

**Case law****Case Details****National ID:** 0600105**Member State:** Netherlands**Common Name:** International Horse Trading v. X**Decision type:** Other**Decision date:** 12/03/2008**Court:** Gerechtshof (Appellate court, Leeuwarden)**Subject:****Plaintiff:****Defendant:****Keywords:****Directive Articles**

Consumer Sales and Guarantees Directive, [Article 5, 1](#). Consumer Sales and Guarantees Directive, [Article 5, 2](#). Consumer Sales and Guarantees Directive, [Article 5, 3](#).

**Headnote**

Presumption of non-conformity if defect had materialized within 6 months.

**Facts**

Consumer bought in August 2003 a horse for his handicapped daughter from a professional horse seller – International Horse Trading (IHT). This horse was chosen due to its calmness, reliability and obedience, since the handicapped girl did not have control over her legs to steer it properly. The consumer had the horse tested at least three times prior to the conclusion of the sale contract. The horse was cleared by the vet and also showed obedience during trial rides. The horse was bought and brought to Finland, where the consumer lived. Consumer complained to the seller already two days after delivery of the horse that it behaved unpleasantly, kicked out etc. while he was being ridden on. Parties agreed that the horse needs more time to adjust to new surroundings, but different trainers could not make it listen. After two and a half months the seller took the horse back to the Netherlands to train it more. The consumer claims that he bought the horse under a condition that the contract would be terminated if there are obedience problems with the horse and that by sending it back he terminated the contract.

**Legal issue**

The court confirms that the parties concluded a consumer sale contract, to which presumption of non-conformity at the moment of delivery of the consumer good applies, if the non-conformity manifests itself in the 6 months from the moment of delivery, pursuant to art. 7:18BW implementing art. 5 of the Directive. The parties acknowledge that lack of obedience of the horse constitutes non-conformity. The seller failed in the proof that the horse was improperly trained in Finland, and that due to that improper training he suffered an injury of his neck which led to pain and resulting disobedience.

**Decision**

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