

Case 891: CISG [7(2)]; 35(1); 35(2) (a) and (b)

Switzerland: Federal Court; 4C.245/2003

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<http://cisgw3.law.pace.edu/cases/040113s1.html>;

Abstract in English: www.unilex.info/case.cfm?pid=1&do=case&id=978&step=Abstract

<http://www.globalsaleslaw.com/content/api/cisg/urteile/838.pdf>

Abstract prepared by Etienne Henry

The buyer's Geneva branch ordered Menthol USP Brand large crystals from a company whose head office was in Germany. The goods were stored in Rotterdam in a warehouse. An analysis carried out by the warehouse laboratory showed that the size of the menthol crystals varied from 0.4 to 4 cms. The buyer complained about what it regarded as a defect and requested that the goods be replaced. The seller rejected the claim, stating that the crystals were of standard quality, and offered to take back the goods. The buyer did not settle the invoice.

The seller brought proceedings before the lower court of Geneva. That court ruled in favour of the plaintiff and ordered the buyer to pay to the plaintiff the sum indicated on the invoice plus annual interest at 5 per cent. The Court of Justice upheld the lower court judgement. The buyer appealed against that decision to the Federal Court, which rejected the appeal.

The Federal Court recalled that, under the terms of article 35 (1) CISG, the seller had to deliver goods which were of the quantity, quality and description specified in the contract. Under the terms of article 35 (2) (a) and (b) CISG, the goods would not meet those requirements unless they were "fit for the purposes for which goods of the same description would ordinarily be used" or "fit for any particular purpose expressly or impliedly made known to the seller at the time of the conclusion of the contract". The burden of proving a fact lay with the party seeking to infer a right therefrom. In the context of article 35 (1) and (2), it fell to the seller to prove the conformity of the goods as long as the buyer had not accepted them. The buyer had to prove that a particular purpose relating to the goods had been expressly or impliedly made known to the seller at the time of conclusion of the contract.

It was pointed out that the seller supplied crystals of only one standard quality and that goods of that type ordinarily suited its customers. Also, the buyer did not provide any proof as to what it actually understood by "large crystals". Since there was no objective definition of the term "large crystals" appearing in the order, it was necessary to apply the principle of trust in order to determine how the term was to be understood by the seller. No facts allowed the inference that the seller had to understand that the term used implied a particular requirement within the meaning of article 35 (2) (b).