Room 301 – 306
Block B
Unity House
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Fair Trading Commission
Seychelles

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PO Box 1207
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THE BOARD OF COMMISSIONERS

28th October 2021

CPA/INS18/17

Mr. Venkatesvara Pillay & M. Rajavella Pillay
Le Niole

Dear Mr. Pillay,

RE: Fair Trading Commission Vs Mr. Venkatesvara Pillay & M. Rajavella Pillay (trading as G.Mohanchandran Pillay & Sons) – 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 BOARD OF COMMISSIONERS

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
M.VENKATESVARA & M.RAJAVELLA PILLAY
(Trading as G. Mohanchandran Pillay & Sons)

Case No: CPA/INS18/17

Complainant – Fair Trading Commission
Respondent – Mr. M.Venkatesvara & M.Rajavella Pillay - Absent

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

For the Complainant
Ms. Priyanka Ramruchaya– Legal Officer (FTC)

For the Respondent
Mr. M.Venkatesvara & M.Rajavella Pillay - Absent

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 12th June 2018, at the business premises of Mr. M.Venkatesvara & M.Rajavella Pillay, trading as G.Mohanchandran Pillay & Sons located at Le Niole, 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 103485 under the business name G.Mohanchandran Pillay & Sons registered on the 14th April 2017 (A1).

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

- 1 types of goods tallying to 15 items with the worth of SCR 42 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);
- 65 types of goods amounting 518 items with the worth of SCR 10,647.15 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);
- 8 types of goods amounting to 24 items with the worth of SCR 740 were past their expiry dates indicating a breach of Section 24 (1);
- The fact that the above expired goods found to be displayed during the above inspection consisted of body products, food products and detergents, it can be said that the respondents failed to comply the general safety requirements which is a breach of Section 50 (1);
- That the inspection lastly revealed that the respondents failed to provide written record transactions (receipts) to consumers upon purchases of goods and this is a breach of Section 25 (1) of the CPA;

[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 twice, whereby the respondent could not attend therefore the respondent sent a representative. The Board asked for a letter authorizing the representative to stand in for the respondent.

[5] The case was re-mentioned for the third time on the 23rd October 2018. Ms. Priyanka Ramruchaya, Legal Officer of the Fair-Trading Commission appeared on behalf of the Commission and the respondent's representative was absent. Ms. Ramruchaya 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 the respondent's representative was present on the day of re-schedule of mention. Being satisfied that they were aware the Board granted Ms. Ramruchaya' motion to proceed *ex parte*. Ms. Ramruchaya proceed to submit oral submissions.

[6] In her submission Ms. Ramruchaya 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."asc*

[7] Ms. Ramruchaya' submission she stated that the shop is situated at Le Niule next t other main road so its very accessible to consumers. The respondent was not affixing any prices giving them the leeway to sell at different prices. They were not providing receipts which is a disadvantage to consumers who cannot keep track of their expenses.

[8] The Board took time to deliberate on this matter. The Board takes note that the respondent was absent 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. Venkatesvara & Pillay, trading as G. Mohanchandran Pillay & Sons, 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.

[9] The Board, in deciding on a suitable penalty, has considered the mitigating factors that were put forth by Mr. Venkatesvara & M. Pillay, 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 first-time 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 2,500**
- **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).***

[10] We rule accordingly.

Pronounced by us on this 28th. day of October, 2021.

Mr. Victor Pool
(Presiding Commissioner)

Mrs Jenna Thelermont
(Commissioner)

Mr. Michael Nalletamby
(Commissioner)