THE FAIR TRADING COMMISSION

BEFORE THE BOARD OF COMMISSIONERS

IN THE MATTER of the Consumer Protection Act, 2010;

THE FAIR TRADING COMMISSION
V
SOMU SEKAAR PILLAY
(Trading as Sekaar's Shopping Centre)

Case No: CPA/INS17/69

Complainant – Fair Trading Commission
Respondent – Somu Sekaar Pillay

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

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

Respondent – Absent

RULING

[1] The Fair Trading Commission (the Commission) conducted an inspection pursuant to Section 33(1)(j) of the Consumer Protection Act, 2010 (the Act) at the business premises of Somu Sekaar Pillay trading as Sekaar Shopping Centre of Les Canelles, Mahe (the respondent) on the 27th July, 2017 following a tip-off phone call received on the 21st July, 2017 that expired baby formula was being sold by the respondent who is 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 one product (7 items) which information contained on them were not in plain language i.e. Creole, English or French contrary to Section 19(1)(b) of the Consumer Protection Act, 2010. Further, 36 products (253 items) were observed to be on sale past their expiry dates contrary to Section 24(1) of the Act. In addition, upon inspecting the receipts being provided to consumers by the respondent it was observed that the receipts did not

contain the address of the premises contrary to Section 25(2)(b) of the Act. The officers compiled an inspection report in relation to this matter and the Legal Affairs Department of the Commission assessed the matter and filed a case before the Board for the contravention of the Consumer Protection Act, 2010, namely: -

- Section **19(1)(b)** read with Section **19(2)** 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; (b) the organisation, form and style of the notice, document or visual representation; (c) the vocabulary, usage and sentence structure of the notice, document or visual representation; (d) the use of any illustrations, examples, headings or other aids to ready and understanding.**]***

- 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)** read with Section **25(1)** with provides that *"A record under subsection (1) shall include the address of the premises at which, or from which the goods or services were 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 Board of Commissioners scheduled this matter for mention on Tuesday 17th April, 2018 and the respondent was summoned to appear before the Board on the said date at 1:30pm. When the case was called on the above date and time the respondent was absent. Upon examining the file the Board observed that the respondent was served with the summons, the notice of complaint and relevant annexes at Sekaar's Shopping Centre, Les Canelles, received by one Venkatarajan Pillay, a shareholder, on the 13th April, 2018. The Commission had not received any communication from the respondent with regards to his absence. Ms. Salina Sinon, Legal Officer representing the Fair Trading Commission in the matter moved that judgment in default be entered against the respondent as per the notice of complaint and accompanying annexes filed before the Board.

[3]The Board deliberated on the matter and based on the evidence before it granted the application to proceed *exparte* by the Commission. Judgment in default is hereby entered against the respondent, Somu Sekaar Pillay, trading as Sekaar's Shopping Centre for the contravention of Section 19(1)(b) read with Section 19(2), Section 24(1), Section 25(2)(b) read with Section 25(1) and Section 50(1)(a) read with Section 50(2)(1) of the Consumer Protection Act, 2010. Consequently, the Board shall impose a fine on the respondent in accordance with Section 67(1) of the Act for the above contraventions. In doing so the Board has taken notice of several factors when deciding on a suitable penalty such as the potential health risk to consumers from buying and consuming expired goods and being unable to read the labels on the products. The Board also takes notice that this respondent has appeared before it twice before. In case CPA.11.207.99-2 the respondent was fined a sum of SR.10,000 (Section 24) and in CPA.INS13.004 the respondent was fined a total sum of SR.23,000 for contraventions of the Act (Sections 24 and 20). This shows the Board that the respondent is very familiar with the Consumer Protection Act, 2010 and hence should have taken steps to ensure compliance with the Act. Based on the above the Board hereby imposes penalties on the respondent pursuant to Section 67(1) of the Act in the following manner: -

- **For the contravention of Section 19(1)(b) read with Section 19(2) – SR.1,000;**
- **For the contravention of Section 24(1) – SR.36,000;**
- **For the contravention of Section 25(2)(b) read with Section 25(1) – SR.2,000;**
- **For the contravention of Section 50(1)(a) read with Section 50(2)(a) – SR.36,000.**

All payments are to be made by the respondent, Mr. Somu Sekaar Pillay, at the office of the Fair Trading Commission not later than sixty (60) days from the date of this ruling

[4]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 29th day of November, 2018.

Ms. Karen Domingue
Chairperson

Mr. Victor Pool
Commissioner

Mrs. Jenna Thelermont
Commissioner

Mr. Michael Nalletamby
Commissioner