

CISG-online 358	
Jurisdiction	Germany
Tribunal	Amtsgericht Riedlingen (Local Court Riedlingen)
Date of the decision	21 October 1994
Case no./docket no.	2 C 395/93
Case name	<i>Italian ham case</i>

*Translation\* by Peter Feuerstein\*\**

*Translation edited by Ruth M. Janal\*\*\**

### Facts of the case:

The parties are in dispute regarding the payment of an invoice for deliveries of ham in December 1992. 1

It is undisputed that the [seller] delivered to the [buyer] the following: 2

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|--|-------------|
| 1) 105.32 kg of ham without bones «MEC» for DM 14.50 per kilo, |             |
| totaling   | DM 1,536.77 |
| 2) 220.70 kg of Parma ham S/O for DM 23.55 per kilo, totaling  | DM 5,219.55 |
| Total debt:  | DM 6,756.32 |

The [buyer] only paid in part, so that the amount of DM 1,602.74 is still outstanding. 3

The [seller] contends that the goods delivered to the [buyer] were in conformity with the contract and that the contract with the [buyer] was never avoided. Mr. M[...], appearing as the agent of the [seller]'s general agent at the time of the conclusion of the contract, did not agree to the avoidance of the contract. He would also not have been entitled to do so. The [buyer] even advised the managing director of the commercial agent, Mr. S[...], that the [buyer] would pay the purchase price. Insofar as the [buyer] contends lack of conformity of the delivered 4

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\* All translations should be verified by cross-checking against the original text. For purposes of this translation, the Claimant of Italy is referred to as [seller] and the Respondent of Germany is referred to as [buyer]. «DM» indicates monetary amounts in German currency (*Deutsche Mark*).

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ham, [the buyer] did not notify the [seller] in due time specifying the nature of the lack of conformity.

The [seller] pleads that the [buyer] be ordered to pay DM 1,602.74 plus 15% interest since 31 January 1993.

The [buyer] pleads that the [buyer]'s claim be dismissed.

The [buyer] contends that all of the ham delivered was too fresh. On 11 January 1993, the [buyer] phoned Mr. M[...], the agent of the general agent of the [seller], to inform it of this matter. Thereupon, [Mr. M[...]] agreed that the [buyer] should not pay for the goods. It is the [buyer]'s position that the matter was therewith finally settled.

The Court has heard evidence by testimony of witnesses M[...] and S[...] through the Local Court (Amtsgericht) in Munich. Reference is made to these protocols, page 30 and page 52 of the trial record.

### **Grounds for the Decision:**

The [seller]'s claim is founded in its entirety.

The [buyer] owes the full purchase price, in accordance with Arts. 53, 62 CISG.

The [buyer]'s objection that the ham was defective is cut off by Art. 39 CISG. The [buyer] did not notify [the seller] about the lack of conformity within a reasonable time after the [buyer] ought to have discovered it. The notice of lack of conformity was not given to the [seller]'s general agent until twenty days after the receipt of the goods. Even though a complete examination within a short time period was complicated by the Christmas Holidays, it was feasible for the [buyer] to carry out spot checks of the goods. The [buyer] could have done this within a time limit of not more than three days. At the latest, within another three days [buyer] could have notified the [seller] about the non-conformity. This is because – following the [buyer]'s submissions – the ham started to develop mould at the latest two to three hours after unpacking.

Thus, it needs not be decided whether the ham was actually defective, whether the notice of the lack of conformity was specific enough and whether witness M[...] was entitled to accept the notification of non-conformity.

The claim for interest is based on Art. 78 CISG in connection with Art. 1284(1) Codice Civile (Italian Civil Code). The higher rate of interest requested by the [seller] has been disputed by the [buyer], and the [seller] did not render any proof of the higher rate of interest.