

Goods damaged after delivery (Leather jacket)

Sleeves of leather jacket tearing off: Jacket was damaged by exposing it to heat after it was purchased.

Complaint ref : 20131023880
Adjudicator : Bonita Hughes
Date : 2 December 2013

1. Summary of your complaint

On the 19th of May 2012 you purchased a R6999.00 leather jacket cash. On the 21st of May 2012 you noticed that the jacket's sleeves started to tear off and had permanent tears. On the 22nd of May 2012 you informed the store and requested a refund.

The store refused to give you a refund and offered to repair the jacket. You do not want the jacket repaired and insisted on a refund. The manager advised that he will contact the owner to assist in resolving the matter.

The owner refused to give you a refund but offered to replace the jacket.

You do not want the jacket replaced. You want the store to give you a refund.

2. Summary of the supplier's response

The supplier advised that after they inspected the jacket they noticed that the jacket has been burnt. They advised that the damage is not consistent with a manufacturer's default and were damaged due to no fault of the manufacturer.

They have as a gesture of goodwill agreed to replace the damaged jacket's sleeves and to deliver the jacket to your address at their cost.

3. Assessment

We have considered all the evidence presented by both you and the supplier and advise as follows:

You state that the jacket had tears which were due to no fault of yours. The supplier however advised that the jacket was damaged but not due to a manufactures default.

In light of the above, it appears that there is a *dispute of fact* between your version of events and that of Simply Brands.

On the one hand you claim that the jacket is defective due to no fault of yours. On the other hand the supplier claims that the defect is as a result of customer neglect.

In trying to reach a decision in cases where there is clearly a dispute of fact we need to look at all the evidence in support of each version and weigh this up against each other to establish which is correct, alternatively which is more probable.

The supplier provided our office with photographs of the damaged parts on the jacket.

After examining the photos it appears that the jacket was damaged by heat as the jacket appears to be burnt.

In terms of section 56 of the Consumer Protection Act in any transaction or agreement pertaining to the supply of goods to a consumer there is an implied provision that the producer or importer, the distributor and the retailer each warrant that the goods comply with the requirements and standards contemplated in section 55, except to the extent that those goods have been altered contrary to the instructions, or after leaving the control, of the producer or importer, a distributor or the retailer, as the case may be.

4. Conclusion

On a balance of probabilities we can therefore conclude that the damage to the jacket is not consistent with a manufactures defect and it appears that the jacket was damaged by exposing it to heat after it was purchased.

There is thus no legal basis upon which we can instruct the supplier to refund you for the jacket. The supplier has however advised that they will replace the sleeves and return the jacket to you at their cost.

We consider this offer to be fair and reasonable.

