Ford Italia SpA

v

ZP,

Stracciari SpA,

THE COURT (Fifth Chamber),

composed of I. Jarukaitis, President of the Fourth Chamber, acting as President of the Fifth Chamber, D. Gratsias (Rapporteur) and E. Regan, Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: C. Di Bella, Administrator,

having regard to the written procedure and further to the hearing on 8 February 2024,

after considering the observations submitted on behalf of:

– Ford Italia SpA, by M. Manfredonia, avvocato,

– Stracciari SpA, by L. Landuzzi, avvocato,

– the European Commission, by G. Gattinara and F. Thiran, acting as Agents,

* Language of the case: Italian.

after hearing the Opinion of the Advocate General at the sitting on 18 April 2024,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 3(1) of Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products (OJ 1985 L 210, p. 29).

2 The request has been made in proceedings between Ford Italia SpA, on the one hand, and ZP and Stracciari SpA, on the other, concerning the liability of Ford Italia for defective products, following a road traffic accident suffered by ZP whilst driving a Ford vehicle which ZP had purchased from Stracciari.

Legal context

European Union law

3 The fourth and fifth recitals of Directive 85/374 provide:

‘Whereas protection of the consumer requires that all producers involved in the production process should be made liable, in so far as their finished product, component part or any raw material supplied by them was defective; whereas, for the same reason, liability should extend to importers of products into the Community and to persons who present themselves as producers by affixing their name, trade mark or other distinguishing feature or who supply a product the producer of which cannot be identified;

Whereas, in situations where several persons are liable for the same damage, the protection of the consumer requires that the injured person should be able to claim full compensation for the damage from any one of them’.

4 Article 1 of that directive provides that the producer is to be liable for damage caused by a defect in his or her product.

5 Article 3 of that directive is worded as follows:

‘1. “Producer” means the manufacturer of a finished product, the producer of any raw material or the manufacturer of a component part and any person who, by putting his [or her] name, trade mark or other distinguishing feature on the product presents him[- or her]self as its producer.

2. Without prejudice to the liability of the producer, any person who imports into the Community a product for sale, hire, leasing or any form of distribution in the course of his [or her] business shall be deemed to be a producer within the meaning of this Directive and shall be responsible as a producer.

3. Where the producer of the product cannot be identified, each supplier of the product shall be treated as its producer unless he [or she] informs the injured person, within a reasonable time, of the identity of the producer or of the person who supplied him [or her] with the product. The same shall apply, in the case of an imported product, if this product does not indicate the identity of the importer referred to in paragraph 2, even if the name of the producer is indicated.'

6 Under Article 5 of that directive:

'Where, as a result of the provisions of this Directive, two or more persons are liable for the same damage, they shall be liable jointly and severally, without prejudice to the provisions of national law concerning the rights of contribution or recourse.'

Italian law

7 Directive 85/374 was transposed into Italian law by decreto del Presidente della Repubblica n. 224 – Attuazione della direttiva CEE n. 85/374 relativa al ravvicinamento delle disposizioni legislative, regolamentari e amministrative degli Stati membri in materia di responsabilità per danno da prodotti difettosi, ai sensi dell'art. 15 della legge 16 aprile 1987, n. 183 (Presidential Decree No 224 transposing Directive 85/374/EEC on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products, pursuant to Article 15 of Law No 183 of 16 April 1987) of 24 May 1988 (GURI No 146 of 23 June 1988; 'Decree No 224/1988').

8 Article 3 of that decree, entitled 'Producer', provides in paragraph 1 thereof that the producer is the manufacturer of the finished product or of one of its components, or the producer of the raw material. Furthermore, pursuant to paragraph 3 of that article, any person who, by putting his or her own name, trade mark or other distinguishing feature on the product or its packaging, presents him- or herself as its producer must also be regarded as such.

9 Article 4 of that decree, concerning the liability of the supplier, provides in paragraph 1 thereof that, where the producer is not identified, the supplier which has distributed the product in the course of a commercial activity is to be subject to the same liability if it has not, within three months of being requested to do so, informed the injured party of the identity and address of the producer or the person who supplied it with the product. Paragraph 5 of that article provides that the third party designated as a previous producer or distributor may be summoned to appear in court and that the distributor against which the claim is brought may be exempted from liability if the designated person appears in court and does not dispute the designation.

The dispute in the main proceedings and the question referred for a preliminary ruling

10 On 4 July 2001, ZP purchased a Ford motor vehicle ('the vehicle in question') from Stracciari, a dealer for that make established in Italy.

11 The vehicle in question had been produced by Ford WAG, a company established in Germany, and then supplied to Stracciari through Ford Italia, which distributes in Italy vehicles produced by Ford WAG. Ford WAG and Ford Italia belong to the same group of undertakings.

12 On 27 December 2001, ZP was involved in a road traffic accident in the course of which an airbag fitted to the vehicle in question failed to work.

13 On 8 January 2004, ZP brought an action before the Tribunale di Bologna (District Court, Bologna, Italy) against Stracciari and Ford Italia, seeking an order that they pay compensation for the damage which ZP claimed to have suffered as a result of the defect in the vehicle.

14 Before that court, Ford Italia submitted that it had not manufactured the vehicle in question. It was only the supplier of the vehicle, the producer being Ford WAG. Ford Italia also claimed that it had indeed stated, on the invoice for the sale of the vehicle in question, that Ford WAG was the producer, and accordingly, in the present case, Ford Italia could not be considered to be that producer itself under Article 3(3) of Directive 85/374 or assume the liability incurred by a producer under that directive.

15 By decision of 5 November 2012, the Tribunale di Bologna (District Court, Bologna) held that Ford Italia incurred non-contractual liability on account of the manufacturing defect in the airbag fitted to the vehicle in question.

16 Ford Italia appealed against that decision before the Corte d'Appello di Bologna (Court of Appeal, Bologna, Italy).

17 In support of its appeal, Ford Italia claimed that the court of first instance had wrongly held that it was for Ford Italia to implicate the producer, by requesting that it be joined as a party to the proceedings, in order to be exempted from liability itself. In addition, the court of first instance had given a ruling *ultra petita*, in so far as it had delivered a judgment against Ford Italia as the supplier of the vehicle in question, when ZP had sought judgment against it as the producer of that vehicle.

18 By judgment of 21 December 2018, the Corte d'Appello di Bologna (Court of Appeal, Bologna) dismissed Ford Italia's action on the ground that Ford Italia, as a supplier, had been correctly allocated the same liability as that of the producer, in so far as its position must be 'assimilated to that of the producer not implicated'. Since it had failed to implicate Ford WAG, Ford Italia could not claim to be exempted from liability pursuant to the first sentence of Article 3(3) of Directive 85/374.

19 Ford Italia brought an appeal on a point of law against that judgment before the Corte suprema di Cassazione (Supreme Court of Cassation, Italy), the referring court.

20 In support of that appeal, Ford Italia criticises the solution adopted by the referring court in a comparable case, in which Ford WAG's liability, as a producer, had been extended to Ford Italia. The referring court had decided, in essence, that, under Article 3(3) of Decree No 224/1988, which transposed Article 3(1) of Directive 85/374 into Italian law, for the purposes of liability for defective products, the supplier of that product must be assimilated to the producer where that supplier's trade mark or company name and the trade mark or company name of the producer are the same, in whole or in large part, and the product is marketed under that trade mark.

21 However, the referring court raises the question as to the exact scope of the expression 'by putting his [or her] name' in Article 3(3) of Decree No 224/1988 and Article 3(1) of Directive 85/374.

22 It asks, in essence, whether the extension of the producer's liability to the supplier is thus limited to cases in which the 'putting' consists, for the supplier, in physically printing his or her name, trade mark or other distinguishing feature on the product, with the intention of confusing the supplier's identity with that of the producer, or whether that extension is also applicable where there is a mere coincidence in the identifying details, as is the case here.

23 In those circumstances, the Corte suprema di cassazione (Supreme Court of Cassation) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Is an interpretation that extends the producer's liability to the supplier, even where the latter has not physically placed its own name, trade mark or other distinguishing feature on the item, on the sole ground that the supplier has a name, trade mark or other distinguishing feature that is in whole or in part the same as that of the producer, consistent with Article 3(1) of [Directive 85/374]? If it is not consistent with that provision, why is that the case?'

The request that the oral part of the procedure be reopened

24 By document lodged at the Registry of the Court of Justice on 29 April 2024, following the delivery of the Advocate General's Opinion, Ford Italia requested that the oral part of the procedure be reopened, pursuant to Article 83 of the Rules of Procedure of the Court of Justice.

25 In support of its request, Ford Italia alleges, in essence, the existence of a fact 'new to the proceedings, but not to the case file', relating to the time at which the consumer became aware of the identity of the actual producer of the vehicle in question. The Advocate General overlooked that fact in his Opinion, which is therefore based on a misinterpretation of the facts.

26 It must be noted, first, that the Statute of the Court of Justice of the European Union and the Rules of Procedure make no provision for the interested parties referred to in Article 23 of the Statute to submit observations in response to the Advocate General's Opinion. Second, under the second paragraph of Article 252 TFEU, the Advocate General, acting with complete impartiality and independence, is to make, in open court, reasoned submissions on cases which, in accordance with the Statute of the Court of Justice of the European Union, require the Advocate General's involvement. The Court is not bound either by the Advocate General's submissions or by the reasoning which led to those submissions. Consequently, a party's disagreement with the Opinion of the Advocate General, irrespective of the questions that he or she examines in the Opinion, cannot in itself constitute grounds justifying the reopening of the oral procedure (judgment of 6 October 2021, *W.Ż. (Chamber of Extraordinary Control and Public Affairs of the Supreme Court – Appointment)*, C-487/19, EU:C:2021:798, paragraphs 62 and 63 and the case-law cited).

27 Nevertheless, in accordance with Article 83 of the Rules of Procedure, the Court may at any time, after hearing the Advocate General, order the reopening of the oral part of the procedure, in particular if it considers that it lacks sufficient information or where a party has, after the close of that part of the procedure, submitted a new fact which is of such a nature as to be a decisive factor for the decision of the Court, or where the case must be decided on the basis of an argument which has not been debated between the interested parties.

28 In the present case, however, the Court considers that it has all the information necessary to give a ruling. Moreover, Ford Italia's request that the oral part of the procedure be reopened does not indicate that the present case should be decided on the basis of an argument which has not been debated between the interested parties, nor does it contain any new fact which is of such a nature as to be a decisive factor for the decision which the Court is called upon to give in that case. In those circumstances, the Court considers, after hearing the Advocate General, that there is no need to order that the oral part of the procedure be reopened.

Consideration of the question referred

29 By its question, the referring court asks, in essence, whether Article 3(1) of Directive 85/374 must be interpreted as meaning that the supplier of a defective product must be considered to be a 'person who … presents him[- or her]self as … [a] producer' of that product, where that supplier has not physically put his or her name, trade mark or other distinguishing feature on the product, but the trade mark which the producer has put on that product is the same, on the one hand, as the name of the supplier or a distinctive element thereof, and, on the other hand, as the name of the producer.

30 As a preliminary point, it should be noted that Directive 85/374 seeks to achieve, in the matters regulated by it, complete harmonisation of the laws, regulations and administrative provisions of the Member States and that, therefore, the margin of discretion available to the Member States to make provision for defective product liability is entirely determined by that directive and must be inferred from its wording, purpose and structure (see, to that effect, judgment of 10 January 2006, *Skov and Bilka*, C-402/03, EU:C:2006:6, paragraphs 22 and 23).

31 On this point, it must be observed that the persons against whom a consumer is entitled to bring an action under the system of liability laid down by Directive 85/374 are listed in Articles 1 and 3 of that directive. Since that directive, as is apparent from the previous paragraph, seeks to achieve complete harmonisation in the matters regulated by it, the list of persons referred to in Articles 1 and 3 of that directive must be regarded as exhaustive (see, to that effect, judgment of 10 January 2006, *Skov and Bilka*, C-402/03, EU:C:2006:6, paragraphs 32 and 33).

32 As regards the wording of those provisions, Article 1 of Directive 85/374 allocates liability for defective products to the producer, whereas Article 3(1) of that directive defines the term 'producer' as meaning, inter alia, the manufacturer of a finished product, the producer of any raw material or the manufacturer of a component part.

33 Although, under Article 1 of Directive 85/374, the EU legislature chose, in principle, to allocate to the producer liability for damage caused by his or her defective products, Article 3 of that directive indicates which of the operators who have taken part in the manufacturing and marketing processes for the product in question will also have to assume the liability established by that directive (see, to that effect, judgment of 10 January 2006, *Skov and Bilka*, C-402/03, EU:C:2006:6, paragraphs 29 and 30).

34 It should be noted that Article 3(1) of Directive 85/374 provides, in essence, an alternative, only the first part of which concerns the person who is at least partially involved in the process of manufacturing the product concerned. By contrast, the second part of the alternative refers to a

person who presents him- or herself as a producer by putting his or her name, trade mark or other distinguishing feature on that product (see, to that effect, judgment of 7 July 2022, *Keskinäinen Vakuutusyhtiö Fennia*, C-264/21, EU:C:2022:536, paragraph 26).

35 It is therefore apparent from the clear and unambiguous terms of Article 3(1) of Directive 85/374 that the involvement of the person who presents him- or herself as a producer in the process of manufacturing the product is not necessary in order for such person to be classified as a 'producer' within the meaning of that provision (see, to that effect, judgment of 7 July 2022, *Keskinäinen Vakuutusyhtiö Fennia*, C-264/21, EU:C:2022:536, paragraph 27).

36 Therefore, a person such as, in the present case, the applicant in the main proceedings, who does not manufacture vehicles, but merely purchases them from the manufacturer of those vehicles in order to distribute them in another Member State, may be considered to be a 'producer', within the meaning of Article 1 of Directive 85/374, if, in accordance with Article 3(1) of that directive, it presented itself as such by putting its name, trade mark or other distinguishing feature on the vehicle in question.

37 By putting his or her name, trade mark or other distinguishing feature on the product at issue, the person who presents him- or herself as a producer gives the impression that he or she is involved in the production process or assumes responsibility for it. Accordingly, by using such particulars, that person is effectively using his or her reputation in order to make that product more attractive in the eyes of consumers which, in return, justifies his or her liability being incurred in respect of that use (judgment of 7 July 2022, *Keskinäinen Vakuutusyhtiö Fennia*, C-264/21, EU:C:2022:536, paragraph 34).

38 That being so, the dispute in the main proceedings raises the question of the liability of the official distributor in Italy of a defective product, namely, in the present case, Ford Italia, which has not itself physically put its name, trade mark or other distinguishing feature on that product, since the trade mark appearing on it, namely Ford, was put on in the course of the manufacturing process of that product and corresponds to the name of the manufacturer of that product. It is therefore necessary to determine whether the fact that that mark also corresponds to a distinctive element of the name of that distributor is sufficient for that distributor to be classified as a 'person who … presents him[- or her]self as … [a] producer' within the meaning of Article 3(1) of Directive 85/374.

39 It is true that, by referring to a person 'who … presents him[-or her]self as … [a] producer' 'by putting' his or her name, trade mark or other distinguishing feature on the product, the wording of that provision might suggest that that classification requires active steps on the part of that person, consisting in putting that wording on the product in question him- or herself.

40 However, first, it should be noted that that reference relates essentially, as has been stated in paragraph 37 of the present judgment, to the conduct of a person who uses the affixing of his or her name, trade mark or other distinguishing feature on a product in order to give the impression of being involved in the production process or of assuming responsibility for it.

41 From that point of view, where that person supplies the product in question, it makes no difference whether that person him- or herself has actually put such wording on that product or whether his or her name contains the wording put on it by the manufacturer, which corresponds to the manufacturer's name. In those two cases, the supplier uses the similarity between the wording in question and that supplier's own company name in order to present him- or herself

to the consumer as the person responsible for the quality of the product and to give rise to confidence on the part of that consumer comparable to that which he or she would have if the product had been sold directly by that supplier's producer. In both cases, that person must therefore be regarded as a person who 'presents him[- or her]self as … [a] producer' within the meaning of Article 3(1) of Directive 85/374.

42 Second, it should be recalled that, according to settled case-law, in interpreting a provision of EU law, it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part (judgment of 24 November 2022, *Cafpi and Aviva assurances*, C-691/21, EU:C:2022:926, paragraph 37 and the case-law cited).

43 It is apparent from Article 5 of Directive 85/374, read in the light of the fourth and fifth recitals of that directive, that the EU legislature adopted a broad interpretation of the concept of 'producer' in order to protect the consumer (see, to that effect, judgment of 7 July 2022, *Keskinäinen Vakuutusyhtiö Fennia*, C-264/21, EU:C:2022:536, paragraph 31).

44 According to the fourth recital of Directive 85/374, the EU legislature has regard to the fact that protection of the consumer requires that 'persons' who present themselves as producers by affixing their name, trade mark or other distinguishing feature to the product should be made liable in the same way as the 'actual' producer. Furthermore, it follows from Article 5 of that directive, read in the light of the fifth recital thereof, that the liability of a person who presents him- or herself as a producer is no different from that of the 'actual' producer, and that the consumer may freely choose to claim full compensation for damage from any one of them, since they are liable jointly and severally (see, to that effect, judgment of 7 July 2022, *Keskinäinen Vakuutusyhtiö Fennia*, C-264/21, EU:C:2022:536, paragraph 32).

45 It thus appears that the purpose of Article 3(1) of Directive 85/374 is to ease the burden of having to determine the actual producer of the defective product in question. In that regard, it is apparent from the explanatory memorandum relating to Article 2 of the Commission's proposal for a directive of 9 September 1976, which gave rise to Directive 85/374, taking into account that that article became, without substantive amendment, Article 3 of that directive, that the EU legislature considered that the protection of the consumer would be insufficient if the distributor could 'refer' the consumer to the producer, who might not be known to the consumer (see, to that effect, judgment of 7 July 2022, *Keskinäinen Vakuutusyhtiö Fennia*, C-264/21, EU:C:2022:536, paragraph 33).

46 Consequently, Article 3(1) of Directive 85/374 must be interpreted, in the light of the context of that provision and the objective pursued by the rules of which it forms part, as meaning that the concept of 'person who … presents him[- or her]self as … [a] producer' within the meaning of that provision, cannot refer exclusively to the person who has physically put his or her name, trade mark or other distinguishing feature on the product. To agree otherwise would be to restrict the scope of the concept of 'producer' and thus compromise consumer protection. In particular, it must be held that the supplier of a product 'presents him[- or her]self as its producer' where the name of that supplier or a distinctive element thereof is the same, on the one hand, as the name of the manufacturer and, on the other hand, as the name, trade mark or other distinguishing feature put on the product by the manufacturer.

47 However, in accordance with Article 5 of Directive 85/374, since a person who presents him- or herself as a producer and the manufacturer of the defective product are jointly and severally liable, the liability of that person invoked by the consumer is without prejudice to the provisions

of national law concerning the rights of contribution or recourse and, in particular, to the provisions enabling that person to invoke, in turn, the liability of the manufacturer of the defective product.

48 In the light of the foregoing, the answer to the question raised is that Article 3(1) of Directive 85/374 must be interpreted as meaning that the supplier of a defective product must be considered to be a 'person who … presents him[-or her]self as … [a] producer' of that product, within the meaning of that provision, where that supplier has not physically put his or her name, trade mark or other distinguishing feature on the product, but the trade mark which the producer has put on that product is the same, on the one hand, as the name of the supplier or a distinctive element thereof, and, on the other hand, as the name of the producer.

Costs

49 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fifth Chamber) hereby rules:

Article 3(1) of Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products

must be interpreted as meaning that the supplier of a defective product must be considered to be a 'person who … presents him[- or her]self as … [a] producer' of that product, within the meaning of that provision, where that supplier has not physically put his or her name, trade mark or other distinguishing feature on the product, but the trade mark which the producer has put on that product is the same, on the one hand, as the name of the supplier or a distinctive element thereof, and, on the other hand, as the name of the producer.

[Signatures]