Sunscreen production trouble turns out costly for manufacturer 2/31/24

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A claim for damages and litigation expenses totalling EUR 212,040.63 was fully satisfied in a civil case where a PwC Legal client was seeking damages, including lost profits, from a certain private company. The plaintiff's interests were represented by Natalja Purina, an attorney-at-law with PwC Legal.

Background

The plaintiff was a company that distributes skin care products, while the defendant was a company that manufactures those products. To carry on their business of selling certain seasonal goods to consumers, the parties entered into a contract where, among other things, the defendant undertook to supply the plaintiff with specified goods manufactured by the defendant for further distribution. Before entering into the contract, the defendant provided the plaintiff with several samples to demonstrate product conformity.

On taking delivery, the plaintiff ran a quality check and found the goods were different from the samples received earlier. On the same day, the plaintiff notified the discrepancies to the defendant, who did not recognise that the goods were inconsistent with the terms of the contract.

At the same time, an independent specialist firm, to which the plaintiff had submitted the end product and samples for comparison, issued an opinion confirming the plaintiff's concerns about the end product not being consistent with the samples.

The plaintiff was unable to start selling the goods as planned, and the product (sunscreen) was decidedly seasonal according to its characteristics, so it was not possible to prepare a new lot of goods on time.

This caused great damages to the plaintiff, including loss of profits. As a favour, the plaintiff reduced total damages to EUR 200,000. The parties initially tried to resolve the dispute out of court, but the defendant did not recognise damages, so the plaintiff went to court.

Arguments of the parties

The dispute was concerned with whether the plaintiff had observed the buyer's obligation prescribed by Articles 38 and 39 of the UN Convention on Contracts for the International Sale of Goods (CISG) to inspect goods within the shortest time frame practically possible in the circumstances and to notify the seller of non-conformity within a reasonable period, and whether the defendant sold defective goods in breach of the contract, causing damages to the plaintiff and the defendant is therefore liable to compensate him.

The defendant claimed that on receiving the goods in Riga (from which they were later removed), the plaintiff sent the defendant a statement of acceptance without objection and stored the goods for 17 days, thereby confirming with conclusive actions that the product conforms to the terms of the contract and thus refusing to raise objections, so the time allowed for raising objections had elapsed. The defendant was unable to establish how the goods were stored and transported, and whether they had been tampered

with during the storage or transportation.

The plaintiff asserted that a statement of acceptance does not confirm that he had accepted the goods without objection or inspected them without finding discrepancies, as alleged by the defendant. This statement merely confirms that the goods had been received.

Accordingly, it's reasonable to conclude that CISG Article 38(3) permitted the plaintiff to postpone checking the goods until they reach the plaintiff, instead of checking them at any of the middle stages of the journey, which would have been practically impossible.

This leads to the conclusion that the plaintiff's obligation to check the goods for conformity did not arise until they reached the plaintiff in Lithuania. The plaintiff immediately checked the goods, found they did not meet the terms of the contract, and notified the defendant on the same day.

Accordingly, the plaintiff believes the defendant had committed a breach of contract causing damages to the plaintiff.

To refute the defendant's other arguments about transporting or storing the sunscreen incorrectly or even physically tampering with its composition, which the defendant claimed might have resulted in the sunscreen received by the plaintiff changing its texture, the plaintiff brought in an expert holding a doctor's degree in chemistry and specialising in cosmetics manufacturing processes. The expert explained to the court that any temporary variations in temperature during transportation were incapable of affecting the sunscreen composition because according to the cosmetics manufacturing standards, sunscreen must be able to withstand temporary variations in temperature. It's impossible to change the sunscreen composition once the manufacturing process is finished, and the defendant's allegation that the plaintiff had tried to add something to the sunscreen should be dismissed.

Finally, an experiment was set up and clearly demonstrated that the error lay in the manufacturing process, which the defendant had breached by failing to warm the sunscreen mass up to the required temperature. The resulting product was inconsistent with the previously approved samples in terms of viscosity, consistency, appearance, colour and absorbency.

The court fully satisfied the plaintiff's claim and made the following statements:

1. The court agrees with the plaintiff's argument that a statement of acceptance merely proves the date, place and amount of goods delivered but it does not indicate conclusive acceptance, and so the goods were not supposed to undergo an inspection in Riga but rather after they were packed and delivered to Lithuania, as the plaintiff had duly done.
2. The defendant as seller failed to carry out the obligation under CISG Article 35 to supply goods meeting the terms of the contract in terms of quantity, quality and description. Article 36 means the defendant is liable under both the contract and the CISG for any non-conformity existing when risk passes to the buyer, even if that non-conformity does not become apparent until a later date.
3. The defendant's objections about potential breaches in transportation do not withstand scrutiny because the quality specification states that the goods can be transported by all modes of transport. The goods are not classified as hazardous. No special carriage requirements were indicated in the specification.
4. After several expert opinions had confirmed non-conformity, the goods were not placed on the market and the plaintiff suffered damages made up of direct costs and lost profits. Following the principle of foreseeability laid down by CISG Article 74, which imposes restrictions on the

amount of damages, the plaintiff had reduced the amount of damages to be recovered, which meets the principle of proportionality and international trade customs. The court recognises that the plaintiff's damages of EUR 200,000 have been determined properly and must be recovered from the defendant because the four preconditions have been established.