

**IN THE MATTER OF THE CONSUMER
GUARANTEE CLAIMS TRIBUNAL**

IN THE COMPLAINT OF:

KUMARA BELLAMY

COMPLAINANT

-and-

**RODERICK R. HINDS
ALISON J. HINDS
(Trading as Fashion Conscious)**

RESPONDENTS

BEFORE:

Messrs: Milton O. Pierce	Deputy Chairman;
Nicole Roachford	Member
Deighton Babb	Member

APPEARANCES:

Mr Roger Barker	Public Counsel and
Ms Susana Thompson	Legal Officer on behalf of the Complainant

Respondents in person and not represented by Counsel

DATES OF HEARING: 19th January 2018;
23rd January 2018;
23rd March 2018

DATE OF DECISION: 13th April 2018

INTRODUCTION

By a complaint dated the 6th day of May 2016, Ms Kumara Bellamy of Tappin Land, Upper Rendezvous, Christ Church complained that on or about the 14th October 2014 she purchased a pair of **AIR MAX 1990 Nike** shoes colour black from the Respondents Roderick Hinds and Alison Hinds who carry on business as Fashion Conscious at a location at Upstairs #14 Swan Street, Bridgetown. The price paid was \$260.00 and the shoes were to form part of her 12-year-old son's school uniform.

Within one (1) week of wearing the shoes to school, the complainant observed that the tips looked strange and within the second week, she observed the seams coming apart.

The Complainant took the shoes back to the establishment and requested a refund from the Respondent, Roderick Hinds, but this was rejected. A formal Complainant was made to the Office of Public Counsel.

Efforts to resolve the matter at the level of mediation having failed, the Complainant is seeking a refund of the full purchase price of \$260.00 by reason of the breach of Section 6(1) of the Consumer Guarantees Act, Cap 326E.

*Section 6(1) "Subject to section 49, there is a guarantee, where Goods are supplied to a customer that **the goods are of acceptable Quality***

(2) Where goods fail to comply with the guarantee set out in Subsection (1)

(a) Part 111 "may give the consumer a right of redress against the supplier"

EVIDENCE

The evidence in this matter was provided by the Complainant the Investigation Officer attached to the Officer of Public Counsel and Mr Roderick Hinds, the Respondent.

(1) Ms Kumara Bellamy

The Complainant stated that on the 14th October 2014 she visited Fashion Conscious to purchase a pair of shoes for her son to wear to school. The shoes were Air Max 1990 Nike for which she paid \$260.00. The witness stated that she did not inspect the shoes there and then but that they appeared normal at the time.

However, within a week or two, she observed damage on the shoes consisting of scuffing in the area of the toes and the stitching appeared to be coming apart. She asked her son what happened to the shoes as the damage did not appear normal. She returned with the shoes to the store and on the first occasion, neither Respondent was present. However, on the next occasion, she met and spoke with Mr Hinds.

Her demand was for a new pair of shoes of the same brand, or the return of her money. Mr Hinds rejected this demand on two grounds; one that the shoes appeared to be worn and; two, he did not have same size/brand in stock. A confrontation arose between the parties which resulted in the police being summoned. The result of the police intervention was that the Complainant was advised not to go back to the store.

The Complainant then made her complaint to the Office of Public Counsel and at a mediation at which both parties attended, the Complainant requested a replacement pair of shoes or a refund of her purchase price. The Respondent offered to replace the shoes with a different Brand but this was rejected by the Complainant.

The Legal Officer, Office of Public Counsel, then referred the shoes to the Investigations Officer, in order to ascertain whether the shoes were made of leather and the extent of the deterioration.

(2) Mr Paul Leach – Investigations Officer, Office of Public Counsel

Duties include investigation of complaints, taking of photographs and presentation of other evidence.

In this instance he took eight photographs of the shoes which were admitted into evidence Exhibits KB1- KB8. Exhibit KB1 showed the damage to the right foot shoe tip, along with the Air Max Band Logo.

Having carefully examined all the remaining photographs, they clearly showed damage to the front of both shoes. It is however impossible to ascertain how this may have been caused, or whether it was poor workmanship.

(3) Mr. Roderick Hinds - Respondent.

The Respondent in his evidence states that he was a Self-employed Businessman, carrying on business at Swan Street, Bridgetown and Sheraton Mall, Christ Church. At the Swan Street location, he sells clothing and shoes including the Air Max 1990 Nikes. He is familiar with the Complainant but did not personally attend to her when she purchased the shoes – this was done by one of his Sales Assistants. Again he was not present when the Complainant first attempted to return the shoes but was there on the subsequent occasion. He offered to replace the shoes with a new brand, but the Complainant insisted on a refund of her money.

He also complained of the condition of the shoes as they appeared as though they were worn extensively.

The matter was then referred to the Office of Public Counsel where the process of mediation was initiated.

The Respondent eventually agreed to replace the shoes. When the exchange was about to take place at the Swan Street location, a dispute arose among the parties ending with the Complainant rejecting the pair of shoes which she was offered.

ANALYSIS

The evidence of the Complainant which was accepted by the Tribunal is that these shoes showed obvious deterioration within one week of the date of purchase and in such circumstances did not comply with the guarantee of acceptable quality as set out in the Act.

Two separate and distinct issues arise out of these circumstances.

A. Can the child, the son of the accused and aged 12, contract on his own behalf, to accept a substituted pair of shoes in place of the original shoes. The evidence that when the transaction was brought to her attention, the Complainant objected to the transaction and rejected the substituted shoes outright.

The Tribunal holds the view that the infant could not legally enter into a contract with the Respondent for the replacement of the shoes.

B. The Complainant having rejected the shoes, to what remedy is the Complainant entitled. The remedy provided at Section 39 (1) (a) of the Act:

“the consumer is entitled to recover from the supplier a refund of any money paid or other consideration provided in respect of the service unless a court or the Tribunal orders that the supplier may retain the whole or part of the money paid or other consideration provided by the consumer.”

CONCLUSION

Judgment for the Complainant, Complainant entitled to recover \$260:00.

Milton Pierce Q.C
Deputy Chairman

Nicole Roachford
Member

Deighton Babb
Member