IETI Transactions on Engineering Research and Practice
http://ieti.net/TERP/

2025, Volume 9, Issue 2, 35-39, DOI 10.6723/TERP.202512_9(2).0004

CONCEPT OF PACKAGING LIABILITY – TECHNICAL AND LEGAL ANALYSIS ON THE EXAMPLE OF A CASE STUDY

Aleksandar Zunjic[1, a]
[1]University of Belgrade, Faculty of Mechanical Engineering, Belgrade, Serbia

[a]azunjic@mas.bg.ac.rs

Abstract This paper examines the legal status of packaging, through the doctrine of the "integrated product", which considers technical defects of packaging, as strictly as defects of content itself. The contribution of the paper is in the finding of the legal inconsistency between the risk transfer mechanism defined by Directive 2011/83/EU and the conformity rules of goods from Directive 2019/771 especially in the context of specific risks of the "takeout" industry. The key contribution is the proposal to amend Article 20 of Directive 2011/83/EU by adding a new paragraph which would explicitly maintain the liability of the trader for packaging defects that existed at the time of delivery, so that the unfair consequence that the consumer is liable for factors that cannot reasonably be controlled after taking possession of the goods would no longer exist.

Keywords: Packaging liability; product liability; Directive 2011/83/EU; Directive (EU) 2019/771; Uniform Commercial Code (UCC).

1. INTRODUCTION

The modern marketplace of consumer goods and especially the retail food and hospitality industry (takeout/delivery) is based on the underlying assumption of packaging integrity. Packaging is no longer a passive wrapper, but an active and integral part of the product that performs the functions of protection, transport and informing the consumer. When that function fails - when, for example, the bottom of a paper bag breaks under the weight of hot food or a handle comes off, causing spillage and possible injuries - a complex legal mechanism of liability is triggered.

This paper offers a focused analysis of packaging liability, with special emphasis on cases of damage to packaging and food product containers, though it is not limited to them. The central thesis of this paper is that packaging, in the eyes of the law, loses its status as an independent entity the moment it goes into circulation filled with goods. In a certain sense, it becomes an "integrated product," and its defects - whether manufacturing, design, or informational - are treated with the same strictness as defects of the content itself (food).

2. LEGAL STATUS OF PACKAGING – DOCTRINE OF THE INTEGRATED PRODUCT

The first step in the analysis of liability is the determination of the ontological and legal status of packaging. Is the paper bag that a restaurant gives you with an order a "service," a "gift," or "goods"? The answer to this question determines the type of liability that applies: strict liability, implied warranties or negligence.

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2.1. Packaging as a Constitutive Element of the Product

In the theory of strict product liability the legal consensus is unequivocal: packaging is considered to be part of the product. This is not only a physical but also legal integration. A defect in packaging, labeling, or the way the product is presented may make the entire product unsafe for its intended use, even though the content thereof (food) may be hygienically sound. Legal theory accepts that the term "product liability" in this context should be more precisely interpreted as "liability for the packaged product" [1].

This means that in the case of a paper bag tearing with hot soup, it is not the "bag" as an isolated object that the dispute is about, but the "hot soup in inadequate packaging" as a single defective product. Courts have confirmed that a defect can be related to the product itself or to its packaging, labelling or presentation [2].

2.2. Status of “Manufacturer” for Packagers and Distributors

The legal practice has broadened the definition of "manufacturer" to include those who engage only in packaging or labeling. This is important for restaurants and food delivery services which, although they do not produce the packaging itself, perform the act of placing food into it, thereby becoming creators of the final product that reaches the consumer.

In the case of Smith v. Alza Corp., the court held that a company that deals only in packaging and labeling a product is a "manufacturer," not just a "seller," and cannot rely on the immunity afforded to sellers by product liability acts if they have not made any changes to the product [3]. This means that a restaurant that packs food into bags takes on part of the liability of the manufacturer of that "packaging system." If a restaurant improperly packs food (e.g. packs an overly heavy box into a thin bag) then it is de facto the manufacturer of a dangerous situation.

2.3. Legal Framework for the Sale of Food and Beverages (UCC)

According to the Uniform Commercial Code (UCC) in the United States, which is a model for many international contracts, the serving of food or drink for compensation (either on premises or to-go) is a "sale." For goods to be "merchantable" they must be properly packaged [4]. Thus, poor packaging is a direct violation of the implied warranty of merchantability. If a bag tears before the customer gets to the car, the sales contract is breached because the goods were not properly packaged for transport, which is their basic purpose.

3. TYPOLOGY OF DEFECTS IN PACKAGING

To prove liability, it is necessary to precisely categorize the nature of the packaging defect. In damage compensation lawsuits, defects are most often divided into three categories: manufacturing defects, design defects, and warning defects (failure to warn).

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3.1. Manufacturing Defects

A manufacturing defect occurs when an individual product is not in accordance with the intended design specifications of the manufacturer. It is an anomaly in the production process. One of the three defects that are recognized to trigger the economic loss rule is a manufacturing defect [5]. In the case of paper bags, this would be a case where, for example, the gluing machine applied too little adhesive to the bottom of one particular bag, or the paper in that batch had a lower grammage than declared.

Case law has instances where the bottom of a box or bag gave way under normal load. In the Kroger case, a customer was injured when the bottom of a cardboard box containing glass bottles collapsed [6]. Such types of incidents are frequently dealt with by the doctrine of res ipsa loquitur ("the thing speaks for itself"), because a properly manufactured box should not fall apart under normal lifting.

3.2. Design Defects

A design defect is when the whole product line is inherently unsafe for its intended use, and a safer alternative design was economically and technologically feasible [7].

This is the most common cause of problems in the "takeout" industry. The use of a standard kraft paper bag (not treated with resins for moisture resistance) to carry hot food that gives off steam is a classic design defect in the packaging system. Standard paper loses almost all of its load-bearing capacity when dampened by condensation. If a restaurant uses bags without "wet strength" treatment [8] for hot food, this is a systemic error in the design of the service.

3.3. Failure to Warn

Manufacturers and sellers have a responsibility to warn of dangers that are not apparent to the average user or of dangers which result from the foreseeable misuse [9]. If a paper bag has a load capacity of 3 kg, but can physically take a volume of goods up to 5 kg, the lack of a warning about maximum weight ("Max Load 3kg") or instructions such as "Support Bottom" may be considered a defect.

4. CASE STUDY

In practice, there was a case of a customer of a restaurant who was given food to take away. The food was hot and the dimensions of the meal were much smaller than the paper bag it was packed in (the paper bag had the logo of a well-known food delivery chain). After leaving the restaurant and walking about 100 meters, the bottom of the bag tore at the right edge and the food fell to the ground. The food was carried close to the body, without any sudden movements or jerks. The question arises who is responsible for such a situation - the manufacturer, the seller or the consumer?

We will analyse this situation mainly through European Union directives that may apply to this event. Delivery in sales contracts takes place when the trader hands over physical possession or control of the goods to the consumer. Article 20 of Directive 2011/83/EU [10] provides that in contracts where the trader sends goods to the consumer, the risk is transferred to the consumer when the consumer takes physical possession of the goods. Since the consumer received the goods (food + bag as part of the delivery) in the restaurant and physically carried them, the event of the bag tearing after handover

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(approximately 100 meters later) is in the zone after physical possession was acquired. According to the logic of Article 20, the restaurant no longer carries the risk of accidental damage after handover.

However, separate from the position on "transfer of risk", the question is whether at the moment of delivery the goods were in conformity, including the packaging. According to Article 10 of Directive (EU) 2019/771 [11], the seller is liable for any lack of conformity existing at the time of delivery. If the lack of conformity becomes apparent within one year, it is presumed to have been there at the time of delivery (with certain exceptions).

Given the above, under the existing EU legal framework, it may be considered that if the bag broke due to an accidental event or the manner of carrying after handover, the primary conclusion is that the consumer bears the consequence. However, if it can be proven that the bag was inadequate/defective already at the time of handover (e.g. due to a material defect) this may be treated as a lack of conformity at delivery, and the restaurant would then bear responsibility.

5. CONCLUSION

Taking into consideration the previous considerations, one can see the existence of a legal inconsistency in terms of liability for packaging. The reason for this is the imprecise formulation of Article 20 of Directive 2011/83/EU [10], as all the burden of liability is transferred to the buyer at the time of taking possession of the packaged product. For this reason, this article should be supplemented in a way that would, as far as possible or completely, reflect reality. Accordingly, this paper suggests that Article 20 should be amended by the addition of a new paragraph which explicitly states that the transfer of risk to the consumer does not affect the trader's liability for defects existing at the time of delivery, including inadequate or defective packaging. In this way, Article 20 would be harmonized with the logic of the EU regime on conformity of goods (2019/771) [11], thus avoiding the unfair consequence that the consumer bears damage caused by something they could not reasonably control after taking possession of the packaged goods.

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