

BETWEEN

AEA

APPLICANT

AND

ZVU LTD

RESPONDENT

Date of Order:

3 September 2010

Referee:

Referee Davidson

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that the Applicant's claim is dismissed.

Facts

[1] The Applicant, AEA, purchased a pair of [basketball] shoes from a factory outlet in Auckland on 3 July 2010 for \$210.00. AEA wore the shoes during a game of basketball the next day and found that the shoes pull tab rubbed against the back of his ankle causing them to bleed. AEA seeks a refund of the shoes on the basis that they are not of acceptable quality or fit for the purpose.

Law

[2] The law governing this claim is the law of contract, and ss 6 and 8 of the Consumer Guarantees Act 1993.

[3] Section 6 of the Consumer Guarantees Act 1993 provides consumers with a guarantee that goods will be of an acceptable quality:

Subject to section 41 of this Act, where goods are supplied to a consumer there is a guarantee that the goods are of acceptable quality.

[4] Acceptable quality is defined in s 7 of the Act and includes being "fit for all the purposes for which goods of the type in question are commonly supplied" and "safe".

[5] Section 8 of the Consumer Guarantees Act 1993 provides consumers with a guarantee that goods will be fit for purpose:

Subject to section 41 of this Act, the following guarantees apply where goods are supplied to a consumer:

- (a) That the goods are reasonably fit for any particular purpose that the consumer makes known, expressly or by implication, to the supplier as the purpose for which the goods are being acquired by the consumer; and
- (b) That the goods are reasonably fit for any particular purpose for which the supplier represents that they are or will be fit.

Decision

[6] AEA made his own shoe selection while in the store and so did not rely on the ZVU Ltd's staff's expertise. The [basketball] shoes purchased by AEA are marketed as basketball shoes and so, pursuant to s 8(1)(b), must be fit for that purpose.

[7] ZVU Ltd presented evidence to show that over 500 pairs of these shoes have been sold in New Zealand without complaint. ZVU Ltd then described how the [basketball] shoes are substantially the same as an earlier model of shoe which was available for sale for many years and about which there were no complaints in New Zealand.

[8] ZVU Ltd also presented evidence from a podiatrist and from a study it conducted on the shoe with men with the same size feet as AEA. The podiatrist, UR, recommended wearing higher socks so that the calf area was not subject to direct contact with the pull tab. In its own study, ZVU Ltd was unable to replicate the calf abrasion experienced by AEA.

[9] In an email to ZVU Ltd on 20 July 2010, AEA provided links to two other customers complaining of abrasion from the pull tab of the [basketball] shoe. The first referred to ankle abrasion and stated "If you do wear them to ball, do not wear ankle socks! You will scratch up the back of your leg." The other review was actually discussing a different basketball shoe by ZVU Ltd, and said "...while I was practicing the back of the shoe was scratching at my ankle".

[10] AEA provided pictures of him wearing the shoes showing how the pull tab could sometimes touch his calf. He also provided photo's showing the abrasions to his calf from the pull tab.

[11] I find that the shoes purchased by AEA were fit for purpose and of acceptable quality. They are marketed as basketball shoes and given the large number sold, used in the game of basketball and used by well known players they are clearly capable of being used while playing basketball. I also find the shoes to be of acceptable quality. ZVU Ltd provided evidence, which I accept, to show that the shoes meet the requirements of s 7 of the Consumer Guarantees Act 1993.

[12] The only issue that raises concerns regarding acceptable quality is the injury experienced by AEA. From the photo's AEA's injury appears to be a minor abrasion. Very

often there is an element of needing to “wear shoes in” and while doing so some discomfort, blistering and potential abrasion may be expected. On the whole, I find AEA’s injuries to be minor, and that new shoes causing such an injury while wearing short socks is not sufficiently serious to categorise them as unsafe for the purposes of the Consumer Guarantees Act 1993. Many tens of thousands of other people have purchased the shoes and not experienced the issues experienced by AEA, strongly suggesting that the issue is not with the quality of the shoe but the manner in which it is being worn or alternately some particular characteristic of AEA’s anatomy. AEA selected the shoes in the store and satisfied himself that they were acceptable. He did not rely on ZVU Ltd’s expertise. While AEA claimed that his calf was injured even if he wore longer socks, it is apparent that he tried longer socks before his earlier injury had fully healed and so he was naturally more susceptible. The solution would appear to be that suggested by UR, by the review identified by AEA and by the promotional photos of basketballers wearing the shoes – that is, to wear longer socks such that the material of the sock protects the wearers heel.

[13] On this basis I find that AEA’s claim must be dismissed.