THE FAIR TRADING COMMISSION

BEFORE THE BOARD OF COMMISSIONERS

IN THE MATTER of the Consumer Protection Act, 2010;

THE FAIR TRADING COMMISSION
VS.
OFFICE EQUIPMENT SERVICES (PTY) LTD
(Rep herein by Mr. Daniel Kim-Koon, General Manager)

CPA.11.196.99

Complainant: Mr. Philippe Domingue
Respondent: Office Equipment Services (Pty) Ltd
(Rep by Mr. Daniel Kim-Koon, General Manager)

QUORUM
Dr. Shelton Jolicoeur – Chairman (Resigned)
Mr. Philippe Chong-Seng – Commissioner
Mrs. Jenna Thelermont – Commissioner

Mr. Georges Tirant – Director for Consumer Protection Affair (FTC) on behalf of the Complainant

Mr. Pesi Pardiwala on behalf of the Respondent

RULING

[1]A complaint was filed with the Fair Trading Commission (the Commission) by the complainant, Mr. Philippe Domingue (See Exhibit 2), on the 6th of October, 2011 to the effect that the complainant had purchased a television set make JVC, model AV-144MG7 at a price of SR. 1, 225/- from Office Equipment Services (Pty) Ltd, the respondent being a company incorporated on the 13th of July, 1991 under the Companies Act 1972 (See Exhibit 1), at its shop situated at Kingsgate House, Independence Avenue, Victoria, on the 11th of May, 2011 (See Exhibit 3). The television having been tested and found to be functioning on that day the complainant took delivery of the same. The television was covered by a warranty for a period of six months.

[2]The Commission investigated of the complaint. Mr. Domingue explained that the television set began to malfunction towards the end of July, 2011. That around d 2:00pm on 5th of October, 2011 the television screen flashed as it does when it is being switched off and from then on the complainant attempted to switch the television back on both with the remote and using the on/off button on television itself but this was unsuccessful. He tried again later that day but in vain. The complainant stressed that he did not at any point attempt to repair or tamper with the television in anyway. Instead he returned it to the shop. There the shop manager acknowledged the six month warranty but only agreed to repair the television and provide an additional six months warranty rather than providing a replacement or a refund of the purchase price. Mr. Karl Tirant carried out the said repairs on behalf of Mr. Daniel Kim-Koon of Office Equipment Services (Pty) Ltd and reported that the 'Flyback Transformer' was the affected component of the television set and after its replacement and testing the television was functional. When the possibility of the component being defective since the complainant stated expressly that the television had been used in the proper manner and had not been subjected to any form of abuse prior to the malfunction the respondent argued that this was not the case but rather the 'Flyback Transformer' had most likely been affected by a surge in the voltage or current level and the repairs conducted was a gesture of good will on his behalf. Two independent electronics technicians were consulted in that respect and both disagreed with the claim of the respondent, Mr. Alex Joubert from 'The Hut Store' situated in the Huteau Lane Complex stating that the more likely causes of the malfunction could be that the 'Flyback Transformer' inserted on assembly was of sub-standard quality; a manufacturing defect or the age and condition of the television and Mr. Ronnie Ernesta of Advanced Technical Services situated at Providence reiterating that it would be very difficult to determine and/or prove that a surge was responsible for the damage. In turn the Public Utilities Corporation (PUC) advised the Commission that there was no abnormal fluctuation in the level of voltage/current on the specified date and within the specified timeframe at that particular location (Refer to Exhibit 4). Additional research revealed that the problem could have also been triggered by the tendency of the 'Flyback Transformer' to accumulate a coating of dust due to electrostatic attraction but the complainant maintained that the television set was kept in an area not exposed to this factor nor direct sunlight.

[3]Subsequent to their investigation and determining that the malfunction was due to a manufacturing defect as per Section 39(1)(a) of the Consumer Protection Act, 2010 which provides that *"In this part "defect" in relation to any goods or a service, means any material imperfection in the manufacture of the goods or components thereof, or in the performance of the service, that renders the goods or the results of the service less acceptable than persons generally would be reasonably entitled to expect in the circumstances;"* the Commission

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concluded that the respondent may be in contravention of Section 42(1)(c)(iii) of the Consumer Protection Act, 2010 by refusing to provide, at the direction of the complainant, a replacement of the television set of a refund of the purchase price of SR. 1, 225/-. As a result the Commission has recommended that firstly, the respondent be ordered to refund the complainant the full purchase price of SR. 1, 225/- although it has to be established that the damage caused to the "Flyback Transformer" can be reasonably attributed to a defect in its initial manufacture before Section 42(1)(c) can be applied, and also the Board imposes a penalty in accordance with Section 67 of the Act.

[4]Following the scrutiny of the case and all the evidence presented before the Board we are of the view that the respondent's act to repair the television set and return it to working condition was reasonable satisfaction of this complaint. Given that the television is fit for the purpose for which it was purchased and for that reason the Board rules that the complaint against Office Equipment Services (Pty) Ltd will not be allowed. The same is hereby dismissed. It is therefore ordered that the complainant, Mr. Domingue, make the necessary arrangements to take the television set back from the respondent with a six month warranty as was originally agreed by the respondent but given the entire circumstances of the case it is further ordered that the warranty period should commence on the date of this ruling.

[5]The parties are free to appeal against this ruling.

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

Mrs. Vijaykumari (Dolly) Tirant
Commissioner

Mr. Philippe Chong-Seng
Commissioner

Mrs. Jenna Thelermont
Commissioner