

Case 491: CISG 42

France: Court of Appeal of Colmar

1 B 98/01776

SA HM v. AG K.

13 November 2002

Original in French

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<http://witz.jura.uni-sb.de/CISG/decisions/131102v.htm>

Abstract prepared by Claude Witz, National Correspondent

In 1994, the company HM, which owned six clothing shops in eastern France, acquired a batch of shirts from the company K, based in Germany. The shirts were made of a fabric that reproduced the features of two types of fabric to which the industrial textile group D-M & Cie had exclusive rights. Sued for infringement by D-M & Cie, HM brought warranty proceedings against its supplier K.

In its judgement of 5 March 1998, the Colmar District Court found HM guilty of infringement and ordered K to indemnify HM for the awards made against it.

In its judgement of 7 March 2001, the Court of Appeal upheld that ruling insofar as the ruling accepted that there had been an infringement of which HM was guilty vis-à-vis D-M & Cie, but it reduced the amount of damages due from HM to D-M & Cie. The Court further ordered that the warranty proceedings should be reopened. It thus invited the parties to give their views on whether CISG of 11 April 1980, particularly article 42, was applicable to the case. The two parties took the view that CISG was applicable.

The Court of Appeal of Colmar applied CISG, with particular reference to article 42, from which it quoted at length.

It ruled that the buyer, HM, “could not, in its professional capacity, have been unaware of this infringement. It therefore acted with knowledge of the intellectual property right that has been invoked and, under CISG of 11 April 1980, article 42(2)(a), the company K (the seller) was no longer required to provide goods free of all intellectual property rights (Court of Cassation, First Civil Division, 19 March 2002)”.

The Court of Appeal accordingly set aside the District Court’s ruling and dismissed the warranty proceedings brought by HM.