



Avv. Maurizio Iorio

Difference between used products and waste

Avv. Maurizio Iorio (Attorney at Law) © 2015

In this article I shall deal with the following situation, often brought to my attention:

- one or more consumers who after having bought, for example, some economical quartz watches come to realize that they do not work properly and since the products are still under guarantee take them back to the retailer who – in agreement with the supplier – replaces them; the situation could also, for example, apply to a TV set that, after having been needlessly repaired several times during the legal guarantee period, is finally replaced by the retailer (hereafter the “Retailer”) with a new one;
- the Retailer then in turn asks the supplier (hereafter the “Supplier”) the reimbursement for the price of the product replaced or other equivalent product; in any case, he asks the Supplier to take back the replaced products;
- the Supplier consequently take back the products with the aim of delivering and/or selling them to a specialized company in repairs and subsequent marketing or, if irreparable, in the recovery of raw materials and components.

The question arising in these cases is whether the quartz watches and the TV set taken back by the shopkeeper are used products or waste.

Used products are handled in a diametrically different manner compared to waste

The difference is fundamental: in fact, while used products can be transported without particular formalities and costs like any other non-hazardous mobile item, waste is subject to a scheme of its own. In the case of WEEE though, always provided that its final destination is a qualified facility for the collection and treatment of waste electrical and electronic equipment, would apply the “concessions” laid down to that end by the Ministerial Decree 65/2010, as supplemented by the recent Legislative Decree No. 49/2014. Accordingly, their temporary “grouping” at the Retailer’s premises would be subject to time limits and well-defined quantities; their transportation would be on the basis of a “transport document” and a “loading and unloading inventory document”, and the logistics operators – in addition to using dedicated means – should be registered, albeit in a simplified way, in a special section of the environmental managers Register. With

Corso di Porta Vittoria , 17 , 20122 Milano

E-mail: m.iorio@avvocatoiorio.it

Posta certificata: maurizio.iorio@milano.pecavvocati.it

Sito : www.avvocatoiorio.it

Tel. +39 3351321041/ +39 (0)236593383

Skype maurizio8651

Fax. +39 (0)293661351



Avv. Maurizio Iorio

obvious costs and handling constraints both in terms of technical quality and legal capacity to handle waste that the ultimate recipient should necessarily have.

Examination of the logistic and operational procedure foreseen between the parties

To answer to our question (waste or used products?) it is necessary to accurately reconstruct the course of the EEE replaced by the Retailer and taken back by the Supplier. Let us therefore continue with our – not the least imaginative – example by reconstructing the scheme devised by the Supplier for dealing with products under guarantee returned by the end customer to the Retailer since they do not function properly:

the Supplier, for example, a company based in Italy, branch of a multinational company, places on the Italian market under its own brand name an electric/electronic equipment (EEE) produced by a third party or its parent company.

The EEE is sold by the Supplier to a network of Retailers who in turn put it up for sale to end-users. The Retailers perform an exclusively visual service assistance after which the resulting apparently non-compliant EEE is replaced under guarantee (in our example, this regardless of whether covered by the legal guarantee for which the Retailer is responsible, or by the conventional guarantee for which the Supplier is directly responsible), while the corresponding non-compliant EEE is taken back by the Supplier and transferred to a first level assessment centre operated by or having a special agreement with the same Supplier: following this second assessment, the EEE is either deemed defective and disposed of as WEEE, or is considered functioning and put back into the market or, finally, is deemed repairable and hence repaired or, hypothetically, transferred to another second level centre for any related operations.

Examination of the contractual obligations agreed between Supplier and Retailer

The activities and operations briefly described above are performed within the scope of the contractual agreements between Supplier and Retailer which provide and regulate: the sale of EEE to the Retailer who in turns sells it to end purchasers; the summary and visual examination by the Retailer of the products returned under guarantee; the management of the reverse logistic activities of the EEE replaced under guarantee by entities appointed by



Avv. Maurizio Iorio

the Supplier; the technical examination by an entity designated or directly managed by the Supplier.

As just said, a key element of this operational and contractual scheme is the guarantee: in fact, the equipment is covered – besides the legal guarantee provided by law by the Retailer to end consumers (set forth in Articles 129 and following of the Consumer Code) – by a conventional guarantee of 2 years provided by the Supplier in accordance with the Retailer, offered to the end purchasers of EEE and drafted in accordance with the “imperative” requirements laid down by Art. 133 of the Consumer Code.

In particular, as said, the conventional guarantee covers as follows: the purchaser takes back to the Retailer the defective EEE; the Retailer, on the basis of a contractual agreement with the Supplier, carries out some simple visual checks after which:

- the Retailer verifies that the EEE is indeed compliant and returns it to the purchaser; or,
- the Retailer verifies that the EEE is apparently non-compliant and replaces it under guarantee with a new EEE provided by the Supplier: consequently the “old” EEE is exchanged with a new EEE and becomes again property of the Supplier; this based on the condition that must necessarily be complied with in case of purchasers intending to avail themselves of the conventional guarantee: namely, return back the “old” EEE for a new EEE supplied, via the Retailer, by the Supplier.

In conclusion: the EEE replaced under guarantee are used products and no waste

Having reconstructed this hypothetical – but not that much – situation used as example, it must be concluded that the EEE conventionally deemed “non-compliant” as a result of the visual check carried by the Retailer are not waste but used products: in fact, pursuant to the obligations imposed by the conventional guarantee freely provided by the Supplier to the purchasers, the EEE taken back by them to the Retailer for the fulfilment of the guarantee are replaced with new EEE provided by the Supplier, which acquires the property of the corresponding “non-compliant”, used EEE. Instead, the legal status of waste, according to the almost unanimous traditional provisions of civil law, is that of “*res nullius*” (nobody's property), namely something abandoned that has no owner; on the contrary, in the present case the conventional guarantee conditions foresee the obligation



Avv. Maurizio Iorio

to deliver the product not working to the Supplier – via the Retailer – with the acquisition by the Supplier of the property of the same product.

From the foregoing derives, besides the legal status of the returned EEE, the non-existence of the will, intention or obligation of the purchaser to “get rid” of the EEE itself. In this regard it must be pointed out that under Article 183.1.a) of Legislative Decree 152/2006 (the Consolidated Environmental Law), which faithfully reproduces the definition contained in Directive 2008/98/EC, constitutes “waste” ... ***any substance or object which the holder discards or intends or is required to discard***”.

In fact, if the purchaser were to confer to the Retailer a used EEE against a new one (thus generating, as a result of the one-for-one take-back, a WEEE pursuant to Art. 11.1 of Legislative Decree No. 49/2014), the used EEE would not be subject to any prior checks, not even visual, by the Retailer; in this case in point the purchaser does not intend to discard the new EEE purchased and nor is this faculty recognized to him: what is recognized to him – and what he intends to pursue – is the conventional guarantee provided by the Supplier, whose conditions entail the replacement at certain conditions of the “defective” used EEE with the new EEE and the acquisition of the property of the used EEE by the same.

The Retailer, who following the substitution comes to be the holder of the used EEE whose ownership was acquired from the Supplier, is not entitled to “get rid” of the latter and turn it into WEEE since he is contractually bound to deliver it to the Supplier for then send it to the entity appointed to carry out the technical checks and possible repairs.

If the entity performing the technical checks/repairs is allocated in Italy, the transport shall, in being used EEE and not waste, accordingly be without any additional formalities respect to any ordinary transport.



Avv. Maurizio Iorio

In the event that the technical checks/repairs entity were instead abroad, the shipping would be regulated by Annex VI of Legislative Decree No. 49/2014 which governs the shipments of “*defective EEE... sent to the producer or a third party acting on his behalf for repair under guarantee or repair contract for the purpose of reuse*” pursuant to the provisions therein contained.

Avv. Maurizio Iorio (Attorney at Law) © 2015

Corso di Porta Vittoria , 17 , 20122 Milano

E-mail: m.iorio@avvocatoiorio.it

Posta certificata: maurizio.iorio@milano.pecavvocati.it

Sito : www.avvocatoiorio.it

Tel. +39 3351321041/ +39 (0)236593383

Skype maurizio8651

Fax. +39 (0)293661351