

## Dealers' obligations in product safety law

by Philipp Reusch

The judgement of 12 January 2017 by the German Federal High Court of Justice (BGH) was a remarkable one as regards the requirements to be met by dealers in terms of product safety law. Although the case itself revolved around the law of competition, the nucleus of the claim for forbearance under the law of competition was determined by the provisions of product safety law, and it has thus developed special relevance for dealers and distributors.

In the judgement in question, the BGH ruled that the dealer – this was a dealer in contact lenses, but it applies to all products under the German Product Safety Act (ProdSG) – is under obligation to provide the contact data of the manufacturer on the product if they have not already been provided there by the manufacturer himself.

The provisions in Article 6 (5) of the ProdSG and those in Article 3 (2) 1. and (2) 3. which complement them, said the BGH, were to be interpreted in accordance with the General Product Safety Directive in the light of Art. 5 2. Sentence 1 and Art. 2 (b) (iii). The first of these states that dealers are “required to act with due care to help to ensure compliance with the applicable safety requirements, in particular by not supplying products which they know or should have presumed, on the basis of the information in their possession and as professionals, do not comply with these requirements”.

Furthermore, Art. 5 1. Subparagraph III of the General Product Safety Directive stipulates that manufacturers within the limits of their respective activities shall adopt measures commensurate with the characteristics of the products which they supply, enabling them to

- a. be informed of risks which these products might pose;
- b. choose to take ... action ... to avoid these risks.

According to Art. 5 1. Subparagraph IV (a) of the General Product Safety Directive, this includes “an indication, by means of the product or its packaging, of the identity and details of the producer and the product reference or, where applicable, the batch of products to which it belongs, except where not to give such indication is justified”.

It follows from this that in accordance with the ProdSG dealers make a contribution to adherence to the applicable safety requirements; in particular also by stating the name and address of the manufacturer on the product or its packaging.

For dealers, the consequence of this judgement consists in the recognition that they should in future pay special attention to whether or not the products they sell – or their packaging – actually bear the appropriate dealer / distributor ID; simply making reference to the manufacturer's obligation to affix such ID will certainly not – i.e. no longer – be adequate. Manufacturers should therefore also affix an appropriate label themselves to avert any impairment of their sales activity.



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**Company contact:** Melanie Schuh / Head of Marketing & Communications / T +49 30 2332895-0 / E [melanie.schuh@reuschlaw.de](mailto:melanie.schuh@reuschlaw.de)