THE FAIR TRADING COMMISSION

BEFORE THE BOARD OF COMMISSIONERS

IN THE MATTER of the Consumer Protection Act, 2010;

THE FAIR TRADING COMMISSION
VS.
SAN XIANG TRADING (PTY) LTD
(Rep herein by its Director, Mr. Chan Sing Chung)

Case No: CPA/INS16/60

Complainant – Fair Trading Commission
Respondent – San Xiang Trading (Pty) Ltd

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

For the Complainant
Ms. Karine Dick – Legal Officer (FTC)

For the Respondent
Mr. Chan Sing Chung – Director (Respondent)
Ms. Edith Wong – Attorney-At-Law

RULING

[1]The Fair Trading Commission conducted a routine inspection, pursuant to Section 33(1)(j) of the Fair Trading Commission Act, 2009, on the premises of San Xiang Trading (Pty) Ltd (Annex 1) on the 4th of August, 2016. During said inspection San Xiang Trading (Pty) Ltd (respondent) was found to be in contravention of Sections 19, 20 and 25 of the Consumer Protection Act, 2010 (Annex 2&3). A compliance notice dated 30th of August, 2016 was issued to the respondent with clear directions to eliminate those contraventions (Annex 4). A compliance visit was conducted by

officers of the Commission on the 22nd November, 2016 (Annex 7&8) whereby the respondent was again found to be in contravention of Section 19 of the Consumer Protection Act, 2010 which states as follows:-

> *"19.(1) Where a person is required in terms of this Act or any other written law to produce, provide or display a notice, document or any 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."*

[2]The Commission filed a case before the Board of Commissioners for the contravention of Section 19 of the Consumer Protection Act, 2010. The case was heard before the Board of Commissioners on the 31st of May, 2017. Ms. Karine Dick, Legal Officer of the Fair Trading Commission, presented their findings to the Board and urged that an appropriate penalty be imposed. The respondent, represented by Counsel Edith Wong, admitted to the breach. Ms. Wong went on to provide a plea in mitigation to the Board for consideration when deciding on a suitable penalty. Ms. Wong submitted that it was an omission on the part of her client to have not removed the labelling and that this was not done deliberately. She requested that the Board grants the respondent the utmost leniency given that San Xiang Trading was a first time offender and has not wasted the Board's time. Ms. Wong also offered two previous cases as assistance to the Board namely, FTC vs. MAS Supermarket (Pty) Ltd – CPA.INS.14.0092 and FTC vs. Spar Eden Island (Pty) Ltd – CPA.INS16.018.

[3]The Board of Commissioners has deliberated on the matter and has given due consideration to the evidence adduced before it as well as the respondent's own admission and subsequent mitigation. The Board hereby finds the respondent, San Xiang Trading (Pty) Ltd to be in contravention of Section 19 of the Consumer Protection Act, 2010. Consequently, the Board of Commissioners imposes a penalty pursuant to Section 67(1) Act. In doing so the Board took into account the plea of leniency on the part of the respondent and has examined the two cases quoted above. We are of the view that although precedence cannot be ignored, it is not binding as each case is dealt with on its own merits. The Board will grant leniency when it is so warranted, but the Board also has to bear in mind that the penalties it imposes must also have a deterrent effect. The Board is of the opinion that by now businesses should be aware of the laws governing their practices and the implications of breaching those laws. It is unfortunate that despite the public sensitization efforts of

the Fair Trading Commission some businesses are still in breach of the law hence the Board has to apply the law to curb the mischief which it seeks to deal with. Taking into account all the above and being mindful that the respondent is a first time offender and has not wasted the Board's time with a lengthy hearing the Board **imposes a fine in the sum of SR.4,000 to be paid** by the respondent, San Xiang Trading (Pty) Ltd, **to the office of the Fair Trading Commission not later than thirty (30)days from the date of this ruling.**

[4]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).*

[5]We rule accordingly.

Pronounced by us on this 31st day of July, 2017.

Ms. Karen Domingue
Chairperson

Mr. Philippe Chong-Seng
Commissioner

Mrs. Jenna Thelermont
Commissioner

Mr. Michael Nalletamby
Commissioner

Mr. Victor Pool
Commissioner