THE FAIR TRADING COMMISSION

BEFORE THE BOARD OF COMMISSIONERS

IN THE MATTER of the Consumer Protection Act, 2010;

THE FAIR TRADING COMMISSION
VS.
TOP GEARS COMPANY (PTY) LTD
(Rep herein by Mr. Patrick Lui-Chit-Chon)

CPA.11.076.99

Complainant: Mr. Ernest Athanasius
Respondent: Top Gears Company (Pty) Ltd
(Rep herein by Mr. Patrick Lui-Chit-Chon)

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

Mr. Georges Tirant – Director for Consumer Protection Affairs on behalf of the complainant

Mr. Pesi Pardiwalla – Attorney-At-Law on behalf of the respondent

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RULING

[1]The complainant in this matter, Mr. Ernest Athanasius, purchased a battery – GPS DIN 66 12V on 11th November, 2010 from the respondent's shop (Top Gears Company (Pty) Ltd) which would not keep charge on his Ford Crown Victoria (Hearse) of 6400cc at a sum of SR. 1, 495/-. He returned the battery and it was replaced with a new one on the 17th February, 2011. The same problem was experienced with the second battery which prompted the complainant to return it on the 13th April, 2011 but this time he was refused a replacement or a refund for the battery as the respondent failed to extend the warranty on the second battery. The complainant therefore filed a complaint against the

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respondent with the Fair Trading Commission (the Commission) for a refund of the cost of the battery.

[2]Following an investigation of the matter officers of the Commission were satisfied the respondent had contravened Section 32(i) of the Consumer Protection Act, 2010 which states that *"A person shall not, in trade or commerce, in connection with the supply or possible supply of goods or services or in connection of the promotion by any means the supply or use of goods or services make a false or misleading representation concerning the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy relating to goods or services."* Further by not extending the warranty on the second battery the Commission found the respondent to also be in contravention of Section 42(1)(c)(d)(i)(ii)(iii) of the same Act which states provides that *"Subject to this Part, 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 or are not useable or durable for a reasonable period of time, having regard to the use, the consumer may, within 6 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 use, installation or delivery of the goods, and at the direction of the consumer, unless the goods are not reasonably fit for the purpose ... repair the goods within 60 days of the return of the goods to the supplier, or replace the goods within 7 days of the return of the goods ... or refund to the consumer the price paid for the goods within 24 hours of the return of the goods."* Having failed to reach an accord the case was brought before the Board of Commissioners for determination.

[3]At the hearing of the matter on 19th October, 2011, Mr. Pesi Pardiwalla, Attorney-At-Law, representing the respondent, upon the instruction of his client, made a swift proposal for a part refund of price paid for the battery if Mr. Athanasius, the complainant, was agreeable. Accepting the compromise Mr. Athanasius agreed to a refund of SR. 1, 000/- out of the purchase price of SR. 1, 495/- since he had used the battery for two months.

[4]There being all around consensus the matter stands settled as per the mutual agreement of both parties. We so order.

Ruling pronounced by us on this 19th day of October, 2011.

Mrs. Vijaykuma ri(Dolly) Tirant
Commissioner

Mr. Philippe Chong-Seng
Commissioner

Mrs. Annie Vidot
Commissioner