

**IN THE MATTER BEFORE THE BOARD
OF THE COMPETITION AND CONSUMER
PROTECTION COMMISSION**

BETWEEN

Mr. Simukoko Chalumba

COMPLAINANT

AND

Automotive Equipment Limited

RESPONDENT

BEFORE:

Commissioner Angela Kafunda	- Chairperson
Commissioner Stanford Mtamira	- Member
Commissioner Emmanuel M. Mwanakatwe	- Member
Commissioner Sikambala M. Musune	- Member
Commissioner Derrick Sikombe	- Member

DECISION

1. Below is a summary of the facts and findings presented by the Commission to the Board of the Commission following investigations carried out in the above case.

Introduction and Relevant Background

It was submitted that:

2. On 11th January, 2023 the Competition and Consumer Protection Commission (“the Commission”) received a complaint from Mr. Simukoko Chalumba (“the Complainant”) against Automotive Equipment Limited (“the Respondent”). Specifically, the Complainant holder of National Registration Card number 86XXXX/XX/1 alleged that on 5th December, 2022 he purchased a New Earth car battery worth K1,340.00 from the Respondent. The Complainant alleged that after two (2) weeks, he noticed that the car battery would be flat in the morning despite the terminals being disconnected, and as such the car needed to be jump started. The Complainant alleged that on 5th January, 2023 he returned the car battery to the Respondent with the hope of getting a refund as they did not have any other

brand of car batteries, but they declined to give him one and advised him to observe it for two weeks. The Complainant alleged that he denied the Respondent's proposal and left the battery with them. The Complainant wanted a refund of K1,340.00 from the Respondent.

Legal Contravention and Assessment Tests

Legal Contravention

It was submitted that:

3. The alleged conduct appeared to be in contravention of Section 49(1) of the Competition and Consumer Protection Act No. 24 of 2010 ("the Act").
4. Section 49(1) of the Act stated that; "*A person or an enterprise shall not supply a consumer with goods that are defective, not fit for the purpose for which they are normally used or for the purpose that the consumer indicated to the person or the enterprise*"
5. Section 49(3) of the Act stated that; "*A person who, or an enterprise which, contravenes subsection (1), shall (a) within seven days of the supply of the goods concerned, refund the consumer the price paid for the goods; or (b) if practicable and if the consumer so chooses, replace the goods with goods which are free from defect and are fit for the purpose for which they are normally used or the purpose that the consumer indicated to the person or the enterprise.*"

Assessment Tests

It was submitted that:

For the purpose of Section 49(1) of the Act, the following assessment tests were used;

6. Whether Automotive Equipment Limited was a "person" or an "enterprise".
7. Whether Automotive Equipment Limited supplied a consumer with goods that were defective, goods that were not fit for the purpose for which they were normally used or for the purpose that the consumer indicated to the person or the enterprise.

Investigations Conducted

It was submitted that:

8. The Respondent was duly served the Notice of Investigation (NoI) and its accompanying letter on 23rd January, 2023. The Commission also submitted the

Complainant's car battery to the Department of Electrical and Electronic Engineering of the School of Engineering at the University of Zambia for it to be assessed.

Findings

The Parties

The Complainant

It was submitted that:

9. The Complainant was Mr. Simukoko Chalumba, a resident of Chibombo. Section 2 of the Act defined a consumer as, "*any person who purchases or offers to purchase goods or services otherwise than for the purpose of re-sale, but does not include a person who purchases goods or services for the purpose of using the goods or services in the production and manufacture of any other goods for sale, or the provision of another service for remuneration.*"¹ In view of the above definition, the Complainant was a consumer as envisaged under the Act as he purchased a car battery from the Respondent for his personal use as evidenced by the invoice dated 5th December, 2022.²

The Respondent

It was submitted that:

10. The Respondent was Automotive Equipment Limited, situated in Lusaka. The Respondent was a registered company (Registration No. 119710006482) with the Patents and Companies Registration Agency (PACRA).³ According to the Act, an "enterprise" meant "*a firm, partnership, joint-venture, corporation, company, association and other juridical persons, which engage in commercial activities, and includes their branches, subsidiaries, affiliates or other entities, directly or indirectly, controlled by them*". The Respondent was an enterprise as envisaged under the Act as they were a company that engaged in commercial activities of supplying automotive spare parts.⁴

Submissions from the Respondent⁵

It was submitted that:

¹ Competition and Consumer Protection Act No. 24 of 2010.

² Complainant's Invoice dated 5th December, 2022.

³ Patents and Companies Registration Agency (PACRA) search on 19th April, 2023.

⁴ Complainant's Invoice dated 5th December, 2022.

⁵ Respondent's Letter to the Commission dated 23rd January, 2023.

11. In a letter dated 23rd January, 2023 the Respondent through Mr. Tarak Mehta submitted that the matter was brought to their attention on 5th January, 2023 and the Complainant was advised to leave the battery with them for testing and evaluation of which they would have reverted within 24 hours. The Respondent however submitted that the Complainant refused to leave the battery at first. The Respondent submitted that while the battery was in their possession, they tested it with their machines and tried it on their vehicles and concluded that the battery had no defects and was working well. The Respondent submitted that they tried to contact the Complainant to inform him of their findings and asked him to collect the battery, but he was unreachable.
12. The Respondent submitted that they urged the Commission to understand that they could not refund for a battery that had no defect and was working very well. The Respondent submitted that they advised the Complainant to go through to their office and they would gladly share proof of their findings with him.

Review of the Complainant's Invoice⁶

It was submitted that:

13. A review of the invoice dated 5th December, 2022 revealed that on 5th December, 2022 the Complainant purchased a car battery worth K1,340.00 from the Respondent.

Third Party Submissions

Submissions from The University of Zambia⁷

Technical Assessment Report from the Department of Electrical and Electronic Engineering of the School of Engineering at the University of Zambia ("UNZA") dated 27th February, 2023.

Physical Inspection

It was submitted that:

14. UNZA submitted that the battery was in a good physical condition since there was no damage or unusual marks.

⁶ Complainant's Invoice dated 5th December, 2022.

⁷ Technical Assessment Report from the Department of Electrical and Electronic Engineering of the School of Engineering at the University of Zambia ("UNZA") dated 22nd March, 2023.

Independent and Technical Assessment

It was submitted that:

15. The technical expert undertook the steps below.

a. Procedures (Measurements)

It was submitted that:

- UNZA submitted that the battery open circuit voltage was measured and found to be 12.0V;
- UNZA submitted that the partial short circuit current was found to be 3A; and
- UNZA submitted that the battery was left to be charged for four (4) hours and the following day the open circuit voltage was measured.

b. Observations

It was submitted that:

- UNZA submitted that after the battery was charged, it was found to be fully charged as per the requirement; and
- UNZA submitted that when the battery was left without any connection for a night, it drained. UNZA submitted that the observation was that when it was connected to the charger, it started charging again indicating it did not hold its charge even on no load.

Conclusion by UNZA

It was submitted that:

16. UNZA submitted that it was concluded that the battery was defective. UNZA submitted that this was because when it was fully charged and left without any load connected to it overnight, it was found to have drained. UNZA submitted that this condition of the battery discharging without connecting to the load could be attributed to some cells partially shorting inside the battery.

Submissions to the Report

It was submitted that:

17. After the Preliminary Report was approved, it was duly served on the Complainant and the Respondent on 21st July, 2023 and 24th July, 2023, respectively. However, there were no submissions from the Complainant.

Submissions from the Respondent⁸

It was submitted that:

18. In a letter dated 31st July, 2023, the Respondent through their Managing Director – Mr. Tarak Mehta submitted that based on the Commission’s letter, the Complainant only started experiencing challenges with the battery two weeks after he bought it. The Respondent submitted that it was part of their policy to check each and every battery before handing it over to a client to make sure that they were receiving good quality and working goods.
19. The Respondent submitted that the same was done for the Complainant, he was only issued the battery after they checked that it was working. The Respondent submitted that they were unable to give the Complainant a refund because they were uncertain of what might have occurred in those two weeks. The Respondent submitted that there were many things that could have caused the battery to fail, such as, jump starting, an issue in the alternator, over charging and taking it elsewhere for charging. The Respondent submitted that they had no proof to say that these things did not transpire in the two weeks that the Complainant had the battery.
20. The Respondent submitted that they appreciated that the battery was taken to UNZA for testing and they trusted that the conclusion was made fairly but as stated above, the Complainant could have done anything with the battery in those two weeks that caused the battery to fail.
21. The Respondent submitted that had the problem occurred immediately after installing the battery, it would be fit to say that the battery had a fault but, in the case at hand, they could not conclude that they supplied a faulty battery. The Respondent submitted that according to them, the battery was fine when they tested it before handing it over to the Complainant.

Desktop Review of Causes of Internal Shorts in Car Batteries.

Ups Battery Centre⁹

It was submitted that:

22. A review of the Ups Battery Centre website revealed that there were various causes that could have triggered a short circuit in a car battery. It was revealed that one

⁸ Respondent’s Letter to the Commission dated 31st July, 2023.

⁹ <https://www.upsbatterycenter.com/blog/internal-short-battery-prevent/> accessed on 21st April, 2023.

of the usual causes was when the separators in a battery melted due to overheating in cells which in turn created a vicious cycle of short circuits.

Vehicles Lounge: Accidentally Shorted Car Battery¹⁰

It was submitted that:

23. A review on the Vehicle Lounge website on accidentally shorted car battery revealed that a car battery could be shorted when cables touched each other and caused a direct connection. It was also revealed that other causes of a shorted battery included loose terminal connections, damaged cables, bad jump-starting, metal tools falling on the battery terminals and incorrect installation of spare parts which could in turn damage the battery or even damage the electrical system.

Further Submissions from The University of Zambia¹¹

It was submitted that:

24. In an email that dated 16th August, 2023, UNZA through their technician Mr. Sekelani Lungu submitted that the main possible cause for the battery being defective was that the quality of the separators was poor or defective thus allowing the active material of the plates to pass through which would result in virtual or direct contact between the positive and negative plates (cells) of the battery.

Relevant Findings

It was submitted that:

25. The Commission established that on 5th December, 2022 the Complainant purchased a New Earth car battery worth K1,340.00 from the Respondent.¹²
26. The Commission through the Technical Assessment Report from UNZA established that the battery was defective given that when it was fully charged and left without any load connected to it overnight, it was found to have drained which would be attributed to some cells partially shorting inside the battery.¹³
27. The Commission established that there were many reasons that could have caused the battery to fail, such as, jump starting, an issue in the alternator, over charging, taking the battery elsewhere for charging,¹⁴ loose terminal connections, damaged

¹⁰ <https://vehicleslounge.com/accidentally-shorted-car-battery/> accessed on 13th June, 2023

¹¹ UNZA's Email to the Commission dated 16th August, 2023.

¹² Complainant's Invoice dated 5th December, 2022.

¹³ Technical Assessment Report from the Department of Electrical and Electronic Engineering of the School of Engineering at the University of Zambia ("UNZA") dated 22nd March, 2023.

¹⁴ Respondent's Letter to the Commission dated 31st July, 2023.

cables, metal tools failing on the battery terminals and incorrect installation of spare parts which could in turn damage the battery or even damage the electrical system.¹⁵

28. The Commission established that another possible cause for the battery being defective was that the quality of the separators was poor or defective thus allowing the active material of the plates to pass through which would result in virtual or direct contact between the positive and negative plates (cells) of the battery.¹⁶

Previous Cases involving the Respondent.

It was submitted that:

29. A review of the Respondent's case file revealed that there was no case against the Respondent in which they were found to have violated Section 49(1) of the Act.

Analysis of Conduct

It was submitted that:

30. In analysing the case for possible violation of Section 49(1), the following assessment tests were used;

Whether Automotive Equipment Limited was a "person" or an "enterprise";

It was submitted that:

31. The Respondent was an enterprise. Refer to paragraph 10 of the above.

Whether Automotive Equipment Limited supplied a consumer with a defective car battery, not fit for the purpose for which it is normally used or for the purpose that the consumer indicated to them.

It was submitted that:

32. The Act defined supply as, "*includes, in relation to goods, the supply, including resupply, by way of sale, exchange, lease, hire or hire purchase of the goods;*"¹⁷ The Commission established that on 5th December, 2022, the Complainant purchased a New Earth Car Battery worth K1,340.00 from the Respondent as evidenced by his invoice dated 5th December, 2022.¹⁸

¹⁵ <https://vehicleslounge.com/accidentally-shorted-car-battery/> accessed on 13th June, 2023

¹⁶ UNZA's Email to the Commission dated 16th August, 2023.

¹⁷ Competition and Consumer Protection Act No. 24 of 2010

¹⁸ Complainant's Invoice dated 5th December, 2022.

Board Determination

36. The facts and evidence of this case have shown that the Respondent did not violate Section 49(1) of the Act.

Board Directive

37. The Board hereby directs that the case against the Respondent for violation of Section 49(1) of the Act is closed.

Note: any party aggrieved with this order or directive may, within thirty (30) days of receiving this order or directive, appeal to the Competition and Consumer Protection Tribunal.

Dated this 19th October 2023

Alex Mula
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Chairperson
Competition and Consumer Protection Commission