

NEW JERSEY PRODUCTS LIABILITY: ANALYZING AMBIGUITIES WHICH ARISE DURING PRODUCTS LIABILITY ACTIONS REGARDING COUNTERFEIT DRUGS

53 Rutgers L. Rec. 1 (2025) | [WestLaw](#) | [LexisNexis](#) | [PDF](#)

On December 6, 2023, the family of a 32-year-old man from Toms River, New Jersey found him unexpectedly deceased.[1] The man's death was traced back to his usage of a supplement referred to as "gas station heroin," more formally marketed as "Neptune's Fix Elixir," which he purchased from a market store in Point Pleasant Borough, New Jersey.[2] The primary ingredient within the "Elixir" is tianeptine, a drug that is unregulated by the U.S. Food and Drug Administration (FDA).[3]

As a result of consuming this product, the man suffered a "seizure, heart failure, cerebral anoxia, and other medical issues" leading to his death.[4] In outwardly recalling the product[5], the FDA has emphasized that tianeptine can interact with other medicines in a "life-threatening way," yet the marketing of the product is not displayed as such.[6]

This exemplifies only one situation where a product containing tianeptine has caused a consumer to experience adverse reactions, but there are several others that have occurred since 2023.[7] With many consumers who are harmed from scenarios like the abovementioned seeking relief via a product liability action, they will need to know which parties can be liable for their conduct. New Jersey product liability law has ambiguities of when sellers and/or distributors [within this context] can be held liable for their products and/or conduct. This article will further highlight the epidemic of counterfeit drugs harming consumers across New Jersey and will analyze the ambiguities of the state's product liability law for this niche issue.

Counterfeit drugs have found their way into the hands of several innocent consumers across the nation.[8] This has occurred throughout both the pharmaceutical industry and amongst drugs sold in convenience stores.[9] Many individuals who have suffered cognizable harm from consuming a product that did not contain what they thought/were told it did seek civil damages and are unsure where to start.[10]

In New Jersey, victims sustaining harm due to consumption or usage of a defective product are permitted to bring an action against the manufacturers, sellers or distributors of that product.[11] Whether a defendant is liable in products liability is circumstantial, as many aspects of law can be.[12] Those circumstances can include the manufacturer or sellers' knowledge of the product being defective, their contribution to the defect(s), the nature of the product, the nature of the defect(s), labeling/failure to warn, etc.[13]

Under New Jersey Products Liability Law, manufacturers and sellers have a duty to patrons to make or sell a product that is "reasonably safe."[14] The term "reasonably safe" means that the product is "reasonably fit, suitable and safe for intended and foreseeable usage."[15] In addition, manufacturers and sellers owe this duty only to foreseeable consumers and users of the product.[16]

It is significantly more difficult for a manufacturer to escape a products liability action than it is for a seller, as sellers at minimum have the defense of providing that they were an "innocent seller."[17] The innocent seller defense immunizes a seller of a defective product if they can sufficiently prove that they were unaware of the defect and that they "should not have been aware" of said defect.[18] If a seller's innocence defense is insufficient, they can be subject to strict liability.[19] Within New Jersey law, there are complexities as to when sellers, specifically, of counterfeit drugs, are strictly liable or immunized from liability, as the nature of the defects differentiate.[20]

This article will address the following: **(1)** The difference between manufacturers, sellers and distributors under New Jersey Products Liability law; **(2)** the innocent seller defense and its applicability to the sale of counterfeit drugs under New Jersey law; **(3)** the applicability of strict liability under New Jersey law to sellers where there is a sale of counterfeit drugs; **(4)** identification of situations where this issue is applicable; and **(5)** an analysis of the complexities of which law is applicable and provide solutions to create a more uniform enforcement of the this issue within New Jersey Law.

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See [Anthony G. Attrino, N.J. Man, 32, died after consuming Neptune's Fix Elixir from local market, lawsuit says, N.J.Com \(Sep. 13, 2024 at 9:08 A.M.\)](#), <https://www.nj.com/ocean/2024/09/nj-man-32-died-after-consuming-neptunes-fix-elixir-from-local-market-lawsui> [2] [Id.](#) [3] [Id.](#) [4] [Id.](#) [5] [FDA warns consumers not to purchase or use any tianeptine prod. due to serious risks, fda \(Oct. 1, 2024\)](#), <https://www.fda.gov/drugs/drug-safety-and-availability/fda-warns-consumers-not-purchase-or-use-any-tianeptine-product-due-serio> [6] See [Attrino](#), *supra* [note 1](#). [7] See generally [Fred Charatan](#), Fake Prescription Drugs are Flooding the U.S., 322 *Brit. Med. J.* 1446 (Jun. 16, 2001), <https://pmc.ncbi.nlm.nih.gov/articles/PMC1173338/>. While this article is from 2001, the flooding of prescription drugs referenced within illustrates how many individuals are experiencing adverse effects of counterfeit drugs across the country, and that number has only increased since 2001. Several individuals, especially in the Northeast, are suffering adverse reactions to misrepresented defective/dangerous products such as Neptune's Fix Elixir.

[8] [Id.](#) [9] [Id.](#) (emphasizing the increase in counterfeit pharmaceutical drugs); see also [AnneMoss Rogers](#), Gas Station Heroin, and Other Not-Yet-Regulated Drugs, [Mental Health Awareness Educ.](#) (Jan. 26, 2024), <https://mentalhealthawarenesseducation.com/gas-station-heroin-and-other-not-yet-regulated-drugs/> (highlighting the rise of unregulated/counterfeit substances being sold at convenience stores and gas station markets). Specifically, with the convenience store substances, they are highly addictive and do not provide adequate consumers. Often, typical consumers of these products are teens and young adults. Counterfeit drugs at convenience stores are highly predatory. Unregulated substances like that highlighted in the referenced article (which will be analyzed later on) are not yet regulated and are often marketed as "mood enhancing," "dietary supplements" or "focus aids." Both types of counterfeit substances referenced within are highly dangerous and the question presented in this piece will apply to both.

[10] See generally Who Can be Responsible for the Sale of Counterfeit Medications?, [Shapiro Legal Group, PLLC](#) (last visited Sep. 19, 2025), <https://www.shapirolegallgroup.com/who-can-be-responsible-for-the-sale-of-counterfeit-medications.html>. The referenced legal article underscores the importance of victims of this issue receiving justice and outlines the steps of who can be liable in a legal action. Specifically, it states "counterfeit medications have become increasingly prevalent, putting countless patients at risk. These fake drugs may leave consumers vulnerable to serious health consequences. In these situations, justice must be served? They [counterfeit drugs] may contain toxic or harmful ingredients that can cause adverse reactions, allergic responses, or even poisoning."

[11] See [N.J. Rev. Stat. § 2A:58C-2 \(2024\)](#). [12] See [N.J. Rev. Stat. § 2A:58C-3 \(2024\)](#). [13] See [id.](#) [14] See [Model Civ. Jury Charge § 5.40A, Products Liability ? Introduction: Caveats to Judges at 2](#). [15] See [id.](#)

[16] See [id.](#) [17] See [N.J. Rev. Stat. § 2A:58C-9\(b\) \(2024\)](#). [18] See [Fabian v. Minster MacH. Co.](#) 258 N.J. Super. 261, 272 (N.J. Super. Ct. App. Div. 1992). [19] See [N.J. Rev. Stat. § 2A:58C-9\(c\) \(2024\)](#).

[20] See Prod. Liab. Claims: How N.J. L. Protect Consumers, DRAZIN AND WARSAW P.C. (last visited Oct. 6, 2024), <https://www.drazinandwarshaw.com/blog/product-liability-claims-how-new-jersey-laws-protect-consumers/>.

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