THE FAIR TRADING COMMISSION
BEFORE THE BOARD OF COMMISSIONERS

IN THE MATTER OF THE CONSUMER PROTECTION ACT, 2010;

FAIR TRADING COMMISSION
V.
SUE, LIN JOHNSTON AND YIDONG, ANTHONY JOHNSTON
(Trading as Linro Global)

Case No: CPA/INS16/58

Complainant – Fair Trading Commission
Respondents – Sue Lin Johnston and Yidong Anthony Johnston (trading as Linro Global)

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

For the Complaint: Mrs. Sylvie Faure – Senior Legal Officer (FTC)

For the Respondents – Ms. Alexandra Benoiton – Attorney-At-Law

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RULING

[1]Pursuant to its mandate to keep under review commercial activities the Fair Trading Commission conducted a routine inspection, in accordance with Section 33(1)(j) of the Fair Trading Commission Act, 2009, at the business premises of Sue, Lin Johnston and Yidong, Anthony Johnston, trading as Linro Global, a registered business licensed for wholesaling and retailing, situated at Plaisance, Mahe on the 4th August, 2016 (See Exh FTC 3, 5 & 6). During the inspection officers of the Commission observed the contravention of Section 19 of the Consumer Protection Act, 2010 relating to the language of the labels of the gods and Section 20 of the same Act relating to the displayed price of the goods (See Exh FTC 1). The respondent was issued with a compliance notice on the 30th August, 2016 with specific directions to remedy the breaches no later than 15th September, 2016 (See

Exh FTC 3). The Commission conducted a follow-up visit at Linro Global on the 30th November, 2016 to ensure compliance with the Consumer Protection Act, 2010 and it was observed that the respondent was still in breach of Section 19 of the Act in that the respondent was still offering for sale with labels that were not in plain language (See Exh FTC 4). The Commission therefore filed a case before the Board of the Commissioners for the abovementioned contravention. Section 19 is hereby reproduced:

> "**19.**(1) *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 –*
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> *(a) in the form prescribed by this Act or any other written law; or*
>
> (b) *in plain language, if no form has been prescribed.*
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> *(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*
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> *(a) the context, comprehensiveness and consistency of the notice, document or visual representation;*
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> *(b) the organisation, form and style of the notice, document or visual representation;*
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> *(c) the vocabulary, usage and sentence structure of the notice, document or visual representation; and*
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> *(d) the use of any illustrations, examples, headings or other aids to reading and understanding."*

[2]All concerned parties appeared before the Board of Commissioners for the hearing of the matter which took place between May, 2017 to October, 2017. The complainant, being the Fair Trading Commission in this instance, was represented

by Mrs. Sylvie Faure, Senior Legal Officer. The respondents were represented herein by Ms. Alexandra Benoiton, Attorney-At-Law.

[3]Mrs. Faure called three witnesses, all officers of the Commission, in support of her case. Firstly Mrs. Frederika Confait-Poussou, Analyst of the Market Surveillance Department, gave evidence to the effect that she joined two other FTC officers, namely Mrs. Natalie Edmond and Mrs. Kate Pierre, on the 4th of August, 2016 to conduct a routine inspection at the business premises of Linro Global situated at Plaisance. That while there she observed several items that were in contravention of Sections 19 and 20. She identified those items as being the ones listed in Exh FTC 1. That collectively the three officers recommended in their report that the respondent be served with a compliance notice with directions to remedy the breaches. Mrs. Confait-Poussou produced the list of items she observed were in breach, the photographs of those items taken and the compliance notice served on the respondent (Exh FTC 1, 2 and 3 respectively). During cross-examination counsel for the respondent asked the witness whether consumers would be able to tell that these items were bulbs by the obvious picture of a bulb on the box and whether or not this was enough information for a consumer to derive these were bulbs. To which the officer responded that although consumer could see a picture of a bulb there were instructions on the box which ordinary consumers would not be able to read as they were in Chinese.

[4]Secondly, Mrs. Kate Pierre, Analyst of the Consumer Department testified that she was one of the three officers who inspected the business premises of Linro Global on the 4th of August, 2016 whereby she observed that the respondent was in contravention of Sections 19 and 20 of the Consumer Protection Act, 2010. Mrs. Pierre identified and produced the inspection form she used and the inspection report subsequently produced in the case (Exh FTC 3a) recommending that the respondent be served with a compliance notice with directions to remedy the breaches. During cross-examination Mrs. Pierre remained adamant that the items identified were in breach of Section 19 of the Consumer Protection Act, 2010 even after counsel for the respondent put to her several times that there was no breach because the boxes had a picture of a bulb on it therefore consumers could tell that it was a bulb. Mrs. Pierre too explained that there were instructions on the box which ordinary consumer would not be able to read because they were in Chinese.

[5]Lastly, Ms. Elza Robert, Analyst of the Market of the Surveillance Department, deponed that she, along with another officer of the Commission, conducted a second visit at the business premises of Linro Global on the 30th November, 2016 following the service of the compliance notice to ensure that the respondent was compliant. Ms. Robert stated that while there she observed that there were quite a few items

still in breach of Section 19. That she listed those items on the prescribed form and took photographs of the items, documents which she identified and produced before the Board (Exh FTC 4a & 4b). Ms. Robert also stated that she reproduced a compliance report whereby she recommended that the matter be forwarded to the Board of Commissioners for adjudication. In cross-examination counsel for the respondent claimed that the bulb boxes had stickers on them with translations. Ms. Robert maintained that not all the items in the shop had translations on them. At this juncture Mrs. Faure closed the case for the Commission.

[6]Ms. Alexandra Benoiton, counsel for the respondent, called two witnesses to defend her case. Firstly, Mr. Yidong Johnston, co-partner of Linro Global, gave evidence to the effect that although officers of the Commission did find some items without labelling in the proper language it was not his intention to breach the law and that this was a mistake probably due to lack of staff members. That after the second visit of the Commission they remedied the breach and had the labels translated locally. Now all the items in the shop are labelled in clear language. In cross-examination it was put to the witness that they received ample time to remedy the breach between the time the compliance notice was served on them in August, 2016 to the time the second visit was conducted in November, 2016.

[7]Lastly, Ms. Benoiton called Mrs. Natalie Edmond, the Deputy Chief Executive Officer of the Fair Trading Commission who gave evidence to the fact that she was one of the officers who conducted the first visit at Linro Global on the 4th August, 2016 as the Principal Analyst of the Competition Department, as she then was. When asked by counsel Mrs. Edmond explained to the Board that she could not say exactly what an ordinary consumer would need to know other than a picture on the box to buy a bulb but Section 19 of the Consumer Protection Act, 2010 is clear and the respondent was not in compliance of that section. At this juncture counsel closed the case for the respondent.

[8]At the conclusion of the hearing both parties opted to submit written submissions. The Board received the submission of the Commission on the 30th November, 2017. Mrs. Faure submitted that having information in a clear and plain language as expressed in Section 19 of the Consumer Protection Act, 2010 is an important one as it is the only way the ordinary consumer would be able to make an informed decision as to what he is purchasing. Therefore Section 19 adds an element of fairness between the buy and sell process hence product labels and any other visual representation relating to the items should be in a language that clearly and effectively conveys information. That in Seychelles the basis of plain language has to be that of one of our national languages as provided by our Constitution being Creole, English and French and the evidence produced (Exh FTC1, 2, 3, 4) clearly showed that at

the time of the two inspections the respondent had items displayed for sale with labels that were not in the three aforementioned languages, instead, they were in Chinese and the fact that Mr. Johnston omitted to sign the statement of declaration on the inspection form confirming the breach does not detract from the evidence proving the same. In fact, Mr. Johnston admitted while giving his oral evidence that those items were indeed found and the breach was not remedied due to the mistake on the part of the staff. Mrs. Faure further submitted that the respondent's stance that the boxes contained a picture of a bulb and the voltage were enough to allow an ordinary consumer to know what he or she was buying is incorrect given that any sort of information presented to a consumer has to be in plain language so as to permit an ordinary consumer to understand the content, significance and import of the information without undue effort, without having to consult a sales assistant, translator or dictionary to understand the information presented to them. That the evidence of Mrs. Confait-Poussou and Mrs. Kate Pierre supports this argument when the former stated that there must be reasons why manufacturers placed all this information on these items and the latter pointed out that the translated sticker contained on the empty bulb carton boxes showed to her by respondent counsel contained information such as bulb type and description and the instruction that the bulb "cannot be used with dimmer switch" that an ordinary consumer would not have been able to understand from the original packaging. Mrs. Faure concluded her submissions by maintaining that the requirements of Section 19 is that any and all information presented to a consumer has to be in plain language and this is not optional but mandatory. Mrs. Faure also noted that in addition to the respondent's obligations under the Consumer Protection Act, 2010 part of his responsibilities as a wholesaler/retailer license holder he is required to have labels of prepacked good imported printed in Creole, French or English and must be legible and easy to read. Mrs. Faure therefore urged the Board to find in the Commission's favour and order the respondent to pay an appropriate fine not exceeding 100,000 Seychelles rupees as per the provisions of Section 67(1) while having regards to the nature, duration, gravity and extent of the contravention.

[9]Ms. Alexandra Benoiton, counsel for the respondent was given a deadline of 7th December, 2017 to file her written submissions. This was not done. Counsel was given several oral reminders to file the document which she again did not do. Upon instructions, on the 21st of March, 2018, the Board's Registration Officer wrote to counsel for a final reminder whereby Ms. Benoiton was directed to file her submission for consideration within seven days of receipt of the letter but still counsel failed to do so. The Board of Commissioners proceed to deliberate on the matter and produce its ruling by analysing the evidence brought forward by the respondent but without considering counsel's closing submissions.

[10]When examining the documentary evidence on record, namely Exh FTC 1(inspection form 1-a dated 4th August, 2016), Exh FTC 2 (photographs), Exh FTC 3 (compliance notice), Exh FTC 3a (Inspection report Form 1 dated 4th August, 2016), Exh FTC 4a (Inspection Form 1 & Form 1-a dated 30th November, 2016) and Exh FTC 4b (photographs), it is abundantly clear that there was a contravention of Section 19 of the Consumer Protection Act, 2010 on two separate occasions. All the items were listed on the forms and the photographs are clear. Witnesses of the Commission gave compelling and corroborative oral evidence which the Board feels remained intact after the respondent presented its defence. Mr. Johnston produced empty bulb card boxes which contained stickers of English translated text glued onto the boxes and counsel for the respondent contended that these were present on the boxes during the second visit hence there was no breach of Section 19. An examination of the photographs taken on the 30th November, 2016 marked Exh FTC 4b revealed that indeed some of the boxes did contain what looked like glued on stickers. The examination also revealed that those stickers were only found on selected boxes and not all of them. Witnesses of the Commission explained that these bulbs would not have been written up as part of the items that were non-compliant unlike the many others that were. Counsel for the respondent also contended that a picture and the voltage are sufficient information needed for an ordinary consumer to know and be able to make an informed decision to buy these bulbs. The Board would have to disagree with counsel. When reading the stickers with the translated texts (D1) there is a list of information previously unavailable to consumers when they were in their original language and some that the Board feels might be particularly important to consumers and could sway their decision as to whether to purchase or not for instance "not suitable for areas exposed to rain and water" as well as "this product is not dimmable" or "cannot be used with dimmer switch". This is contrary to the Board's interpretation of the Section 19 which we reiterate provides that *"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 the context, comprehensiveness and consistency of the notice, document or visual representation."* The Board is of the view that the respondent has not produced any evidence to convince it that there was no breach. Even the respondent, Mr. Yidong Johnston, admitted while giving his evidence that these items were found in his shop and was through a mistake or slackness on the part of his staff that the breach was not remedied from the first visit. The Board of Commissioner unanimously finds the respondents Sue Lin Johnston and Yidong

Anthony Johnston (trading as Linro Global) to be in contravention of Section 19 of the Consumer Protection Act, 2010.

[11]Consequently, the Board is now required to consider a penalty in relation to the breach. In this regard Section 67(3) provides that:

> *"67.(3) In determining an appropriate penalty for the purposes of this section, the Commission shall have regard to the following –*
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> *(a) the nature, duration, gravity and extent of the contravention;*
> *(b) any loss or damage suffered as a result of the contravention;*
> *(c) the behaviour of the respondent;*
> *(d) the market circumstances in which the contravention took place;*
> *(e) the level of profit derived from the contravention;*
> *(f) the degree to which the respondent co-operated with the Commission; and*
> (g) *whether the respondent has previously been found in contravention of this Act.*

[12]In her submissions Mrs. Faure prompted the Board to consider especially the provisions Section 67(3)(a). The Board takes note that Section 19 is a clear prohibited conduct provision and the respondents failed to remedy the breaches when identified at the first visit but instead the breach continued for a further three months up till the second visit was conducted. When added together with the number of items found to be in contravention of the Act, that is, 229 items noted at the first visit and 714 items at the second visit aggravates the breach. This observation can also be linked to the behaviour of the respondent which is suggests a dismissive attitude towards the Commission having failed to comply with the compliance notice issued. In addition, the Board takes note that the respondent's licence permits them to import their own goods therefore being responsible in bringing these goods into the country. No specific evidence was provided in relation to the market circumstances in which the contravention took place but the Board is privy to several similar cases brought before it therefore it can be deduced that the matter of language is still a pertinent issue in the market thus still affecting the decision-making process of ordinary consumers. No definite evidence was provided with regards to the profit derived from the contravention but the Board takes note that these non-compliant were still being displayed for sale after they were directed to remedy the breach therefore there is a possibility that consumers have purchased these items. The degree of the respondents' co-operation with the Commission is debatable. On one hand they have promptly responded to all notices to appear before the Board but at the same time they did not comply with a direction of the Commission (via compliance notice) resulting in a lengthy hearing before the

Board, in doing so, registering two contraventions of the Consumer Protection, Act 2010 but a first appearance before the Board. There was no evidence adduced in relation to loss or damage suffered as a result of the breach.

[13]Based on all the above the Boards shall impose a **fine on the respondents, Sue Lin Johnston and Yindong Anthony Johnston (trading as Linro Global) in the sum of SR.10,000 to be paid to the office of the Fair Trading Commission not later than thirty (30) days from the date of this ruling.**

[14]The parties are free to appeal against this ruling (*see Section 77 of the Consumer Protection Act, 2010 and Section 44 of the Fair Trading Commission Act, 2009).*

We rule accordingly.

Pronounced by us on this 30th day of August, 2018.

Ms. Karen Domingue
Chairperson

Mr. Philippe Chong-Seng
Commissioner

Mrs. Jenna Thelermont
Commissioner

Mr. Michael Nalletamby
Commissioner

Mr. Victor Pool
Commissioner