THE FAIR TRADING COMMISSION

BEFORE THE BOARD OF COMMISSIONERS

IN THE MATTER of the Consumer Protection Act, 2010;

THE FAIR TRADING COMMISSION
VS.
SHEILA'S SHOP
(Rep herein by Mrs. Sheila Monthy)

CPA.INS.060613

Complainant – Fair Trading Commission
Respondent – Sheila's Shop

QUORUM:
Mr. Victor Pool – Chairperson
Mrs. Jenna Thelermont – Commissioner
Mr. Michael Nalletamby – Commissioner

For the Complainant
Mrs. Chantale Grange – Director for Legal Affairs (FTC)
Ms. Emily Mousbe – Legal Officer (FTC)

For the Respondent
Mr. Bernard Georges – Attorney-At-Law
Mrs. Sheila Monthy

RULING

[1]Pursuant to its powers under Section 4(i) of the Consumer Protection Act, 2010 to monitor consumer markets the Fair Trading Commission conducted routine inspections of goods on the 6th of June, 20103 at the retail outlet Sheila's Shop of Anse Boileau(See Annex 1), in accordance with Section 33(1)(j) of the Fair Trading Commission Act, 2009. During this exercise, Sheila's Shop now respondent herein, was found to be in contravention of Section 19(1) of the Consumer Protection Act, 2010 by offering for sale two different products of which labels were not in a plain and understandable language and Section 24(1) of the same Act by offering for sale

49 different goods amounting to a total of 624 items at a date later than the expiry date listed on those goods. Those expired goods accumulated a combined retail price of SR.4,431.01/- (See Annex 2). The respondent was served with a prohibition notice dated 6th June, 2013 prohibiting the sale of those expired items (See Annex 3). On the 15th of July, 2013 the Commission received from the respondent copies of receipts from STAR Seychelles as proof of payment for disposal of those expired goods (See Annex 5). The respondent was requested to attend a meeting with the Commission regarding the above breach via letter dated 30th of September, 2013 (See Annex 7). Such a request was not met. The Commission therefore deemed it necessary for a case against Sheila's Shop to be forwarded to the Board of Commissioners for a formal hearing.

[2]The parties attended the hearing before the Board of Commissioners on the 5th of February, 2014. The Board heard submissions from both sides. Mr. Ziggy Adam, Legal Officer, from the Fair Trading Commission presented the Commission's findings. Mr. Bernard Georges, Attorney-At-Law, represented the respondent who did not contest the breach. In fact counsel stated clearly that *'yes, the goods were expired'* and wanted a chance to explain as to why that was so. Mr. Georges went on to say that his client had no explanation for some of the older goods i.e. those expired since 2011 and 2012 though they were not many, but in terms of the newer ones he was instructed that Ms. Monty buys her goods from one place in bulk and given the size of the business she does not check the expiry dates and in most instances the time the goods are delivered they are almost expired anyway and she tries to keep them off the shelves. With regards to the two items with foreign language that is also not disputed but Counsel explained that she buys it from individuals and if the goods have gone through customs she does not bother to check. Counsel concluded by mitigating that given the respondent is not disputing that the goods were expired thus not wasting the Board's time and has complied with the directives of the Commission and has disposed of the goods, also that this was tiny business faced with much competition, with a turnover not exceeding SR.20, 000/- per month, of which the said turnover for the said month has taken a big drop having to dispose of those goods, that the Board be lenient in imposing a penalty on the respondent. Mr. Adam disagreed and argued that the size of the business is irrelevant as the law applies to all businesses big or small. Mr. Adam urged the Board to impose a penalty taking into account the severity of the breach given the substantial amount of expired goods identified at Sheila's Shop.

[3]The Board of Commissioners has deliberated on the matter and has considered evidence adduced by both parties. Based on documentary evidence and the respondent's own acceptance the Board finds that the respondent, Sheila's Shop, has contravened Section 19(1) and Section 24(1) of the Consumer Protection Act, 2010. Taking into account the arguments of the Commission and mitigation of the respondent's counsel and having regards to Section 67(3) taking into account the severity of the breach and the degree to which the respondent has cooperated with Commission the Board **shall impose a fine in the sum of SR. 6, 000/- on the respondent, Sheila's Shop**, for the contravention of Section 24(1) which prohibits the sale of expired goods. **Payment is to be made to the offices of the Fair Trading Commission not later than thirty (30) days from the date of this ruling.**

[4]With regards to the contravention of Section 19(1) which relates to the sale of goods which do not contain visual representations in a plain and understandable language, the Board shall issue out a strong warning to the respondent and directs Sheila's Shop to immediately cease to offer for sale such prohibited products.

[5]We so order.

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

Pronounced by us on the 5th day of March, 2014.

Mr. Victor Pool	**Mrs. Jenna Thelermont**	**Mr. Michael Nalletamby**
Chairperson	**Commissioner**	**Commissioner**