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Fair Trading Commission
Seychelles

THE BOARD OF COMMISSIONERS

04th May 2021

CPA/INS18/49

Chez Deenu Pty Ltd
Quincy Street Victoria

Dear Chez Deenu Pty Ltd,

RE: Fair Trading Commission Vs Chez Deenu Pty Ltd – CPA/INS18/49

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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Fair Trading Commission
Seychelles

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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
CHEZ DEENU PTY LTD

Case No: CPA/INS18/49

Complainant – Fair Trading Commission
Respondent – Mr. S. Rajasundadram

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

For the Complainant
Mrs Sylvie Faure– Senior Legal Officer (FTC)

For the Respondent
Mr. S. Rajasundadram

RULING

[1] The Fair-Trading Commission (the Commission), pursuant to Section 33(1)(j) of the Fair-Trading Commission Act, 2009, a compliance notice was issued and served to the business on the 15th November 2017 for the breach of Section 20 (1) read with Section 20 (3) and Section 24 (1) of the CPA 2010 based on a routine inspection conducted on the 02nd November 2017 on the respondents' premises, located at Quincy Street, Victoria. Chez Deenu (Pty) Ltd, a wholesaler and retailer of goods as defined by Section 2(1) of the Consumer Protection Act, 2010 (the Act). The respondent holds a wholesale and a retailer's license number 14297 under the business name Chez Deenu (Pty) Ltd registered on the 01st July 2017 (A2).

[2] Pursuant to a visit conducted on the 02nd November 2017 by officers of the Commission it was found that the respondent was in contravention of Section 20 (1) read with (3), and Section 24 (1) of the Consumer Protection Act 2010. The respondent was ordered by the Commission through a compliance notice to rectify the contravention Section 20 and Section 24 of the CPA 2010.

[3] In response to this compliance notice, Chez Deenu issued a letter (A5) on the 17th November 2017, stating that the needful will be done to rectify the issues.

[4] Thereafter, on the 30th January 2018, a compliance visit was conducted at the respondents' premises to verify whether the compliance notice was complied with. The inspection revealed 3 types of goods tallying to:

- 3 items (44 items) worth SCR 1,493.92 on sale with labels/information which were not in plain language indicating a breach of Section 19 (1) (b) read with Section 19 (2) (a)
- 24 types of goods (499 items) worth over SCR 8,901.58 were on display for sale without prices signifying a breach of Section 20 (1) read with Section 20 (3) (a).
- That the business was found to also be in breach of Section 50 (1) (a) read with Section 50 (2) (c) of the CPA 2010 for not complying with the general safety requirements.

[5] 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 **50 (1) (a)** read with Section **50 (2) (a)** *"A person shall not in trade or commerce supply any consumer goods which fail to comply with general safety requirement." [50(2)(a) For the purposes of this section, 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 purpose for which, the goods are being and would be marketed, their composition or structure, the use of any mark in relation to the goods and any instructions or warnings which are given or would be given in respect to the keeping, use or consumption of the goods.]*

[6] This matter was called before the Board of Commissioners on the 30th October 2018 for a mention. Mrs. Sylvie Faure, Senior Legal Officer of the Fair-Trading Commission appeared on behalf of the Commission and Mr. S. Rajasundadram appeared on the respondents' behalf.

[7] The respondent through his counsel accepted liability and said that they would like to provide mitigating arguments by written submissions. The Commission agreed and dates were fixed for submissions.

[8] In her submissions Mrs Faure 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."*

[9] Mrs. Faure submits that the practical considerations argument being advanced by the respondent and submits that Section 20 (1) of the CPA 2010 already takes into consideration this argument as a retailer is required to display prices of any foods for sale 'in relation to those goods. That means that it doesn't necessarily have to be on every single item but it does have to be disclosed in such a way that it passes the Section 20 (3) CPA,2010 test.

[10] She argued that Section 20 (3) of the CPA 2010 is clear that 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-

a) 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 things used in connection with the goods or on which the goods are mounted for display or exposed for sale;
b) In any other way represented, from which it may reasonably be inferred that the price is a price applicable to the goods or services; or
c) Published in relation to the goods or services in a catalogue available to the public (..)

[11] As such she states that had there been a price on any of the main boxes containing single items or on the shelf, it would not have been considered as a breach of Section 20 (1) as that manner of display it would have been caught under Section 20 (3) (a). The only situation where the requirement for disclosure of prices does not apply is to goods in advertising displays, or if goods are kept in an area where the public does not have access.

[12] She further argued that the respondent has contended that it has not received a single complaint whatsoever from any individual consumer in relation to prices being displayed. That many very well be, but the Commission exists to promote and advance the welfare of consumers by protecting them from unconscionable or otherwise improper trade practices (Section 3 (d) (i)) CPA 2010, and by encouraging responsible and informed consumer choice and behavior (Section 3 (e) CPA,2010) and the basis of that is ensuring price certainty. The Commission does not have to be reactive. It can be proactive, hence why Section 5 (1) of the CPA 2010 allows it to initiate complaints in respect of prohibited conducts.

[13] She submitted that price display is important as a supplier is bound by a display price under Section 21 (1) of the CPA 2010 and may not charge a price higher than the displayed price or the lowest displayed price, if more than the one price is displayed, enforcing that starts with price display. Whilst the respondent has accepted all liability, it is submitted that in coming to a fair and appropriate penalty the Board of Commissioners have regard in deed to the fact that the respondent is a well-established big retail outlet and one trusted by its customers. It should therefore be operating within the realm of the Consumer Protection Act 2010. A breach of Section 19, 20 and 50 should not be trivialized. The consumers rights to being given information in plain language as is expressed in Section 19 of the CPA 2010 is an important one. How else will the ordinary consumer make an informed decision if he does not know what exactly he is buying.

[14] She urged the Board to bear in mind that the types of goods in question, shampoos and drink, and the relevance of information contained on labels on such goods. It is submitted that this right to information in an understandable language is so important that the Seychelles Licensing Authority imposed it as a condition of the

respondent's wholesalers/retailers license that 'the label prepacked goods imported must be printed in Creole, French or English and must be legible and easy to read'.

[15] Finally, she submitted that in considering the nature of the contravention in relation to Section 20, the Board considers that selling goods without a price gives leeway to retailers to sell goods at different prices to different consumers. The Board should take into account that 24 types of goods, tallying to 499 items, were on display for sale without prices. The Board should also take notice that over and above the respondents' obligations under the Consumer Protection Act, it is a condition of the respondent's wholesalers/retailers license that it marks the price of goods displayed for sale on the premises.

[16] Mr. S. Rajasundadram in his submission stated that, for the price displays, there are items that are very small and miniature in size and those items that remain inside the chiller/cooler, the respondent displays prices on the front or top floor of the chiller of the shelves as the case may be. Thus, the customers are well acquainted with the practice of viewing the prices of singular items.it is not correct therefore to complain the prices are displayed. The respondent avers that it is not practically possible for the reason set out above that display for each item remains on those respective items. Whereas, it is justified the pries are legibly shown, written and exhibited on the doors, shelves or chiller.

[17] It is also the case where the cartons contain mini packets of the consumable goods or merchandise the prices are displayed on the carton itself for the customer/consumer to know the prices.

[18] It is pertinent to note that there is no complaint whatsoever from any individual consumer or the customers in respect of the respondents shop that he or she does not see the prices for each item.

[19] Chez Deenu Pty Ltd of 49 years in trade is a well-established big retail outlet and this is the first time ever in its long-experienced trade that this type of complaint is being brought forward to the Fair-Trading Commission. The above explanation would really justify that there is no real or genuine complaint on this count or ground against the respondent, Chez Deenu Pty Ltd.

[20] The respondent, Chez Deenu Pty Ltd caused a letter dated on the 17th November 2017, a reply to the Fair-Trading Commissions letter, 02nd November 2017, received on the 10th November 2017, is self-explanatory and justified its comments that this Board would need to take note of while analysing the complaint.

[21] There is no issue of non-compliance on the date of the second visit in January 2018 while all had been complied with and a letter dated 17th November 2017 has been issued. A set of photos were attached to the submission herein where the justifications of the respondent is well portrayed. In any event is its pertinent to note that the value of the products complained of namely SCR 8,901.58 would reflect that there is really no serious issue involved.

[22] The respondent avers that despite having executed labels printed on plain language, a minor volume of products namely, 44 products, 3 types of goods, were inadvertently omitted. The products that were complained of not having labels with plain languages were bought from other importers/wholesalers and it really skipped from the attention of the respondent.

[23] Again the value of those products involved are not really consumables, while it is only a hair shampoo which every consumer is well known to buy the brand name such as head and shoulders. The value involved remains only SCR 1,493.92, thus it is marginally minimal thus no seriousness involved.

[24] It is only 6-7 tins of peanuts that did not contain the labels and it as due to the fact that the wholesaler/supplier itself supplied as they were. Yet, this respondent is conscious of its legal duty of displaying those items with proper labels. This respondent undertakes that this would not recur again. The justification that this respondent would like to make is that without seeing the expiry date, origin and other approval requirements, it would not buy and display for the consumers consumption. Again, there is no consumer would buy those items that do not contain any labels on the products without safety requirements.

[25] The respondent would like to therefore submit to the Board of Commissioners that a mere warning would suffice for the trivial occurrence as referred in the submissions.

[26] 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, Chez Deenu Pty Ltd, to be in contravention of Section 19 (1) read with Section 19 (2)(a), Section 20 (1) read with Section 20 (3) (a)and Section 50 (1) (a) read with Section 50 (2) (a) of the Consumer Protection Act, 2010.

[27] The Board, in deciding on a suitable penalty, has considered the mitigating factors that were put forth by Mr. S. Rajasundadram, for the respondent. The Board also takes notice that the volume of items found in contravention of the Consumer Protection Act, 2010 was high. 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) the sum of SCR 1,000**
- **For the contravention of Section 20 (1) the sum of SCR 3,000**
- **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 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).*

[28] We rule accordingly.

Pronounced by us on this ..4th.. day of May, 2021.

Mr. Victor Pool
(Presiding Commissioner)

Mrs Jenna Thelermont
(Commissioner)

Mr. Michael Nalletamby
(Commissioner)