THE FAIR TRADING COMMISSION

BEFORE THE BOARD OF COMMISSIONERS

IN THE MATTER of the Consumer Protection Act, 2010;

THE FAIR TRADING COMMISSION **Complainant**

VS.

CORGATE ESTATE **Respondent**
(Rep herein by Mrs. Roselie Padayachy)

CPA.INS.090713.1

QUORUM:
Mr. Colin Jean-Louis – Chairperson
Mr. Philippe Chong-Seng – Commissioner
Mrs. Jenna Thelermont – Commissioner
Mr. Michael Nalletamby – Commissioner

For the Complainant
Ms. Emily Mousbe – Legal Officer (FTC)

For the Respondent
Mr. Michael Padayachy

RULING

[1]Pursuant to powers granted under Section 33(1)(j) of the Fair Trading Commission Act, 2009 a routine inspection of goods was carried out by the Fair Trading Commission at Corgate Estate Shop, a licensed retailer, on the 9th of July, 2013 to ensure compliance with the provisions of the Consumer Protection Act, 2010. (See Exhibits 1 and 2). Corgate Estate Shop, now respondent herein, was found to be displaying for sale forty-four items at a date later than the expiry date of those items contrary to Section 24 of the Consumer Protection Act, 2010. Most of the goods had been expired only a few days prior to the inspection (See Exhibit 3).

[2]The matter appeared before the Board of Commissioners on Wednesday 11th September, 2013 for hearing. One Mr. Michael Padayachy appeared on behalf of the respondent. The Board established from Mr. Padayachy that he was the son of Mrs. Roselie Padayachy, who is on record as the owner of the shop and that he had recently taken over the business due his mother's ill health. Being satisfied that the respondent was properly represented the hearing proceeded. Ms. Emily Mousbé, Legal Officer, appeared on behalf of the Commission went on to present the case on behalf of the complainant and outlined the relevant contravention. She concluded by noting that the respondent was a first offender and requested Board to consider a suitable penalty as set out in Section 67(1) of the Consumer Protection Act, 2010 while having regards to Sections 67(3) and 68 of the same Act.

[3]Mr. Padayachy explained that with all the ins and outs of reopening the shop the dates on these few items were overlooked. One particular product was put on the shelf by mistake by one of the casual workers he had hired to help him set up the shop. He added that operating a shop in such a tough neighbourhood is not easy and being alone in the shop he admits that this incident was an oversight on his part. Moreover, Mr. Padayachy brought to the attention of the Board that small retailers like himself face many difficulties one being wholesalers selling to them items that have very short shelf lives. Because these items come in bulk it is not always plausible to check them one by one at the time of delivery. It is when the boxes are opened that they discover the close expiry dates. As conclusion he apologized for his behaviour and assured the Board that it will not be repeated.

[4]The Board of Commissioners has considered all the evidence adduced before it and hereby finds that although Corgate Estate Shop was found to be offering expired goods for sale Mr. Padayachy was sincere in his deposition and the Board appreciates his predicaments. The Board takes due cognisance of the fact that the expired goods were few compared to other cases and the expiry date was not far back, only a few days, and was unanimous in deciding that no fine shall be imposed on the respondent. However, this should not be mistaken as a free pass for the respondent. Therefore, Corgate Estate Shop is hereby ordered to immediately cease such behaviour and to comply with the relevant laws governing retailing businesses and its officers are to take necessary steps to ensure such compliance. The respondent is further ordered with a strong warning to be more prudent when engaging into the daily running of his business to make certain that such behaviour is not repeated. **The respondent is reminded that failure to comply with an order or direction of the Commission is an offence punishable by a fine or imprisonment or by both such fine and**

imprisonment (See Section 70 of the Consumer Protection Act, 2010). We rule accordingly.

[5]The parties are free to appeal against this ruling (See Section 44 of the Fair Trading Commission Act, 2009).

Pronounced by us on this ....16th day of October, 2013.

Mr. Colin Jean-Louis
Chairperson

Mr. Philippe Chong-Seng
Commissioner

Mrs. Jenna Thelermont
Commissioner

Mr. Michael Nalletamby
Commissioner