THE FAIR TRADING COMMISSION

BOARD OF COMMISSIONERS

Mrs. Anette Rose — Complainant

T.M.P. Company (Pty) Ltd
trading as World Electronics — Respondent

Complaint No: CPA.11.071.99
Presented on: 08-06-2011
Decided on: 13th-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
Mr. Ahmed Jabber for Respondent

In Attendance: Ms. Jena Thelermont Member FTC Board
Mr. Daniel Gappy CEO, FTC

ORDER

1. The case for the Complainant is briefly as follows:
The Complainant on the 9th April 2011 purchased a colour television set brand Fantasia, model CTV-2023M, from the Respondent at its shop situated at Huteau Lane Complex at Albert Street, Victoria. The TV set was not tested by the shop attendant.

2. Since the said TV set developed certain problems immediately after purchase and it was returned to the Respondent on the next day i.e. 10th April 2011, Complainant claimed a refund of the purchase price plus the cost of transportation to and from her home.

3. At the time of the purchase of the said TV set the Respondent issued to the Complainant a warranty card/receipt whereby the TV set purchased was given a one year guarantee. The Respondent refused the claim for refund by the Complainant. The Complainant then filed a complaint with the Fair Trading Commission (FTC).

4. Mr. Tirant for FTC avered that after conducting an investigation he issued a letter and Compliance notice (Exhibit A6) on the 18th April 2011 advising the Respondent to refund to the Complainant within 3 days of receipt of the said letter and Compliance Notice the sum of SR.3,600 being the cost of the TV set (SR.3,400) and transportation cost (SR.200). The Respondent did not comply.

5. Mr. Jabber for the Respondent in his reply admitted that the Complainant purchased the said TV set, that it was under a 1 year warranty period and that he did receive the letter and Compliance Notice from the FTC. He did not deny that the said TV set was defective. He avered that he was not aware that a Consumer had 3 options, (a) entitlement to a refund; (b) entitled to a new TV set and (c) entitlement to have the TV set repaired and that the Consumer had the right to exercise any of the 3 options. He further avered that he was not fully aware of the provisions of the Consumer Protection Act. He agreed, however, that the Complainant was entitled to a refund and that the Respondent was prepared to comply with an order of the Board to the effect.

6. Section 42(1) of the Consumer Protection Act 2010 (the "Act") provides inter alia 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, without penalty and at the supplier's risk and expense, and the supplier shall refund to the consumer any costs associated with the ..... delivery of the goods .....". Section 42 (1) (c) (iii) of the Act further provides that the Supplier shall ..... at the direction of the Consumer ..... refund to the Consumer the price paid for the goods, within 24 hours of the return of the goods to the Supplier"

7. We have gone through the material on record and heard the submissions of the Director of Consumer Affairs of the FTC and the Respondent. It is clear to us that the TV set was not in good working order or defective as defined by Section 39 of the Act. It is also an admitted fact that the impugned TV set was under warranty for one year vide Exhibit A5. The TV set was purchased on the 9th April 2011. The Complainant returned it to the Respondent within the period of 6 months after delivery and well within the warranty period. It is also a fact that the TV set had developed certain defects during the warranty period (which fact was not denied by the Respondent). The Respondent sold the TV set to the Complainant for valuable consideration in cash. Therefore, it is incumbent upon the Respondent to ensure that the goods delivered to the Complainant is defect free.

8. The Respondent has therefore contravened section 42(1) (c) (iii) of the Act by refusing refund to the Complainant the purchase price of the TV set and the cost of transportation.

9. In the result the complaint is allowed and the Respondent is directed to (a) refund to the Complainant the sum of SR.3,400 being the purchase of the TV set and (b) pay to the

Complainant the sum of SR.200 being the cost of transportation. The Respondent is further directed to pay the sum of SR.1500 towards the costs of these proceedings.

The amounts shall be payable within thirty days from the date of receipt of a copy of the order failing which the amount shall carry interest of 9% per annum till the date of payment. Copy of this order to be supplied to each party free of charge. After compliance, file to be consigned.

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

11. The Respondent is advised of his right of appeal.

CHAIRMAN MEMBER MEMBER

Complainant's side Documents

Exhibit A1 – Certificate of Incorporation
Exhibit A2 – Certificate of Business Name
Exhibit A3 – Registration of Business Name
Exhibit A4 – Complaint Form
Exhibit A5 – Warranty Certificate
Exhibit A6 – Compliance Notice

Respondent's side Documents

NIL