THE FAIR TRADING COMMISSION

BEFORE THE BOARD OF COMMISSIONERS

IN THE MATTER of the Consumer Protection Act, 2010;

THE FAIR TRADING COMMISSION
VS.
MAS SUPERMARKET (PTY) LTD
(Rep herein by Mr. Jason Padayachy)

Case No: CPA.INS.14.0092

Complainant – Fair Trading Commission
Respondent – Mas Supermarket (Pty) Ltd

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

For the Complainant
Mr. Trevor Louise – Legal Officer (FTC)

For the Respondent
Mr. Jason Padayachy

RULING

[1]Pursuant to Section 4 and Section 33(1)(j)of the Fair Trading Commission Act, 2009 the Fair Trading Commission (the Commission) conducted a routine inspection at the business premises of MAS Supermarket (Pty) Ltd, a licensed retailer, situated at Anse Kerlan, Praslin (See CE1), on the 1st of August, 2014 (See CE2) MAS Supermarket (Pty) Ltd, now respondent herein, was found to be in contravention of Section 19(1) of the Consumer Protection Act, 2010 which states *"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 – (a) in the form prescribed by this Act or any other written law; or (b) in plain language, if no form has been*

prescribed" by displaying for sale eighty-six (86) items which labels were not in a plain and understandable language which in this instance is interpreted to be the three national languages (See CE3). Additionally, the respondent was found to also be in contravention of Section 24(1) of the same Act 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 those goods"* by offering for sale twenty-seven (27) items at a date later than the expiry date of those items. Those goods accumulated a retail value of SR. 774.90 (See CE4). The respondent was served with a compliance notice and was directed to cease the above conduct and moreover was advised to obtain translation script from suppliers and to repackage the said goods and also to remove the expired goods from the shelves for immediate disposal (See CE5). The respondent was issued with a prohibition notice pursuant to Section 52 of the Consumer Protection Act, 2010 (See CE6). Armed with these facts the Commission filed a case before the Board of Commissioners for the contravention of Section 19(1) and Section 24 (1) of the Consumer Protection Act, 2010.

[2]The case was heard before the Board of Commissioners on Wednesday 15th October, 2014 duly attended by all parties. Mr. Trevor Louise, Legal Officer, presented the Commission's findings and urged the Board to consider penalties set out in Section 67(1) of the Consumer Protection Act, 2010 while having regards to Section 67(3) of the same Act

[3]Mr. Padayachy, representing the respondent intimated that they usually check all the goods being offered for sale but they must have missed those few that had expired. Moreover, he indicated that when ordering goods from suppliers on Mahe they are not made aware of the language contained on the products. It is only on delivery that they discover that some items do not contain the prescribed languages and it is negligence on the part of his staff who did not know that they were not allowed to offer these goods for sale. The respondent produced a document from the Public Health Authority to say that he disposed of those goods (RE1) although the Board noticed that the document is dated 17th April, 2014 clearly months before the Commission's inspection and it did not contain any of the items identified by officers of the Commission. To conclude the respondent apologised for the incident and assured the Board that this would not be repeated.

[4]The Board of Commissioners deliberated on the matter and hereby finds the respondent, MAS Supermarket (Pty) Ltd, represented herein by Mr. Jason Padayachy, to be in contravention of Section 19(1) and 24(1) of the Consumer Protection Act, 2010. When deciding on a suitable penalty the Board has taken several factors into

account including the fact that despite being aware of the unlawfulness of his actions the respondent has failed to change his behaviour (See RE1). **After due consideration the Board of Commissioners shall hereby impose monetary fines on the respondent in accordance with Section 67(1) of the Consumer Protection Act, 2010 in the following manner:**

- **For the contravention of Section 19(1) – SR.3,000;**
- **For the contravention of Section 24(1) – SR.3,000.**

Payments are to be made to the offices of the Fair Trading Commission not later than thirty (30) days from the date 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 so order.

Pronounced by us on this 14th day of January, 2015.

Mr. Philippe Chong-Seng
Chairperson

Mrs. Jenna Thelermont
Commissioner

Mr. Michael Nalletamby
Commissioner