THE FAIR TRADING COMMISSION

BEFORE THE BOARD OF COMMISSIONERS

IN THE MATTER of the Consumer Protection Act, 2010;

THE FAIR TRADING COMMISSION
VS.
DECOUVERTE TROPICALE LTEE CO (PTY) LTD (trading as NAUTICA)
(Rep herein by its director, Mr. Ravindra Goburdhun)

CPA.11.093.99

Complainant – Mrs. Jaqueline Hascoet
Respondent – Decouverte Tropicale Ltee Co (Pty) Ltd (trading as Nautica)

QUORUM:
Dr. Shelton Jolicoeur – Chairman (Resigned)
Mr. Philippe Chong-Seng – Commissioner
Mrs. Annie Vidot - Commissioner

Attendance:
Mr. Georges Tirant – Director for Consumer Protection Affairs (FTC)
Ms. Chantale Barallon – Senior Legal Officer (FTC)

Mr. Jacques Vannier for the Complainant
Mr. Ravindra Goburdhun for the Respondent

Case presented on behalf of the Complainant by Mr. Georges Tirant, Director for Consumer Protection Affair (FTC)

RULING

[1]Mrs. Jaqueline Hascoet who resides in Vannes, France, the complainant herein, paid for two model ships, "La Confiance" and "Soleil Royal" from Decouverte Tropicale Ltee Company (Pty) Ltd trading under the name Nautica, an overseas company registered under the Companies Act, 1972, on the 22nd and 23rd October, 2010. When the complainant did not receive "Soleil Royal" after she received "La

G. D Tirant fcs

Confiance" in December, 2010 she enquired of this from the respondent and she was informed that "Soleil Royal" had been wrongly sent to St Petersburg, Russia in January, 2011. After being unable to resolve the matter Mrs. Hascoet filed a complaint with the Commission on the 5th of May, 2011. Several correspondences were arranged by the Commission as attempts to settle this matter. During a meeting on 19th of May, 2011 the respondent informed the Commission that the model ship was wrongly sent to Russia but a new one was ready and would be sent to the complainant by the end of May. That did not materialize. The Airway bill submitted by the respondent at the request of the Commission clearly shows that the "Soleil Royal" was addressed to a Mr. Alexander Andryushka in Russia. The respondent subsequently informed the Commission that the model ship would be ready by the 24th June, 2011. When similarly this did not materialize three phone calls were made to the respondent on that same day with no response. Instead contact was established with the respondent's colleague with whom a message was left asking the respondent to contact the Commission but this proved futile. An inspection was carried out on the 11th July, 2011 by officials of the Commission and they were informed by the salesperson that they were still awaiting the shipment of "Soleil Royal" from Mauritius. Furthermore it came to light during the investigation that the respondent did not have a contract terms and conditions with the complainant as well as no insurance covering the shipping of its goods.

[2]Subsequent to assembling all their findings the Commission concluded that the respondent was in contravention of Section 40(1)(a) of the Consumer Protection Act, 2010 which states that *"...where a supplier undertakes to perform any service for or on behalf of a consumer, the supplier shall* – (a) *perform and complete that service in a timely manner and give to the consumer timely notice of any unavoidable delay in the performance of the service;"* and recommended that the Board enforces section 40(2) of the same Act which provides that *"Where a supplier fails to perform a service to the standards specified in subsection (1), the suppliers shall at the direction of the consumer – (remedy any defect in the quality of the services performed or the goods supplied; or (b) refund to the consumer a reasonable portion of the price paid for the service performed and goods supplied, having regard to the extent of the failure"* and also to implement Section 67 of the Act which caters for a financial penalty against such contraventions.

[3]The matter proceeded to be heard by the Board of Commissioners on Wednesday 3rd August, 2011 with all the parties duly represented. Mr. Ravindra Goburdhun, the director of Nautica relayed to the Board that apart from this case he has had no other similar complaint. That the situation was an unfortunate incident brought upon by unforeseen events such as the model ship "Soleil Royal" being wrongly delivered to Russia and his workshop catching fire which set him back and prevented him from constructing another model ship to send to Mrs. Hascoet in a timely manner. That he had now already sent a newly built model ship to the

complainant and they were only waiting delivery. The parties were advised to notify the Commission when the new model ship is received by the complainant. The hearing was adjourned on that note.

[4]Consequently the Board of Commissioners was informed on the 8th of September, 2011 that via email dated 29th August, 2011 the complainant informed the Commission that the model ship had been duly received the week before thus resolving the dispute. There being no further ailments to either party this matter stands settled.

[7]We so order.

Ruling pronounced by us on this 28th day of November, 2012.

Mrs. Vijaykumari (Dolly) Tirant
Commissioner

Mr. Philippe Chong-Seng
Commissioner

Mrs. Annie Vidot
Commissioner