

**CASE FILE NUMBER: CONS/19/09/2023/01385/CM**

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

**BETWEEN**

**Mr. Thomas Chileshe**

**COMPLAINANT**

**AND**

**Home Center SD  
Investments Limited**

**RESPONDENT**

**BEFORE:**

- |  |                      |
|--|----------------------|
| <b>Commissioner Angela Kafunda</b>         | <b>- Chairperson</b> |
| <b>Commissioner Stanford Mtamira</b>       | <b>- Member</b>      |
| <b>Commissioner Emmanuel M. Mwanakatwe</b> | <b>- Member</b>      |
| <b>Commissioner Sikambala M. Musune</b>    | <b>- Member</b>      |
| <b>Commissioner Derrick Sikombe</b>        | <b>- Member</b>      |

**DECISION**

- 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:***

- On 19<sup>th</sup> September 2023, the Competition and Consumer Protection Commission (“the Commission”) received a complaint from Mr. Thomas Chileshe (“the Complainant”) against Home Center SD Investments Limited (“the Respondent”). Specifically, the Complainant alleged that on 13<sup>th</sup> August 2023, he purchased a ENC 42-inch television set (“TV”) from the Respondent at a cost of K3,500.00. The Complainant alleged that when he connected the TV to his GoTV decoder, the screen displayed a blur and blue picture making it difficult to view content on the screen. The Complainant alleged that on 16<sup>th</sup> August 2023, he returned the TV to the Respondent and he was advised to leave it at their shop. The Complainant alleged that the Respondent informed him that they would give him a replacement TV once they had new stock. The Complainant alleged that on 18<sup>th</sup> August 2023, he engaged the Respondent

but he was sent away. Further, the Commission observed that the Respondent displayed a notice on the receipt which stated that, "*Money un-refundable*" which appeared to be a disclaimer. The Complainant demanded a refund of K3,500.00 or a replacement TV from the Respondent.

3. Initially the Commission instituted investigations on the matter under Section 48(1) and Section 49(1) of the Competition and Consumer Protection Act, No. 24 of 2010 ("the Act"). As such, the Notice of Investigation was sent to the Respondent. However, during the process of investigations the Commission found that the matter appeared to be bordering only on Section 48(1) of the Act, hence, this case was analysed under Section 48(1) of the Act.

### **Legal Contravention and Assessment Tests**

#### **Legal Contravention**

##### ***It was submitted that:***

4. The alleged conduct appeared to have contravened Section 48(1) of the Act.

5. Section 48(1) of the Act states that:

*"An owner or occupier of a shop or other trading premises shall not cause to be displayed any sign or notice that purports to disclaim any liability or deny any right that a consumer has under this Act or any other law."*

6. Section 48(2) of the Act states that:

*"A person who, or an enterprise which contravenes subsection (1) is liable to the Commission a fine not exceeding ten percent of that person's or enterprise's annual turnover."*

#### **Assessment Test**

**The following assessment tests are with regards to Section 48(1) of the Act;**

##### ***It was submitted that:***

7. Whether the Respondent was an "owner" or "occupier" of a shop or other trading premises;
8. Whether a sign or notice was displayed;

9. Whether the sign or notice purported to disclaim any liability or deny any right a consumer has under the Act; and

### **Investigations Conducted**

#### ***It was submitted that:***

10. The Commission duly served the Notice of Investigation (NOI) and its accompanying letter on the Respondent on 3<sup>rd</sup> October 2023.

### **Findings**

#### **The Parties**

##### **The Complainant**

#### ***It was submitted that:***

11. The Complainant was Mr. Thomas Chileshe, holder of National Registration Card number 30XXXX/XX/1, whose contact number is 0977XXXXXX and is a resident of Kanyama, Lusaka.<sup>1</sup> Section 2 of the Act defines 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*”<sup>2</sup>. Therefore, the Complainant is a consumer as envisaged under the Act because he purchased an ENC 42-inch TV from the Respondent for his personal use.<sup>3</sup>

##### **The Respondent**

#### ***It was submitted that:***

12. The Respondent was Home Center SD Investments Limited, located along Freedom Way, Town Center, Lusaka. The Respondent is, however, not a registered company with the Patents and Companies Registration Agency (PACRA) but is a registered taxpayer with the Zambia Revenue Authority (ZRA) with Taxpayer Identification number (TPIN) 1001730143.<sup>4</sup> According to Section 2 of the Act, an “enterprise” means “*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*”<sup>5</sup>. However, in the view of the above definition, the Respondent qualifies to be “*juridical person*” as envisaged under the Act as it is a company that is engaged in the commercial

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<sup>1</sup> CCPC Form IV dated 18<sup>th</sup> September 2023

<sup>2</sup> Competition and Consumer Protection Act No. 24 of 2010

<sup>3</sup> Complainant’s receipt dated 13<sup>th</sup> August 2023

<sup>4</sup> ZRA Taxpayer search dated 12<sup>th</sup> December 2023

<sup>5</sup> Competition and Consumer Protection Act No. 24 of 2010

activities of supplying assorted electronic items such as TVs and fans to the public.

### **Submissions from the Respondent**

#### ***It was submitted that:***

13. There were no submissions received from the Respondent despite the Notice of Investigation having been served on them on 3<sup>rd</sup> October 2023. Non-response to the NOI constitutes a violation of Section 55(5) as read together with Section 55(4)(a) of the Act.
14. Section 55(4)(a) of the Act reads, *“For the purpose of an investigation under this section, the Commission may, by notice in writing served on any person, require that person to furnish to the Commission, in a statement signed by that person or, in the case of a body corporate, by a director or member or other competent officer, employee or agent of the body corporate, within the time and in the manner specified in the notice, any information pertaining to any matter specified in the notice which the Commission considers relevant to the investigation.”*
15. Section 55(5) of the Act reads, *“A person who, or an enterprise which, contravenes subsection (4) commits an offence and is liable, upon conviction, to a fine not exceeding one hundred thousand penalty units or to imprisonment for a period not exceeding one year, or to both.”*

### **Review of the Respondent’s Receipt<sup>6</sup>**

#### ***It was submitted that:***

The Commission reviewed the Complainant’s receipt and it was revealed that on 13<sup>th</sup> August 2023, the Complainant purchased an ENC 42-inch TV at a cost of K3,500.00 from the Respondent. It was also revealed that there was a notice which stated that, *“Money un-refundable”* as shown in picture 1 below.

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<sup>6</sup> Review of the Respondent’s receipt dated 13<sup>th</sup> August 2023

Picture 1: Respondent's receipt

**HOME CENTER  
SD INVESTMENTS LTD**  
FURNITURE & ELECTRONICS  
P.O BOX 37895  
Located along Freedom Way  
Town Center, Lusaka - Zambia

(K)

**CASH SALE**

SPIN No. 1001710142 No. 1096

M/s..... Date: 13/08/23

Qty	Description	@	K Amount
	ENC	3500	3500
	212		

Prepared by.....  
Signature: [Signature]  
Money un-refundable

VAT.....%  
TOTAL K 3500

**Further Submissions from the Complainant**

**It was submitted that:**

- 16. On 27<sup>th</sup> November 2023, the Complainant submitted that he was given a partial refund of K2,000.00 by the Respondent.<sup>7</sup>
- 17. On 11<sup>th</sup> December 2023 the Complainant submitted that on 9<sup>th</sup> December 2023 he got a fan at a cost of K700.00 from the Respondent. The Complainant submitted that on 11<sup>th</sup> December 2023, the Complainant was given the remaining balance of K800.00 by the Respondent.<sup>8</sup>

<sup>7</sup> Telephone conversation with the Complainant dated 27<sup>th</sup> November 2023

<sup>8</sup> Telephone conversation with the Complainant dated 11<sup>th</sup> December 2023

## **Submissions to the Commission Preliminary Report**

### ***It was submitted that:***

18. After the approval of the preliminary report, it was duly served on the Respondent and Complainant on 26<sup>th</sup> January 2024 and 31<sup>st</sup> January 2024, respectively, in order for them to make submissions to the report. However, there were no submissions to the report from either party.

## **Relevant Findings**

### ***It was submitted that:***

19. The Commission found that on 13<sup>th</sup> August 2023, the Complainant purchased an ENC 42-inch TV at a total cost K3,500.00 from the Respondent.<sup>9</sup>
20. The Commission found that the Respondent displayed a notice which read, “*Money un-refundable*” on their receipt.<sup>10</sup>
21. The Commission found that on 27<sup>th</sup> November 2023, the Complainant was issued a partial refund of K2,000.00 by the Respondent.<sup>11</sup>
22. The Commission found that on 9<sup>th</sup> December 2023, the Complainant obtained a fan at a cost of K700.00 from the Respondent.<sup>12</sup>
23. The Commission found that on 11<sup>th</sup> December 2023, the Complainant was issued the remaining balance of K800.00 by the Respondent.<sup>13</sup>

## **Previous Cases involving the Respondent**

### ***It was submitted that:***

24. A review of the Respondent’s case file revealed that there was no previous case against the Respondent in which they were found to have breached Section 48(1) of the Act.

## **Analysis of Conduct**

### ***It was submitted that:***

25. In analysing the case for possible violation of Section 48(1) of the Act, the following assessment tests were used:

### ***Whether the Respondent was an “owner” or “occupier” of a shop or other trading premises;***

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<sup>9</sup> Complainant’s receipt dated 13<sup>th</sup> August 2023

<sup>10</sup> Complainant’s receipt dated 13<sup>th</sup> August 2023

<sup>11</sup> Telephone conversation with the Complainant dated 27<sup>th</sup> November 2023

<sup>12</sup> Telephone conversation with the Complainant dated 11<sup>th</sup> December 2023

<sup>13</sup> Telephone conversation with the Complainant dated 11<sup>th</sup> December 2023

***It was submitted that:***

26. Black's Law dictionary defines an owner, "as one who has the right to possess, use, and convey something; a person in whom one or more interests are vested"<sup>14</sup>. The Black's law dictionary defines an occupant, as "one who has possessory rights in, or control over, certain property or premises"<sup>15</sup>. Furthermore, a shop in Black's Law Dictionary is defined in part as "a building in which goods and merchandise are sold at retail"<sup>16</sup>." In this case, the Respondent occupied a shop located along Freedom Way, Town Center, Lusaka through which they supplied electronics such as TV's and Fans. As such, the Respondent was an occupier of the trading premise where the TV was purchased.

***Whether a sign or notice was displayed;***

***It was submitted that:***

27. In the case of **ZAMM Imports Limited vs. the Competition and Consumer Protection Commission, 2014/CCPT/008/CON**, the Competition and Consumer Protection Tribunal ("the Tribunal") defined the word "display" as *to notify, inform or send a message to one who is a customer or consumer publicly or privately*. The Tribunal further stated that the word "display" can also be stretched to displaying on a consumer's or customer's receipt. To that extent "display" cannot only be restricted to the public, on a wall, billboard, notice board or public place but also on a receipt..."<sup>17</sup>
28. In line with the above case, the display of a notice can either be on the wall, at the till or printed on a receipt, invoice or any other document related to a transaction between a consumer and an owner or occupier of a shop or any other trading premises. In this regard, it was established that the notice "Money un-refundable" stated on the Respondent's receipt amounted to display of a notice.

***Whether the sign or notice purported to disclaim any liability or deny any right a consumer has under the Act;***

***It was submitted that:***

29. In establishing this question, the ***Zamm Imports case*** further highlights how disclaimers are considered under the Act. It was held by the Tribunal that;

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<sup>14</sup> Black's Law Dictionary eighth edition 2004

<sup>15</sup> Black's Law Dictionary eighth edition 2004

<sup>16</sup> Black's Law Dictionary (1968), 4<sup>th</sup> Edition, Henry Campbell Black, West Publishing Co. p. 1547

<sup>17</sup> Ibid

*“disclaimers were treated as strict liability cases in line with Section 48(1) of the Act.”<sup>18</sup>*

30. In the case cited above, the Tribunal ruled that by displaying a disclaimer, ZAMM IMPORTS violated Section 48(1) of the Act. The Tribunal stated that Section 48(1) fell into the category of the term strict liability meaning that the Respondent violated the Act by displaying a sign or notice purporting to disclaim liability.
31. In the case at hand, the Commission established that the words stated on the Respondent’s receipt, *“Money un-refundable”* purported that money paid by the Complainant could not be refunded back to him as the Respondent was not obligated to give the Complainant a refund under any circumstances. However, for example, under Section 49 of the Act, consumers are entitled to a refund in the event that they are supplied with defective or unsuitable goods or services. Therefore, the Respondent displaying the notice on their receipt denied consumers the right to a refund that they had under the Act in circumstances that they were supplied with defective products.
32. Considering the facts of the matter, the notice on the Respondent’s receipt purported to deny any liability on the part of the Respondent and to deny consumers their right to a refund. In this regard, the notice on the Respondent’s receipt, *“Money un-refundable”* amounted to a disclaimer. Therefore, the Commission found that the Respondent violated Section 48(1) of the Act.

***Whether the Respondent furnished the Commission, in a statement signed by that person or, in the case of a body corporate, by a director or member or other competent officer, employee or agent of the body corporate, within the time and in the manner specified in the notice, any information pertaining to any matter specified in the notice which the Commission considers relevant to the investigation***

***It was submitted that:***

33. A Notice of Investigation was served on the Respondent on 3<sup>rd</sup> October 2023. However, the Respondent did not avail the Commission with any response.
34. The Competition and Consumer Protection Tribunal ruling in the case of **MTN Zambia Limited Vs the Competition and Consumer Protection Commission (2013)** held that: *“the Appellants’ failure to respond to the Notice of Investigation issued by the Commission was a serious dereliction of duty on the part of the Appellant and could be construed to mean a lack of defense on*



their part. The Tribunal cited **Order 18 rule 13 of the Rules of the Supreme Court (White Book) 1999 Edition** which provides that;

***“Any allegation of fact made by a party in his pleading is deemed to be admitted by the opposite party unless it is traversed by that party in his pleading or a joinder of issue under rule 14 operates as a denial of it”.***

35. In light of this cited provision, the Respondent’s failure to respond to the Notice of Investigation issued by the Commission amounts to an admission of guilt.

#### **Board Deliberation**

36. Having considered the facts, evidence and submissions in this case, the Board resolves that the Respondent displayed a disclaimer on their receipt and therefore breached Section 48(1) of the Act.

#### **Board Determination**


37. The facts and evidence of this case have shown that the Respondent did violate Section 48(1) of the Act.

#### **Board Directives**

38. The Board hereby directs that;
- i. The Respondent is fined 0.5% of their annual turnover for 2022 with the applicable cap of K30,000.00 for breach of Section 48(1) of the Act in accordance with Section 48(2) of the Act and the Competition and Consumer Protection Commission Guidelines for Administration of Fines 2019 (See Appendix 1);
  - ii. The Respondent submits their audited annual books of accounts for 2022 to the Commission for calculation of the actual fine within thirty (30) days of receipt of the Board Decision in accordance with Section 5(d) of the Act;
  - iii. Respondent deletes the disclaimer which reads, *“Money un-refundable”*, from their receipts and submit proof thereof to the Commission in accordance with Section 5(d) of the Act within thirty (30) days of receipt of the Board Decision; and,
  - iv. The Respondent develops a new return policy and submits it to the Commission for review in line with Section 5(b) of the Act within 30 days of receipt of the Board Decision.

*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 (CCPT).*

Dated this 5<sup>th</sup> April 2024

  
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**Chairperson**  
**Competition and Consumer Protection Commission**

## **Appendix 1-Calculation of Fine**

The calculation of the recommended fine was determined as follows-

- (a) The Competition and Consumer Protection Guidelines on Fines – September 2019 sets a base of 0.5% for offences relating to Section 48(1) of the Act with the following caps;

<b>Offence</b>	<b>Starting Fine</b>	<b>Maximum Fine in Kwacha</b>
Unfair trading practice	0.5% of turnover	<ul style="list-style-type: none"> <li>• K1,000 for turnover upto K50,000</li> </ul>
False or misleading representation		<ul style="list-style-type: none"> <li>• K10,000 for turnover above K50,000 upto K250,000</li> </ul>
Price Display		<ul style="list-style-type: none"> <li>• K40,000 for turnover above 250,000 upto K500,000</li> </ul>
Supply of defective and unsuitable goods and services		<ul style="list-style-type: none"> <li>• K70,000 for turnover above K1,500,000</li> </ul>
Section 49) except for Section 49(1)		<ul style="list-style-type: none"> <li>• K150,000 for turnover above K1,500,000 upto K3,000,000</li> </ul>
		<ul style="list-style-type: none"> <li>• K200,000 for turnover above K3,000,000 upto K5,000,000</li> </ul>
		<ul style="list-style-type: none"> <li>• K500,000 for turnover above K5,000,000</li> </ul>

Display Disclaimer	of	0.5% of turnover	K30,000
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(b) The Competition and Consumer Protection Guidelines on Fines – June 2019 further provides for additions as follows-

(i) ***Prevalence of the offence, i.e. whether the conduct is widespread and the application of a sanction is likely to have a wide deterrent effect;***

The Commission has received a number of complaints concerning disclaimers and imposition of a fine is likely to have a wide deterrent effect.

(ii) ***Whether the offender has been the subject of previous enforcement action by the Commission;***

The Respondent has not been a subject of previous enforcement by the Commission for engaging in such conduct. Thus, no additional fine should be added because this is the first time the Respondent is being fined.

(iii) ***Whether the offender has demonstrated a resistance to conciliation;***

The Respondent has not shown resistance to conciliation. It is thus recommended that no further additional fine be imposed.

(c) Therefore, the Commission has observed that the total fine sums up to the minimum fine of 0.005 or 0.5% of annual turnover subject to the applicable cap of K30,000.00.