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THE BOARD OF COMMISSIONERS

Thursday 29th November, 2018

Parameswali Pillay
(trading as Murali Mini Market)
Anse La Mouche
Mahe

Dear Mr. Pillay,

RE: FTC v Parameswali Pillay (trading as Murali Mini Market) (CPA/INS18/23) – RULING

In accordance with Section 42(1) of the Fair Trading Commission Act, 2009 please find attached a signed copy of the ruling of the Board of Commissioners of the hearing conducted in the above mentioned case. We trust in your expedient compliance as per the orders contained herein.

Also note that failure or refusal to comply with this ruling constitutes an offence under Section 53(1) of the Fair Trading Commission Act, 2009. The same is reproduced below:

> **53(1)** A person which refuses or fails to comply with a direction or order of the Commission commits an offence and is liable –
>
> (a) where the person is an individual, to a fine not exceeding 100, 000 rupees or to imprisonment for a term not exceeding 2 years or to both.
>
> (b) where the person is a person other than individual, to a fine not exceeding 400, 000 rupees.

Sesel
Mon Pei Beni

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THE BOARD OF COMMISSIONERS

Moreover, you have the right to appeal against this decision. To that effect you may, within fourteen (14) working days of receipt of this document, submit a Notice of Appeal setting out your grounds of appeal to:

The Chairperson of the Appeal Tribunal
C/O Fair Trading Commission
3rd Floor, Block B
Unity House, Victoria

Yours sincerely,

Llalande

Laura Lalande (Miss)
Registration Officer
For: Chairperson
Board of Commissioners
Fair Trading Commission

FAIR TRADING COMMISSION
BOARD OF COMMISSIONERS

Cc: CEO-FTC

Sesel
Mon Pei Bani

THE FAIR TRADING COMMISSION

BEFORE THE BOARD OF COMMISSIONERS

IN THE MATTER of the Consumer Protection Act, 2010;

THE FAIR TRADING COMMISSION
VS.
PARAMESWALI PILLAY
(Trading as Murali Mini Market)

Case No: CPA/INS18/23

Complainant – Fair Trading Commission
Respondent – Parameswali Pillay

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

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

Respondent – In person

RULING

[1]The Fair Trading Commission (the Commission) conducted a routine inspection pursuant to Section 33(1)(j) of the Consumer Protection Act, 2010 (the Act) on the 28th February, 2018, at the business premises of Parameswali Pillay trading as Murali Mini Market at Anse La Mouche, Mahe (the respondent), a registered and licensed business and a supplier of goods as defined by Section 2(1)(a)(i) of the Act. During the inspection officers of the Commission observed 2 products (5 items) on display and being offered for sale which had labels which contained information which were not in plain language contrary to Section 19(1)(b) of the Consumer Protection Act, 2010, 205 products (2051 items) being offered for sale without their prices being displayed contrary to Section 20(1) of the same Act and 22 products (161 items) were found to be on display for sale past their expiry date contrary to Section 24 of the Act. Further, upon inspecting the receipts being provided to consumers by the

respondent it was observed that the receipts did not contain the unit price of goods supplied and the total price of the transaction before any applicable taxes contrary to Section 25(2)(e) and (g) of the Act. Subsequently, the Commission filed a case before the Board of Commissioners for the contravention of the Consumer Protection Act, 2010, namely:-

- Section **19(1)** read 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.*"

- 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)(e) and (g)** which 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)(e)** the unit price of any particular goods or services supplied; and **(g)** the total price of the transaction, before any applicable taxes.]*

- 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]This case was mentioned before the Board of Commissioners on Tuesday 18th September, 2018 and both parties duly appeared. Ms. Priyanka Ramruchaya, Legal Officer, represented the Commission and the respondent, Mr. Parameswali Pillay was present in person. The Board went on to ascertain Mr. Pillay's position on the matter whereby the respondent went on to accept all the breaches that had been brought against him. He informed the Board that he had not been in the country when this incident happened and his employees did not check the products properly. That he has since the inspection remedied all the issues that had been observed by the officers of the Commission. The respondent confirmed that he understood the consequences of accepting the charges and prayed for leniency while assuring the Board that this incident will not recur. Ms. Ramruchaya moved as per the contraventions in the notice of complaint and requested the opportunity to file written submissions on penalties.

[3]Ms. Ramruchaya urged the Board to impose penalties as set out under Section 67(1) of the Consumer Protection Act, 2010 which provides that *"Where the Commission determines after a formal hearing that a person has contravened any requirement or prohibition contained in sections the Commission may order the person, in the case of an individual, to pay a penalty of a sum not exceeding SR100,000."* She submitted that when considering a suitable penalty the Board shall have regard to Section 67(3)(a) and (f) which states that *"In determining an appropriate penalty for the purposes of this section, the Commission shall have regard to the following (a) the nature, duration, gravity and extent of the contravention; and (f) the degree to which the respondent co-operated with the Commission."* Ms. Ramruchaya first addressed the nature of the contravention. She submitted that some of the expired products on sale were consumables hence presented a health risk to consumers who could have purchased and consumed these items. Ms. Ramruchaya went on to address the sheer volume of items (over 2200) found to be in contravention of the Act is an aggravating factor supporting the gravity of the breach. For these reasons the Commission felt that a compliance notice would not suffice in addressing the issues and instead directly filed a case to the Board of Commissioners. She also submitted that the mere fact that the respondent accepted the breaches and his other mitigating factors do not negate his involvement in a prohibited conduct. Ms. Ramruchaya concluded her submissions by citing similar cases that the Board has decided upon such as FTC v Ramesh Pillay (trading as Baie Lazare Supermarket) (CPA/INS16/70) and FTC v G. Asokkumar Chetty (trading as Sri Durga General Merchants) (CPA/INS16/7), to assist the Board in deciding a penalty.

[4]Based on the evidence before it and the respondent's admission the Board of Commissioners hereby finds the respondent, Mr. Paramewsali Pillay trading as Murali Mini Market, to be in contravention of Section 19(1)(b) read with Section

19(2)(a), Section 20(1) read with Section 20(3), Section 24, Section 25(1) read with Section 25(2)(e) and (g) and Section 50(1)(a) read with Section 50(2)(a) of the Consumer Protection Act, 2010. The Board has considered the mitigating factors put forth by the respondent as well as the submissions of Ms. Ramruchaya. The Board also takes notice that the respondent is a first-time offender and has accepted the breaches thus not wasting the Board's time. That being said the Board also takes cognizance of the numerous breaches of the law and the high volume of the items in contravention. Consequently, the Board shall impose a fine on the respondent in accordance with Section 67(1) of the Act for the above contraventions in the following manner: -

- **For the contravention of Section 19(1)(b) read with Section 19(2)(a) the sum of SR.4,000;**
-
- **For the contravention of Section 20(1) read with Section 20(3) the sum of SR.20,000;**
- **For the contravention of Section 24 the sum of SR.6,000;**
- **For the contravention of Section 25(1) read with Section 25(2)(e) and (g) the sum of SR.6,000;**
- **For the contravention of Section 50(1)(a) read with Section 50(2)(a) the sum of SR.6,000;**

All payments are to be made by the respondent, Mr. Parameswali Pillay, to the offices of the Fair Trading Commission not later than thirty (30) working 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 ...29th... day of November, 2018.

Ms. Karen Domingue
Chairperson

Mr. Victor Pool
Commissioner

Mrs. Jenna Thelermont
Commissioner

Mr. Michael Nalletamby
Commissioner