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Fair Trading Commission
Seychelles

# THE BOARD OF COMMISSIONERS

24th May 2021

CPA/INS18/17

Mr Natheshkumar Balasubramanian
*Glacis*

Dear Mr Balasubramanian,

**RE: Fair Trading Commission Vs Mr Natheshkumar Balasubramanian (trading as Sri Ayyaanar Agency) – CPA/INS18/17**

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:

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## THE BOARD OF COMMISSIONERS

***Chairperson for the Appeal Tribunal***
***P O Box 216,***
***Allied Building***
***Francis Rachel Street,***
***Mahe, Seychelles***
***Telephone: (248)4224881 /***
***Facsimile: (248)4225044***
**Email: john.renaud@renaudchambers.sc**

Yours Sincerely,

FAIR TRADING COMMISSION

Ms. Chrystal Loizeau
Assistant Registration Officer

**For: Chairperson**
**Board of Commissioners**
**Fair Trading Commission**

VISION2033

# THE FAIR TRADING COMMISSION

## BEFORE THE BOARD OF COMMISSIONERS

**(Consumer Protection Act, 2010)**

## IN THE MATTER OF:

**THE FAIR TRADING COMMISSION**
**V**
**NATESHKUMAR BALASUBRAMANIAN**
(trading as Sri Ayyaanar Agency)

**Case No**: CPA/INS18/17

**Complainant** – Fair Trading Commission
**Respondent** – Mr. Nateshkumar Balasubramanian

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

**For the Complainant**
Ms. Hazel Renaud– Legal Officer (FTC)

**For the Respondent**
Mr. Nateshkumar Balasubramanian

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## 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 10th October 2019, at the business premises of Mr. Nateshkumar Balasubramanian, trading as Sri Ayyaanar Agency located at Glacis, Mahe (the respondent), a business and a supplier of goods as defined by Section 2(1) of the Consumer Protection Act, 2010 (the Act). The respondent holds a retailer's license number 143534 under the business name Sri Ayaanar Agency registered on the 11th September 2007 (see license A2).

[2] That on the date of inspection it was revealed that:

- 4 types of goods tallying to 13 items, also worth a total of SCR 294.50 were displayed for sale with labels or information that were not in plain language indicating a breach of Section 19 (1) (b) read with Section 19 (2);
- 9 types of goods tallying to 229 items were displayed for sale without a price being displayed in relation to them indicating a breach of Section 20 (1) read with Section 20 (3) (a);
- 32 types of goods amounting to 227 items were past their expiry dates indicating a breach of Section 24 (1);
- 1 type of goods amounting to 8 items were being sold without any labels indicating a breach of Section 50 (1);
- The respondent failed to meet the requirements of the Consumer Protection Act 2010 in relation to receipts, in that it failed to indicate the address of the premises at which or from whom the goods were supplied indicating a breach of Section 25 (1);
- That this respondent is not a first-time offender, and that on the 27th November 2018, the respondent was in contravention of Section 19 (1) (b) read with Section 19 (2), Section 20 (1) read with Section 20 (3), Section 24, Section 25 (1) and Section 50 (1) (a) read with Section 50 (2) (a) of the CPA 2010.

[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(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."*

- Section **50 (1) (a)** read with Section **50 (2) (a)** which provides that *"consumer goods fail to comply with the general safety requirement if they are not reasonably safe having regard to all the circumstances including the manner in which, and the purposes for use of any mark in relation to the goods and any instructions or warnings which are given or would be given with respect to the keeping, use or consumption of the goods"*

[4] This matter was called before the Board of Commissioners on the 10th December 2019 for a mention. Ms. Hazel Renaud, Legal Officer of the Fair-Trading Commission appeared on behalf of the Commission and Mr. Balasubramanian appeared on as the respondent.

[5] On being asked whether he will be contesting the contraventions as specified in the docket Mr. Balasubramanian stated that he will not be contesting the contraventions and that he accepts all of the findings as contained in the notice of motion. However, he stated that he wanted to explain some facts as to why some of the contraventions happened. The Board gave him an opportunity to be heard and after the respondent had made his statement the complainant requested to submit written submissions. Both parties were given dates to provide their written submissions.

[6] In her submission Ms. Renaud 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."*

[7] Ms. Renaud's submission centered on four point namely, the nature, duration, gravity and extent of the contraventions. With regards to the first point, the nature of the contravention she stated that the goods found to be in breach of Section 24 of the CPA 2010 consisted of personal hygiene products such as various body soaps, shower gel, baby diapers, baby wipes, baby soaps and good items such as coffee and milk. It is submitted that the Board should take into consideration the potential health risks such as skin irritations associated, had consumers purchased and used those items mentioned above.

[8] Secondly, the duration, she urged that the Board should take note that the inspection was conducted on the 07th November 2019, however the findings of the inspection revealed that there were goods that were displayed for sale that had been expired since February 2017, and others since the months from April to November 2018 and others as well all throughout the year 2019 whilst one particular product had been expired since March 2015. It is submitted therefore that the respondent had ample time to remove the expired goods but instead had found an opportunity for months to keep them on display for sale although the expiry dates had passed.

[9] Thirdly, the gravity of the contravention of Section 24 of the CPA 2010, 32 types of goods amounting to 227 items. As for the contravention of Section 20 of the CPA 2010, 17 types of goods amounting to 260 items were recorded that were on display for sale without a price displayed in relation to them. It is submitted that the number of items is significant in showing the gravity of the breach.

[10] Lastly, the level of Profit Derived from the breach of Section 24, in this respect she explained that most of the expired goods that were found being displayed for sale at the time of the inspection, had been expired since early 2018 while one good had been expired since 2015 and another since 2017. It was submitted that there is a possibility that some of these products could have been sold by the respondent, therefore an indication that a profit could have derived from the sale of expired goods and that the Board should take this into account when imposing the fine for the breach of Section 24.

[11] Additionally, by not displaying prices, it is probable that the respondent had leeway to sell goods at different prices to different consumers. Therefore, although we are unable to quantify the level of profit derived by the respondent, it is more probable than not, considering the above, that the respondent benefited from the contravention of several provisions of the CPA 2010.

[12] However in favor of the respondent Ms. Renaud stated that he appeared before the Board of Commissioners on the date of mention and accepted all liability for all breaches of the CPA 2010. It was therefore submitted that the respondent has cooperated with the Commission and did not waste the Boards time.

[13] Lastly Ms. Renaud stated that the respondent is not a first-time offender under the Act. On the 27th November 2019, the Board of Commissioners pronounced a ruling against the same Mr. Balasubramanian, whereby he was fined a total of SCR 48,000 for the being in contravention of Section 19 (1) (b) read with Section 19 ( 2) (a), Section 20 (1) read with Section 20 (3), Section 24, Section 25 (2) (b) read with Section 25 (1) and Section 50 (1) (a) read with Section 50 (2) (a) of the Consumer Protection Act 2010, in the case of CPA/INS18/17- FTC Vs Nateshkumar Balasubramanian ( trading as NP Shopping Center).

[14] It is submitted that; the Board should consider that Mr. Nateshkumar Balasubramanian as a recurrent respondent. Therefore, he is well aware of the requirements and prohibitions found in the Consumer Protection Act 2010.

[15] Mr. Balasubramanian in his submission stated that, in the year 2018, officers of Fair-Trading Commission visited his shop which is 7x6 Sqm at L'ilot, Glacis whereby he was found to be in breach of certain provisions of the CPA. During that time, a new employee from India had just come to work for him he was not well versed in the laws because the employee that was there went to India.

[16] Mr Balasubramanian stated that these are the following steps that he has taken to rectify with zero tolerance, the past contraventions:

1. The stock given to manage stocks found expired will be deducted from the stock. If the officers found any wrong in the shop, they are responsible and will be deducted in their salary
2. In each shelf there must be a price listed and expiry dates, paper must be affixed
3. When a product is placed on the shelf, it must be priced

4. When obtaining from whole sale the item must be marked with retail price/expiry dates/comply to avoid expiry products coming to the shop from the store
5. Daily before opening the shop, the manager must double check the fixed list in the deep/chiller and in the racks to avoid papers being torn out
6. Now before two months I employed a tourist guide to go through my shops to visit for expiry products and prices on products (to avoid the complaints)
7. When some time in the freezer by mistake we transfer the goods from one deep to another then the list of products not mentioned and not on freezer.
8. Now a procedure is working to obtain a zero tolerance of a best before product when in the diary only.
9. Before one-month dates, we mention in blue on expiry date we write in red in chiller with high lighter when to know when we in months shop, we will sell at discounted price.

[17] Mr Balasubramanian pleaded that the Board be favourable in his regard and not to fine him as he promised that this will not happen again in the future.

[18] The Board took time to deliberate on this matter. The Board takes note that the respondent has admitted to all the contraventions and therefore shall not engage in an in-depth analysis of the facts and law but does appreciate that the evidence on record does substantiate a *prima facie* case against the respondent and therefore finds the respondent, Mr. Balasubramanian, trading as NP Balu Shopping Super, to be in contravention of Section 19 (1) read with Section 19 (2)(a), Section 20 (1) read with Section 20 (3) (a), Section 24 (1), Section 25 (2) (b) read, Section 50 (1) (a) of the Consumer Protection Act, 2010.

[19] The Board, in deciding on a suitable penalty, has considered the mitigating factors that were put forth by Mr. Balasubramanian, for the respondent. The Board also takes notice that the volume of items found in contravention of the Consumer Protection Act, 2010 was high and that the respondent is a recurrent offender. Consequently, the Board shall impose a fine on the respondent in accordance with Section 67(1) of the Consumer Protection Act for the above contraventions as follows: -

- **For the contravention of Section 19(1) read with Section 19 (2) (a) the sum of SCR 3,000**

- **For the contravention of Section 20 (1) read with Section 20 (3) (a) the sum of SCR 3,000**

- **For the contravention of Section 24 (1) the sum of SCR 6,000**
- **For the contravention of Section 25 (2) (b) the sum of SCR 2,000**
- **For the contravention of Section 50 (1) the sum of SCR 5,000**

**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.**

**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).***

[20] We rule accordingly.

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

**Mr. Victor Pool**
**(Presiding Commissioner)**

**Mrs Jenna Thelermont**
**(Commissioner)**

**Mr. Michael Nalletamby**
**(Commissioner)**