

Case 479: CISG 42(2)

France: Court of Cassation T 00-14.414

19 March 2002

SA Tachon diffusion v. Marshoes SL

Original in French

<http://witz.jura.uni-sb.de/CISG/decisions/190302.htm> (French language text)

<http://cisgw3.law.pace.edu/cases/020319f1.html> (English translation)

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The seller, a Spanish company, delivered to the buyer, a French company, shoes with counterfeit ribbons. The holder of the intellectual property right received compensation from the buyer. The buyer brought an action against the Spanish company for reimbursement of the sum of 300,000 francs paid to the victim of the counterfeit and for payment of damages. The buyer's claim was dismissed by the Court of Appeal of Rouen.

The Court of Cassation rejected the appeal lodged against the decision of the Court of Appeal. The Court of Cassation cited the sovereign discretion of the trial judges who found that the buyer could not, as a professional, have been unaware of the counterfeit; therefore, the buyer acted with knowledge of the property right invoked. The Court of Cassation found that the Court of Appeal correctly applied article 42(2)(a) CISG and had properly concluded that the obligation of the seller did not extend to delivering goods free from any intellectual property right.