



5 June 2025

COMMODITIES IN FOCUS WEEKLY - ISSUE 127

A CLARIFICATION OF THE "RIGHT TO SELL GOODS" UNDER SECTION 12 OF THE SALE OF GOODS ACT 1979

ELECTRIC MANIA LIMITED V AVRON TRADING LIMITED
[2025] EWHC 159 (COMM)

In an obiter judgment, the High Court considers the 'right to sell goods' under section 12 of the Sale of Goods Act 1979 and clarifies the provision's application to beyond mere proprietary rights to sell and to include the legal right to sell.

BACKGROUND

In light of the first UK COVID-19 lockdown in March 2020, the claimant, Electric Mania Limited ("**Electric Mania**"), a manufacturer and supplier of, primarily, electrical and electronic goods, seized a new opportunity to expand its business to the sale of high-end quality hand sanitisers to consumers. On 3 April 2020, Electric Mania entered into an agreement with the defendant, Avron Trading Limited ("**Avron**"), to purchase two hand sanitiser products (the "**Products**");

1. **Lonstin** – The product sheet stated this killed "99.9% common germs" while the label referred to the product being "effective at eliminating

MRSA¹ and E Coli". Electric Mania bought 12,000 bottles.

2. **GCG** – The product sheet described this to be effective against a broad range of bacteria "including MRSA, VRE²". Electric Mania bought 28,000 bottles.

The Products were duly delivered by Avron and paid for by Electric Mania. However, the high price point, market saturation and failed marketing efforts made it difficult for Electric Mania to sell the Products. In total, Electric Mania only sold 3.4% of the Lonstin stock and 1.7% of the GCG stock bought from Avron.

In January 2021, the Medicines and Healthcare Regulatory Agency (the "**MHRA**") issued a notice to Electric Mania stating that the Lonstin gel was classified as a medicinal product under the Human Medicines Regulations 2012 ("**HMR 2012**") due to claims on the label about eliminating MRSA and E Coli. The MHRA ordered Electric Mania to immediately stop selling the product with that labelling, warning that failing to do so would be a criminal offence resulting in a prosecution.

¹ MRSA is an abbreviation for methicillin-resistant staphylococcus aureus. It is a type of bacterium capable of causing a variety of skin infections and more serious illnesses.

² VRE is an abbreviation for vancomycin-resistant enterococcus, again a bacterium capable of causing serious infection.



Electric Mania immediately ceased its marketing and sale efforts in respect of both Products.

THE CLAIM

Electric Mania made a claim against Avron for breach of contract and misrepresentation. The claim was primarily on the basis that the Products were not compliant with the regulatory standard for sale as medicinal products. Further or alternatively, Electric Mania argued that the Products were not effective against certain pathogens as described. Electric Mania sought rescission of the sale contract and the return of its purchase price or alternatively, damages.

THE HIGH COURT'S FINDINGS

Electric Mania's claim failed, unable to pass the first hurdle: The first and determinative question before the Court was whether the Products were medicinal under the HMR 2012. If the Products were in fact medicinal (i.e. their marketing and sale was restricted by regulation), then the Court could consider whether the sale of the restricted Products amounted to breach of the sale contract or misrepresentation by Avron. However, if the Products were not in fact medicinal (i.e. there was no restriction to market or sell them), there could be no claim for breach of contract or misrepresentation and Electric Mania's claim would fail entirely.

To determine the question, the Court had to consider the entirety of the Products including their product sheets and labels. Having considered these and the claims made in the product sheets and the labels, the Court found that they did not amount to a claim that the Products were effective against diseases but rather, against bacteria that were capable of causing diseases. The Court concluded that the Products were not in fact medicinal. Electric Mania's claim therefore had to fail.

Despite the above finding, the Court went on to consider the remaining eight issues in the case. The majority of these issues were found against Electric Mania. While the Court's decision on these issues is entirely obiter, there are some helpful comments and clarifications, in particular with respect to the "right to sell goods" under

section 12(1) of the Sale of Goods Act 1979 ("**SOGA 1979**") which are of general application and interest. The remainder of the article focuses on this aspect of the case.

'RIGHT TO SELL GOODS' UNDER SECTION 12(1) OF SOGA 1979

Section 12(1) of SOGA 1979 provides, amongst other things:

"12 Implied terms about title, etc.

(1) in a contract of sale ... there is an implied term on the part of the seller that in the case of a sale he has a right to sell the goods, and in the case of an agreement to sell he will have such a right at the time when the property is to pass."

Electric Mania's position was that section 12(1) was not only concerned with the seller's title but also his entitlement to sell. Accordingly, Electric Mania argued that Avron was in breach of the implied term under section 12(1) on the basis that it had no authorisation to sell the Products to Electric Mania (on the assumption that the Products were medicinal and therefore illegal to sell without the required authorisation). Further, Electric Mania argued that it had been deprived of the use and enjoyment of the Products because it could not sell them.

In support of its position, Electric Mania relied on two previous decisions of the English court:

- i. In *Niblett Ltd v Confectioners' Materials Company Ltd*³ the seller had bought tins of condensed milk which had on them, labels infringing the registered trademark of another manufacturer. The buyer had to remove the labels before it could assume possession. The English court found that the seller had no right to sell the goods by reason of the infringement of the registered trademark.
- ii. The case of *Microbeads AF v Vinehurst Markings*⁴ involved the sale and purchase of special machinery used for road markings in alleged breach of another company's patent for similar machinery. While the English court held there had not been a breach of patent in this case, Lord Denning made it clear that had there been a breach, the "... words 'a right to sell the goods' means not only a right to pass the

³ *Niblett Ltd v Confectioners' Materials Company Ltd* [1921] 3 KB 387

⁴ *Microbeads AF v Vinehurst Markings* [1975] 1 WLR 218



property ... to the buyer, but also a right to confer on the buyer the undisturbed possession of the goods."

Avron argued that the legality of the sale did not fall under the ambit of section 12(1). In its view, section 12(1) was only concerned with title to sell and since, at the time of delivery and passage of property, Avron had title to sell the Products, there could be no breach of section 12(1). Avron further argued that both the *Niblett* and *Microbeads* cases involved private intellectual property rights of third parties in the goods. This contrasts with a public regulator intervening to stop the sale of the goods.

The Court found favour with Electric Mania's position. The following findings of the Court are of particular importance to the interpretation and application of section 12(1):

- 1. While, in practice, there could be some tension between the seller's 'right to sell' the goods and the buyer's right to acquire 'unclouded title' in the goods, section 12(1) only concerns the former and "to focus on the purchaser's rights potentially does injustice" to the wording of the section.⁵**
- 2. The decisions in *Niblett* and *Microbeads* are of general application. They are neither restricted to private rights nor cases of intellectual property. They are capable of also covering regulatory restraints affecting the seller's right to sell the goods.**

It follows that had the Court found the Products to be medicinal, Avron would have been found in breach of contract and liable to Electric Mania for damages (which the Court went on to assess but which falls outside the scope of this article).

COMMENTS

Counterparties to sale contracts often equate the seller's 'right to sell' to 'title to sell'. This case makes it clear that the 'right to sell' goes beyond mere title issues and can encompass, amongst other things, regulatory prohibitions and restraints. Sellers should take note and take particular care with any regulatory and/or licensing requirements affecting the goods they intend to sell (including any packaging or labels on those goods). Further, as the 'right to sell' is

assessed at the time of passage of title in the goods, especially in situations where title is intended to pass long after the agreement to sell has been reached or the goods have been delivered, sellers need to ensure they have adequate wording in their contracts to protect themselves from any changes in the regulatory regime affecting their goods.

CONTACT US



NAZ TAJBAKHSH

Managing Associate

+ 44 20 7809 2180

naz.tajbakhsh

@stephensonharwood.com



ANNA MCDOWELL

Associate

+ 44 20 7809 2314

anna.mcdowell

@stephensonharwood.com

⁵ Paragraphs 135 and 136 of the judgment.