THE FAIR TRADING COMMISSION

BEFORE THE BOARD OF COMMISSIONERS

IN THE MATTER of the Consumer Protection Act, 2010;

THE FAIR TRADING COMMISSION
V
KRISHNAMART AND COMPANY (PTY) LTD

Case No: CPA/INS18/2

Complainant – Fair Trading Commission
Respondent – Krishnamart And Company (Pty) Ltd

QUORUM:
Ms. Karen Domingue – Chairperson
Mrs. Jenna Thelermont – Commissioner
Mr. Victor Pool – Commissioner

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

For the Respondent
Mr. Ravi Pillay – Director

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 11th January, 2018 at the business premises of Krishnamart And Company (Pty) Ltd situated at 5th June Avenue, Victoria, represented herein by Mr. Ravi Pillay (the respondent). During the inspection officers of the Commission found the respondent to be in breach of Section19(1)(b) read with Section 19(2)(a), Section 20(1) read with Section 20(3), Section 24 and Section 25(1) of the Consumer Protection Act, 2010. The respondent was subsequently issued with a compliance notice with instructions to rectify those breaches. During a follow up inspection conducted on the 27th of March, 2018 the respondent was found to still be in breach of Section 20 of the Act by offering for sale 1259 items without a price displayed in relation to those items; Section 24 of the Act by offering for sale 17 items past the

expiry date of those items and by virtue this breach the respondent is also in contravention of Section 50(1)(a) by offering for sale goods which fail to comply with the general safety requirement; and Section 25(2)(g) by failing to provide written records of sale which contained the total price of the transaction before any applicable taxes. The Commission therefore filed a case before the Board of Commissioners for the contravention of the Consumer Protection Act, 2010, namely:-

- Section 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)(g)** read with Section 25(1) which provides that *"A written record shall include **(g)** the total price of the transaction, before any applicable taxes.* [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]On the date set for mention of the matter, the respondent appeared and informed the Board that after receiving the case docket and going through it he would not be contesting the complaint, instead he will be accepting all the breaches filed. The respondent explained that he has had issues with his workers who sometimes show up late for work and some do not follow instructions given to them properly hence why those breaches were observed during the inspection. The respondent added that since then he has put in place better monitoring measures to ensure that he is in

compliance with the law. The respondent also stated that he was in the process of fixing his POS system but he was encountering some delays with the company who manages this equipment and its software and that he would provide the Commission with proof of the proper receipt which is compliant with the Consumer Protection Act, 2010 as soon as the equipment is fixed. The respondent also noted that this was his first time appearing before the Board of Commissioners and prayed for leniency while assuring the Board that the incident would not repeat itself.

[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 person other than an individual, to pay a penalty of a sum not exceeding SR400,000."* She submitted that when considering a suitable penalty the Board should 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; (e) the level of profit derived from the contravention; and (f) the degree to which the respondent co-operated with the Commission."*

[4]Ms. Ramruchaya first addressed the nature, gravity and extent of the contravention. She submitted that the expired products observed during inspection were drinks and baby biscuits, hence presented a health risk to consumers, specifically infants in this instance, who could have consumed these items. In her opinion, this increases the gravity of the breach coupled with the fact that the respondent had the opportunity to rectify these issues between the time of the first inspection and the follow up inspection but failed to do so. Moreover, there is a likelihood that consumers had purchased some of those products during that time indicating the possibility that the respondent derived a profit from those products. In relation to the degree to which the respondent has co-operated with the Commission, Ms. Ramruchaya submitted that the respondent admitted to all the breaches and did not waste the Board's time and stated that he had now rectified all the issues observed by officers of the Commission during the inspection, save for the receipt but this should not negate the gravity of the respondent's conduct.

[3]Based on the evidence before it and the respondent's admission the Board of Commissioners hereby finds the respondent, Krishnamart and Company (Pty) Ltd, represented herein by Mr. Ravi Pillay, to be in contravention of Section 20(1) read with Section 20(3), Section 24, Section 25(2)(g) 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 the mitigating factors put forth by the respondent as well as the

submissions of Ms. Ramruchaya. The Board takes note that the respondent is a first-time offender before this Board he has accepted all the breaches filed against him thus not wasting the Board's time. The Board also takes note of the respondent's efforts to rectify the breaches observed by officers of the Commission and in relation to this, he forwarded a copy of the amended receipt presently being provided to consumers which are now compliant with the Consumer Protection Act, 2010. Additionally, the Board has also taken note of the nature of the contravention including the number and types of items in contravention. 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 20(1) read with Section 20(3) the sum of SR20,000;**

- **For the contravention of Section 24 the sum of SR3,000;**

- **For the contravention of Section 25(2)(g) read with Section 25(1) the sum of SR3,000;**

- **For the contravention of Section 50(1)(a) read with Section 50(2)(a) the sum of SR3,000.**

All payments are to be made by the respondent 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.

Ms. Karen Domingue	**Mr. Victor Pool**	**Mrs. Jenna Thelermont**
Chairperson	**Commissioner**	**Commissioner**