THE FAIR TRADING COMMISSION

BOARD OF COMMISSIONERS

Mr. Noris Zialor — Complainant

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

Complaint No: CPA.11.102.99
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
Mr. Ahmed Jabber for Respondent

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

ORDER

1. The Complainant Mr. Noris Zialor of Machabee, Glacis, Mahe, has filed this complaint alleging defective goods supplied by the Respondent.

2. The case in brief is that Complainant had purchased one mobile hand set of iphone 5 brand from the Respondent at its shop at Huteau Lane, Albert Street, Victoria, Mahe, on the 23rd March 2011, on payment of a sum of SR.3,800. At the time of purchase Respondent also provided warranty for a period of one year. (copy of the receipt was produced, admitted and marked as Exhibit A)

3. During the warranty period (1 year) just after 52 days of purchase of the said mobile phone Complainant found defect, the soft pad and keys stopped responding and the hand set went out of order. Thereafter, the Complainant intimated the defect of the mobile phone to the Respondent and was informed that he would be contacted on the following Monday the 16th May 2011. The Complainant was not contacted by the Respondent as promised.

4. On the following day i.e. Tuesday 17th May 2011, the Complainant's mother went to the shop and the Respondent agreed to refund the purchase price of the handset. The following day i.e Wednesday 18th May 2011, Complainant went for the refund at the shop and was informed that no refund would be given and that the handset would be sent abroad for repairs.

5. The Complainant thereafter filed a Complaint with the Commission on the 19th May 2011. On behalf of the Fair Trading Commission (FTC) Mr. Tirant avered that he investigated the complaint and that by letter dated 20th May 2011, the Commission advised the Respondent to refund to the Complainant, within 24 hours of receipt of the letter, the sum of SR.3,800 being the purchase price of the handset. The Respondent has not complied with the direction. He argued that the mobile phone was not a branded item and that Respondent has falsely represented the handset to be of a particular standard and quality, thus violating the provisions of Section 32 of the Consumer Protection Act (the "Act").

6. Mr. Jabber for the Respondent in his reply admitted that the Complainant did purchase the said mobile phone from his shop and that it was covered by a warranty period of one year. He submitted that at the time of purchase the handset was new and had no scratches on it, but when it was returned it had several scratches at the corners which could mean that the handset had fallen several times hence the defect. Mr. Jabber further submitted that to his knowledge the handset had no inherent manufacturing defect. He said Respondent was prepared to send the handset to the manufacturers overseas for repairs because Respondent did not believe that local service centres would have the technical ability to carry out the repairs.

7. Section 42(1) (c) of 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".

8. We have heard the arguments of the parties weighed the rival contentions and we have gone through the evidence brought on record.
It is clear to us that after 52 days within the warranty period the handset became dead, was not in good working order or defective as defined by section 39 of the Act. The Respondent has failed to adduce any evidence that there is no manufacturing defect in the said handset. The Complainant had returned the handset to the Respondent within the warranty period after he found out that it was defective. He is therefore entitled to a refund of the purchase price of the handset. The warranty covered repair or replacement of the whole set in case of any defect during the warranty period of 1 year without charge.

9. From the above findings, we come to the conclusion that the mobile phone became inoperative after 52 days of purchase. The grievance of the complainant is genuine and there

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is a deficiency in service on the part of the Respondent in that it sold to the Complainant a patently defective mobile phone.

10. It is therefore ordered that the Respondent

(a) Refund to the Complainant the purchase price of the mobile phone i.e the sum of SR.3,800.
(b) Amend the terms and conditions of its warranty in accordance with the provisions of the Act relating to warranty of goods.
(c) Pay the Fair Trading Commission a penalty fee of SR.3,500.

These 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.

11. This order is pronounced by us on the 18th day of July 2011.

12. 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 – Registration of Business
Exhibit A3 – Certificate of Business Name
Exhibit A4 – Warranty Certificate
Exhibit A5 – Letter of Complaint 20th May 2011