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Fair Trading Commission
Seychelles

BOARD OF COMMISSIONERS
THE FAIR TRADING COMMISSION

Please address all correspondence to the Chief Executive Officer

CRF/INSI&FOS

CONFIRMATION OF RECEIPT

I, Mr. / Mrs. / Ms. ....,

acknowledges receipt of **cover letter and ruling** pertaining to the case of FTC Vs. K. Ramakrishnan & Jayanthi Pillay trading as Ramajayam Beach Point

....._ today (Date) _____from the Board of Commissioners,

Fair Trading Commission (The Commission).

SIGNATURE:_____

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Fair Trading Commission
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THE BOARD OF COMMISSIONERS

24th November 2021

CPA/INS18/05

K. Ramakrishnan & Jayanthi Pillay
Beau Vallon

Dear K. Ramakrishnan & Jayanthi Pillay ,

RE: Fair Trading Commission Vs K. Ramakrishnan & Jayanthi Pillay (trading as Ramajayam Beach Point) – CPA/INS18/05

In accordance with Section 42(1) of the Fair-Trading Commission Act 2009, please find attached a signed copy of the ruling of the Board of Commissioners of the hearing conducted in the above-mentioned case. We trust in your expedient compliance as per the orders contained herein.

Also note that failure or refusal to comply with this ruling constitutes an offence under Section 53(1) of the Fair-Trading Act 2009. The same is reproduced below:

53 (1) A person which refuses or fails to comply with a direction or order of the commission commits and offence and is liable-

a) Where the person is an individual, to a fine not exceeding SCR 100,000 rupees or to imprisonment for a term not exceeding 2 years or to both
b) Where the person is a person other than the individual to a fine not exceeding SCR 400,000 rupees

Moreover, you have the right to appeal against this decision. To that effect you may, **within Fourteen (14) days of this receipt of this document,** submit a Notice of Appeal setting out your grounds of appeal to:

VISION2033

THE FAIR TRADING COMMISSION

BEFORE THE BOARD OF COMMISSIONERS

(Consumer Protection Act, 2010)

IN THE MATTER OF:

THE FAIR TRADING COMMISSION
V
K. RAMAKRISHNAN & JAYANTHI PILLAY
(Trading as Ramajayam Beach Point)

Case No: CPA/INS18/05

Complainant – Fair Trading Commission
Respondent – K. Ramakrishnan and Jayanthi Pillay

QUORUM:
Mr. Victor Pool – Commissioner
Mrs. Jenna Thelermont- Commissioner
Mr. Michael Nalletamby– Commissioner

For the Complainant
Ms. Salina Sinon – Legal Officer (FTC)

For the Respondent
K. Ramakrishnan and Jayanthi Pillay
Represented by Legal Counsel Mr. Guy Ferley

RULING

[1] The Fair Trading Commission (the Commission), pursuant to Section 33(1)(j) of the Fair Trading Commission Act, 2009 which empowers the Commission to inspect goods, conducted a routine inspection on the 24th January, 2018, at the business premises of K. Ramakrishnan and Jayanthi Pillay trading as Ramajayam Beach Point situated at Beau Vallon, Mahe (the respondents),a business and a supplier of goods as defined by Section 2 of the Fair Trading Commission Act, 2009 and Section 2(1) of the Consumer Protection Act, 2010 (CPA 2010). The respondents hold a retailer's license number 127976 under the business name Ramajayam Beach Point registered on the 03rd July 2017.

[2] During the inspection, officers of the Commission observed several breaches of the Consumer Protection Act, 2010, namely;

- 1 product (5 items) being sold with no plain languages/understandable languages contrary to section 19(1)(b) read with section 19(2)(b) of the CPA 2010;
- 114 goods (1,431 items) being offered for sale without their prices being displayed contrary to Section 20(1) read with section 20(3) of the CPA 2010;
- 3 products (11 items) with (expiry date) were found to be on display and being offered for sale past their expiry date contrary to Section 24 of the CPA 2010; and
- Moreover, the respondent receipt to consumers for goods supplied lacked the total price of transaction before any applicable tax contrary to Section 25(2)(g) read with section 25(1).

[3] Subsequently, the Commission filed a case before the Board of Commissioners for the contravention of the Consumer Protection Act, 2010, namely: -

- Section **19(1)(b)** read with Section **19(2)(a)** which provides that "*Where a person is required in terms of this Act or any other written law to produce, provide or display a notice, document or other visual representation to a consumer, that person shall produce, provide or display such notice, document or visual representation in plain language, if no form has been prescribed.*" ***[19(2)*** *For the purposes of this Act, a notice, document or visual representation is in plain language if it is reasonable to conclude that an ordinary consumer of a class of persons to whom the notice, document or visual representation is intended, with average literacy skills and minimal experience as a consumer of the relevant goods or services, could be expected to understand the content, significance and import of the notice, document or visual representation without undue effort, having regard to (a) the context, comprehensiveness and consistency of the notice, document or visual representation.]*

- Section **20(1)** read with Section **20(3)(a)** which provides that "*Subject to this subsection (2), a retailer shall not display any goods for sale without displaying to the consumer a price in relation to those goods.*" ***[20(3)(a)*** *A price is adequately displayed to a consumer if, in relation to any goods or services, a written indication of the price expressed in the currency of the Republic is annexed or affixed to, written, printed, stamped or located on, or otherwise applied to the goods or to, any band, ticket, covering, label, reel, shelf or other thing used in connection with the goods or on which the goods are mounted for display or exposed for sale.]*

- Section **24(1)** which provides that *"A person shall not offer to supply, display or supply any particular goods at a date later than the expiry date of the goods."*

- Section **25(2)(g) read with section 25(1)** *"A supplier of goods and services shall provide a written record of each transaction to the consumer to whom any goods or services are supplied..."*

[4] This matter was called before the Board of Commissioners for a mention on the 18th September 2018. Ms. Salina Sinon, Legal Officer of the Fair-Trading Commission, appeared on behalf of the Commission and Legal Counsel Mr. Guy Ferley appeared as the representative for the respondents who informed the Board that the respondents will be accepting all liabilities for all the contraventions and requested more time to file written submissions of the respondent.

[5] In her submissions Ms Sinon urged the Board to impose penalties as set out under Section 67(1) of the Consumer Protection Act, 2010 which provides that *"Where the Commission determines after a formal hearing that a person has contravened any requirement or prohibition contained in sections the Commission may order the person, in the case of an individual, to pay a penalty of a sum not exceeding SR100,000."* She submitted that when considering a suitable penalty, the Board shall have regard to Section 67(3)(a), (e) and (f) which states that *"In determining an appropriate penalty for the purposes of this section, the Commission shall have regard to the following (a) the nature, duration, gravity and extent of the contravention; (f) the degree to which the respondent co-operated with the Commission."*

[6] Ms. Salina Sinon submitted that given that the respondent has accepted liability, that in terms of Section 19, there was only 1 product and that was a drink product being monster energy. Given that it is a drink item, consumers need to know what it contains and the language on it is of importance and this indicated the nature of the contravention.

[7] In terms of gravity, Section 20, there were 114 products amounting to 1,431 items and they were worth SCR 39,198. Since no prices were displayed, it gives the suppliers certain leeway to sell at higher prices to certain consumers, for example to tourists as they are not used to the prices. So that gives them the opportunity to profit over certain consumers. That is why it is important that suppliers abide to the law. The high number of products and items, indicates the gravity. With the sum of SCR 39,198, which indicates the profit that could be made.

[8] Section 24, 3 products 11 items all detergents, some expired for 4 months, some 5 and some 2 months. Detergents that people use, so therefore the skin gets contact with it which can have an effect on them. Ms Sinon explained that this is significant for Section 50, of the Consumer Protection Act 2010, which is about safety.

[9] Ms Sinon stressed that the respondent has a chain of shops and he has been in business for a while, so he should be well aware of the law.

[10] Mr. Guy Ferley submitted that as per Section 67 (1) Consumer Protection Act 2010 provides "in determining the appropriate penalty for the purposes of this, the Commissioners shall have regards… (to a list of factors) which includes the gravity of the offences, the circumstances under which they were committed including the amount of money involved and the attitudes of the offender(s) in relation to the offences.

[11] The respondents submitted for consideration of the Board as follows:

i. The respondents are first offenders and they regret having committed the offences which were due to inadvertence rather that deliberates acts and/or omissions. They pleaded guilty showing that they are remorseful and have since taken steps to remedy the breaches and they have put their house in order.
ii. The numbers of goods which were not labelled in plain languages, Section 19 (1) (b) read with Section 19 (2) (a) are only 5. Also, Section 50 (1) (a) read with Section 50 (2) (a) supplying goods which failed to comply with general safety requirements, only 8 numbers of expired goods. These were the most serious contraventions as contained in the charges. The small numbers of expired goods demonstrate that there was an oversight rather than a nefarious act on the part of the respondent.
iii. The value of goods for which there were no proper displayed prices totaled only SCR 39,198 from which it is apparent the respondents were not expected to profit enormously.
iv. In view of the matters stated above, the respondents pray for leniency from the Commissioners when deciding on the sentence.

[12] The Board has deliberated on the matter and hereby finds as follows. Based on the evidence before it, together with the respondent's admission the Board of Commissioners hereby finds the respondent, K. Ramakrishnan and Jayanthi Pillay trading as Ramajayam Beach Point, to be in contravention of Section 19, Section 20(1) read with Section 20(3), Section 24, and Section 25(1) of the Consumer Protection Act, 2010. Section 30(1) of the Fair-Trading Commission Act, 2009 provides that *"The Commission may initiate a complaint against an enterprise."* Furthermore, Section 33(1) of the same Act provides that *"For the purpose of the performance of its functions under this Act or any written law that the Commission shall have power to (i) inspect goods; and (j) to do all necessary and proper acts in the lawful exercise of its powers or the performance of its functions."*

[13] The Board, therefore, based on the admission of the respondent finds the respondent to be in breach of sections 19, 20, 24, and 25 of the CPA. In deciding

on a suitable penalty, the Board considered the mitigating factors put forth by counsel on behalf of the respondents as well as the submissions of Ms. Sinon for the Commission. The Board takes notice that the respondent is a first-time offender and that they have accepted the breaches thus not wasting the Board's time. The Board also takes notice that the volume of items found in contravention of the Consumer Protection Act, 2010 was high. Consequently, the Board shall impose a fine on the respondent in accordance with Section 67(1) of the Act for the above contraventions in the following manner: -

- **For the contravention of Section 19 the sum of SCR 2,500;**
- **For the contravention of Section 20 the sum of SCR 3,000;**
- **For the contravention of Section 24 the sum of SCR 3,500;**
- **For the contravention of Section 25(1) the sum of SCR 2,500;**

All payments are to be made by the respondents at the office of the Fair-Trading Commission not later than sixty (60) calendar days from the date of receipt of this ruling.

[14] The parties are free to appeal against this ruling to the Appeal Tribunal *(See Section 44 of the Fair-Trading Commission Act, 2009 and Section 77(1) of the Consumer Protection Act, 2010).*

We rule accordingly.

Pronounced by us on this 24th day of November, 2021.

Mr. Victor Pool
Presiding Commissioner

Mrs. Jenna Thelermont
Commissioner

Mr. Michael Nalletamby
Commissioner