



Supreme Court of Nevada Refuses to Extend Strict Product Liability to Trademark Licensors

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On May 1, 2025, the Supreme Court of Nevada in *Hernandez v. The Home Depot, Inc.*¹ decided not to extend strict product liability to reach trademark licensors whose sole involvement with a product is licensing the display of their mark on the product and its packaging. Despite urging from both the plaintiff and the Nevada Justice Association, which submitted an amicus curiae brief, the Court was not convinced that an “expansive view” of strict liability, as the plaintiff put it, was necessary to achieve Nevada’s policy of protecting consumers. Instead, the Court adopted the prevailing view among states that have considered this issue and limited the application of strict liability to only those trademark licensors who also substantially participate in the product’s development or distribution.

The Apparent-Manufacturer Doctrine and its Development over Time. Before the strict liability doctrine became widely accepted, consumers injured by unsafe products sometimes struggled to obtain a remedy because the product’s source could not be identified. In such circumstances, some courts saw injustice when a seller could not be held liable for injuries caused by a product to which the seller had affixed its own name but that had been manufactured by a different entity. This scenario led to the development of the apparent-manufacturer doctrine, in which liability is allowed based on the use of a non-manufacturing seller’s name on a product.² The apparent-manufacturer doctrine came to be reflected in the Restatement (First) of Torts §400.

Subsequent developments affected the usefulness and application of the apparent-manufacturer doctrine. Trademark licensing by entities entirely uninvolved with the design, manufacture or distribution of the products that would carry the licensor’s mark became common practice. Also, publication of the Restatement (Second) of Torts §402A in 1965 extended strict liability to all sellers in a product’s chain of distribution. That expansion of the pool of defendants ensured that virtually every person injured by an unreasonably unsafe product would have an available remedy. Consistent with §402A’s focus on participation in the product’s distribution as the nexus for liability, the Restatement (Second) signaled that application of the apparent-manufacturer doctrine should be limited to those entities who “sell, lease, give or loan” products to users.³

In the aftermath of the Restatement (Second) of Torts’ publication, however, courts across the nation disagreed on the proper application of the apparent-manufacturer doctrine and three approaches emerged. Many courts followed the direction of §400 *comment a* and declined to hold trademark licensors strictly liable unless they also “sell, lease, give or loan” the product.⁴ At the other

¹ *Hernandez v. The Home Depot, Inc. and Ridge Tool Company*, 568 P.3d 119 (Nev. 2025).

² See *Thornhill v. Carpenter-Morton Co.*, 109 N.E. 474 (Mass. 1915).

³ Restatement (First) of Torts §400, cmt. a.

⁴ See, e.g., *Burkert v. Petrol Plus of Naugatuck*, 579 A.2d 26, 33 (Conn. 1990); *Stanford v. Dairy Queen Products of*

end of the spectrum, a few courts ignored the limits of *comment a* altogether and applied strict liability on the sole basis that a licensor permitted its mark to be affixed to the product.⁵ And some courts, likely the majority, opted for a middle path in which the strict liability line is drawn based on whether a licensor's participation in the manufacture, design, or distribution of a product is "substantial."⁶

The Restatement (Third) of Torts: Product Liability, published in 1998, sought to provide some consistency. Section 14 clarified that the apparent-manufacturer doctrine applies to "one engaged in the business of selling or otherwise distributing products who sells or distributes as its own a product manufactured by another." And *comment d* to Section 14 further explains that the doctrine is inapplicable to licensors unless "they participate *substantially in the design, manufacture, or distribution of the licensee's products.*" Thus, the Restatement (Third) seemingly endorses the "substantial control" line of cases and implicitly rejects those rulings that imposed liability on entities whose only involvement with the product was licensing the use of their trademark. As Nevada's Supreme Court took up *Hernandez*, it faced multiple competing theories of how the apparent-manufacturer doctrine should be applied to an entity that licensed the use of its trademark on a line of power tools but did not otherwise participate in the preparation or distribution of the products.

The Hernandez Opinion and the Scope of Strict Product Liability in Nevada. The Supreme Court of Nevada had not addressed the apparent-manufacturer doctrine before *Hernandez*, and its reaction was impossible to predict. On the one hand, the Court had rejected portions of the Restatement (Third) of Torts: Product Liability on multiple occasions. On the other hand, the Court strongly embraced the Restatement (Second) §402A's limitation of strict liability to commercial sellers of a product, and it had also discounted the idea that receiving a financial benefit from product distribution is a sufficient basis for imposing strict liability.

The *Hernandez* case was a product liability lawsuit brought in federal court against Home Depot, which marketed and sold an allegedly defective nail gun. The suit also named Ridge Tool Company, which licensed the use of its "RIDGID" trademark on the product and its packaging. These defendants moved for summary judgment on the claims against Ridge Tool, in part urging the Court not to impose strict liability on a "mere licensor" based on evidence that Ridge Tool had not participated at all in the design, manufacture, or distribution of this product or its warnings. The defendants noted the dearth of Nevada caselaw on this subject but pointed to section 14 of the Restatement (Third) of Torts: Products Liability and trending caselaw since its adoption to argue that the "overwhelming trend around the United States" was to impose strict liability on trademark licensors only when they substantially participated in bringing the product to market. Plaintiff Hernandez argued in opposition that he should be allowed to bring his strict product liability claim against Ridge Tool because the presence of the "RIDGID" name on the nail gun and its packaging made Ridge Tool the "apparent manufacturer," based on section 400 of the Restatement (Second) of Torts. Although Nevada had never adopted the apparent-manufacturer doctrine, the plaintiff urged the Court to apply it based on the Restatement (Second) of Torts' long-standing influence on Nevada common law.

The U.S. District Court granted summary judgment in Ridge Tool Company's favor on all claims except the strict liability claim. It noted that the parties agreed Ridge Tool Company's only involvement with the nail gun was licensing its trademark to Home Depot. But finding no clearly controlling precedent on whether a plaintiff may sue a trademark licensor for strict products liability under such circumstances, the court certified the question. It asked the Supreme Court of Nevada to answer:

Texas, 623 SW.2d 797, 805 (Tex. Ct. App. 1981).

⁵ See, e.g., *Caterpillar Tractor Co.*, 527 A.2d 134, 140 (Pa. Super. Ct. 1987).

⁶ See, e.g., *Torres v. Goodyear Tire & Rubber Co.*, 786 P.2d 939, 944 (Ariz. 1990); *Kasel v. Remington Arms Co.*, 24 Cal. App. 3d 711, 727 (Cal. Ct. App. 1972).

Does Nevada impose strict products liability on an entity whose only involvement with a defective or unreasonably dangerous product is to license its trademark to be used to market the product and where the product and packaging prominently display the trademark?

The Supreme Court of Nevada answered the question in the negative, declining to expand the scope of strict liability in Nevada to mere licensors and foreclosing any legal viability to the merits of Plaintiff's remaining strict liability claim against Ridge Tool in federal court. The Court reasoned that extending strict liability to an entity outside a product's chain of distribution did not serve Nevada's public policy of placing responsibility "wherever it will most effectively reduce the hazards to life and health inherent in defective products that reach the market." The Court adopted the Restatement (Third) of Torts section 14's rendition of the apparent-manufacturer doctrine, which limits the doctrine's application to licensors that "participate substantially in the design, manufacture, or distribution of the licensee's products."

By answering the certified question in the negative, the Supreme Court of Nevada aligned itself with a majority of other states who refuse to apply strict liability to licensors absent substantial participation in the chain of distribution. Critically, the Court's opinion also solidified the limited scope of strict product liability in Nevada. In doing so, the Court held the line against extending strict liability to reach those outside the chain of distribution—those who do not manufacture, sell, or otherwise distribute a product—consistent with section 402A of the Restatement (Second). The Court's decision to maintain limited strict liability comes as a pleasant surprise given Nevada's trend in recent years of emulating laws of states such as California, Illinois, and Arizona, which have expanded liability to reach entities more and more distantly involved with a product, and which may have decided this issue differently.