THE FAIR TRADING COMMISSION

BEFORE THE BOARD OF COMMISSIONERS

IN THE MATTER of the Consumer Protection Act, 2010;

THE FAIR TRADING COMMISSION
VS.
MARSHA NAIDOO
(Trading as Organic Life)

Case No: CPA/INS16/80

Complainant – Fair Trading Commission
Respondent – Mrs. Marsha Naidoo

QUORUM:
Ms. Karen Domingue – Chairperson
Mr. Philippe Chong-Seng – Commissioner
Mrs. Jenna Thelermont – Commissioner

For the Complainant
Mrs. Sylvie Faure – Senior Legal Officer (FTC)

Respondent – In person

RULING

[1]The Fair Trading Commission conducted an inspection, pursuant to Section 33(1)(j) of the Fair Trading Commission Act, 2009, on the business premises of Mrs. Marsha Naidoo trading as Organic Life situated at Eden Plaza, Eden Island, on the 13th of December, 2016 whereby the business was found to be in contravention of Section 24 of the Consumer Protection Act, 2010 by offering for sale 106 items past their expiry dates. The Commission filed a case before the Board of Commissioners for the contravention of Section 24(1) of the Consumer Protection Act, 2010, which states that;

> **"24(1)** *"A person shall not offer to supply, display or supply any particular goods at a date later than the expiry date of the goods."*

[2]The respondent was served with the case docket and summoned to appear before the Board of Commissioners on the 24th of May, 2017. The respondent appeared and through her representative, Mr. Kirschlee Naidoo, informed the Board that she would not be contesting the breach. Mr. Naidoo went on to explain that they are a small business who ordered their items bulk and the suppliers would sell them products with different expiry dates and not having checked each item one by one some of them ended up on the shelf. He added that the items observed by officers of the Commission have been disposed of and now they are more selective with the items they order and they now check each product one by one when it is going on the shelves. Mr. Naidoo assured the Board that although those products should not have been on offer for sale they did not pose any danger to human health. He also added that this incident was not intentional and prayed that instead of a fine they be educated as to the requirements of the Consumer Protection Act so that such incidents do not repeat itself. The Board took note of Mr, Naidoo's submission and instructed the Commission to conduct a follow up visit at the respondent's premises to ensure that the said expired products had indeed been removed before judgment is entered. The parties were to reappear before the Board on the 31st of May, 2017.

[3]The case was called on the 31st of May and Mrs. Sylvie Faure, Senior Legal Officer of the Fair Trading Commission informed the Board that the Commission duly conducted a follow up visit at the business premises of Ms. Marsha Naidoo on the 30th of May, 2017 and based on the compliance form there was no indication that the expired products previously observed were present on the shelf that day although three other items were found on offer for sale past their expiry dates. Mrs. Naidoo who was present in person reiterated that the previous products have been disposed of and that this new incident was an oversight on their part given the other items in that batch expired in August, 2017 save for those three which they must have missed. The Board granted the Commission time to file the necessary documentation relating to the follow up visit. The parties were summoned to reappear before the Board on the 19th of July, 2017. When the case was called the respondent was absent. Mrs. Faure moved that a judgment by admission be entered against the respondent. Subsequently, Mrs. Faure filed written submissions in support of her case for consideration by the Board. Mrs. Faure prayed that a reasonable penalty be imposed while having regard to the fact that the respondent has admitted to the breaches. Mrs. Faure also submitted that evidence will show a cavalier approach to compliance with the Consumer Protection Act, 2010 on the part of the respondent given the fact that different breaches were observed on different occasions by the Commission even after a commitment was made to the Board itself, officers of the Commission still picked up issues on the last compliance visit recommended by the Board.

[4]The Board has deliberated on the matter and based on her own admission the Board hereby finds the respondent, Mrs. Marsha Naidoo, trading as Organic Life, to be in contravention of Section 24(1) of the Consumer Protection Act, 2010. Consequently, the Board of Commissioners shall therefore impose a fine pursuant to Section 67(1) of the Consumer Protection, Act 2010. In deciding on a suitable penalty, the Board has taken into consideration all the circumstances of the case, including the submissions made by complainant, the mitigation made by the respondent as well as provisions of Section 67(3) of the Act. The Board is mindful of the respondent's behaviour in that she did not waste the Board's time by accepting the breaches and has exhibited some form of the compliance with the Act although not completely. At the same time the Board takes notice of the fact that the respondent's premises have been inspected on more than one occasion and during each inspection officers of the Commission found breaches of the Consumer Protection Act, 2010. In addition, the Board takes note of the amount of expired items found and its approximate retail value being over SR.8,700 had these items been sold to the public. Accordingly, the Board **imposes a fine for the contravention of Section 24(1) of the Consumer Protection Act, 2010 in the sum of SR. 10,000 to be paid by the respondent, Mrs. Marsha Naidoo, to the office of the Fair Trading Commission not later than sixty (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 rule accordingly.

Pronounced by us on this 20th day of February, 2018.

Ms. Karen Domingue
Chairperson

Mr. Philippe Chong-Seng
Commissioner

Mrs. Jenna Thelermont
Commissioner