THE FAIR TRADING COMMISSION

BEFORE THE BOARD OF COMMISSIONERS

IN THE MATTER of the Consumer Protection Act, 2010;

THE FAIR TRADING COMMISSION
VS.
MR. G. ASOKKUMAR CHETTY
(Trading as Sri Durga GeneraL Merchant)

Case No: CPA/INS17/7

Complainant – Fair Trading Commission
Respondent – Mr. G. Asokkumar Chetty

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

For the Complainant
Ms. Salina Sinon – Legal Officer (FTC)

Respondent – In person

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 business premises of Mr. G. Asokkumar Chetty trading as Sri Durga General Merchant situated at Jivan Building, Market Street, Victoria, on the 8th of March, 2017 whereby the business was found to be in contravention of the Consumer Protection Act, 2010 by offering to sell goods with information not in plain language, offering goods for sale without disclosing the price in relation to those goods, offering for sale goods past their expiry dates and not providing proper sale records to consumers.

[2[The Commission filed a case before the Board of Commissioners for the contravention of the Consumer Protection Act, 2010, namely:-

- Section **19(1)** read with Section **19(2)(a)** which provides 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 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.**]***

- Section **20(1)** read with **subsection (3)(a)** which provides that "*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.**]***

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

- Section **25(1)** read with Section **25(2)(f)** with provides that "*A supplier of goods and services shall a written record of each transaction to the consumer to whom any goods or services are supplied.*" ***[25(2)(f)*** *A record under subsection (1) shall include the quantity of any particular goods or services supplied.**]***

- Section **50(1)(a)** read with Section **50(2)(a) and (c)** which provides that "*A person shall not in trade or commerce supply any consumer goods which fail to comply with general safety requirement.*" ***[50(2)(a)*** *For the purposes of this section, consumer goods fail to comply with the general safety requirement if they are not reasonably safe having regard to all the circumstances, including the manner in which, and the purpose for which, the goods are being and would be marketed, their composition or structure, the use of any mark in relation to the goods and any instructions or warnings which are given or would be given in respect to the keeping, use or consumption of the goods; (c) the existence of any means by which it would have been reasonable for the goods to have been made safer.**]***

[2]Mr. Chetty was served with the case docket and summoned to appear for mentioned before the Board of Commissioners on the 24th of October, 2017. The respondent appeared and informed the Board that he would not be contesting the breaches. Nevertheless, the Board reminded the respondent of his rights and proceeded to fix the case on 14th of November, 2017 on which date the respondent duly appeared with one Ms. Natifa who explained to the Board that the respondent asked her to attend the hearing with him because he did not fully understand the issues at hand. The Board awarded the respondent time to go through the documents he had been served with his representative. Ms. Natifa then addressed the Board on behalf of the respondent and reiterated that he is not contesting the breaches and made reference to a letter which the respondent delivered to the Commission headed "Apology Letter" and explained that Mr. Chetty had travelled overseas for medical assistance and handed over his shop to his workers who made those mistakes. The Board acknowledges receipt of this letter and shall make the necessary inferences from its contents. Ms. Salina Sinon, Legal Officer of the Fair Trading Commission, proceeded to submit written submissions to the Board. A copy of those submissions was served on the respondent which he went through with his representative and was then given time to submit. The respondent apologised for the matter and prayed that he be forgiven for this mistake since he was not in the country and it was his workers who did not take proper care. He assured the Board that this would not happen again.

[3]Based on the evidence adduced as well as the respondent's own admission the Board of Commissioners hereby finds the respondent, G. Asokkumar Chetty trading as Sri Durga to be in contravention of the Consumer Protection Act, 2010 Act, namely;

- Section 19(1) read with Section 19(2)(a) by displaying for sale 3 products (428 items) with notices which were not in plain languages (See Annex 4);
- Section 20(1) read with Section 20(3)(a) by offering for sale 48 products (921 items) without displaying the price to the consumer (See Annex 5);
- Section 24(1) by offering for sale 1 product (4 items) at a date later than their expiry dates (See Annex 6);
- Section 25(1) read with Section 25(2)(f) by not providing to consumers proper sale records (See Annex 7);
- Section 50(1)(a) read with Section 50(2)(a) and (c) by offering for sale goods which fail to comply with the general safety requirements.
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[4]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 had regard to several factors including the submissions made by complainant, the mitigation made by the respondent as well as provisions of Section 67(3) of the Act. It has been made clear to the Board that this is not the first

time that the respondent has interacted with the Commission. As per the complainant's submissions the respondent's premises has been inspected by the Commission at least on three occasions during a span of about one year and on all occasions the respondent has been found to be non-compliant and was previously served with a compliance notice. Ms. Sinon also submitted that this time around the amount of goods that were not in compliance with the law was more than has been previously found. Therefore, instead of rectifying the matter the breaches have aggravated. The Board finds that non-compliance with the law cannot be excused on the basis that the respondent was out of the jurisdiction when the inspections were conducted especially given that the respondent had previously been cautioned with regards to the Consumer Protection Act.

[5]Taking all of the above factors into consideration the Board **imposes the following penalties to be paid by the respondent, Mr. G. Asokkumar Chetty, at the office of the Fair Trading Commission not later than sixty (60)days from the date of this ruling in manner;**

- **For the contravention of Section 19(1) – SR3,000;**
- **For the contravention of Section 20 – SR.6,000;**
- **For the contravention of Section 24 –SR.3,000;**
- **For the contravention of Section 25 (1) – SR.5,000**
- **For the contravention of Section 50(1) – SR3,000**

[6]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 19th day of December, 2017.

Mr. Victor Pool
Presiding Chairperson

Mr. Philippe Chong-Seng
Commissioner

Mrs. Jenna Thelermont
Commissioner

Mr. Michael Nalletamby
Commissioner