

In the London Arbitration Centre

LAC Case No.IC5421

The seat of Arbitration is in England & Wales

Under the ADR Procedure for the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015

In accordance with the London Arbitration Centre Rules of Procedure

Date of Award; **22<sup>nd</sup> September 2021**

Between;-



|



The 'consumer'

And

Just Kampers Limited

The 'trader'

### **Final Decision**

#### **Introduction**

The trader carries on business selling vehicle accessories and equipment through their website.

On 4<sup>th</sup> March 2021, the consumer purchased from the trader a *Heavy Duty Instant Garage* ('the instant garage'). The instant garage is made of fabric and required assembly by the consumer upon delivery. In other words, a self assembly product.

On about 11<sup>th</sup> March 2021, after the consumer had assembled the instant garage, the consumer says "*...the whole structure came off its footing because of bad weather and scratched and damaged my car and landed upside down on my neighbours cars. Since then I have paid to fix my car and my neighbours cars...*"

The consumer presented a claim for compensation to the trader. The claim is disputed by the trader and the dispute has been referred to the London Arbitration Centre (LAC) for resolution of the dispute in accordance with the rules and procedures of LAC.

#### **The claim presented by the consumer**

The claim presented by the consumer is in four parts which I have summarised below;-

1. The consumer claims the brand of the product was a different brand to the one advertised on the trader's website. He states the product supplied was of an inferior quality;
2. The consumer complains there are no assembly instruction provided on the trader's website. He says there is no mention of the skill required to assemble the product, the number of people required, hours needed etc.;

3. The consumer claims the website contains a misdescription. This misdescription is identified as being;-

*"This quality, heavy duty, medium-sized instant garage is ideal for protecting your pride and joy from all weathers. Durable and hard-wearing, this instant garage offers the same level of protection as traditional buildings, but for a fraction of the price. Practical for all manner of uses, it can also be used for outdoor trade shows and exhibitions, as building site storage, as a temporary workspace and additional storage"*

4. The consumer claims the product did not come with securing pins and that there is no mention of securing pins in the product manual which he says came with the box. He states;-

*"They also lied that the product came with securing pins and it collapsed because of lack of securing pins. But in the Product manual [ which came with the box] there is no such mention of securing pins !!!"*

### **My findings on the claim presented by the consumer**

#### The brand of the product

I find as a fact that the product sold to the consumer was marked as 'unbranded' under details of the manufacturer. This information is provided to the consumer under the specifications supplied to the consumer as part of the purchase confirmation. I find as a fact that the actual brand of the product sold to the consumer was shown branded *Clarke International*.

The consumer puts his claim in the following way;-

*After the above incident I have also realised that the product delivered to me was a completely different brand [ Clarkes] and far inferior in quality to the one advertised on Just kampers website*

I have been provided by the consumer with a copy of a screen shot of the order confirmation form following the purchase order being submitted by the consumer. Under specification, the manufacturer is identified as 'Unbranded'. I have not been provided with evidence of a different product advertised on the traders website other than the instant garage that is described in the order confirmation form. Neither has the consumer elaborated on any differences between what was advertised and what was stated on the order confirmation form other than the brand.

I do not accept a product which is shown as manufactured by **Clarke International** to be, by itself, inferior in quality to an *unbranded* product. If the situation was reverse, the product was sold *branded* but supplied as *unbranded*, the consumer may have had a valid complaint against the trader. In that situation, a purchaser would be within his legal rights to claim that he has not been supplied with the description represented by the manufacturer (section 11 of the Consumer Rights Act 2015). It is common knowledge that a branded product is generally more expensive and carries more prestige than an unbranded product because the consumer is able to identify the product with the manufacturer. By way of example, there is a whole industry producing fake branded products. It does not follow that an unbranded product is actually better in standard and quality than a branded product. The quality might actually be the same.

Whether the product supplied was of an *inferior quality* is a different proposition. This is an important question because even products of the same brand can also be at the same time inferior in quality. I come back to this question below.

#### The claim that no assembly instructions are provided on the trader's website

I find as a fact that detailed assembly instructions were provided to the consumer within the assembly manual enclosed within the packaging of the product. This fact is confirmed from the consumer's own evidence where he stated as part of the claim that the '*Product manual [ which came with the box].....*'. The consumer also supplied what appeared to be the cover sheet of the detailed assembly manual as part of the claim. The cover sheet of the assembly manual stated;-

*Please read instructions COMPLETLELY before assembly. This shelter MUST be securely anchored. Before you start: 2 or more individuals recommended for assembly.*

It goes without saying that a self assembly product without detailed assembly instructions would not be of satisfactory quality required under section 9 of the Consumer Rights Act 2015. In this case, the consumer has confirmed the assembly manual came with the product. I do not find there are any additional requirements on the trader to post these assembly instructions on the trader's website short of any allegation that the assembly manual was incomplete or not clear. This is not the case.

### The alleged misdescription

The consumer believes the description applied by the trader was wrong and states in the claim form that the description is "*..utterly misleading and false. It is not meant for all weathers in UK and it doesn't even provide even a fraction of protection of a traditional building..*".

In his complaint to the UK's Advertising Standards Agency, the consumer elaborated "*This description isn't true at all because the garage blew away in wind and damaged a few cars. Its not meant for UK weather and certainly not for a windy day or snow..*"

A material misdescription would in law enable the consumer to rescind the contract. I find, however, that there was no material misdescription. The consumer's complaint is essentially the garage blew away when it should not have done so. If the instant garage had not blown away, the product would presumably have met the description applied by the trader. I find that the consumer's complaint under this heading goes to the quality of the instant garage. The question is whether the product was of inferior quality. I deal with this below.

The claim that the product did not come with securing pins and that there is no mention of securing pins in the product manual which he says came with the box

If this fact is proven correct on the evidence, then the product would not be of satisfactory quality. Upon consideration of the evidence, however, I cannot come to the conclusion that the product did come with securing pins and that there was specific mention of securing pins in the assembly manual.

There was some confusion when I initially considered the evidence supplied by the consumer whether the full assembly instructions were provided by the trader. All I had was a single sheet from the consumer. The trader had supplied an assembly manual for a different product. As a result of pursuing my own inquiries with manufacturer, I was able to ascertain that the assembly manual provided by the consumer was actually page 1 of an eleven page document. The consumer was not able to provide an explanation why the full document had not been provided with the initial claim stating "*Probably the online system wasn't accepting larger file earlier?*".

When I consider the assembly manual, page 3 lists the *Parts List* in pictorial format and Page 7 states;-

#### **6. PROPERLY ANCHOR THE FRAME**

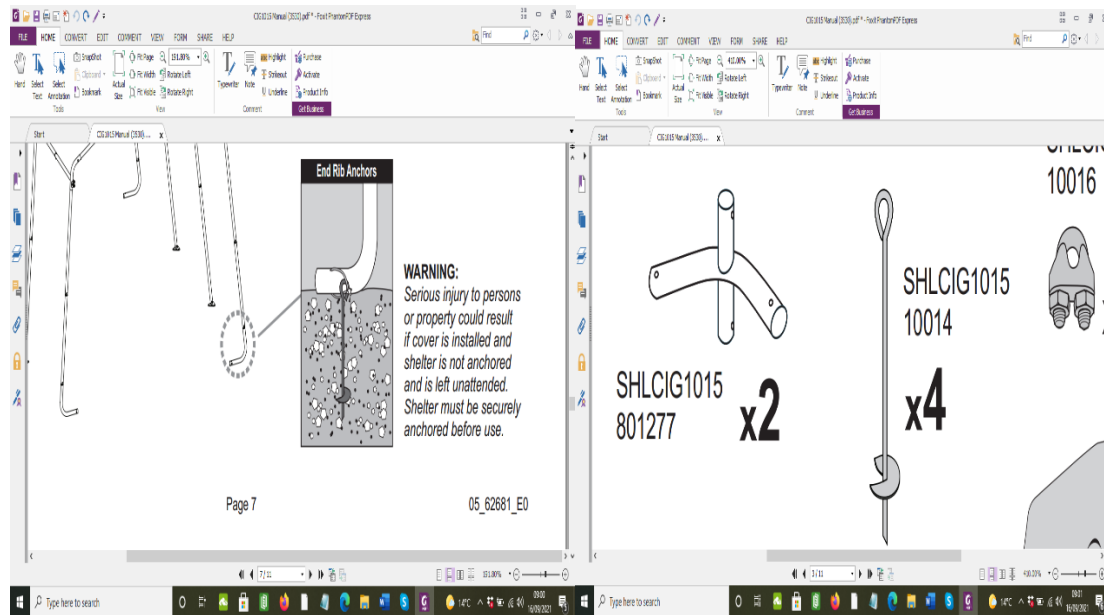
**A. Anchors must be placed inside shelter at the corners of the shelter.**

**B. Insert a ¾ inch pipe or steel rod, through the eyelet of the auger and screw the anchor into the ground until**

the eyelet is sticking out of the ground by 1 to 2 inches so it can be anchored to the legs.  
If ground is too hard, dig a hole with a shovel or post hole tool. Optional: Fill with cement.  
C. Wrap cable provided through the eyelet of the anchor and around the frame as shown below. Secure the cable with the clamps provided.

**WARNING: Serious injury to persons or property could result if cover is installed and shelter is not anchored and is left unattended. Shelter MUST be securely anchored.**

The image accompanying the above instructions is copied below on the left. The image of the relevant part from the Parts List on page 3 is copied below on the right.



If the product did not come with the securing pins shown above, then the consumer ought to have contacted the trader about this after he had read the assembly manual. Proceeding to assemble the product without the securing pins would be negligent on his part because of the clear warnings given as part of the instructions in the assembly manual.

Whilst the Parts List does not name individual parts by name, it is clear that the assembly manual does in fact make visual reference to the securing pins and therefore I find as a fact that there was mention of *securing pins* albeit by reference to images.

In summary, I do not find that the product supplied by the trader was not of satisfactory quality. I find as a fact that the instant garage failed because it had not been properly secured to the ground as a result of the consumer failing to follow the instructions in the assembly manual.

### Matters of law

After carrying out a first review of the complaint, I asked the trader to respond to the claim and specifically show the trader's compliance with the information requirements required by law upon traders engaged in 'distance' selling contracts with consumers.

On 5<sup>th</sup> August 2021, the trader responded to the claim but did not show in the evidence supplied that the consumer had been given information about his rights to cancel. This was important from a legal perspective and a factual perspective because the consumer had 14 days in law to exercise his right

to cancel this contract and that the incident complained about by the consumer occurred within 14 days of the delivery of the product.

The only information I have is the trader's terms & conditions displayed on its website (as at 12<sup>th</sup> July 2021) and the clause which reads as follows;-

*5.4 Cancellations, returns and refunds are subject to the following conditions:-*

*5.4.1 the Buyer has the right to cancel an order of Goods at any time before the Goods have been delivered or for a period of 7 days starting on the day after the day on which the Buyer received the Goods;*

The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 ('the Regulations')

The cancellation period is 14 days under paragraph 29(3) of the Regulations;

*(3) If the contract is a sales contract and none of paragraphs (4) to (6) applies, the cancellation period ends at the end of 14 days after the day on which the goods come into the physical possession of—*

*(a) the consumer, or*

*(b) a person, other than the carrier, identified by the consumer to take possession of them.*

I find that on 11<sup>th</sup> March 2021, the consumer was still within the cancellation period and the consumer is able to cancel the contract because the trader is in breach of the trader's information requirements set out in paragraph 31 of the Regulations.

By email dated 9<sup>th</sup> August 2021, however, I asked the consumer whether or not he still had in his possession the *Heavy Duty Instant Garage* which he purchased from the trader. In response, the consumer stated by email dated 24<sup>th</sup> August 2021 "*I would like to confirm (sic) I still have parts of the Garage (sic) left with me.*"

Notwithstanding the consumer's entitlement to cancel the contract, I am not satisfied that I can justly order the trader to refund the consumer the cost of the instant garage because of paragraph 34(9) of the Regulations;-

*If (in the case of a sales contract) the value of the goods is diminished by any amount as a result of handling of the goods by the consumer beyond what is necessary to establish the nature, characteristics and functioning of the goods, the trader may recover that amount from the consumer, up to the contract price.*

I am not able to place any financial value on the instant garage on the basis of the findings that the consumer did not follow the instructions in the assembly manual as well as the disposal charges advanced by the consumer against the trader for the instant garage in the claim form and the fact that only **parts** of the instant garage remain.

The Order

On the basis of the reasons set out above, I cannot find any legal or factual basis which supports the consumer's claim against the trader and I therefore dismiss the claim by the consumer against the trader.

Dated 22<sup>nd</sup> September 2021

Signed.....  
Ayub Sadiq  
ADR Official appointed by the London Arbitration Centre Limited