THE FAIR TRADING COMMISSION

BEFORE THE BOARD OF COMMISSIONERS

IN THE MATTER of the Consumer Protection Act, 2010;

THE FAIR TRADING COMMISSION
VS.
RATHINASAMY ARUNACHALAM
and
RETHINASAMY KARPAKASUNDARI
(Trading as New Shop)

Case No: CPA/INS18/8

Complainant – Fair Trading Commission
Respondent – Rathinsamy Arunachalam and Rethinasamy Karpakasundari

QUORUM:
Ms. Karen Domingue – Chairperson
Mr. Philippe Chong-Seng – Commissioner
Mrs. Jenna Thelermont – Commissioner
Mr. Michael Nalletamby – Commissioner

For the Complainant
Ms. Salina Sinon – Legal Officer (FTC)

For the Respondents
Rathinasamy Arunachalam - 1st Respondent
Rethinasamy Elanchezhian – Appointed Attorney
Manivannan Rethinaselvan – Appointed Attorney

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 25th January, 2018, at the business premises of Rathinasamy Arunachalam and Rethinasamy Karpakasundari trading as New Shop at La Retraite, 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 1 product (4 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, the officers observed 37 products (688 items) being offered for sale without their prices being displayed contrary to Section 20(1) of the same Act. Further, 8 products (51 items) were found to be on display for sale past their expiry date contrary to Section 24 of the Act by virtue of which together with the breach of Section 19 also triggers the contravention of Section 50(1)(a) of the act by offering for sale goods which do not meet the necessary safety requirements. Finally, upon an inspection of the receipt being provided to consumers it was observed that said receipts lacked the price of the transaction before any applicable tax as well as the amount of the applicable taxes contrary to Section 25(2)(g) and (h) read with Section 25(1) of the Act. 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)(g) and (h)** read with Section 25(1) which provides that *"A written record shall include **(g)** the total price of the transaction, before any applicable taxes and **(h)** the amount of 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]The representatives of the respondents, namely Rethinasamy Elanchezhian and Manivannan Rethinaselvan appeared before the Board several times and on one occasion with the first respondent Rathinasamy Arunachalam. The latter stated that he is ill and is following medical treatment in India but has been informed of the situation. The respondent accepted all liability and his representatives intimated to the Board that this was the first time that the shop had been found in contravention of the Consumer Protection Act and since then they have taken necessary measures to remedy all the issues detected during the inspection. The respondent showed Board members photographs of the shop on his mobile phone with all the prices affixed on the all the items, together with a sample of the receipt which they are now providing to consumers as well as a signed document from a driver of the waste collection company confirming that he collected the expired items from the shop. The respondent confirmed that he understood the consequences of accepting the charges and prayed for leniency given that the shop is small and he do not make that much profit. The respondent assured the Board that this incident will not recur. Ms. Sinon moved as per the contraventions in the notice of complaint and requested the opportunity to file written submissions on penalties.

[3]Ms. Sinon 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; (e) the level of profit derived from the contravention; and (f) the degree to which the respondent co-operated with the Commission."* Ms. Sinon first addressed the nature of the contravention. She

submitted that most of the expired products observed during the inspection were food items hence presented a health risk to consumers who could have purchased and consumed these items which also increases the gravity of the breach. Ms. Sinon went on to address duration of the contravention whereby it was observed that some of the products had been expired for over a year and several others for several months which increased the risk of consumers purchasing those products also indicating the possible profit the respondent could have made. Lastly, Ms. Sinon addressed the degree to which the respondent has co-operated with the Commission to which she submitted that the respondent had co-operated fully and had accepted liability therefore not wasting the Board's time.

[4]Based on the evidence before it and the respondent's admission, the Board of Commissioners hereby finds the respondents, Mr. Rethinasamy Arunachalam and Mrs. Karpakasundari Rethinasamy trading as New Shop, 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)(g) and (h) 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. Sinon. The Board also takes notice that the respondent is a first-time offender and has accepted the breaches thus not wasting the Board's time and moreover have provided proof rectification of the breaches observed. 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 19(1)(b) read with Section 19(2)(a) the sum of SR500;**

- **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) and (h) 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 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.

Ms. Karen Domingue
Chairperson

Mr. Philippe Chong-Seng
Commissioner

Mrs. Jenna Thelermont
Commissioner

Mr. Michael Nalletamby
Commissioner