



High Performance Cables

BEIER GmbH

BEIER GmbH, Postfach 1147, D-73442 Oberkochen



To all customers of BEIER GmbH

OEMs: Refusal to assume liability

Dear Sir or Madam,

We have been informed by our customers of the following circumstances:

Producers of power tools (i. a. ATLAS COPCO, Desoutter and Stanley) have repeatedly threatened to categorically disclaim liability for the malfunction of their products if these products have been used in connection with replacement cables produced by us or with cables repaired by us, and even if the malfunction actually falls into the scope of the respective OEM's responsibility.

We would like to comment these circumstances as follows:

1. We consider this behaviour of producers of power tools as illegal. It infringes provisions of European competition law. According to these provisions, a producer of a machine may not disclaim liability on the grounds that the respective machine has been used with compatible components of other companies.
2. European competition law prohibits such behaviour because it enables the producer to restrict competition on the markets for spare parts and connected services. The producer thereby prevents market entry by companies such as BEIER GmbH. However, it has to be noted that companies like BEIER GmbH create pricing pressure on these markets that forces OEMs to reduce prices for spare parts and connected services.
3. The European Commission has confirmed that European competition law bars producers from disclaiming liability for its products on the grounds that its products are used with compatible components of other companies. The European Commission wrote in its Report on Competition Policy 1996 in relation to a case concerning the company „Novo Nordisk“, a producer of medical instruments for insulin self-injection:

„Following a complaint by a medical device manufacturer, the Commission found that Novo Nordisk abusively disclaimed liability for the malfunction of its [...] products or refused to guarantee such products, when they were used in conjunction with the compatible components of other manufacturers. Following discussions with the Commission Novo Nordisk agreed no longer to use disclaimers in such circumstances.“



4. Therefore, OEMs are principally obliged to assume liability for their products, even if they are used in conjunction with replacement parts produced by third parties. They can only disclaim liability if the malfunction is caused specifically by the application of a replacement part that has not been produced by the OEM and if the malfunction would not have occurred if an original spare part had been used instead.
5. We, of course, assume liability for the quality and functioning of our own products and services.

Conclusion:

The OEMs' behaviour as described above is in our view contrary to European competition law. Its only purpose is to intimidate and unsettle customers. It is intended to eliminate competition, to the disadvantage of you as the customer.

We recommend that you consider closely whether you want to allow OEMs to deprive you of the chance to buy our products and services, or whether you want to be able to benefit from the advantages of our products regarding cost, quality and ergonomics.

We encourage you to forward this letter to the OEMs concerned and their employees in order to ask them for their written comment regarding the legality of such behaviour.

Please do not hesitate to contact us if you have any further questions or remarks.

Kind regards

Edgar Beier
Managing Director

BEIER GmbH

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Handelsregister
Steuer

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