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Fair Trading Commission
Seychelles

THE BOARD OF COMMISSIONERS

Monday 27th May, 2019

Ponnilavan Ponselvan
(trading as Vadamalaian Beoliere Supermarket)
Beoliere
Mahe

Dear Mr. Ponselvan,

RE: FTC v Ponnnilavan Ponselvan (trading as Vadamalaian Beoliere Supermarket) (CPA.INS18.28) – RULING

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 Commission 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 an offence and is liable –
>
> (a) where the person is an individual, to a fine not exceeding 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 individual, to a fine not exceeding 400, 000 rupees.

BOARD OF COMMISSIONERS
FAIR TRADING COMMISSION

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THE BOARD OF COMMISSIONERS

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

The Chairperson of the Appeal Tribunal
C/O Fair Trading Commission
3rd Floor, Block B
Unity House, Victoria

Yours sincerely,

Lalande

Laura Lalande (Miss)
Registration Officer
For: Chairperson
Board of Commissioners
Fair Trading Commission

Cc: CEO-FTC

THE FAIR TRADING COMMISSION

BEFORE THE BOARD OF COMMISSIONERS

IN THE MATTER of the Consumer Protection Act, 2010;

THE FAIR TRADING COMMISSION
V
PONNILAVAN PONSELVAN
(trading as Vadamalaian Beoliere Supermarket)

Case No: CPA/INS18/28

Complainant – Fair Trading Commission
Respondent – Ponnilavan Ponselvan

QUORUM:
Mr. Victor Pool – Commissioner (Presiding)
Mrs. Jenna Thelermont – Commissioner
Mr. Michael Nalletamby – Commissioner

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

Respondent – In person

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 20th of February, 2018, at the business premises of Ponnilavan Ponselvan trading as Vadamalaian Beloiere Supermarket located at Beoliere, 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 56 products (911 items) were being offered for sale without their prices being displayed contrary to Section 20(1) of the Consumer Protection Act, 2010. Further, 16 products (161 items) were found to be on display for sale past their expiry date contrary to Section 24 of the Act which also contravenes Section 50(1)(a) of the act by offering for sale goods which do not meet the necessary safety requirements.

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

- 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 **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 respondent appeared before the Board of Commissioners for mention on 13th November, 2018 and indicated to the Board that he had received the case docket and he will be accepting all liability in relation to the complaints filed against him before the Board. He explained that it was a mistake on his part and that since the inspection, necessary measures have been taken to remedy all the issues detected. The respondent also confirmed that he understood the provisions of the Consumer Protection Act, 2010 and the consequences of accepting the charges and prayed for leniency while assuring the Board that this incident will not recur. Ms. Priyanka Ramruchaya, Legal Officer representing the Commission moved the Board as per the notice of complaint on record in relation to the breaches and opted to file written submissions in relation to penalties.

[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 an individual, to pay a penalty of a sum not exceeding SR100,000." She submitted that when considering a fair and appropriate penalty the Board should have regard to Section 67(3)(a), (e), (f) and (g) 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; (f) the degree to which the respondent co-operated with the Commission; (g) whether the respondent had previously been found in contravention of the Act."*

[4]Ms. Ramruchaya first addressed the nature, duration, gravity and extent of the contravention. She submitted that the products observed to be expired were food items, baby products and detergents which raise serious health risk concerns to consumers who could have purchased and consumed those products. She also pointed out that the baby cream had been expired since 2016 and others several months prior to the date of inspection raising the risk of consumers purchasing and consuming those products and this also indicates the possible profit the respondent could have derived from those products and that he in fact intended to make a profit from those products given that he had not discarded them after their expiry date. This also shows that the respondent had ample time to take reasonable steps to avoid contravention of the Act. Ms. Ramruchaya also submitted that the number of items found in contravention of the Consumer Protection Act, 2010 was rather high adding to the gravity of the breaches. Ms. Ramruchaya concluded by noting that the respondent had co-operated with the Commission and accepted all liability before the Board in this matter therefore not wasting the Board's time but this should not negate from his prohibited conduct. Moreover, it should be noted that the respondent had previously been found in contravention of the Consumer Protection Act, 2010 in case number CPA.INS.090513.4 – FTC v Vadamalaian (rep by Ponnilavan Ponselvan) (2013) whereby he was fined for the contravention of Section 24 which shows that the respondent is well aware of the provisions of the Consumer Protection Act, 2010.

[4]Based on the evidence before it and the respondent's admission, the Board of Commissioners hereby finds the respondent Ponnilavan Ponselvan trading as Vadamlaian Beoliere Supermarket, to be in contravention of Section 20(1) read with Section 20(3), Section 24 and Section 50(1)(a) read with Section 50(2)(a) of the Consumer Protection Act, 2010. The Board has considered all the mitigating factors put forth by the respondent as well as the points raised by Ms. Ramruchaya in her submissions. The Board takes special notice that the respondent is a recurrent offender and the number of contraventions has increased from his previous case

before the Board to this one. The Board unanimously agrees that deterrent penalties should be imposed so as to deter future reoccurrence of non-compliance with the law. The Board hereby imposes monetary fines 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 SR40,000;**

- **For the contravention of Section 24 the sum of SR12,000;**

- **For the contravention of Section 50(1)(a) read with Section 50(2)(a) the sum of SR12,000.**

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.

Mr. Victor Pool
Commissioner
(Presiding)

Mr. Michael Nalletamby
Commissioner

Mrs. Jenna Thelermont
Commissioner