THE FAIR TRADING COMMISSION

BEFORE THE BOARD OF COMMISSIONERS

IN THE MATTER of the Consumer Protection Act, 2010;

THE FAIR TRADING COMMISSION
V
KOVINDASAMY PILLAY
(trading as Sri Vekkaliaman Supermarket)

Case No: CPA/INS18/29

Complainant – Fair Trading Commission
Respondent – Kovindasamy Pillay

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

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

Respondent – In person

RULING

[1]The Fair Trading Commission (the Commission) conducted a routine inspection pursuant to Section 33(1)(j) of the Consumer Protection Act, 2010 (the Act) on the 20th of February, 2018, at the business premises of Kovindasamy Pillay trading as Sri Vekkaliaman Supermarket located at North East Point, Mahe (the respondent), a registered and licensed business and a supplier of goods as defined by Section 2(1)(a)(i) of the Act. During the inspection officers of the Commission observed 4 product (33 items) on display and being offered for sale with labels which contained information that were not in plain language contrary to Section 19(1)(b) of the Consumer Protection Act, 2010. Moreover, 12 products (207 items) were being offered for sale without their prices being displayed contrary to Section 20(1) of the same Act. Further, 34 products (177 items) were found to be on display for sale past their expiry date contrary to Section 24 of the Act by virtue of which coupled with

the contravention of Section 19(1)(b) is also a contravention of Section 50(1)(a) of the act by offering for sale goods which do not meet the necessary safety requirements. Furthermore, upon inspection of the receipt being provided to consumer officers of the Commission discovered that said receipts did not contain the address of the premises at which or from which the goods were being supplied as well as the name or description of any particular good being supplied contrary to Section 25(2)(b) and (d) read with Section 25(1) of the Consumer Protection Act, 2010. 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(2)(b) and (d)** read with Section **25(1)** which provides that *"A written record shall include **(b)** the address of the premises at which, or from*

which the goods or services were supplied; and ***(d)*** *the name or description of any goods or services supplied."* [**25(1)** *"A supplier of goods and services shall 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 *"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.****]*

[2]The respondent appeared before the Board of Commissioners for mention on 13th November, 2018 together with his son Subramanian Pillay assisting him during the proceedings before the Board. On that date the respondent informed the Board that he had been overseas for medical treatment. That in his absence, his wife and son manage the shop. He confirmed that he received the case docket and they have briefed him about the situation. The respondent, through his son then indicated that he will be accepting all liability in relation to the complaints filed before the Board. He explained that his wife was not aware that some of their actions were contraventions of the law. He added that since the inspection necessary measures have been taken to remedy all the issues detected. The respondent also confirmed that he understood the provisions of the Consumer Protection Act, 2010 and the consequences of accepting the charges and prayed for leniency while assuring the Board that this incident will not recur. Ms. Priyanka Ramruchaya, Legal Officer representing the Commission moved the Board as per the notice of complaint on record in relation to the breaches and opted to file written submissions in relation to penalties.

[3]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 fair and appropriate penalty the Board should have regard to Section 67(3)(a), (e), (f) and (g) 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; (e) the level of profit*

derived from the contravention; (f) the degree to which the respondent co-operated with the Commission; (g) whether the respondent had previously been found in contravention of the Act."

[4]Ms. Ramruchaya first addressed the nature, duration, gravity and extent of the contravention. She submitted that without an understandable language to consumer it would have been difficult to know what precautions needed to be taken to use a particular product, which was bleach in this case. She also submitted that most of the products observed to be expired were food items hence raises serious health risk concerns to consumers who could have purchased and consumed those products. She also pointed out that some of the products in contravention of Section 24 had been expired since 2017 prior to the date of inspection raising the risk of consumers purchasing and consuming those products and this also indicates the possible profit the respondent could have derived from those products and that he in fact intended to make a profit from those products given that he had not discarded them after their expiry date. This also shows that the respondent had ample time to take reasonable steps to avoid contravention of the Act. Ms. Ramruchaya also submitted that the number of items found in contravention of the Consumer Protection Act, 2010 was rather high adding to the gravity of the breaches. Ms. Ramruchaya concluded by noting that the respondent was a first-time offender before the Board and had co-operated with the Commission and accepted all liability before the Board therefore not wasting the Board's time but noted that this should not negate from his prohibited conduct.

[4]Based on the evidence before it and the respondent's admission the Board of Commissioners hereby finds the respondent Kovindasamy Pillay trading as Sri Vekkaliaman Supermarket, to be in contravention of Section 19(1)(b) read with Section 19(2)(a), Section 20(1) read with Section 20(3), Section 24, Section 25(2)(b) and (d) read with Section 25(1) and Section 50(1)(a) read with Section 50(2)(a) of the Consumer Protection Act, 2010. The Board has considered all the mitigating factors put forth by the respondent as well as the points raised by Ms. Ramruchaya in her submissions and hereby imposes monetary fines 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 19(1)(b) read with Section 19(2)(a) the sum of SR2,000;**

- **For the contravention of Section 20(1) read with Section 20(3) the sum of SR6,000;**

- **For the contravention of Section 24 the sum of SR6,000;**

- **For the contravention of Section 25(2)(e) read with Section 25(1) the sum of SR6,000;**

- **For the contravention of Section 50(1)(a) read with Section 50(2)(a) the sum of SR6,000.**

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

[5]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 ..27th.. day of May, 2019.

Mr. Victor Pool
Commissioner
(Presiding)

Mr. Michael Nalletamby
Commissioner

Mrs. Jenna Thelermont
Commissioner