THE FAIR TRADING COMMISSION

BEFORE THE BOARD OF COMMISSIONERS

(Consumer Protection Act, 2010)

IN THE MATTER OF:

THE FAIR TRADING COMMISSION
V
KASI & CO (PTY) LTD
(Trading as Kasi Trading)

Case No: CPA/INS19/45

Complainant – Fair Trading Commission
Respondent – KASI & CO (PTY) LTD

QUORUM:
Mr Victor Pool (Presiding Commissioner)
Mrs Jenna Thelermont-Commissioner
Mr Michael Nalletamby – Commissioner

For the Complainant
Ms Sophie Vel – Legal Officer (FTC)

For the Respondent
Mr. Somasundaram Rajasundaram

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 14th February 2019, at the business premises of a retail outlet in the Eastern region of Mahe.

[2] During an inspection at a retail shop in the Eastern part of Mahe, officers of the Commission observed that the respondent was offering for sale 10 Johnsons

baby powder with labels and information that were not in plain languages, contrary to Section 19 (1)(b) read with Section 19 (2) (a).

[3] The Commission queried with the shop as to who the suppliers of those Johnsons Baby Powder were. In order to ensure efficiencies in action taken, the officers requested the suppliers details so that they could address this problem. Therefore, the shop manager supplied the officers with an invoice as to which was directed to Mr. Rajangam Kasinathan, who is one of the directors of Kasi & Co (Pty) Ltd. The respondents hold a wholesaler's license number 138814 under the business name Kasi & Co registered on the 08th April, 2017.

[4] To confirm the allegations, a meeting was conducted on the 25th March 2019 with Mr Kasinathan. During this meeting, Mr. Kasinathan confirmed that this product, Johnsons baby powder was indeed supplied by Kasi Trading. Furthermore, Mr. Kasinathan was instructed to recall of this product from the market. He was directed by Fair Trading Commission, that if he intended to sell those goods, he was to affix a label that complied with the relevant provisions Consumer Protection Act. (A7)

[5] On the 11th April 2019, the CEO of the Fair-trading Commission, in accordance with Section 72 (1) of the CPA 2010, issued a compliance notice to the respondents for the breach of Section 19 (1) (a) of the CPA 2010 read with Section 20(1) (a) of the Licensing Act 2010 and the licensing condition (A8).

[6] The Compliance notice ordered the respondent Mr. Kasinathan to ensure that all goods were to be in plain understandable languages within 7 days of receiving this notice or to remove from the market within 14 days of receiving the compliance notice(A10).

[7] On the 27th June 2019, a tip off was received that the respondent was selling the product "Nutella Ferrero" with labels not in plain understandable languages contrary to Section 19 (1)(b) of the CPA. A consumer had brought in a sample of this product which was photographed (A11 A12). To determine whether this allegation was indeed factual, a letter was issued to the respondent for a meeting on the 15th June 2019 (A13).

[8] During this meeting, Mr. Kasinathan, who was representing Kasi Trading confirmed that they indeed did supply the "Nutella Ferrero". Having been found a second time to be in breach of Section 19(1) (b) read with Section 19 (2) (a) of

the CPA Based on this admission, the Commission decided to issue another Compliance Notice on the respondent and to file 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.]*

[9] This matter was called before the Board of Commissioners on the 21st January, 2020 for a mention. Ms. Sophie Vel, Legal Officer of the Fair-Trading Commission appeared on behalf of the Commission and Mr. Rajangam Kasinathan had appeared before the Board, represented by his lawyer, Mr. Somasundaram Rajasundaram, who submitted to the Board that his client will not be contesting the contravention and offered to make submission in mitigation of the contravention.

[10] Ms. Vel firstly addressed the nature, duration and gravity and extent of the contravention. Ms. Vel stated that, Mr. Kasinathan was found to have been in breach of Section 19 twice. The first time it was for selling Johnsons baby powder in February 2019, to which they were issued with a compliance notice. He failed to comply with the notice when the second breach was observed for selling Nutella Ferrero in June 2019. This failure to comply with the notice is an offence under Section 72 (5) of the CPA 2010.

[11] Ms. Vel firstly addressed the nature, duration and gravity and extent of the contravention. Ms. Vel stated that, Mr. Kasinathan was found to have been in breach of Section 19 twice. The first time it was for selling Johnsons baby powder in February 2019, to which they were issued with a compliance notice.

He failed to comply with the notice when the second breach was observed for selling Nutella Ferrero in June 2019. This failure to comply with the notice is an offence under Section 72 (5) of the CPA 2010.

[12] In her submissions Ms Vel 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."*

[12] Ms. Vel stated that, Mr. Kasinathan is a wholesaler. During the inspection, goods supplied by Mr. Kasinathan was found displayed or offered for sale with labels not in plain languages. It is likely that these goods could have also been sold by the respondent to several retailers or to a number of consumers.

[13] Ms. Vel stated that, therefore although we are unable in these circumstances quantify the level of profit derived by the respondent, it is more probable than not that considering the above, that the respondent benefitted from the contravention of this provisions of the CPA 2010.

[14] Ms. Vel humbly submits that, even though during the date of mention the respondent stated that this matter was trivial, this should not and cannot be used as an excuse. No matter how big or small the breaches are, the law remains the law, and they have to respect the law. Furthermore, this is a prevalent offence amongst the suppliers of goods in our society and it should not be regarded as a small issue, as we should deter such practices by penalizing wholesalers who imports the goods and in turn it affects the whole population on a wider scale. Therefore, since the respondent also stated that his is his first offence, I should put forward to the Board that, from the points I have established above and under Section 67 (3) (g) of the CPA 2010, the respondent is indeed a recurrent offender.

[15] Mr. Somasundaram Rajasundaram in his submission on behalf of the respondent, Mr Rajangam Kasinathan, stated that, the respondent accepts the offences he has been charged with under the provisions of the CPA 2010.

[16] Mr Rajasundaram stated that, as part of the respondent's mitigation plea, the labelling and language requirement does not materially affect the consumer as those products, Nutella and Johnson's baby powder are well known to the consumers by the name of the products itself. However, that the languages were neither in English or French, but it was only the ingredients that were not in those two languages. Whereas the two products names were in English consumers are very well versed with them.

[17] Mr. Somasundaram Rajasundaram, stated that, in every legal pursuit, while approaching as to how to remedy issues, it is an established principle that the intention of the legislation is to be to the requirement of language, is to sensitize the consumers in terms of what they are buying for eventual consumption. He stated that consumers are well versed in terms of what they do buy and what they consume by the brand names and the styles of display. In his view, the absence of certain information in required language on the label does not defeat the intention of legislature.

[18] Finally, Mr. Rajasundaram, stated that the in respect to the respondent's submissions, that this Board considers minimal fine.

[19] The Board took time and deliberated on the matter. The Board takes note that the respondent, Mr. Kasinathan has admitted to the contraventions and therefore shall not engage in an in-depth analysis of these 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. Rajangam Kasinathan, trading as Kasi & Co (Pty) Ltd, to be in contravention of Section 19 of the Consumer Protection Act, 2010.

[20] The Board, in deciding on a suitable penalty, has considered the factors put forth by Ms. Vel for the Commission and Mr. Rajasundaram, for the respondent. The Board also takes notice that the respondent had been issued with compliance notices before. Consequently, the Board shall impose a fine on the respondent in accordance with Section 67(1) read with subsection 67(3)(g) of the Consumer Protection Act for the above contraventions as follows: -

- **For the contravention of Section 19 of the Consumer Protection Act, 2010, the sum of SCR 8,000.**

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).*

We rule accordingly.

Pronounced by us on this 24th day of February, 2021

Mr Victor Pool
(Commissioner)
(Presiding)

Mrs Jenna Thelermont
(Commissioner)

Mr. Michael Nalletamby
(Commissioner)