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## PRACTICE AREAS

Workers Compensation  
Personal Injury  
Motor Vehicle Accidents  
Wrongful Death

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## Products liability lawsuits and pleading requirements in Illinois

Goesel v. Boley Intern. (H.K.) Ltd., 2009 WL 3358950 (N.D.Ill.,2009), is a recent and very interesting federal decision. In Goesel, the plaintiffs brought a **products liability** action on behalf of their son against a toy sword manufacturer and Target, the exclusive distributor of sword, after their child suffered severe eye injuries when the sword shattered.

The **Northern District of Illinois** was required to interpret state law to determine whether the common law doctrine of "apparent manufacturer" survived the recent enactment of 735 ILCS 5/2-621, "Product Liability Actions," or, alternatively, whether the one of the three statutory exceptions allowed for in the statute applied to hold Target liable for the child's injuries.

The Court concluded that the new statute trumped the common law doctrine of "apparent manufacturer" and furthermore, that Target was not liable pursuant to the new statute, since the manufacturer of the sword was also sued by the plaintiffs:

Goesels have pleaded themselves out of court as to any potential **strict liability** on Target's part. Goesels themselves refer to the Act as the "Distributor Statute" (see their Mem. 1), and Complaint ¶ 18 expressly alleges:

The packaging for the Walking Robot states that it is "Distributed by Target corporation, Minneapolis, MN" and is sold under the copyright of "Target Brands, Inc. All Rights Reserved" and directs the purchaser to "Shop **Target.com**."



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Common parlance of course recognizes the distinction between manufacturing and distributing a product, so that the quoted allegation creates no reasonable inference that Target was the product's manufacturer-indeed, exactly the opposite is the case. And of course none of the arguments advanced by Goesels succeeds in moving Target from distributor status to that of the manufacturer. Target's motion is granted.

Accordingly, consumers and lawyers for consumers must understand that even though product packaging may sport logos of a well known store that you trust, a count sounding in products liability will not stand if it is disclosed anywhere on the packaging that the manufacturer was other than the store. However, note that this type of packaging, which predominately reflects the store's decals, may hold the store accountable under other legal theories such as those sounding in common law negligence.