

# Federal Court Finds Amazon Not Liable for Third-Party Vendor's Product

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Wednesday, January 3, 2018

Happy New Year to our retail clients and friends! In the midst of the holiday season, the United States District Court for the Middle District of Pennsylvania issued a significant opinion in [Oberdorf v. Amazon.com, Inc.](#) Judge Matthew W. Brann entered summary judgment in favor of Amazon and against a woman who was allegedly injured by a product that she purchased from a third-party vendor through Amazon's Marketplace. The decision has implications for not only Amazon with respect to certain transactions but also for other retailers that market third-party products through certain sites.

The plaintiffs in *Oberdorf* bought a retractable dog leash from a third-party vendor through the Amazon Marketplace. That leash allegedly malfunctioned and caused serious eye injuries—"catastrophic," according to the Court—to Mrs. Oberdorf and loss of consortium to Mr. Oberdorf. After the plaintiffs were unable to make contact with the third-party vendor or the leash's manufacturer, they filed suit against Amazon and asserted claims for strict liability, negligence, breach of warranty, misrepresentation, and loss of consortium. Amazon then moved for summary judgment. The Court granted that motion and entered summary judgment in Amazon's

favor on all of the plaintiffs' claims.

The Court began its analysis by addressing the strict liability claims, which hinged on whether Amazon was a "seller" for purposes of Section 402A of the Restatement (Second) of Torts. (Notably, there is no uniform federal scheme that addresses product liability; whereas some states have product liability statutes, Pennsylvania and other states have adopted the Restatement, either in whole or in part.) The Court explained that, because "[t]he Pennsylvania Supreme Court has not ruled on whether an online sales listing service like Amazon Marketplace qualifies as a 'seller' under Section 402A," it was the Court's job to "predict how that court would rule on the question."

The Court looked for guidance from *Musser v. Vilsmeier Auction Co.*, No. 562 A.2d 279 (Pa. 1989), a case in which the Pennsylvania Supreme Court reasoned that imposing strict liability on an auctioneer under Section 402A would not further the public policy goal of ensuring that "one who enters into the business of supplying human beings with products which may endanger the safety of their persons and property" is responsible for the safety of such products because the auction company (i) "had no role in the selection of the goods to be sold"; (ii) "is not equipped to pass upon the quality of the myriad of products he is called upon to auction and with which his contact is impromptu"; and (iii) does not have a "direct impact upon the manufacture of the products he exposes to bids, such as would result from continuous relationships with their producers and which would be expected to provide him with influence over the latter in acting to make products safer." *Id.* at 281-82.

Adopting that reasoning, the Court held that Amazon—insofar as its Marketplace is concerned—is more like a "third-party auctioneer" than a "seller" of goods. The Court explained that Amazon's Marketplace "is merely a third-party vendor's 'means of marketing' since third-party-vendors - not Amazon - 'choose the products and expose[] them for sale by means of' the Marketplace." The Court further explained that Amazon would not be "equipped to pass upon the quality of the myriad of products," given the sheer number of goods available (more than one million products), and that "because Amazon has 'no role in the selection of goods to be sold,' it also cannot have any 'direct impact upon the manufacture of the products' sold by the third-party vendors." The Court compared the Amazon Marketplace to a "newspaper classified ad section, connecting potential consumers with eager sellers in an efficient, modern, streamlined manner." The Court said that, for purposes of Section 402A, Amazon was not a "seller," and that notwithstanding the broad allegations in the complaint, "it is clear from the [plaintiffs'] papers that they are, in fact, attempting to hold Amazon liable for its role in publishing an advertisement for the [third party vendor's] product." As a result of its determination, the Court dismissed the plaintiffs' strict liability claims.

The Court then addressed the remainder of the plaintiffs' claims, entering judgment against them on their misrepresentation and breach of warranty claims (because they produced no evidence of a warranty or representation made by Amazon), their negligence claims (because Section 230 of the Communications Decency Act ("CDA") states that providers of interactive computer services shall not be "treated as the publisher or speaker of any information provided by another information content provider," and further states that "no liability may be imposed under any State or

local law that is inconsistent with this section”), and their loss of consortium claim (because it is derivative of their other claims, all of which were rejected).

The *Oberdorf* decision has important implications for retailers that market third parties’ products through their e-commerce platforms, though, as noted above, there are variations across state laws. This ruling may be appealed to the Third Circuit and we will monitor it going forward.

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