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.11.101.99

Complainant: Ms. Hilda Sanders
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

---

RULING

[1]The complainant in this matter, Ms. Hilda Sanders, purchased an auto battery (12V – 60Amps) on 26th March, 2011 for her pick-up from the respondent's shop (Top Gears Company (Pty) Ltd) at the sum of SR. 1, 050/-(See Exhibit A2). On the 10th of May she was contacted by her mechanic informing her that the battery was not functioning. On that same day she reported this incident to the respondent but was informed that she would not be receiving a replacement or a refund. The battery was not covered by warranty. Subsequently, Ms. Sanders filed a complaint with the Fair Trading Commission (the Commission) on the 16th of May, 2011 (See Exhibit A1).

D Tirant

[2]After its initial assessment of the complaint it was decided by officers of the Commission to subject the battery to several tests to determine its condition. On the 24th of May, 2011 an official statement was submitted by Mr. Geoffrey Alvis, the mechanic who worked on Ms. Sanders' pick up, who explained that when he tried to start the Toyota Hilux pick-up after he had placed in the new battery, it was flat. That he put the battery on charge for twelve hours and the next day the pick-up still would not start, instead he noticed that one of the cells in the battery boils up when on charge(See Exhibit A8).

[3]Consequent to a meeting held on 8th June, 2011 the respondent informed the Commission that firstly, a 60 amps battery will not work on a 1600cc engine, secondly that the complainant might have placed the battery directly on the floor and exposed to sunlight, thirdly, that the mechanic might have wrongly charged the battery and finally that the acid used in the battery is imported in a pure state and diluted locally. It was therefore concluded to have the battery properly tested so on the 10th June, 2011 the same was taken to the Seychelles Institute of Technology (SIT) where the voltage reading was checked and was found to be 10.7V. It was also observed that the four middle cells were found to be overfilled with electrolytes and its gravity was below the specific value. Additionally, a discharge test was carried out on the battery which result was compiled in a report together with all the other test results produced and marked as Exhibit A5. On the same day the battery was taken to the Seychelles Bureau of Standards (SBS) for a density test which measures the ratio of sulphuric acid against water. The results were received on the 27th June, 2011 and the ratio was found to be below the standard. Further to this on the 1st of July, 2011 on official of SBS took two other samples of auto batteries from the shop of the respondent in the presence of officials of the Commission for testing. The results were received on the 14th July, 2011 and the ratios from both samples were below standard (See Exhibit A7). Based on the evidence gathered the Commission it was clear that the auto battery was not in good working order or was defective which condition is provided for under Section 39 of the Consumer Protection Act, 2010 and was satisfied that the respondent was in contravention of Sections 32(i) and 42 of the same Act which provides that in such cases the consumer is allowed warranty for a period of six months and that the supplier shall repair, replace or refund upon the return of the goods.

[4]During the hearing of the case on the 12th and 19th of October, 2011, Mr. Pesi Pardiwalla, Attorney-At-Law, representing the respondent, was adamant in the position there was nothing really wrong with the battery itself, that it was a question of the voltage being low and it was the way you maintain and prepare a battery for a car which was the problem. That this was no fault of the complainant and the respondent was prepared to pay Ms.

Sanders back the purchased price and the battery be returned. All parties were in agreement.

[5]On the basis of this mutual agreement it is hereby ordered that the respondent, Top Gears Company (Pty) Ltd refunds the complainant, Ms. Hilda Sanders, the sum of SR.1,050/- being the price she purchased the battery. The Board was informed that the battery was in possession of the Fair Trading Commission, hence, the Commission is to make the necessary arrangements to return the battery to the respondent. We so order.

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

Mrs. Vijaykumari (Dolly) Tirant
Commissioner

Mr. Philippe Chong-Seng
Commissioner

Mrs. Annie Vidot
Commissioner