Room 301 – 306
Block B
Unity House
Victoria
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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/INS20/18

Mr Natheshkumar Balasubramanian
L'ilot
Glacis

Dear Mr Balasubramanian,

RE: Fair Trading Commission Vs Mr Natheshkumar Balasubramanian (trading as N.P Balu Shopping Super) – CPA/INS20/18

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
NATESHKUMAR BALASUBRAMANIAN
(Trading as N.P Balu Shopping Super)

Case No: CPA/INS20/18

Complainant – Fair Trading Commission
Respondent – Mr. Nateshkumar Balasubramanian

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. Nateshkumar Balasubramanian

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 May 2020, at the business premises of Mr. Nateshkumar Balasubramanian, trading as N.P Balu Shopping Super located at L'ilot 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 150711 under the business name N.P Balu Shopping Super registered on the 06th December 2016 (A).

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

- 1 types of goods tallying to 3 items with the worth of SCR 317.70 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);
- 34 types of goods amounting 432 items with the worth of SCR 8,883.05 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);
- 2 types of goods amounting to 4 items with the worth of SCR 112 were past their expiry dates indicating a breach of Section 24 (1);
- 2 types of goods amounting to 4 items with the worth of SCR 245.80 were observed not to be meeting the general safety requirements which is a breach of Section 50 (1);
- Furthermore, it was observed on display for supply 1 type of good tallying to 41 items with the worth of SCR 164, which had passed their used dates which is a breach of Section 10 (e) of the Food (Labelling of Pre-Packaged Foods) Regulations 2019;
- That this respondent is not a first-time offender.

[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 **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 22nd September 2020 for a mention. Ms. Sophie Vel, 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 oral submissions. Both parties were given dates to provide their written submissions.

[6] In her submission 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."asc*

[7] Ms. Vel's submission stated that the inspection was done on the 14th May 2020 at the premises of Mr Balasubramanian, trading as NP Balu Shopping Super

located at L'ilot, Glacis. Mr Balasubramanian was found to have breached Sections 19, 20, 24 and 50 of the CPA 2010. Mr Balasubramanian has stated that he will be accepting all liabilities.

[8] Ms Vel states the nature and gravity of those breaches, as there were beverages such as coffee that were not in plain ordinary language and that the allergens were not in plain languages. She also states that there were cosmetics which could cause damages to scalp or even hair loss. He has failed to comply.

[9] 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.

[10] Mr. Balasubramanian in his submission stated that, he will be accepting all liabilities and that he buys his products from STC that had no plain languages, and that he also buys his products from Laxmi and these products did not state the expiry dates. Mr Balasubramanian states that he had employed a Seychellois to double check all products in all the shops and has also done a computer system for this.

[11] Mr Balasubramanian states that they have already removed all expired goods. They will be laminating papers to place on the fridges and deeps in the store. No groceries that are expired are to be sold. They have placed papers on all the shelves with prices displayed for each of the products and this was done around three to four months ago. He also states that the wholesalers do not bring receipts and that they are only showing receipts on tablets. He states that he does not know much creole or French but is able to speak English and that he brought in these groceries at STC to show us that there are no expiry dates on them.

[12] Mr Balasubramanian states that his average income per month is around SCR 175,000 and this is for the smaller shop and that the owner has taken back the other half of the shop for his own use as a clothing store, so therefore the income for the shop has been reduced. He states that he is taking precautionaly measures for the issues that have been raised by the FTC and that he has marked boxes with the expirey dates therefore this issue will be reduced. He states that his Seychellois employee has asked for 1 week to have all the papers laminated and placed on the freezers as the school kids tend to rip the papers.

[13] Mr Balasubramian raises the issue of wholesalers which he states that the wholesalers should check their expiry dates and that when he asked them about it

they told him he had no right to ask the wholesaler for expiry dates. He states that the wholesalers keep stock till they are closer to the expiry dates.

[14] 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.

[15] 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.

[16] 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 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).*

[17] 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)