

A ski-shop operator, in a telephone conversation with a glove manufacturer, ordered 12 pairs of vortex-lined ski gloves at the list price of \$600 per dozen "for delivery in 30 days." The glove manufacturer orally accepted the offer and immediately faxed to the ski-shop operator this signed memo: "Confirming our agreement today for your purchase of a dozen pairs of vortex-lined ski gloves for \$600, the shipment will be delivered in 30 days." Although the ski-shop operator received and read the manufacturer's message within minutes after its dispatch, she changed her mind three weeks later about the purchase and rejected the conforming shipment when it timely arrived.

On learning of the rejection, does the manufacturer have a cause of action against the ski-shop operator for breach of contract?

- A. No, because the ski-shop operator neither paid for nor accepted any of the goods tendered.
- B. No, because the ski-shop operator never signed a writing evidencing a contract with the manufacturer.
- C. Yes, because the gloves were identified in the contract and tendered to the ski-shop operator.
- D. Yes, because the manufacturer's faxed memo to the ski-shop operator was sufficient to make the agreement enforceable.

Explanation:

Statute of frauds requirements

- Writing** Physical or electronic document(s) containing reasonable basis to believe contract was formed (eg, receipt, check, emails) AND
- at common law – identifies parties, subject matter, consideration, time & nature of performance
 - under UCC – lists quantity of goods (contract enforceable only up to written quantity)
- Signature** General rule – handwritten signature from, or other mark identifying, party to be charged (eg, letterhead, electronic signature, initials)
- Merchant exception – between merchants, written confirmation that satisfies statute of frauds as to *sender* will bind both parties if no written objection within 10 days

UCC = Uniform Commercial Code,

Under the **statute of frauds**, a **contract** for the sale of goods of \$500 or more is only enforceable if it is in a writing signed by the party against whom enforcement is sought. The UCC relaxes these requirements in transactions **between merchants** so that the statute of frauds is met as to *both* parties if one party sends a **written confirmation** and the **recipient does not object** in writing **within 10 days**. The written confirmation must:

- provide a reasonable basis to believe a contract was formed (eg, memo confirming the order)
- contain the quantity of the goods or a means to determine it (eg, 12 pairs of vortex-lined ski gloves) *and*
- contain a signature or other identification sufficient to bind the sender (eg, sender's fax number)

Here, the manufacturer faxed the ski-shop operator a memo confirming the order for 12 pairs of vortex-lined ski gloves, which the ski-shop operator did not object to until three weeks later (ie, after the 10-day deadline). Since the fax number will identify the manufacturer as the sender, the memo will be sufficient to bind *both* parties—even without the ski-shop-operator's signature **(Choice B)**. Therefore, the manufacturer has a cause of action for breach of contract.

(Choice A) There are three **exceptions** to the UCC statute of frauds, one of which applies when some amount of payment or goods was received and accepted (not seen here). But since the parties here are *merchants*, the manufacturer's memo created an enforceable agreement.

(Choice C) The gloves did not need to be tendered to the ski-shop operator to create an enforceable contract. The written confirmation merely needed to evidence the merchants' agreement and identify the *quantity* of the goods.

Educational objective:

Under the UCC, a transaction between merchants satisfies the statute of frauds as to *both* parties if (1) one party sends a written confirmation that satisfies the statute of frauds *and* (2) the other party does not object in writing within 10 days.

References

- U.C.C. § 2-201 (Am. Law Inst. & Unif. Law Comm'n 2020) (statute of frauds formal requirements).

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