



**Consumer Claims Tribunal**

**CCR/103/15/MS  
David Andrews**

**vs**

Today 7th September, 2015

**Super Gold Enterprises**

The Tribunal

Having seen the claim filed by David Andrews of the 19th May 2015  
Having seen the reply lodged by respondent company of the 2nd June.  
Having seen the acts of the case, heard the evidence under oath.

Considers

That on the 15th July 2014 plaintiff purchased a Diesel watch from respondent Super Gold Jewellers from their Bay Street outlet subject to warranty for the price of three hundred and seventy-nine Euro (€379.00). Approximately two weeks after purchase, plaintiff noticed that there was a condensation problem. He returned the watch back to defendant who accepted to repair it. After about a week, watch was returned to plaintiff who refused to accept the watch because it was dirty on the inside. Once again respondent company accepted to take the watch back and have it cleaned. The watch was returned a second time and this time plaintiff noticed that it was scratched on the back. Respondent dismissed plaintiff's allegation as 'picky' since the scratch was slight, and refused to take the watch back. Plaintiff returned to the outlet the day after with the watch insisting on a replacement or refund, which requests were both denied. Apart from the allegation that the scratch occurred while in the possession of respondent company, plaintiff is also claiming that the digital display does not work and that the condensation problem recurred.

Considers

That respondent company, whilst acknowledging that the watch was bought from their outlet and that it did have a condensation problem, is claiming that originally plaintiff wanted a refund and not a repair. Since, it is company policy that they do not give refunds, they accepted to repair the watch and remove the condensation. This they claimed to have done successfully and the watch was delivered to plaintiff who refused to accept the watch because it was delivered in a bad state.

That according to Maria Ebejer, representative of respondent company, the dirt was not visible to the naked eye. Nevertheless plaintiff insisted on a refund and again respondent company refused. Dennis Ebejer, also on behalf of respondent company acknowledges that the watch had a condensation problem which, according to him, was successfully removed. The second time the watch was brought to their shop for repair of the same problem, Ebejer maintained that the watch had been submerged in water or similar liquid. He also acknowledges that the watch is 30 metres



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waterproof but adds 'that is subject to interpretation.' Respondent company, therefore, refused to accede to plaintiff's request claiming that he was the cause of the damage on the basis that 'the watch was in some way submerged in water ..'

Considers

That, when plaintiff bought the watch from respondent company, this was covered by a warranty which was dated July 2014. There is evidence of this in the acts of the case. Unfortunately since a copy of this was not exhibited before this Tribunal, it will have to consider the legal warranty covering this sale.

Plaintiff claims that the condensation problem occurred two weeks after purchase. This was definitely within the warranty period. Furthermore, even though respondent company do not refund as per policy, it could have exchanged the watch as per the declaration/ statement on the receipt given to plaintiff and exhibited in the acts. Receipt clearly states that items can only be exchanged within two weeks of purchase.

This Tribunal agrees with the respondent company when it says that condensation occurs when there is a change in temperature. However, this change has got to be sudden and severe since under normal circumstances the space underneath the glass face is supposed to be a vacuum that will hinder any condensation under normal temperature changes. What's more, if the watch is waterproof, as in this case, it is also supposed to be protected from water ingress up to the depth indicated (30 metres).

Plaintiff is excluding the possibility that he ever took the watch to the sea or submerged it in water. There is no evidence to support respondent's allegation that plaintiff used the watch in any other way other than that recommended by the manufacturer.

The Tribunal is inclined to believe that the fact that the watch developed a condensation problem so soon after purchase - which problem was acknowledged by respondent company - means that in all likelihood, it had an air leak which also compromised its water proofing capability. Moreover the condensation was so intense that it affected the digital display which ceased to function. Such a serious defect so soon after purchase means that the watch was defective in the first place and respondent company should have replaced it as soon as the defect became apparent. The defect is such that requires specialized equipment to re-vacuum the space underneath the glass and have the watch resealed with new seals. There is no evidence that this type of repair was carried out on plaintiff's watch. The fact that the condensation problem recurred after repair seems to suggest that only a superficial / surface repair was carried out instead of the proper repair procedure which was required. Plaintiff, therefore, was given back a defective watch which only appeared to be repaired.

Considers

Respondent Dennis Ebejer is claiming that the 30 metre water proof declaration on the watch is subject to interpretation. What exactly is meant by that, the Tribunal does not really know. What it knows for sure is that the watch is waterproof up to a depth of 30 metre according to the manual.



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There is no evidence that the watch was immersed in water, let alone beyond a depth of 30 metres. The fact that respondent company acknowledged that there was a defect in the watch so soon after purchases corroborates plaintiff's allegation that the watch was faulty in the first place. This would entitle him to either have the watch replaced or the money refunded.

In the circumstances, the Tribunal therefore feels that Plaintiff's request is justified.

For these reasons, the Tribunal decides to uphold Plaintiff's request and condemns defendant company to refund the amount of three hundred and seventy nine (€379.00) Euro to plaintiff subject to defendant company taking possession of said defective watch.

A handwritten signature in dark ink, appearing to read 'M. Spiteri'.

**Michela Spiteri LL.D**  
**Arbiter**