

§2800.53. Definitions

The following terms have the following meanings for the purpose of this Chapter:

(1) "Manufacturer" means a person or entity who is in the business of manufacturing a product for placement into trade or commerce. "Manufacturing a product" means producing, making, fabricating, constructing, designing, remanufacturing, reconditioning or refurbishing a product. "Manufacturer" also means:

(a) A person or entity who labels a product as his own or who otherwise holds himself out to be the manufacturer of the product.

(b) A seller of a product who exercises control over or influences a characteristic of the design, construction or quality of the product that causes damage.

(c) A manufacturer of a product who incorporates into the product a component or part manufactured by another manufacturer.

(d) A seller of a product of an alien manufacturer if the seller is in the business of importing or distributing the product for resale and the seller is the alter ego of the alien manufacturer. The court shall take into consideration the following in determining whether the seller is the alien manufacturer's alter ego: whether the seller is affiliated with the alien manufacturer by way of common ownership or control; whether the seller assumes or administers product warranty obligations of the alien manufacturer; whether the seller prepares or modifies the product for distribution; or any other relevant evidence. A "product of an alien manufacturer" is a product that is manufactured outside the United States by a manufacturer who is a citizen of another country or who is organized under the laws of another country.

(2) "Seller" means a person or entity who is not a manufacturer and who is in the business of conveying title to or possession of a product to another person or entity in exchange for anything of value.

(3) "Product" means a corporeal movable that is manufactured for placement into trade or commerce, including a product that forms a component part of or that is subsequently incorporated into another product or an immovable. "Product" does not mean human blood, blood components, human organs, human tissue or approved animal tissue to the extent such are governed by R.S. 9:2797.

(4) "Claimant" means a person or entity who asserts a claim under this Chapter against the manufacturer of a product or his insurer for damage caused by the product.

(5) "Damage" means all damage caused by a product, including survival and wrongful death damages, for which Civil Code Articles 2315, 2315.1 and 2315.2 allow recovery. "Damage" includes damage to the product itself and economic loss arising from a deficiency in or loss of use of the product only to the extent that Chapter 9 of Title VII of Book III of the Civil Code, entitled "Redhibition," does not allow recovery for such damage or economic loss. Attorneys' fees are not recoverable under this Chapter.

(6) "Express warranty" means a representation, statement of alleged fact or promise about a product or its nature, material or workmanship that represents, affirms or promises that the product or its nature, material or workmanship possesses specified characteristics or qualities or will meet a specified level of performance. "Express warranty" does not mean a general opinion about or general praise of a product. A sample or model of a product is an express warranty.

(7) "Reasonably anticipated use" means a use or handling of a product that the product's manufacturer should reasonably expect of an ordinary person in the same or similar

circumstances.

(8) "Reasonably anticipated alteration or modification" means a change in a product that the product's manufacturer should reasonably expect to be made by an ordinary person in the same or similar circumstances, and also means a change arising from ordinary wear and tear.

"Reasonably anticipated alteration or modification" does not mean the following:

(a) Alteration, modification or removal of an otherwise adequate warning provided about a product.

(b) The failure of a person or entity, other than the manufacturer of a product, reasonably to provide to the product user or handler an adequate warning that the manufacturer provided about the product, when the manufacturer has satisfied his obligation to use reasonable care to provide the adequate warning by providing it to such person or entity rather than to the product user or handler.

(c) Changes to or in a product or its operation because the product does not receive reasonable care and maintenance.

(9) "Adequate warning" means a warning or instruction that would lead an ordinary reasonable user or handler of a product to contemplate the danger in using or handling the product and either to decline to use or handle the product or, if possible, to use or handle the product in such a manner as to avoid the damage for which the claim is made.

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