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Fair Trading Commission
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THE BOARD OF COMMISSIONERS

04th May 2021

CPA/INS19/45

Mr Murugan-Poornimadevi Pillay
Anse Aux Pins

Dear Mr Pillay,

RE: Fair Trading Commission Vs Mr Murugan-Poornimadevi Pillay (trading as Poornima Super Market) – CPA/INS19/45

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

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
MURUGAN-POORNIMADEVI PILLAY
(trading as Poornima Super Market)

Case No: CPA/INS19/45

Complainant – Fair Trading Commission
Respondent – Mr. Murugan-Poornimadevi Pillay

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. Murugan-Poornimadevi Pillay

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 31st July 2019, at the business premises of Mr. Murugan-Poornimadevi Pillay, trading as Poornima Super Market located at Anse Aux Pins (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 275867 under the business name Poornima Super Market registered on the 31st July 2017 (A).

[2] That 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:

- 5 types of goods amounting to 39 items worth SCR 710 with labels or information that were not in plain language indicating a breach of Section 19 (1) (b) read with Section 19 (2).
- 139 types of goods amounting 3,095 items worth SCR 39,774.00, that 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).
- 5 types of goods amounting to 37 items worth SCR 434.00 that were past their expiry dates indicating a breach of Section 24 (1)
- 4 types of goods amounting to 11 items worth SCR 434.00 that were past their best before dates
- The respondent failed to meet the requirements of the Consumer Protection Act 2010 in relation to receipts, in that it failed to indicate the date on which the transaction occulted and the unit price of any particular goods and services supplied indicating a breach of Section 25 (2) (c) and (e).

[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 before the Board of Commissioners on the 10th December 2019 for a mention. Ms. Sophie Vel, Legal Officer of the Fair-Trading Commission appeared on behalf of the Commission and Mr. Murugan-Poornimadevi Pillay appeared on as the respondent. Both parties requested to submit written submissions.

[5] In her submissions 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."*

[6] Ms. Vel submits by stating the nature, duration, gravity and extent of the contraventions.

Nature:

Firstly, the goods found to be in breach of the Consumer Protection Act 2010, for instance, in relation of Section 24, consisted of food products.

The Board should therefore take into account of the potential health risks associated had consumers bought, consumed or used goods of the above nature. For instance, had the expired mushrooms been brought any consumed by consumers, it is probably that the product could have caused food poisoning.

[7] Duration:

Secondly, the Board should take into account the duration of contravention in accordance with Section 67 (3) (a) of the CPA 2010. One of the products found

to be expired, in breach of Section 24 of the CPA 2010, had been expired one year prior to the inspection. That is, the savory yellow coloring expiry date was September 2018. The inspection was conducted on the 31st July 2019. This obviously shows that the respondent had ample time to ensure that its practices were in line with the Consumer Protection Act 2010.

Gravity:

- 5 goods amounting to 39 items worth SCR 710 were found to be displayed with labels or information that were not in plain languages, a breach of Section 19 of the CPA 2010.
- 139 goods amounting to 3,065 items worth SCR 39,774 were found to be displayed without a price displayed in relation to them, a breach of Section 20 of the CPA 2010.
- 5 goods amounting to SCR 434 were found to be expired, a breach of Section 24 of the CPA 2010.

[8] It is submitted in relation to the above that the meaning of expiry dates under Section 24 of the CPA 2010, states that the expiry date means the date stated in relation to goods such as food, drink and medicine being the date by which they are considered unsuitable for sale or consumption. To say that a good is unsuitable for sale or consumption. To say that a good is unsuitable for sale or consumption therefore means that it should not have been on display or offered for sale to prevent consumers from buying and consuming such goods. Hence, the respondent failed to give due importance to expiry dates by having failed to remove the above expired goods from the shelves.

[9] Through the inspection it was also found that the receipts being provided to consumers after the purchase of goods lacked the date on which the transaction occurred and the unit pries of the goods supplied, a breach of Section 25 of the CPA 2010. It is submitted that this is an important factor to be taken into account by the Board in deciding of a penalty to be imposed on the respondent.

[10] Receipts serves as a written record of each transaction. The fact that 2 of the required information as per the CPA 2010 was missing on the respondent's receipt may mean that consumers who purchased goods at the respondent's shop was unable to keep track of their expenses, as the receipt they were provided with did not record how much they were charged for each good and how much they were charged for taxed for the transaction.

[11] Through the inspection it was found that the sales records of transaction being issued had a disclaimer printed on, that readds, "goods once sold will not be taken back" a breach of Section 32. It is submitted that this is false representation, and it misleads the consumers as to the warranty of the goods purchased.

[12] In light of the breach of several provisions of the CPA 2010, and account of number of items found to be in contravention, the issuing of a compliance notice will not suffice to remedy the matter and the matter was brought before the Board for prohibited conduct.

[13] During the inspection it, goods not in plain language and expired goods were found to be on display and offered for sale. Also, a huge amount of goods was found to be on display and offered for sale without the price being displayed. It Also, most likely that some of these goods could have been sold by the respondent.

[14] Therefore, although we are unable in the circumstances, to quantify the level of profit derived by the respondent, it is more probable than not, considering the above, that the respondent benefitted from the contravention of several; provisions of the CPA 2010.

[15] Mr. Pillay in his submission stated that, he is a young and inexperienced Seychellois having recently started in the retail business about 2 years ago. He admits that having breached without prior knowledge of the 5 sections of the Consumer Protection Act 2010 and that the shop manager and himself had not intended to defraud their consumers on whom we rely on for our live hood.

[16] Mr Pillay states that the shop manager was cooperative during the visit from the Fair-Trading Commissions officers, and that on the same date of inspection, being 31st July 2019, he has complied to the CPA 2010. That Number 5, 7 and 8 of the complaint, the type of goods which are 14 in total is of a minimal amount; and that though he agrees that it should have been ensured that those goods should never have been put up for display.

[17] That number 9 is of a trivial nature and that the shop manager whilst in a rush to serve other customers must have over looked the significance of writing the dates and unit prices of goods sold on the invoices and that it is to be noted that he is planning to install a computerized cash register soon to address this concern

[18] The shop manager nor Mr Pillay were aware that the disclaimer reads that "goods once sold should not be taken back" and that this was a breach under the CPA 2010. It is noted that several types of receipt books bought at stationary shops now have the disclaimer printed on them and as stated earlier under number 7, the purchase of a cash register will eliminate the recurrence of such a breach.

[19] Mr Pillay states that this is his first offence under the CPA 2010 and that he guarantees the Board of Commissioners that he shall adhere to the requirements of the CPA 2010.

[20] Mr Pillay humbly prays that the Honourable of the Board of Commissioners will kindly take into consideration of the above pleas and set aside the prayers of the Fair-Trading Commission instead and be cautioned with a compliance notice.

[21] 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. Murugan-Poornimadevi Pillay, trading as Poornima Super Market , 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) (c) and (e) read with Section 25 (1), Section 32 (i) read with Section 42 (1) of the Consumer Protection Act, 2010.

[22] 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) read with Section 19 (2) (a) the sum of SCR 1,000**

- **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 25 (2) (c) and (e) read with Section 25 (1) the sum of SCR 1,000**

- **For the contravention of Section 32 (i) read with Section 42 (1) the sum of SCR 1,000.**

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).*

[23] 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)