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Fair Trading Commission
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# THE BOARD OF COMMISSIONERS

06th April 2021

CPA/INS17/08

Panacea Healthcare (Sey) LTD
Anse Royale

Dear Panacea Healthcare (Sey) LTD,

**RE: Fair Trading Commission Vs Panacea Healthcare (Sey) LTD (trading as Anse Royale Pharmacy) – CPA/INS17/08**

In accordance with Section 42(1) of the Fair-Trading Commission Act 2009, please find attached a signed copy of the ruling of the Board of Commissioners of the hearing conducted in the above-mentioned case. We trust in your expedient compliance as per the orders contained herein.

Also note that failure or refusal to comply with this ruling constitutes an offence under Section 53(1) of the Fair-Trading Act 2009. The same is reproduced below:

**53 (1)** A person which refuses or fails to comply with a direction or order of the commission commits and offence and is liable-

a) Where the person is an individual, to a fine not exceeding SCR 100,000 rupees or to imprisonment for a term not exceeding 2 years or to both
b) Where the person is a person other than the individual to a fine not exceeding SCR 400,000 rupees

Moreover, you have the right to appeal against this decision. To that effect you may, **within Fourteen (14) days of this receipt of this document,** submit a Notice of Appeal setting out your grounds of appeal to:

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# THE BOARD OF COMMISSIONERS

*Chairperson for the Appeal Tribunal*
*P O Box 216,*
*Allied Building*
*Francis Rachel Street,*
*Mahe, Seychelles*
*Telephone: (248)4224881 /*
*Facsimile: (248)4225044*
Email: john.renaud@renaudchambers.sc

Yours Sincerely,

Ms. Chrystal Loizeau
Assistant Registration Officer

**For: Chairperson**
**Board of Commissioners**
**Fair Trading Commission**

VISION 2033
Towards a Sustainable and Inclusive Future

# THE FAIR TRADING COMMISSION

## BEFORE THE BOARD OF COMMISSIONERS

**(Consumer Protection Act, 2010)**

## IN THE MATTER OF:

## THE FAIR TRADING COMMISSION
## V
## PANACEA HEALTHCARE (SEY) LTD

(Trading as Anse Royale Pharmacy)

**Case No:** CPA/INS17/08

**Complainant** – Fair Trading Commission
**Respondent** – Panacea Healthcare (Sey) LTD

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**QUORUM:**
Mr Victor Pool- Commissioner
Mr Michael Nalletamby – Commissioner
Mrs Jenna Thelermont – Commissioner

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

**For the Respondent**
Mr Elvis Chetty

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## RULING

[1]The Fair Trading Commission (the Commission), pursuant to Section 33(1)(j) of the Fair Trading Commission Act, 2009 which empowers the Commission to inspect goods, conducted a routine inspection on the 16th December 2016, at the business premises of Mrs. Tania Schulz-Allcorn & Mr. Curtis Allcorn, Panacea Healthcare (Sey) Limited, trading under the shop name of Anse Royale Pharmacy situated at Anse Royale, Mahe (the respondents) ,a business and a supplier of goods as defined by Section 2(1) of the Consumer Protection Act, 2010 (CPA). The respondent holds an importer and retailer's license, number 163923 under the business name Vital Pharmacy registered on the 17th day of September, 2017.

[2] During the inspection, officers of the Commission observed that 48 types of goods, tallying to 302 items were found to be on sale without a price displayed contrary to Section 20 (1) (CPA) 2010 (A4)

[3] On the 30th January 2017 a compliance notice was served to Panacea Healthcare (Sey) Ltd for the breach of Section 20 (1) and (3) of the CPA 2010 (A5). Subsequent to the notice, a compliance visit was conducted on the 21st March 2017 to verify whether the compliance notice had been complied with (A6). It was seen and recorded that items had their prices displayed; however, it was noticed that on the receipt issued by the respondent a disclaimer stating "No Exchange or Refund" (Annex 7). This therefore may be construed as a breach of the CPA to be a false representation as a consumer has 6 months from time of delivery of the goods to return to the supplier if the goods are not fit for the purpose, not of good quality, not in good working order or defective as well as goods that are not useable or durable for a reasonable of time (having regards to use) and, at the direction of the consumer refund, replace or repair the goods. Therefore, this representation on the receipt amounts to a breach of Section 32 (i) of the CPA 2010 which states that:

*"a person shall not, in trade or commerce, in connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply or use of goods or services make a false or misleading representation concerning the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy relating to goods or services"*

[4] The commission sought to explain the statutory requirement of the law and therefore a letter was issued on the 08th May 2017 to Panacea Healthcare (Sey) LTD trading as Anse Royale Pharmacy (A8) to inform of the findings of the compliance visit and to explain the provisions of Section 42 (1) of the CPA 2010 relating to the observations made on the receipt. The commission also requested that the notice be amended or removed from the receipt and that the action taken be communicated to the Commission by 19th May 2017.

[5] On the 19th May 2017, a follow up call was made to the Panacea Healthcare (Sey) Ltd (Anse Royale Pharmacy) to check if the notice on the receipt had been removed or amended and it was again agreed that the notice of no exchange or return will be removed.

[6] On 27th July 2017 an off-duty FTC officer was provided with a receipt at Anse Royale Pharmacy. The receipt was disclosed to the Commission and it was observed that the disclaimer had been amended to "refund or exchange on electricals only" (A9). This, the Commission determined that it was still not in accordance with the statutory requirements as Section 42 (1) of the CPA 2010 which states that a consumer has the right for a remedy either in the form of repair, replacement or refund and this should be at the direction of the consumer. Anse Royale Pharmacy was therefore still not in

compliance with the CPA 2010 as it sells products other than electrical appliances, that being body lotion, shampoo, manicure sets amongst others. According to the Chief Pharmacist at the Pharmaceutical Services Health Care Services, medicines are to be excluded because there is a no return policy for medicines (A10). A compliance notice was therefore served on the 11th August 2017 for the breach of Section 32 (i) of the CPA 2010 (A11).

[7] Following this, a compliance visit was conducted and it was revealed that no changes had been made to the receipt to amend the notice of "refund or exchange on electricals only" (A12). Therefore, Anse Royale Pharmacy had failed to comply with the compliance notice issued 11th August 2017., furthermore, during that visit the officers of the FTC saw a policy notice in the shop in which one point read; *"we do not display our prices because all our invoices are itemized, and the medications are out of the patient's direct line of sight"* (A12). The officers explained to the owner that this point on their policy should be removed as it was a breach of section 20 (1) of the CPA 2010 read with section 20 (3) of the CPA 2010, due to the fact that there are other goods on sale at the premise's asides from medications. It is important to note that the Anse Royale pharmacy had previously been found to be in breach of Section 20 of the CPA 2010, whereby a compliance notice had been served in January 2017(A5), thus, they were already warned about the section which they had breached again.

[8] Point 3 of their policy stated; *"we cannot refund or exchange medications, or any other sealed items…"*.

The Commission explained to the respondent that this should only apply to medications however, the phrase any other sealed items should be removed as goods "apart from medications" can be refunded, exchanged or repaired despite having been a sealed item. This is contrary to the implied warranties of Section 42 (1) (a) (b) (c) and (d) of the CPA 2010. This disclaimer has the effect of limiting the right to remedy to a refund or exchange only. This is misleading and a breach of Section 32 (i) of the CPA 2010.

[9] The officers also found that point 4 of the policy stated; "any *electrical items that is found to have a Factory Defect only will be exchanged within a reasonable period of time*".

Section 42 of the CPA 2010 provides that goods with factory defect be remedied as per the consumers direction within 6 months of delivery of the goods. However, the Anse Royale pharmacy is again limiting the right to remedy to its consumers to an exchange only. This is again misleading and a breach of Section 32 (i) of the CPA 2010 as Section 42 (1) of the CPA 2010 makes provision that a remedy can either be in the form of a repair, replacement or refund. Furthermore, the remedy should be at the direction of the consumer.

[10] Subsequently, the Commission filed a case before the Board of Commissioners for the contravention of the Consumer Protection Act, 2010, namely: -

- Section 32 which provides that:

*"A person shall not, in trade or commerce, in connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply or use of goods or services-*

*i. Make false or misleading representation concerning the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy relating to goods or services.*

Section 42 which provides that:

*"The consumer may within 6 months after delivery of the goods, return the goods to the supplier, without penalty and at the supplier's risk and expense, and the supplier shall refund to the consumer any costs associated with the use, installation or delivery of goods, and at the direction of the consumer-*

*i. Unless the goods are not reasonably fit for the purpose referred to in paragraph (a) or (b), repair the goods within 60 days of the return of goods to the supplier*

*ii. Replace the goods within 7 days of the return of the goods to the supplier or such longer period as agreed by the parties or*

*iii. Refund to the consumer the price paid for the goods, within 24 hours of the return of the goods to the supplier."*

[11] This matter was called before the Board of Commissioners on 18th September 2018 for a hearing. Ms. Priyanka Ramruchaya, Legal Officer of the Fair-Trading Commission appeared on behalf of the Commission and one of its directors, Mrs. Tania Shulz-Allcorn and her representative Mr. Elvis Chetty appeared as the respondent.

[12] The first witness to becalled by Ms. Ramruchaya was Mrs. Fredericka Confait-Poussou, Senior Analyst in the Market Surveillance Department for the Fair-Trading Commission, who testified under the oath that her knowledge of what had transpired during the investigation and that she was well aware of the facts. She stated that the letter issued to the respondent by the Commission following the breach of the CPA 2010, was objected to by the respondent. She explained that the letter was issued as a measure to address the breach of the Section 32 (i) of the CPA 2010.

Mrs. Confait-Poussou stated that, the receipt was dated on the 27th July 2017, and was adduced into evidence to prove that the respondent was in breach of Section 32 (i) of the CPA 2010 (CE3). A compliance notice was issued to the respondent as another measure

to address the above issue. However, following objections by counsel, the compliance notice was not adduced.

[13] The second witness to be called by Ms. Ramruchaya was Ms. Rhonda Barreau, who testified under oath that she conducted a follow up inspection at Anse Royale pharmacy on the 08th September 2017, to verify if the respondent had complied with the compliance notice that had been previously issued. A compliance form filled in by Ms. Barreau was then adduced as an exhibit to confirm the above (CE4).

[14] Ms. Barreau gave evidence before the Board of the findings of the compliance visit. Namely, the fact that the receipt still had a disclaimer "*refund of exchange on electricals only*", hence the respondent had not complied with the compliance notice that had been previously issued.

[15] There was a notice in the pharmacy with the respondent's policy's, a photo which could not be adduced following the counsel's objection since Ms. Barreau did not take the photo. It is submitted though that Ms. Barreau was present during the taking of this photo, and her oral evidence suffices.

[16] Ms. Barreau testified that after the compliance inspection she compiled all the findings from all the inspections conducted at the respondent's premises in the report. In conclusion, she explained that in the said report which she made reference to during the hearing, by stating that;

"*the respondent was found to be in breach of Section 32 (i) of the CPA 2010 and was informed of the elements of Section 42 of the CPA 2010 through a letter to assist in understanding the need to amend or remove the return policy on its receipt. However, the notice on the receipt was amended to cover specific items only, so the respondent was still in breach of the stated section of the CPA 2010 and a compliance notice was then served to the respondent requesting it to comply with the law but this was still not done*".

[17] In her submissions 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 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; (f) the degree to which the respondent co-operated with the Commission."*

[18] In her conclusion she stated that although their main documentary evidence could not be adducted, other documentary evidence that was adduced can still be relied upon to show that there was a breach of the CPA 2010 and even though the Commission tried to address the issue there were still a further breach on the part of the respondent, showing a refusal to comply such as the compliance form and attached receipt dated the 21st March 2017 (CE2) can be used to show that the respondent was found to be in breach of Section 32 (i) of the CPA 2010, by misleading consumers as to their statutory warranty. The receipt dated 27th July 2017 (CE3), can then be used to show that the disclaimer had been amended to include refund or exchange on electricals only, and as stated above given that the respondent had other products on sale apart from electricals it was still misleading consumer as to their remedies in relation to other goods in the pharmacy.

[19] The observations in the compliance notice form dated the 08th September 2017 (CE4), can be used to indicate that the respondent was found to be in further breach of the CPA 2010. Similarly, the witnesses' oral evidence under oath can be taken into account by the Board to prove the above stated breach of the CPA 2010.

[20] Ms. Ramruchaya submitted that although there were some procedural irregularities that arose, leading to some evidence not being admitted, the Boards focus should not be shifted from the fact that there was a breach of Section 32 (i) of the CPA 2010, and although more than one measure was taken by the Commission to address it, the respondent still failed to comply.

[21] She submitted, based on the above, that the amendment of the receipt to include refund or exchange on electricals only (CE3) was still not in line with Section 32 (i) of the CPA 2010 as it still was a false representation to consumers concerning the warranty in relation to other products displayed for sale in the pharmacy, apart from the electricals and medicines.

[22] Through cross examination by counsel for the respondent, Mrs. Confait-Poussou was also asked whether she expected the respondent to return or exchange medicines. She explained that the law does not specify whether it applies to medications, it just states goods. She stated that however that the public health was contacted on the issue of medicines and FTC was informed that there should be a no return policy for medications.

[23] Therefore, the fact that a no return policy for medications is the accepted norm this was not being disputed by the FTC, hence why it was not included in the notice of complaint. The issue is with the fact that the respondent had other sealed goods on sale apart from medications and electricals in its pharmacy and that the disclaimer on

the respondent's receipt did not properly reflect that. So, what is presently before the Board is a case where the respondent limited consumers rights to remedy of other goods on sale in its pharmacy (apart from medicines and electricals).

[24] After closing her case, Mr Chetty, made a submission of no case to answer by stating that the FTC had failed to establish a prima facie case before the Board of Commissioners.

[25] The Board has deliberated on the matter and considered all the evidence adduced before it. The Board takes notice of the two receipt which had a disclaimer "refund of exchange on electricals only" which was found to be in breach of Section 32 (i) of the CPA 2010, by misleading consumers as to their statutory warranty. Based on that alone the Board concluded that the respondent had breached Section 32 (i) of the CPA 2010. The Board also agrees with the notion as supported by the Ministry of Health that it is the normal practice in this industry for there to be a no return policy for medicine and that in this present case this is not an issue.

[26] With regards to section 20 (1) of the CPA 2010 read with Section 20 (3) of the CPA 2010, the Boards find that the evidence of the compliance visit does disclose a breach of that section, although the photographic evidence was objected to the Board relied on the oral evidence of the officer and does conclude that there was a breach of that section.

[27] Based on the above conclusion, the Board of Commissioners hereby finds the respondent, Panacea Healthcare (Sey) Ltd, trading as Anse Royale Pharmacy, to be in contravention of section 32 (i) and section 20 (1) read with Section 20 (3) of the Consumer Protection Act, 2010.

[28] The Board, in deciding on a suitable penalty, has considered the mitigating factors put forth by the respondent as well as the submissions of Ms. Ramruchaya for the Commission. The Board also takes notice that the volume of items found in contravention 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 the following manner:

- **For the contravention of Section 32 (i) read with section 42 the sum of SCR 3,000;**

- **For the contravention of Section 20 the sum of SCR 3,000;**

**All payments are to be made by the respondents at the office of the Fair-Trading Commission not later than Thirty (30) calendar days from the date of receipt of this ruling.**

[29] 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 6th day of April, 2021.

**Mr. Victor Pool**
**Presiding**

**Mr. Michael Nalletamby**
**Commissioner**

**Mrs Jenna Thelermont**
**Commissioner**