THE FAIR TRADING COMMISSION

BEFORE THE BOARD OF COMMISSIONERS

IN THE MATTER of the Consumer Protection Act, 2010;

THE FAIR TRADING COMMISSION
VS.
SEKAAR @ TAKAMAKA (PTY) LTD

CPA.INS13.001

Complainant: The Fair Trading Commission

Respondent: Sekaar @ Takamaka (Pty) Ltd
(Rep herein by Mr. Somu Sekaar Pillay)

QUORUM:
Mr. Colin Jean-Louis – Chairperson
Mr. Philippe Chong-Seng – Commissioner
Mr. Michael Nalletamby – Commissioner
Mr. Victor Pool – Commissioner

For the Complainant
Mr. Georges Tirant – Director for Consumer Protection Affairs (FTC)

For the Respondent
Mr. Mohamed Syed Malimary

Case presented on behalf of the complainant by Mr. Georges Tirant – Director for Consumer Protection Affairs (FTC).

RULING

[1]Pursuant to Section 4(3)(a) of the Fair Trading Commission Act, 2009 the Fair Trading Commission is empowered to keep under review commercial activities to ensure that practices that may adversely or unfairly affect the interests of consumers are prevented or terminated. Accordingly, in accordance with Section

33(1)(j) inspections of goods were carried out on 15th February, 2013 by the Fair Trading Commission (the complainant) at the business premises of one Sekaar @ Takamaka (Pty) Ltd (the respondent) of Takamaka, Mahe, a registered company directed by Mr. Somu Sekaar Pillay (See Exhibits 1, 2 & 3). During the inspection by officers of the Commission the respondent was found to be in contravention of several provisions of the Consumer Protection Act, 2010. The Commission deemed it necessary for a case against the respondent to be heard before the Board of Commissioners.

[2]A formal case was heard against Sekaar @ Takamaka (Pty) Ltd, on Wednesday 20th March, 2013. Mr. Georges Tirant, Director for Consumer Protection Affairs presented the case on behalf of the complainant. Mr. Mohamed Syed Malimary duly represented the respondent. Count 1 of the statement of offence alleges that the respondent displayed for sale four different products which their labels were not displaying information in an understandable language of Seychelles i.e. not in the three national languages namely Creole, French or English which is contrary to Section 19(1) of the Consumer Protection Act, 2010 which states that *"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 (b) in plain language, if no form has been prescribed"*. A total of forty-one (41) such items were identified and they produced a combined retail price of approximately SR. 1, 799.48/- (see Annex 6).

[3]Count 2 refers to the displaying of goods for sale without displaying to consumers a price in relation to those goods contrary to section 20(1) which provides that *"... a retailer shall not display any goods for sale without displaying to the consumer a price in relation to those goods."* To that end officers of the Commission found the respondent to be displaying for sale eighty (80) different products with no affixed prices (See Annex 7).

[4]The third count was to the effect that the respondent required customers to pay a higher price for goods than the displayed price (See Annex 8) in that it was discovered that the price of at least twelve (12) products were higher at the point of sale than what had been displayed. This is prohibited under Section 21 which provides that *"... a person shall not, in trade or commerce, as a supplier, require a*

customer to pay a price for any goods and services – (a) higher than the displayed price in respect of those goods or services ..."

[5]When presented with count 4 which read as follows *"failing to take all reasonable precautions to cover and obscure prices in respect of goods outside Seychelles in relation to the supply of goods outside of Seychelles contract to Section 21(6)(b) of the Consumer Protection Act, 2010"*, the respondent contested committing this offence and held that he had never heard mention of this offence. Mr. Tirant, the Director for Consumer Protection Affairs, reconsidered his position on the issue and decided to withdraw this count and instead to use it as a tool of education to the respondent as well as other businesses. Count 4 therefore stands withdrawn.

[6]Section 24 provides that *"A person shall not offer to supply, display or supply any particular goods at a later date other than the expiry date of the goods"*. As per count 5 the inspection revealed that the respondent, Sekaar @ Takamaka (Pty) Ltd, on the 15th February offered to supply and displayed twenty-four (24) items at a date later than its expiry date (See Annex 9(a) and (b)) which would have accumulated a combined retail price of SR.8, 184.90/-.

[7]Finally count 6 disclosed that the respondent displayed for sale eight (8) canned products which failed to meet the general safety requirements as set out by law as the cans were badly dented (See Annex 10). Mr. Tirant explained that such produce were at risk of being infected by a type of bacteria called clostridium botulinum rendering the same unsafe for consumption.

[8]Ultimately, the respondent did not contest any of the allegations brought forward by the Commission and agreed with the said contraventions. On that note the Board of Commissioners adjourned the hearing and went on to deliberate on the matter.

[9]The Board has gone through the evidence adduced before it. Based on this evidence coupled with the plea of no contest by the respondent the Board finds Sekaar @ Takamaka (Pty) Ltd to be in contravention of Section 19(b), Section 20(1), Section 21(1)(a), Section 24(1) and Section 50(1)(a), respectively, of the Consumer Protection Act, 2010. What remains now is for the Board of Commissioners to provide a suitable penalty for such contraventions. In doing so

the Board has taken into account the provisions of Section 67(3) and has had regards to the nature, gravity and extent of the contravention as well as the behaviour of the respondent. Also noting that this same respondent has previously been found in contravention of the Consumer Protection Act, 2010 (See Annex 4) the Board of Commissioners rules that the respondent be fined in the following manner in accordance with Section 67(1);

- **For the contravention of Section 19(b) – SR. 3, 000/-;**
- **For the contravention of Section 20(1) – SR. 3, 000/-;**
- **For the contravention of Section 21(1)(a) – SR. 3, 000/-;**
- **For the contravention of Section 24(1) – SR.20, 000/-;**
- **For the contravention of Section 50(1) – SR. 1, 500/-.**

[10]**All fines are to be paid to the Commission not later than thirty (30) days from the date of this ruling.**

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

[12]We so order.

Pronounced by us on this 13th day of June, 2013

Mr. Colin Jean-Louis
Chairperson

Mr. Philippe Chong-Seng
Commissioner

Mr. Michael Nalletamby
Commissioner

Mr. Victor Pool
Commissioner