

Our ref: 201606-0008042

20 April 2017

ASSESSMENT: YOUR COMPLAINT

The above matter, as well as the *Customer Complaint Form* has reference.

Summary of your complaint

The Complainant advised that she had purchased a lawnmower ("the product") from the Supplier herein. The Complainant further advised that she has incurred injuries as a result of using the product.

Summary of Supplier's response

The Supplier has advised that they "cannot accept liability for a decision that the customer made, putting herself at risk of injury, as this was not within our control. For the record the mower has never come in for inspection or repairs and by the complainant's own admission in her first communication has been working fine ever since the incident."

Assessment

We have considered all the evidence presented by both the Complainant and the Supplier and advise as follows:

The Complainant purchased the product from the Supplier and has presumable previously used the product without any fault. The Complainant has advised that the product was used on a particular morning when the grass was damp and as such, the Complainant needed to manually remove the grass build up from the product. When she attempted to do this however, the product would not switch off. Despite this, the Complainant proceeded to remove the grass build up numerous times and as a result, injured herself. The Complainant also further advised that since the incident, the product has performed with no problems.

Defective goods

In terms of Section 55 and 56 of the Consumer Protection Act, the Consumer is entitled to safe, good quality goods and has the right to return goods if there is a manufacturer's defect:

55. Consumer's rights to safe, good quality goods.

...

- (2) Except to the extent contemplated in subsection (6), every consumer has a right to receive goods that—
- (a) are reasonably suitable for the purposes for which they are generally intended;
 - (b) are of good quality, in good working order and free of any defects;
 - (c) will be useable and durable for a reasonable period of time, having regard to the use to which they would normally be put and to all the surrounding circumstances of their supply; and
 - (d) comply with any applicable standards set under the Standards Act, 1993 (Act No. 29 of 1993), or any other public regulation.

...

56. Implied warranty of quality

...

- (2) Within six months after the delivery of any goods to a consumer, the consumer may return the goods to the supplier, without penalty and at the supplier's risk and expense, if the goods fail to satisfy the requirements and standards contemplated in section 55, and the supplier must, at the direction of the consumer, either—
- (a) repair or replace the failed, unsafe or defective goods; or
 - (b) refund to the consumer the price paid by the consumer, for the goods.
- (3) If a supplier repairs any particular goods or any component of any such goods, and within three months after that repair, the failure, defect or unsafe feature has not been remedied, or a further failure, defect or unsafe feature is discovered, the supplier must—
- (a) replace the goods; or
 - (b) refund to the consumer the price paid by the consumer for the goods.

As stated above, the Consumer is entitled to return any defect goods to the Supplier and request a refund, repair or replacement should it be determined that the product is indeed defective.

In this instance, the Complainant experience what was possible a defect in the product but had never returned the product to the Supplier for an inspection in order to determine what the fault was. The Supplier, has as such, never had the opportunity to inspect the product. The Complainant provided the following reason for not returning the product back to the Supplier:

“Regarding taking the machine back to ... when it malfunctioned would have resulted in not being able to mow the grass for however long it took for them to send the mower to a work shop to be checked. During the growing season this was not practical but is what I had intended to do before the summer season started again.”

Considering the nature of the product, its purpose and cost, it would have been preferable for the

Complainant to have the product assessed. However, the Complainant did not deem this necessary. The possibility of having the product inspected now at this stage in the matter will prove fruitless, in that a significant amount of time has lapsed since the incident. As previously advised, the Complainant has also stated that the product has not been faulty since the incident.

Supplier's liability

The Complainant is further of the opinion that the Supplier should be held liable for the injury suffered. This respect the Consumer Protection Act makes provision for Supplier's liability in terms of Section 61:

61. Liability for damage caused by goods

(1) Except to the extent contemplated in subsection (4), the producer or importer, distributor or retailer of any goods is liable for any harm, as described in subsection (5), caused wholly or partly as a consequence of—

- (a) supplying any unsafe goods;
- (b) a product failure, defect or hazard in any goods; or
- (c) inadequate instructions or warnings provided to the consumer pertaining to any hazard arising from or associated with the use of any goods,

irrespective of whether the harm resulted from any negligence on the part of the producer, importer, distributor or retailer, as the case may be.

...

(4) Liability of a particular person in terms of this section does not arise if—

- (a) the unsafe product characteristic, failure, defect or hazard that results in harm is wholly attributable to compliance with any public regulation;
- (b) the alleged unsafe product characteristic, failure, defect or hazard—
 - (i) did not exist in the goods at the time it was supplied by that person to another person alleged to be liable; or
 - (ii) was wholly attributable to compliance by that person with instructions provided by the person who supplied the goods to that person, in which case subparagraph (i) does not apply;
- (c) it is unreasonable to expect the distributor or retailer to have discovered the unsafe product characteristic, failure, defect or hazard, having regard to that person's role in marketing the goods to consumers...

Where an adequate instruction and/ or warnings are provided the goods are not to be regarded as unsafe or defective for the purpose of Section 61(1), and the ultimate responsibility for accident prevention in effect shifts to the consumer.

In determining whether or not the Complainant used the product in terms of the manual and instructions provided, this office requested that these instructions or manual be furnished for inspection. The Supplier and the Complainant complied with the request, however, both parties furnished different manuals for the product.

The manual supplied by the Supplier clearly advised the user:

- Wet grass can be dangerous. Let the grass dry;
- Avoid operating the equipment in wet grass, where feasible;
- Do not make any adjustments or repairs without stopping the engine;
- Do not put hands or feet near or under rotating parts. Keep clear of the discharge opening at all times;
- Stop the engine and disconnect the spark plug wire/terminal before cleaning blockage or unclogging chute;
- Stop the engine whenever you leave the mower.

Page 6 of the manual also provides information in respect of what to do should the product not stop.

The Complainant furnish this office with a manual that differed from the one sent by the Supplier, however, it still advised:

- Rotating parts can contact or entangle hands, feet, hair clothing or accessories. Traumatic amputation or severe laceration can result;
- Keep hands and feet away from rotating parts.

The manual also provides information in respect of how the product needs to be switched off. If the user needs to trouble shoot, there is a website that can be consulted.

The information provided by the parties in this matter had led this office to believe that the Complainant purchased a lawnmower from the Supplier, enjoyed the use of it and used it contrary to the instructions. The Complainant put herself at risk by manually removing grass build up from the product, without ensuring it properly switched off. As a result, thereof, the Complainant sustained injuries. The Complainant has not afforded the Supplier to inspect the product and has since not experienced any fault.

Our office can unfortunately not hold the Supplier liable in terms of Section 61 of the Consumer Protection Act, based on the facts of this case, the information and evidence furnished to this office and on the principles of reasonableness and fairness, there is no reasonable prospect of this office making a recommendation in the Complainant's favour.