

TO: Clients and Friends of the Firm
FR: Frishberg & Partners
RE: Product Liability Legislation

I. Introduction

According to the Ukrainian Constitution, a person's life, health, honor and dignity are the highest social wealth of the state. This premise allows the state to apply efforts to provide all Ukrainian consumers with an adequate level of protection of their life and health. The state's increasing interest is manifested in the creation of new departments with the authority to regulate and control the safety of product consumption. It can also be seen in the creation and improvement of existing legislation which sets forth the rules for the protection of consumer rights as well as safety requirements for consumer products.

The Department of Consumer Policy, as part of the State Committee on Certification and Consumer Policy, is the main state body charged with the protection of consumer rights. All other Ministries and departments are required to cooperate in carrying out the state policy with regard to consumer rights protection.

With respect to the legislation, along with the general norms of consumer rights protection reflected in the Constitution of Ukraine and the Civil and Economic Codes, the Law of Ukraine No. 1023-XII "On Protection of Consumer Rights", dated May 12, 1991 (as completely amended for the third time on December 1, 2005 – hereinafter the "Law"), is specifically designed to deal with the minute details of consumer rights protection. It establishes the criteria for product liability of manufacturers and service providers for goods and services purchased or used by natural persons exclusively for their everyday needs.

From a theoretical point of view, Ukrainian consumer protection legislation could be considered civil legislation with elements of administrative law, which can be delegated to specifically authorized state bodies, and specific consumer rights that may be used to protect the interests of a consumer during the conclusion of civil agreements contemplating the purchase of domestic goods or services.

The Law clearly defines the entities participating in the consumer product market, as well as the products, services and other terms applied on such market. The principal criteria that product manufacturers and service providers should observe include the proper provision of information about their product or service, product safety and quality standards. In other words, products and

services must correspond to the existing standards, technical conditions and other quality and safety rules established by the state.

II. Liability for the Safety and Quality of Products

In the European Union and the United States, distributors, dealers and manufacturers are usually liable to consumers for the sub-standard quality of and misinformation about their goods and services. While Ukrainian legislation does not contain the concept of “distributor”, the function of a distributor in Ukraine may be carried out by an importer or general importer, who may be described as a “manufacturer” in accordance with the Law.

Specifically, pursuant to the Law, a manufacturer either (i) manufactures a product or (ii) declares itself the manufacturer of a product by displaying on such product and/or its packaging or in the accompanying documents provided to a consumer its name, trademark or other element that identifies such subject of business activity or *(iii) imports a product*.

The function of a distributor may also be performed by a person or entity qualified under Ukrainian legislation as a “seller”. As a result, in Ukraine a manufacturer, an importer and/or a direct seller of a product or service may be liable for the sub-standard quality of such product (service) and the non-conformance of such product (service) with the relevant state standards. As a rule, the documents accompanying a product or service must identify the person or entity that may accept complaints and claims from consumers and who carries out warranty repairs and service.

III. Product Information

In accordance with Article 15 of the Law, a consumer has the right to receive necessary, accessible, reliable and timely information, which allows them to make an informed and competent choice concerning a product. Such information must be made available to consumers before they purchase a product or order works (services). Importantly, product information is not deemed an advertisement and must contain:

- 1) the name of the product, and the name or portrayal of the mark for goods and services under which they are sold;
- 2) information concerning the main consumer features of the product, as well as other information related to specific products (for example, food products);
- 3) information concerning the content level of hazardous substances, which are established by normative-legal acts, and a warning concerning the application (use) of certain goods (if such warning is required by legislation);

.....
: If you wish to receive the entire article, please
: contact us at: office@frishberg.com.ua.
:
: Thank you.
:.....