THE FAIR TRADING COMMISSION

BOARD OF COMMISSIONERS

Mr. Stevy Estral	Complainant
T.M.P. Company (Pty) Ltd trading as World Electronics	Respondent

Complaint No:	CPA.11.066.99
Presented on:	08-06-2011
Decided on:	13-07-2011

BEFORE:	Dr. Shelton M. Jolicoeur,	Chairman
	Ms. Annie Vidot,	Member
	Mr. Philip Chong Seng,	Member
Present:	Mr. Georges Tirant :	Director Consumer Affairs, FTC for the Complainant
	Mr. Ahmed Jabber	for the Respondent
In Attendance:	Ms. Jena Thelermont	Member FTC Board
	Mr. Daniel Gappy	CEO, FTC

ORDER

1. The Complainant's case is that he had purchased a wrist watch for the sum of SR.600 from the Respondent at its shop at Huteau Lane, Albert Street, Victoria on the 24th March 2011. At the time of purchase the watch was covered by warranty for a period of 3 months. (warranty produced admitted and marked as Exhibit A4)

2. After having worn the watch for a few days the strap of the watch broke and the watch fell. Complainant found the watch to be defective and returned it to the shop. The watch was exchanged with a new one. On the 28th March 2011 the strap of the watch broke again, the links severed and the watch fell. The alleged defects occurred during the warranty period.

3. Mr. Tirant on behalf of FTC submitted that by a letter and compliance notice dated 18th April 2011, the Commission advised the Respondent to refund to the Complainant within 3 days of receipt of the letter and compliance notice, the sum of SR.600 being the purchase price of the watch. The Respondent has failed to comply with the direction.

4. Mr. Tirant further submitted that the Respondent has further contravened Section 42(1) (c) (iii) of the Act by refusing to refund to the Complainant the purchase price of the goods.

5. He argued that on the issue of warranty for the wrist watch, it does not comply with the provisions of the Act in several respects. Firstly, the warranty is limited to items of more than SR.500 while the Act imposes no limits on the basis of the price of the items purchased. Secondly, the warranty certificate distinguishes between goods under warranty and goods which are not while the Act does not make such a distinction. Thirdly, a distinction is made between accessories and the main item. Fourthly, the last term of the warranty is unfair in that the supplier is limiting its legal liability in respect of the quality of the product.

6. The Respondent in its reply admitted that Complainant purchased the said wrist watch, that the watch was returned to the shop damaged and that it was exchanged for a new one.

7. Mr. Jabber for the Respondent, however, denies that the replacement watch also became defective after purchase. He submitted that the Complainant has no grievance with respect to the guarantee or warranty issued to the watch. The Complainant had enough chances to check the quality while purchasing the item from the Respondent. As per the avernment of the Respondent even if there is any complaint with respect to the strap of the wrist watch, it would be the result of rough use and mishandling on the part of the Complainant.

8. Section 42(1) (c) of the Consumer Protection Act 2010 (the "Act") provides that "..... where a consumer acquires any goods, otherwise than by way of sale by auction which are not of good quality, in good working order or defective, the consumer may within six months after delivery of the goods, return the goods to the supplier".

9. After hearing the submissions of the parties and carefully examining the evidence and material on record before us, we find that the wrist watch was not in good working order or defective as defined by section 39 of the Act. Two watches became defective in a matter of days after purchase and exchange.

10. We also find that the Respondent has contravened Section 42 (1) (c) (iii) of the Act in refusing to refund to the Complainant the price of the watch.

11. We further find that the warranty given by the Respondent falls short of the requirements of the provisions of the Act and serves the purpose of limiting its liability in respect of the quality of its products on sale.

12. In view of the findings above, the Complaint is allowed. The Respondent ordered as follows:

    (i) The Respondent will refund the purchase price of the watch in the sum of SR.600 to the Complainant.
    (ii) The Respondent will also pay a penalty fee of SR.2,000 to the Commission.

    This order will be complied with within 30 days of receipt of its copy by the Respondent failing which the above refund money and penalty fee will carry interest of 9% per annum till payment.

13. The Complaint is disposed of with the aforesaid directions.

14. This order is pronounced by us on the 13th day of July 2011.

15. The Respondent is advised of its right of appeal.

CHAIRMAN MEMBER MEMBER

Complainant's side Documents

Exhibit A1 – Certificate of Incorporation
Exhibit A2 – Certificate of Business Name
Exhibit A3 – Particulars of Director
Exhibit A4 – Warranty Certificate
Exhibit A5 – Compliance Notice

Respondents side Documents

NIL