THE FAIR TRADING COMMISSION

BEFORE THE BOARD OF COMMISSIONERS

IN THE MATTER of the Consumer Protection Act, 2010;

THE FAIR TRADING COMMISSION
VS.
CBJ MINIMARKET
(Rep herein by Mr. Cliff Pool)

CPA.INS12.P004

Complainant: The Fair Trading Commission
Respondent: CBJ Minimarket
(Rep by Mr. Cliff Pool)

QUORUM
Mrs. Vijaykumari (Dolly) Tirant – Commissioner (Chairperson)
Mr. Philippe Chong-Seng – Commissioner
Mrs. Jenna Thelermont – Commissioner

For the complainant
Mr. Georges Tirant – Director for Consumer Protection Affairs (FTC)
Mr. Jude Bistoquet – Enforcement Officer (FTC)

For the respondent
Mr. Cliff Pool

Case presented on behalf of the complainant by Mr. Georges Tirant – Director for Consumer Protection Affairs (FTC)

RULING

[1]In accordance with Section 4(3)(a) of the Fair Trading Commission Act, 2009 inspections of goods were carried out at the premises of CBJ Minimarket, the respondent in this matter, on the 18th July, 2012 after the Commission received a complaint alleging that the shop owner was selling expired goods (See Annex 2). The objective of the inspection was to ensure compliance with the provisions of the Consumer Protection Act, 2010. During

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the inspection the respondent was found to be in contravention of Section 24(1) of the Consumer Protection Act, 2010 by being in possession of and offering to sell a total of forty-four different products past their expiry dates (See Annex 3). Moreover, amongst the forty-four products two were rendered unsafe in that fifty-one items of Al Mithali Hot Sauce did not bear any understandable language and two cans of mushrooms had inflated. This constitutes an additional contravention of Section 50(1) of the same Act which provides that *"a person shall not in trade or commerce supply, expose, offer or agree to supply any consumer, or possess, goods which fail to comply with the general safety requirement"* as well as Section 19 which states *"where a person is required in terms of this Act or any other written law to ... display a notice, document or other visual representation to a consumer, that person shall ... display such notice, document or visual representation – in the form prescribed by this Act or any other written law; or in plain language, if no form has been prescribed."* Those goods, amounting to a combined retail value of SR.11,804.59/-, were listed (See Annex 3a – 3e), seized, placed in a carton box and the respondent served with Prohibition Notice requiring immediate disposal of the said products (Annex 4). The Board takes note that to date no evidence of disposal has been produced to the Commission.

[2]The matter was heard before the Board of Commissioners on Wednesday 24th October, 2012 and Mr. Georges Tirant, the Director for Consumer Protection Affairs presented the findings of the Fair Trading Commission to the Board and recommended that the Board imposed penalties as set under Section 67(1) of the Consumer Protection Act, 2010. On the other side Mr. Cliff Pool appearing for the respondent accepted responsibility for the incident in that he was indeed found in possession of those items. He was very vocal in expressing his unconcealed discontent with certain wholesalers whom he described as very dishonest in that they trick retailers by delivering goods with different expiry dates in the same carton with appropriate dates at the top and unsuitable dates concealed at the bottom. This in turn misleads retailers like himself when stacking their shelves. The respondent went on to explain that rotations of goods in his shop are done every two months because with a high number of clientele products are sold quickly so it is unlikely that goods would have time to expire on the shelves but because of the above-mentioned issue he has found himself facing this predicament on numerous occasions. Mr. Pool added that he has not disposed of the goods as required as he claims to be keeping them as proof to return to the wholesaler he had purchased them from precisely for this reason. With regards to the contravention of Section 19 the respondent claimed that he was not aware that selling goods that do not bear an understandable was against the law but now that he does this act shall not be repeated. Mr. Pool concluded his testimony by assuring the Board that presently there were no expired goods in his

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shop, that he now checks every product before putting them on display to the public to ensure that all the products being offered on sale are in conformity with the law.

[3]We have studied all the evidence placed before us and have taken into consideration the recommendations of the Commission as well as the testimony of the respondent herein and find that the respondent was indeed in contravention of the following sections of the Consumer Protection Act, 2010;

- Section 19 by having goods which were not in a plain and understandable language;
- Section 24(1) by offering to sell goods past their expiry dates; and
- Section 50(1) by supplying goods which do not comply with the general safety requirement.

[4]It is our considered view that although the respondent has been co-operative towards the Commission and setting up new measures to ensure compliance with the provisions of the law we cannot ignore the fact that the law has been contravened. Consequently, in accordance with Section 67(1), we shall impose penalties on the respondent in the following manner;

- **For the contravention of Section 19 a fine in the sum of SR.3, 000/-.**
- **For the contravention of Section 24(1) and Section 50(1) a fine in the sum SR.10, 000/-.**

[5]The abovementioned fine totalling **SR.13, 000/- is to be paid not later than thirty (30) days from the date of this ruling**. Additionally, the respondent is ordered to dispose of all the seized items forming part of this case and provide proof of such disposal to the Commission not later than fifteen days from the date of this ruling. We so order.

[6]The respondent is free to appeal against this decision.

Ruling pronounced by us on this 28th day of November, 2012.

Mrs. Vijaykumari D. Tirant	**Mr. Philippe Chong-Seng**	**Mrs. Jenna Thelermont**
Commissioner	**Commissioner**	**Commissioner**
(Chairperson)		