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Fair Trading Commission
Seychelles

THE BOARD OF COMMISSIONERS

Monday 27th May, 2019

Vimal and Company (Pty) Ltd
(trading as Vimal Supermarket)
Pointe Conan
Mahe

Att'n: Mr. Vimalathitan Vairasamy

Dear Mr. Vairasamy,

RE: FTC v Vimal and Company (Pty) Ltd (CPA.INS16.2) – 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.

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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,

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

THE FAIR TRADING COMMISSION

BEFORE THE BOARD OF COMMISSIONERS

IN THE MATTER of the Consumer Protection Act, 2010;

THE FAIR TRADING COMMISSION
V
VIMAL AND COMPANY (PTY) LTD
(trading as Vimal Supermarket)

Case No: CPA/INS16/02

Complainant – Fair Trading Commission
Respondent – Vimal And Company (Pty) Ltd

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

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

For the Respondent
Mr. Vimalathithan Vairasamy – Director
Mr. Vijay – Director

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 14th February, 2017 at the business premises of Vimal And Company (Pty) Ltd (trading as Vimal Supermarket) situated at Pointe Conan, Mahe, represented herein by Mr. Vimalathitan Vairasamy (the respondent). During the inspection officers of the Commission found the respondent to be in breach of Section 24 of the Consumer Protection Act, 2010 by offering for sale goods past the date of the expiry dates of those goods and Section 20(1) by displaying goods for sale without displaying a price in relation to those goods. The respondent was subsequently served with a compliance notice with instructions to rectify those breaches but during a compliance

visit conducted on the 4th of April, 2017 the respondent was found to still be in breach of Section 24 of the Act as well as being in breach of Section 19 by offering for sale goods which labels contained information not in plain language. Moreover, the Commission conducted another inspection on the 26th of September, 2017 following a tip off in relation to the sale of expired Heineken but instead the inspection yielded the observation of the further breach of Section 19 of the Act. The Commission therefore 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 **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]On the date set for mention of the matter the respondent appeared and informed the Board that after receiving the case docket and going through it he would not be contesting the complaint, instead he will be accepting all the breaches filed against him while being well aware of the consequences. The respondent prayed for leniency and assured the Board that the incident would not repeat itself.

[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 person other than an individual, to pay a penalty of a sum not exceeding SR400,000."* She submitted that when considering a suitable penalty the Board should have regard to Section 67(3)(a), (c), (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; (c) the behavior of the respondent; (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 to be in contravention of this Act."*

[4]Ms. Ramruchaya first addressed the nature, gravity and extent of the contravention. She submitted that the expired products observed during both the original and follow up inspection were food and drink items, so were the items which labels did not contain plain language observed at the follow -up inspection, hence presented a health risk to consumers who could have purchased and consumed these items which also increases the gravity of the breach. Moreover, that some of those products had been expired for 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. Further, that the original inspection was conducted on 14th of February, 2017 and a compliance notice issued shortly after with orders to comply with the Consumer Protection Act, 2010 but by the 4th of April, 2017 when the follow up inspection was conducted and further on 26th September, 2017 when another inspection was carried out a further breach of Section 24 was observed as well as additional breach of Section 19 and again further breaches of Section 19 was observed in September showing that the respondent had ample time to remedy the issues so that he would be in conformity with the law but failed to do so. Ms. Ramruchaya then went on to address the behavior of the respondent to which she submitted that the respondent refused to comply with the Consumer Protection Act, 2010 despite being well are of its provisions having been found to still be in contravention of the Act during the follow up inspections. In relation to the degree to which the respondent has co-operated with the Commission Ms. Ramruchaya submitted that the respondent admitted to all the breaches and did not waste the Board's time and that he had now rectified all the issues observed by officers of the Commission during the inspection but this should not negate the gravity of the respondent's conduct. Ms. Ramruchaya also noted that the respondent had previously been found to be in contravention of the Consumer Protection Act, 2010 by the Board of Commissioners in the case of *Vimalathitan Vairasamy (trading as South Mini Market – CPA/INS17/129)* whereby a fine was imposed on him.

Furthermore, the Commission has filed a similar case against this same respondent in relation to another business premises currently before the Board for adjudication. Ms. Ramruchaya urged the Board to take all of these factors into consideration and impose a deterrent penalty pursuant to Section 67(1) of the Consumer Protection Act, 2010 so as a mean to prevent future contraventions.

[5]Based on the evidence before it and the respondent's admission the Board of Commissioners hereby finds the respondent, Vimal and Company (Pty) Ltd, trading as Vimal Supermarket, represented herein by Mr. Vimalathiatan Vairasamy, to be in contravention of Section 19(1)(a) read with Section 19(2)(a), Section 24 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. Ramruchaya. The Board takes note that this is the third time that the respondent had been found to be in contravention of the Consumer Protection Act, 2010 by this Board. Again in this case, the respondent has accepted all the breaches filed against him and did not waste the Board's time. The Board also takes note of the nature of these breaches as well as the behavior of the respondent towards the Commission and the Consumer Protection Act, 2010. The respondent being a recurrent offender is well aware of the provisions of the Act and the consequences of breaches these provisions but yet continues to reoffend. The Board finds this behavior to be unacceptable and the respondent is directed to cease this behavior immediately. 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 SR12,000;**

- **For the contravention of Section 24 the sum of SR18,000;**

- **For the contravention of Section 50(1)(a) read with Section 50(2)(a) the sum of SR18,000.**

All payments are to be made by the respondent at the office of the Fair Trading Commission not later than sixty (60) calendar days from the date of receipt of this ruling

[6]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 ..... day of May, 2019.

Ms. Karen Domingue
Chairperson

Mrs. Jenna Thelermont
Commissioner

Mr. Michael Nalletamby
Commissioner

Mr. Victor Pool
Commissioner