THE FAIR TRADING COMMISSION

BEFORE THE BOARD OF COMMISSIONERS

IN THE MATTER of the Consumer Protection Act, 2010;

THE FAIR TRADING COMMISSION
VS.
SHRI RAMAJAYAM SUPERMARKET CO (PTY) LTD

Case No: CPA/INS16/72

Complainant – Fair Trading Commission
Respondent – Shri Ramajayam Supermarket Co (Pty) Ltd

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

For the Complainant
Ms. Priyanka Ramruchaya – Legal Officer (FTC)

Respondent – Absent

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 Shri Ramajayam Supermarket Co (Pty) Ltd situated at Grand Anse, Praslin on the 18th of August, 2016 whereby officers of the Commission recorded the contravention of Sections 19, 20, 21 and 24 of the Consumer Protection Act, 2010. In accordance with Section 72(1) of the same Act Shri Ramajayam Supermarket Co (Pty) Ltd was served with a compliance notice on the 20th of October, 2016 with specific instructions to rectify these breaches. During a follow up visit conducted on the 17th November, 2016 the Commission observed that the respondent was still in breach of two provisions of the Consumer Protection Act, 2010. The Commission has therefore filed a case before the Board of Commissioners for the contravention of Section 19(1)(b) read with Section 19(2)(a) and Section 20(1) read with Section 20(3) of the Consumer Protection Act, 2010 reproduced below:

"**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 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."* ***[19(2)(a)*** *For the purposes of this Act, a notice, document or visual representation is in plain language if it is reasonable to conclude that an ordinary consumer of a class of persons to whom the notice, document or visual representation is intended, with average literacy skills and minimal experience as a consumer of the relevant goods or services, could be expected to understand the content, significance and import of the notice, document or visual representation without undue effort, having regard to the context, comprehensiveness and consistency of the notice, document or visual representation.**]***

20(1) *Subject to this subsection (2), a retailer shall not display any goods for sale without displaying to the consumer a price in relation to those goods."* ***[20(3)(a)*** *A price is adequately displayed to a consumer if, in relation to any goods or services, a written indication of the price expressed in the currency of the Republic is annexed or affixed to, written, printed, stamped or located on, or otherwise applied to the goods or to, any band, ticket, covering, label, reel, shelf or other thing used in connection with the goods or on which the goods are mounted for display or exposed for sale.**]***"*

[2]The respondent was served with the case docket and summoned to appear before the Board of Commissioners for a mention on the 31st October, 2017 to fix a hearing date for the matter. The respondent appeared being represented by one Ms. Monica Dine who informed the Board that she was, a Manager of Pillay R. Group who owns Shri Ramajayam Supermarket Co (Pty) Ltd. The Shop Manager of Shri Ramajayam Supermarket was also present. Ms. Dine stated that the personnel of Shri Ramajayam Supermarket had not forwarded these correspondences to their corporate offices on the Mahe, therefore, they were unaware of this case. The Board explained the issues to her and scheduled the hearing for 23rd January, 2018 at 2:00pm.

[3]On the date set for hearing the case was called and the respondent was absent. As per the Board's records the respondent had been served with fresh summons on the 19th of January, 2018 to attend the hearing before the Board of Commissioners and the Commission had not received any communication from the respondent to the contrary. Ms. Priyanka Ramruchaya, Legal Officer, representing the Fair Trading Commission moved that the matter proceed exparte. The Board granted her application. Ms. Ramruchaya called two witnesses in support of her case. Firstly, Mrs. Kate Pierre, an Analyst of the Fair Trading Commission who testified that she

conducted the routine visit of 18th August, 2016 and recorded the breaches she observed i.e. Sections 19, 20, 21 and 24 of the Consumer Protection Act, 2010, on inspection forms which she produced (See CE2 and CE3). Mrs. Pierre also produced the compliance notice which was served on the respondent (CE4). Secondly, Mr. Erol Sophola, Principal Analyst (Competition Department) testified that he was part of the team who conducted the follow up visit at the premises of Shri Ramajayam Supermarket to ensure compliance with the compliance notice on the 17th of November, 2017 whereby it was observed that the respondent was still in breach of Sections 19 and 20 of the Consumer Protection Act, 2010 (See CE5 and CE6). Mr. Sophola also testified as his observations between the two visits and he noted that the product in breach of Section 19 was the same during both visits only the quantity varied being less during the second visit and that the products in breach of Section 20 has increased from 6 to 46 between the two visits. Mr. Sophola prepared a compliance report where he detailed his findings which he produced to the Board (CE7). Ms. Ramruchaya concluded her case by filing written submissions whereby she prayed that the Board imposes a deterrent penalty on the respondent in accordance with Section 67(1) of the Consumer Protection Act, 2010 while having regards to the provisions of Section 67(3) of the same Act, namely the duration of the contravention given that the respondent was granted time to rectify the breaches but failed to do so; the gravity of the contravention in that the same product was found to be in contravention of Section 19 but the individual pieces were less which possibly implies that the respondent sold these items hence benefiting from the contravention and the fact the quantity of individual items in breach of Section 20 was much greater during the compliance visit. These facts also impact on the impression of the behaviour of the respondent in relation to compliance with the Consumer Protection Act, 2010.

[4]The Board of Commissioners deliberated on the matter and has taken into consideration all the evidence adduced. The Board hereby finds the respondent, Shri Ramajayam Supermarket Co (Pty) Ltd, to be in contravention of Section 19(1)(b) read with Section 19(2)(a) and Section 20(1) read with Section 20(3) of the Consumer Protection Act, 2010. The Board has taken into account the provisions of Section 67(3) of the Consumer Protection Act, 2010 when deciding on a suitable penalty. The Board takes note the behaviour of the respondent vis a vis the continued breach of the Consumer Protection Act, 2010 including not appearing for the scheduled hearing. Consequently, the Board of Commissioners shall therefore impose a fine pursuant to Section 67(1) of the Consumer Protection, Act 2010 in the following manner:

- **For the contravention of Section 19(1)(b) – SR.6,000;**
- **For the contravention of Section 20(1) – SR.6,000.**

All payments are to be paid to the office 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 rule accordingly.

Pronounced by us on this 27th day of February, 2018.

Mr. Victor Pool
Presiding Chairperson

Mr. Philippe Chong-Seng
Commissioner

Mrs. Jenna Thelermont
Commissioner

Mr. Michael Nalletamby
Commissioner