

Case number: 187

Article number: sales convention / 14(1); 61(3); 63

Thesaurus issue:

Country of decision: United States of America

Year of decision: 1997

Type of decision: Judicial decision

Case 187: CISG 14(1); 61(3); 63

United States: Federal District Court, Southern District of New York

23 July 1997

Helen Kaminski Pty. Ltd. v. Marketing Australian Products, Inc. doing business as Fiona Waterstreet Hats

Published in English in U.S. Dist. LEXIS 10630 [1997] and WL 414137 [1997]

An Australian manufacturer of fashion accessories entered into a "Distribution Agreement" with a U.S. distributor. The Agreement specified the terms on which the parties would do business, including methods of payment, delivery and warranties as to quality (article 14(1) CISG). The distributor agreed to purchase accessories totalling a specified amount during the year following the conclusion of the Agreement. Soon after entering into the Agreement, the parties amended it to transfer the manufacturer's accessories that were already in the United States to the distributor.

The distributor subsequently ordered additional accessories and the manufacturer sent notice that the accessories were ready for shipment. The distributor failed, however, to open a letter of credit before shipment as provided in the Distribution Agreement. The manufacturer thereupon sent notices to the distributor demanding that the distributor cure its default within a specified time (article 63 CISG). Before the time to cure expired, the distributor filed for bankruptcy in the United States. The bankruptcy court granted the distributor additional time to cure and ruled that the manufacturer was stayed from suing in an Australian court.

On appeal to the Federal District Court, the manufacturer argued that the CISG superseded the U.S. Bankruptcy Code and that consequently the bankruptcy court was not authorized to grant the distributor a "period of grace"(article 61(3) CISG). The Federal District Court affirmed the bankruptcy court's order, holding that the Distribution Agreement did not fall within the ambit of the CISG because the Agreement did not cover the subsequently-ordered accessories. Although the Agreement had been amended to cover some specified goods, the amended Agreement did not refer specifically to the accessories in dispute.