

CISG-online 662	
Jurisdiction	France
Tribunal	Cour de Cassation (French Supreme Court)
Date of the decision	19 March 2002
Case no./docket no.	T 00-14.414
Case name	<i>Tachon diffusion S.A. v. Marshoes S.L.</i>

Translation by Catherine Piché***

Edited by Claude Witz and Julia Eisengräber

[Key issues addressed]

[This case concerns Article 42 CISG and the obligation of the seller to deliver goods which are free from any right or claim of a third party based on industrial property or other intellectual property, of which at the time of the conclusion of the contract the seller knew or could not have been unaware. It also concerns the exception under that Article, pursuant to which the seller will not be so liable if the buyer «knew or could not have been unaware of the right or claim» at the time of the conclusion of the contract.]

I. Parties to the action at the Supreme Court

On the appeal brought to the Supreme Court by Appellant [buyer], a limited liability company under French law, with a principal place of business in Saint-Pierre-du-Vauvray, France, to reverse a ruling rendered on 17 February 2000 by the Court of Appeals of Rouen (2nd Civil Court) in favor of Société M. SL, Respondent [seller], with a principal place of business in Alicante, Spain.

The [buyer] invokes one sole reason for reversal of the ruling of the Appellate Court. [Buyer]'s reasons for reversal are annexed to the present ruling.

II. Supreme Court composition: Parties' counsel

The Supreme Court, at the public hearing of 12 February 2002, for which were in attendance: Mr. Lemontey, président and rapporteur, Mr. Renard-Payen and Mr. Durieux, conseillers, Mr. Sainte-Rose, avocat général, Ms. Aydalot, greffier de chambre;

* All translations should be verified by cross-checking against the original text. For purposes of this translation, the Appellant, Société T... diffusion of France, is referred to as [buyer]; the Respondent, Société M ... SL of Spain, is referred to as [seller]. Monetary amounts in the currency of France [French francs] are indicated as [f].

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Pursuant to the report given by Mr. Lemontey, président, the observations made by Ch., Esq., avocat for the Appellant, and by SCP T.-R. and B., Esq., avocats for the Respondent, the conclusions made by Mr. Sainte-Rose, avocat général, the Supreme Court deliberated pursuant to the law.

III. Supreme Court ruling

On the sole ground of appeal, taken in its two branches, as explained in [buyer]'s Memorandum of Law and annexed to the present ruling:

Whereas the Appellate Court on 17 February 2000 held that

- [Buyer], in his function as a professional, could not ignore the fact that the purchased shoelaces were counterfeit, and violated a third party's trademark rights;
- [Buyer] had acted with complete knowledge of the trademark rights; and
- Therefore, that [seller] did not have to deliver goods which were «free from any right or claim of a third party based on industrial property or other intellectual property, of which at the time of the conclusion of the contract the seller knew or could not have been unaware», pursuant to Article 42(2)(a) CISG;

For these reasons, the Supreme Court:

- Dismisses the appeal;
- Orders the [buyer] to pay court costs;
- Pursuant to Section 700 of the new Code of Civil Procedure, rejects the demand made by [seller].

The reasons provided by Ch., Esq., avocat for [buyer] are included in the Supreme Court's reasoning.