THE FAIR TRADING COMMISSION

CASE No: CPA. 111.046.99

IN THE MATTER of the Consumer Protection Act 2010, and

IN THE MATTER of the Fair Trading Commission and Universal Sharpening Tools (Pty) Ltd

Complainant: Mr William McAteer personally present

Respondent: Universal Sharpening Tools (Pty) Ltd - Represented by Mrs Barbara Laurence its director hereof

BEFORE:

Dr. Shelton Jolicoeur	Chairman
Mrs Annie Vidot	Commissioner
Mrs Jenna Thelermont	Commissioner
Mr Philip ChongSeng	Commissioner

Present were: Mr Daniel Gappy – CEO FTC

Mr Georges Tirant – Director Consumer Affairs

ORDER

Statement of Case

Mr Tirant presented the case of the Claimant. The Complainant brought a chainsaw for repairs at the Respondents' workshop at Union Vale, Mahe, on the 25th February 2011. The chainsaw was a model MS170STIHL.

According to the Complainant the machine was in his possession for a good number of years. He lent the machine a neighbour only on one occasion to work on his own premises. The

machine was rarely used. His son-in-law was the last person who used the machine before it was sent for repairs at the said workshop.

Complainant avers that upon deposit of the machine at the workshop it was not labeled in front of him and no receipt was provided as proof of deposit. His main contention is that the machine that was returned to him after repairs was not the one he deposited at the workshop.

Although he admitted that his eyesight is not very good but noticed that the machine had a white mark on the cutting arm. He took photographs of the machine at the workshop on the day it was returned to him and which he said he sent to his son-in-law to verify. His son-in-law emailed him to say that the machine was not the same on that he had seen before. No photograph before the deposit of the machine is available.

Mr Tirant said that after conduction an investigation the FTC officer advised the Complainant by letter dated 40th April 2011 that due to insufficient evidence the Commission had no case against the Respondent. The Complainant appealed for a hearing before the Board of Commissioners and requested to bring along his gardener Mr Jason Jeremy to give evidence.

Statement by Mr Jason Jeremy

Mr Jeremy giving evidence on oath said that in a visit to the workshop on 13th June 2011, he saw the machine and confirmed that the model was the same as the Complainant had stated that is MS170SHTIL. He also stated that the cutting arm was not the same as the one he last saw before it was deposited for repairs and that it was rusty. The print on the one for the Complainant was a white or beige colour.

The case for the Respondent

Mrs Barbara Laurence for the Respondent admitted that the chainsaw was deposited at the Respondent's workshop on the 25th February 2011 for repairs. According to the normal procedure the details of the problem with the machine were entered on a job card and Complainant was advised that a technician would have a look at it and he will be informed. The machine was assigned to technician Nichol Dugasse who worked on it. She contended that the chainsaw was that of the Complainant and there had not been any mix-up of machines whatsoever.

Mr Dugasse a senior technician of the Respondent, giving evidence on oath said that he tried to fix the machine but not being satisfied with its performance at first, advised the Complainant to leave it for a while so he could complete the work. On his return to collect the machine at a later

date, the complainant came with a camera and took some photos of the machine. He told Mr Dugasse that the chainsaw in question was not his, the blade was rusty and the serial number on the machine was worn away. Mr Dugasse averred that the chainsaw he fixed was that of the Complainant and there had been no interference in any way with the machine during the period of repair at the workshop.

We have carefully gone through the entire case thoroughly, including the Complainant and the relevant documents tendered by the Complainant and the Respondent. We also heard the arguments put forth by both the Complainant and the Respondent.

We did not consider the email from the son-in-law of the Complainant to be pertinent to this case as the former was not present to give evidence before us personally.

In view of the foregoing, it is our considered opinion the Complainant has failed to adduce credible evidence to show that the Respondent has interfered with the chainsaw during the period of repair at the workshop.

Therefore, the complaint has no merit, weight or substance and deservers rejection. We are of the view that as the balance of probabilities the Respondent has satisfied the Board of Commissioners that the standard of care for the repair services was maintained and that there was no negligence or interference with the machine in question. We, therefore, dismiss the complaint.

The Respondent is entitled to payment that may have been agreed upon at the time the chainsaw was deposited for service or to a reasonable fee for the services when the work was completed. We accordingly order that payment be made by the Complainant to the Respondent before delivery of the chainsaw. Should the Complainant refuse to make payment for the work done on the chainsaw the Respondent has a right of lien and may retain the chainsaw until payment is made.

Certified copy of this order be communicated to the parties, free of charge. After compliance, file to be consigned to record.

Pronounced on this 15th day of December 2011.

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Dr. Shelton Jolicoeur
Chairman

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Mrs Annie Vidot
Commissioner

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Mrs Jenna Thelermont
Commissioner

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Mr Philip Chong-Seng
Commissioner