Room 302
3rd Floor
Block B
Unity House
Victoria
Mahe
Seychelles

Fair Trading Commission
Seychelles

Tel (+248) 4- 32 52 50)
Fax (+248) 4- 32 52 40)
(+248) 4- 32 52 49)
PO Box 1207
Victoria
Mahe
Seychelles

BOARD OF COMMISSIONERS
THE FAIR TRADING COMMISSION

Please address all correspondence to the Chief Executive Officer

CONFIRMATION OF RECEIPT

I, Mr. / ~~Mrs.~~ / Ms. Shawn Andriamiyon.,

acknowledges receipt of **cover letter and ruling** pertaining to the case of Jules Didon Vs Michelline Rose-Rodyanne Jolicoeur CAA.18.029.

today (Date) 24.02.2021. from the Board of Commissioners, Fair Trading Commission (The Commission).

SIGNATURE: Andriamiyon.

THE FAIR TRADING COMMISSION

BEFORE THE BOARD OF COMMISSIONERS

(Consumer Protection Act, 2010)

IN THE MATTER OF:

JULES DIDON
V
MICHELLINE RIAZE
(Trading as Rodyann's Fashion)

Case No: CPA.18.029

Complainant – Jules Didon
Respondent – Michelline Riaze
Represented by Mrs. Alexia Amesbury

QUORUM:
Ms Karen Domingue- Chairperson
Mr Victor Pool – Commissioner
Mr. Michael Nalletamby – Commissioner

For the Complainant
Mrs Catherine Ayoma Ombima– Senior Legal Officer (FTC)

For the Respondent
Michelline Riaze – Shop Owner

RULING

[1] The Fair-Trading Commission (the Commission) registered a complaint from Mr. Jules Didon (the complainant; A2)) of Pointe Larue against one Ms. Michelline Riaze, trading as Rodyann's Fashion (the respondent) with the license number of 54265 which was registered on the 10th November 2006(A6).

[2] That, Mr. Didon had purchased two handbags at Ms. Riaze's shop, located at Oliaji Building, Victoria in December 2017. One of those bags cost SCR 850 and the other SCR 650, with the total of SCR 1,500. He had no receipt to show upon lodging his complaint (A1), although the sales person at the shop confirmed to the Commission by means of a letter that he made the said purchase on 15th December 2017.

[3] During the first week of January 2018, the two bags broke. The handles came off on one and the zipper broke off on the other. The two handbags were taken in as evidence on the 02nd February 2018 and recorded on the exhibit form, both bags were visibly broken (A4). As per the standard procedures, Ms. Riaze was formally notified of this complaint by a letter, dated 13th February 2018. Following this letter, the Commission received a response from Ms. Riaze on 14th march 2018 whereby she stated that she would replace one of the bags but not the other one (A11). In a final attempt to amicably resolve this matter, both these parties were invited to a meeting at the commission on the 31st March 2018 where Ms. Riaze upheld her decision to replace one bag only (A12) and they could not come to an understanding.

[4] Subsequently, the Commission filed a case before the Board of Commissioners for the contravention of the Consumer Protection Act, 2010, section 40(1))(c): -

*"**40(1)** Subject to this Part, where a supplier undertakes to perform any service for or on behalf of a consumer, the supplier shall—*

(a) ...
(b) ....
(c) 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 are 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 use, installation or delivery of the goods, and at the direction of the consumer –

(i) unless the goods are not reasonably fit for the purpose referred to in paragraph (a) or (b), repair the goods within 60 days of the return of the goods to the supplier;
(ii) replace the goods within 7 days of the return of the goods to the supplier or such longer period as agreed by the parties;

refund to the consumer the price paid for the goods within 24 hours of the return of the goods to the supplier.

***39(1)(b)** 'Defects' in relation to any goods or a service means – any characteristic of the goods or components thereof that renders the goods or components less useful, practicable, or safe than persons would generally be entitled to expect in the circumstances; and 'defective' is construed accordingly."*

[5] This matter was called before the Board of Commissioners on the 28th May 2019. Mrs Catherine Ayoma Ombima, Senior Legal Officer of the Fair-Trading Commission, appeared on behalf of the Commission and Ms Michelline Riaze appeared as the respondent. Ms Riaze then informed the Board that her counsel, Mrs Amesbury will file written submissions. This was not handed in in due time. Therefore, the case was set for a second mention. on the 11th August 2020, Mrs. Ombima and the respondent agreed to do written submissions.

[6] In her submissions Mrs Ombima urged the Board to impose penalties as set out under Section 67(1) of the Consumer Protection Act, 2010 which provides that *"Where the Commission determines after a formal hearing that a person has contravened any requirement or prohibition contained in sections the Commission may order the person, in the case of an individual, to pay a penalty of a sum not exceeding SR100,000."* She submitted that when considering a suitable penalty, the Board shall have regard to Section 67(3)(a), (e) and (f) which states that *"In determining an appropriate penalty for the purposes of this section, the Commission shall have regard to the following (a) the nature, duration, gravity and extent of the contravention; (f) the degree to which the respondent co-operated with the Commission."*

[7] Mrs Ombima stated that Section 42 (1) (c), provides that were a consumer acquires any goods, other than by way of sale by auction, which are not of good quality, defective or not in good working order, the consumer may return the goods within 6 months to the supplier, without any penalty, and at the risk and expense of the supplier, 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, to provide remedies listed under paragraph i, ii or iii of that section.

[8] Mrs. Ombima stated that, the fact as to whether the bags were of good quality or not can speak for itself. If the bags had been of good quality, they would not have lasted for such a short period of time. Mr Didon, made known in his complaint that, the bags had been brought in December 2017 and by the first week of January 2018, both the bags had already developed issues and that they could no longer be used.

[9] Mrs Amesbury in her submission stated that Ms Riaze does not dispute that the bags were defective but that she refuses to provide a refund of the price that Mr Didon had paid but argues that the only remedy she would provide was a replacement of one of the bags.

[10] The Board has deliberated on the matter. Based on the evidence before adduced together with the submissions, the Board of Commissioners hereby finds that the

respondent, Ms. Riaze, to be in contravention of Section 40(1) (c) of the Consumer Protection Act, 2010.

[11] Consequently, the Board hereby orders as follows:

That the respondent shall refund the Complainant the sum of SCR1,500 being the price paid for the two bags.

All payments are to be made by the respondents at the office of the Fair-Trading Commission not later than Thirty (30) calendar days from the date of receipt of this ruling.

The parties are free to appeal against this ruling to the Appeal Tribunal *(See Section 44 of the Fair-Trading Commission Act, 2009 and Section 77(1) of the Consumer Protection Act, 2010).*

We rule accordingly.

Pronounced by us on this 30th. day of December, 2020.

Mrs Karen Domingue
Commissioner
(Chair Person)

Mr. Victor Pool
Commissioner

Mr. Michael Nalletamby
Commissioner