THE FAIR TRADING COMMISSION

BEFORE THE BOARD OF COMMISSIONERS

IN THE MATTER of the Consumer Protection Act, 2010;

THE FAIR TRADING COMMISSION
VS.
GLOBAL INTERNET CAFÉ
(Represented by Mr. Frank Elizabeth)

CPA.11.187.99

Complainant: The Fair Trading Commission
Respondent: Global Internet Café

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

In Attendance:
Mr. George Tirant – Director of Consumer Protection Affairs (FTC)
Ms. Chantale Barallon – Senior Legal Officer (FTC)
Ms. Helene Marie – Secretary (FTC)

Case convened for hearing on Wednesday 12th October, 2011, presented on behalf of the complainant by Ms. Chantale Barallon (Senior Legal Officer – FTC)

RULING

Introduction

[1]Subsequent to a formal complaint being initiated by the Fair Trading Commission (complainant) pursuant to Section 5 of the Consumer Protection Act, 2010, against Global Internet Café (respondent) on 7th September, 2011 as per Exhibit A2 being the complaint form, the hearing was scheduled at 9:00 am on Wednesday 12th October, 2011.

VTirant PCS JH

At 9:10 am a letter was received by Mrs. Jenna Thelermont (Commissioner) from Mr. Frank Elizabeth, an attorney-at-law representing the respondent, claiming that he is unable to attend the hearing due to a conflicting hearing in the Supreme Court at the same date and time. The Board of Commissioners (B.O.C.), after a short deliberation, decided to proceed with the hearing despite the absence of Mr. Elizabeth in view of the fact that he had failed to give sufficient notice of his proposed absence. This is in accordance with Rule 12 of the Fair Trading (Procedure for Conduct of Hearings) Rules, 2011. Rule 12(1) states;

> *"**12(1).** Where on the day fixed for any particular matter whether before the Chief Executive Officer or the staff of the Commission at the stage of investigation or at a hearing before the Board, including the day of the continuation of a hearing fixed on adjournment, any party to the proceeding who was present when the date was fixed and was informed of such date or who was served with a notice of such date, does not appear, the proceedings may be continued in the absence of that party and the Chief Executive officer or Board as the case may be, may issue any order, direction or notice as he or it considers appropriate."*

The complainant's case

[2]The Board heard all the evidence of the case presented by Miss Chantale Barallon of the Fair Trading Commission which was, in its first limb, to the effect that the respondent was in contravention of Sections 30(1), 31(a) and 32(a) of the Consumer Protection Act, 2010 relating to charges of misleading advertising. The aforementioned sections provide that:

> ***"30.(1)** 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, engage in conduct that is, or is likely to be, misleading or deceptive.*
>
> ***31.** 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 of goods or services, engage in conduct that is liable to mislead or deceive the public as to –*

(a) the nature, manufacturing process, characteristics, suitability for a purpose, or quantity of goods;

32. *A person shall not, 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 of goods or services –*

(a) falsely represent that goods are of a particular standard, quality, value, grade, composition, style or model or have a particular history or a particular previous use;"

[3] Predominantly the complainant's case is that the respondent, a business trading under the registered name of Global Internet Café, registered under the Registration of Business Name Act, 1972 on August 30th, 2005 (See Exhibit 1), was engaging in such conduct, in relation to promotional material being advertised by the respondent, that was misleading, deceptive and falsely represented. The same promotion was advertised three times in issues of the Seychelles Nation of Saturday 19th of March, Wednesday 27th April and Tuesday 2nd of August, 2011 (Exhibits A3, A4 and A5 respectively). Via letter dated 12th August, 2011 (Exhibit A6) the complainant advised the respondent of the matter and enclosed a formal undertaking with an invitation to enter into the same in accordance with Section 75 of the Consumer Protection Act, 2010 as a resolution of the contravention. No response was received from the respondent. Consequently, officers of the Commission visited the premises on 7th of September, 2011 where they observed a promotional board outside the respondent's shop offering to supply Nokia E71, the same promotional product appearing in the advert in the Seychelles Nation. Upon further investigation the officers were made aware that the product being advertised was not the one on sale in that they were providing Nokia E71i only (See Exhibit A7). The following day the respondent was issued with a Compliance Notice (Exhibit A8) together with a letter (Exhibit A9). On September 15th, 2011 officers of the Commission photographed the same promotional board, adduced as Exhibit A11, outside the respondent's business premises showing a clear disregard to the Commission's instructions. The complainant also brought to the attention of the Board that since the enactment of the Act in addition to the three complaints comprising the subject matter of this case two other complaints were lodged against the respondent relating to defective equipments (See Exhibits A13 and A14).

[4] As its second limb the complainant's case is claiming that the respondent is liable under Section 72(5) of the Consumer Protection Act, 2010 by not complying with the

Compliance Notice (Exhibit A8) issued by the Commission on 8th September, 2011 in pursuance to Section 72(1), a liability punishable under section 70 of the same Act. The formers are reproduced.

> *"72(1) Subject to subsection (2), where the Commission has reasonable grounds to believe that a person has engaged in prohibited conduct, the Commission may issue a compliance notice in the prescribed form to that person.*
>
> *72(5). A person to whom a compliance notice has been issued, who fails to comply with the notice commits an offence and is liable on conviction to be sentenced under section 70."*

[5]In turn Section 70 provides that;

> *"70. A person who fails or refuses to comply with an order, direction or undertaking of the Commission or order or direction of the Tribunal, commits an offence and is liable on conviction –*
>
> *(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 such fine and imprisonment.*
>
> *(b) where the person is a person other than an individual to fine not exceeding 400, 000 rupees."*

The respondent's case

[6]The only piece of evidence from the respondent is in respect of a letter written by Mr. Elizabeth, the respondent's lawyer and representative, rejecting all charges made against the company and also accusing the Fair Trading Commission of "faute", harassment and abuse of power. The Board has taken this letter into due consideration.

Conclusion and Orders

[7]After a perusal of the evidence presented the Board of Commissioners concluded that Global Internet Café, the respondent, has already been the subject of five consumer complaints related to defective equipment and out of these, 3 were related to Nokia E71i advertised and sold as Nokia E71 mobile phones. The Fair Trading Commission has given Mr. Elizabeth enough notice to rectify the misleading advertisements and also to

advise the prospective customers about the differences between the two stated Nokia models. We therefore find that the charge of misleading advertising is valid. As a result it is hereby ordered that Global Internet Café immediately ceases this practice.

[8]Moreover, we also find that the respondent has committed a further offence as per Section 72(5) having disregarded the compliance notice issued to it by the Fair Trading Commission. To this end the Board of Commissioners has decided to enforce Section 67(1), 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 –(a) in the case of an individual, to pay a penalty of a sum not exceeding SR100,000; or (b) in the case of a person other than an individual, to pay a penalty of a sum not exceeding SR400,000"*, and impose a **fine of Rs. 5, 000/- on Global Internet Café as a deterrent fine to be paid thirty (30) days from the date of this ruling.** We so order.

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

Pronounced by us on this ....12th..... day of .....December....., 2012.

Mrs. Vijaykumari (Dolly) Tirant
Commissioner
(Chairperson)

Mr. Philippe Chong-Seng
Commissioner

Mrs. Jenna Thelermont
Commissioner