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Fair Trading Commission
Seychelles

THE BOARD OF COMMISSIONERS

11th June 2021

CPA/INS17/69

Mr. Kumar Pillay & ORS
Sekaar's @ Les Canelles II

Dear Mr. Pillay & ORS,

RE: Fair Trading Commission Vs Mr. Kumar Pillay & ORS (trading as Sekaar's @ Les Canelles II)– CPA/INS17/69

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:

SESELWA

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Fair Trading Commission
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THE BOARD OF COMMISSIONERS

P O Box 216,
Allied Building
Francis Rachel Street,
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Telephone: (248)4224881 /
Facsimile: (248)4225044
Email: john.renaud@renaudchambers.sc

Yours Sincerely,

FAIR TRADING COMMISSION BOARD

Ms. Chrystal Loizeau
Assistant Registration Officer

For: Chairperson
Board of Commissioners
Fair Trading Commission

SESELWA En Sel Destin

THE FAIR TRADING COMMISSION

BEFORE THE BOARD OF COMMISSIONERS

(Consumer Protection Act, 2010)

IN THE MATTER OF:

THE FAIR TRADING COMMISSION
V
KUMAR PILLAY & ORS
(Trading as Sekaar's @ Les Canelles II)

Case No: CPA/INS17/69

Complainant – Fair Trading Commission
Respondent – Mr. Kumar Pillay & ORS

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

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

For the Respondent
Mr. Kumar Pillay & ORS – Shop Owner

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 26th September 2019, at the business premises of Mr. Kumar Pillay, trading as Sekaar's @ Les Canelles II located at Les Canelles, (the respondent), a business and a supplier of goods as defined by Section 2(1) of the Consumer Protection Act, 2010. The respondent holds a retailer's license number 162903 under the business name Sekaar's @ Les Canelles II registered on the 19th June 2013.

[2] During the inspection, officers Ms. Rhonda Barreau and Mr. Curtis Naiken of the Commission observed several breaches of the Consumer Protection Act, 2010, being;

- 1 type of good (10 item) worth SCR 290, was being sold with no plain languages/understandable languages contrary to Section 19 (1)(b) read with Section 19 (2) (a);
- 115 types of goods (1,300 items) worth SCR 25,420 were found to be on display and being sold without a price displayed on them contrary to Section 20 of the Act;
- 6 types of goods (44 items) worth SCR 1,422 were found to be expired contrary to Section 24 (1) of the Act;
- Moreover, the record of transaction i.e., receipt being provided to consumers of inspection did not meet the statutory requirements as it did not specify the total price of transaction, before any applicable taxes and the amount of any applicable taxes, contrary to of Section 25 (1) of the Act.

[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."*

[4] This matter was called for a mention before the Board of Commissioners on the 30th June 2020. Ms. Sophie Vel, Legal Officer of the Fair-Trading Commission appeared on behalf of the Commission and Mr. Kumar Pillay appeared on the respondents' behalf.

[5] This matter was then set for a hearing date, for the 15th December 2020. Ms. Sophie Vel, Legal Officer of the Fair-Trading Commission appeared on behalf of the Commission and the respondent did not attend. Ms. Vel for FTC move the Board to enter a plea of judgement by default as the respondent failed to appear for their defense. The Board queried as to the service of summons on the respondent to ensure that he was indeed serviced in the proper manner. The Board was showing the summons and receipt of service of summons signed by the respondent. Being satisfied that service was effected the Board granted Ms. Vel's motion to proceed *ex parte.*

[6] Ms. Vel adduced the necessary documents into evidence and prayed the Board to give effect to their prayer for relief contained in the notice of motion.

[7] The Board took time to deliberate on the matter. The Board takes note that the respondent had only been present at the mention, 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. Kumar Pillay, trading as Sekaar's @ Les Canelles II, to be in contravention of Section 19, Section 20, Section 24 and Section 25 (1), of the Consumer Protection Act, 2010.

[8] The Board, in deciding on a suitable penalty the Board takes notice of the fact that the respondent duly served did not make any attempts to contact the Commission to explain that he would not be able to attend the hearing and also takes note that this respondent is not a first-time offender and that the respondent is familiar with the obligations of the Act. The Board also takes notice that the volume of items

found in contravention of the Consumer Protection Act, 2010 was high. Not fixing price on goods and not providing a receipt provides opportunity to overprice customers.

[9] Consequently, the Board hereby impose the following fines 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 the sum of SCR 1,000;**
- **For the contravention of Section 20 the sum of SCR 26,000;**
- **For the contravention of Section 24 the sum of SCR 3,000;**
- **For the contravention of Section 25 (1) the sum of SCR 6,000;**

All payments are to be made by the respondents at the office of the Fair-Trading Commission not later than Thirty (30) 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).*

[10] We rule accordingly.

Pronounced by us on this 11..... day of June 2021.

Mr. Victor Pool
(Presiding Commissioner)

Mrs. Jenna Thelermont
(Commissioner)

Mr. Michael Nalletamby
(Commissioner)