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Fair Trading Commission
Seychelles

THE BOARD OF COMMISSIONERS

28th October 2021

CPA/INS19/47

Mr. Prabakaran Pillay
Au Cap

Dear Mr. Pillay,

RE: Fair Trading Commission Vs Mr. Prabakaran Pillay (trading as Nivetha Store) – CPA/INS19/47

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
Prabakaran Pillay
(Trading as Nivetha Store)

Case No: CPA/INS19/47

Complainant – Fair Trading Commission
Respondent – Mr. Prabakaran Pillay

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. Prabakaran Pillay
Represented by Legal Counsel Mr. Guy Ferley

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 8th August, 2019, at the business premises of Mr. Prabakaran Pillay situated at Green Estate, Au Cap, Mahe (the respondent), a business and a supplier of goods as defined by Section 2 of the Fair Trading Commission Act, 2009 and Section 2(1) of the Consumer Protection Act, 2010 (CPA 2010). The respondents hold a retailer's license number (61201) under the business name Nivetha Store.

[2] During the inspection, officers of the Commission observed several breaches of the Consumer Protection Act, 2010, namely;

- 7 products (40 items) worth SCR 990 with (expiry date) were found to be on display and being offered for sale past their expiry date contrary to Section 24 of the CPA 2010; and

- Moreover, the respondent receipt to consumers for goods supplied did not specify unit price of particular goods contrary to Section 25(2)(g) read with section 25(1).

[3] Subsequently, the Commission filed a case before the Board of Commissioners for the contravention of the Consumer Protection Act, 2010, namely: -

- 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(2)(g) read with 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 before the Board of Commissioners for a mention. 9th June, 2020. Legal Officer Ms. Priyanka Ramruchaya of the Fair-Trading Commission, appeared on behalf of the Commission and Legal Counsel Mr. Guy Ferley appeared as the representative for the respondents who informed the Board that the respondents will be accepting all liabilities for all the contraventions and requested to give oral submissions whilst the respondent requested time to send through written submissions.

[5] In her submissions 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."*

[6] Ms. Ramruchaya stated that an inspection was done at the premises of Mr Prabakran Pillay on the 8 August 2019 and it was revealed that 7 items 40 items worth SCR 990 that was expired and was on display which is a breach of Section 24, as per the CPA. Section 24 defines as expiry date for foods, drinks and medicine which is unsuitable to be sold and consumed, and by displaying this you didn't give importance to the expiry date and still displayed to be sold, therefore you were in breach of Section 24 (1) of the CPA.

[7] During inspection it was seen that you were in breach of Section 25 (2) (e) and (g) that was not complying under the CPA 2010. No unit price was displayed on receipt and no price before tax on receipt, and if you don't have unit price on receipts that means that consumers cannot compare unit prices so that they can do more informed choices.

[8] Firstly, the nature of goods expired was foods like corned beef, masala, chili and beef loaf, the board should consider potential health risk if bought and consumed, which could affect their health.

[9] Unit prices are important for consumers to do informed choices and other factors are that, the respondent should make sure that the goods being displayed should not be expired. And you stated that you had a shop and gotten a warning in the past and that you were well aware of the CPA and you knew the sections and you knew what you were supposed to do and not to do and this should not be used as an excuse.

[10] In his submissions to the Board in letter dated 24th June 2020, Legal Counsel Mr. Ferley submitted in mitigation that his clients were a first-time offender and admits to the contravention thus saving time and inconvenience to the Board and that his clients are remorseful. Mr. Ferley urged the Board to be lenient given that the worth of the goods in relation to the contraventions was only SCR 990.

[11] The Board has deliberated on the matter and hereby finds as follows. Based on the evidence before it together with the respondent's admission the Board of Commissioners hereby finds the respondent, Prabakaran Pillay
trading as Nivetha Store, to be in contravention of Section 24(1), and Section 25(2)(g) read with section 25(1) of the Consumer Protection Act, 2010.

[12] In deciding on a suitable penalty, the Board considered the mitigating factors put forth by counsel on behalf of the respondent as well as the submissions of Ms. Priyanka Ramruchaya for the Commission. The Board takes notice that the respondent is a first-time offender and that they have accepted the breaches thus not wasting the Board's time. The Board also takes notice that the volume of items found in contravention of the Consumer Protection Act, 2010 was not high.

Consequently, the Board shall impose a fine on the respondent in accordance with Section 67(1) of the Act for the above contraventions in the following manner: -

- **For the contravention of Section 24(1) the sum of SCR 1,000;**
- **For the contravention of Section 25(1) the sum of SCR 3,000;**

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.

[13] 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 2nd day of November, 2021.

Mr. Victor Pool
Commissioner
(Presiding)

Mrs Jenna Thelermont
Commissioner

Mr. Michael Nalletamby
Commissioner