

Case 204: CISG 1(1)(a); 35(2)(a); 36(1)

France: Court of Appeal of Grenoble (Commercial Division)

15 May 1996

Société Thermo King v. Société Cigna France et al. Original  
in French

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The company Sorhofroid, a franchised import dealer of the American company Thermo King, sold to the company Frappa a refrigeration unit, which was subsequently resold to the company Transports Norbert Dentressangle. The latter loaded goods to be delivered to the company Système U, which refused them because they had thawed.

Having before it an appeal lodged by the company Thermo King against the ruling of the Commercial Court, whereby liability for the damage due to thawing had been shared between Thermo King and Transports Norbert Dentressangle, the Court of Appeal allowed the action brought directly by the sub-purchaser against the initial seller.

The applicable-law clause in the contract (Minnesota law) and the arbitration clause contained in the initial contract between Thermo King and Sorhofroid, both of which clauses had been invoked by Thermo King, were found by the Court to be inapplicable to the sub-purchaser, which was not party to the initial contract. The Court ruled, moreover, that only the franchise contract and not sales made in application of that contract should be subject to the Minnesota law chosen by the parties. In addition, the Court stressed that CISG was applicable, unless otherwise agreed, to sales concluded after 1 January 1988 between a seller and a buyer with their places of business in the United States and France, respectively. The Court found that the sub-purchaser could base his action against the American seller on CISG, since the seller had issued a contractual guarantee in favour of the end-user.

The Court found articles 35(2)(a) and 36 CISG to be applicable with regard to the defects of the refrigeration unit, noting that the unit had broken down within a short period of time after it was first operated and that it was up to the seller, presumed liable, to prove that it was not responsible for the defect. Notwithstanding any more precise determination of the defect, the early breakdown established the Court's finding of lack of conformity and its assigning of full liability to Thermo King.