Block B, 3rd Floor
Room 301-306
Unity House
Victoria
Mahe, Seychelles

Fair Trading Commission
Seychelles

Tel: (+248 4 32 52 50)
Fax: (+248 4 32 52 40 /4 32 52 49)
PO Box 1207
Victoria
Mahe
Seychelles
Email: info@ftc.sc
Website: www.ftc.sc

THE BOARD OF COMMISSIONERS

Thursday 29th November, 2018

Nateshkumar Balasubramanian
(trading as N.P Balu Shopping Centre)
L'Ilot
Glacis
Mahe

Dear Mr. Balasubramanian,

RE: FTC v Nateshkumar Balasubramanian (trading as N.P Balu Shopping Centre) (CPA/INS18/17) – 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 Dezi

Block B, 3rd Floor
Room 301-306
Unity House
Victoria
Mahe, Seychelles

Fair Trading Commission
Seychelles

Tel: (+248 4 32 52 50)
Fax: (+248 4 32 52 40 /4 32 52 49)
PO Box 1207
Victoria
Mahe
Seychelles
Email: info@ftc.sc
Website: www.ftc.sc

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,

FAIR TRADING COMMISSION
FTC
BOARD OF COMMISSIONERS

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

Cc: CEO-FTC

Sesel
Mon Pei Beni

THE FAIR TRADING COMMISSION

BEFORE THE BOARD OF COMMISSIONERS

IN THE MATTER of the Consumer Protection Act, 2010;

THE FAIR TRADING COMMISSION
VS.
NATESHKUMAR BALASUBRAMANIAN
(Trading as N.P Balu Shopping Centre)

Case No: CPA/INS18/17

Complainant – Fair Trading Commission
Respondent – Nateshkumar Balasubramanian

QUORUM:
Ms. Karen Domingue – Chairperson
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 (the Commission) conducted a routine inspection pursuant to Section 33(1)(j) of the Consumer Protection Act, 2010 (the Act) on the 15th February, 2018, at the business premises of Nateshkumar Balasubramanian trading as N.P Balu Shopping Centre at Glacis, 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 17 products (148 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, 206 products (2,515 items) being offered for sale without their prices being displayed contrary to Section 20(1) of the same Act, 15 products (145 items) were found to be on display for sale past their expiry date contrary to Section 24 of the Act and that no receipts were being provided to Section 25(1) 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)(b)** read with Section **19(2)** 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 in plain language, if no form has been prescribed.*" ***[19(2)*** *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 (a) the context, comprehensiveness and consistency of the notice, document or visual representation.**]***

- Section **20(1)** read with Section **20(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)** *"A supplier of goods and services shall a written record of each transaction to the consumer to whom any goods or services are supplied."*

- Section **50(1)(a)** read with Section **50(2)(a)** 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.**]***

[2]This case was mentioned before the Board of Commissioners on Tuesday 25th September, 2018 and both parties duly appeared. Ms. Salina Sinon, Legal Officer, represented the Commission and the respondent, Mr. Balasubramanian was present in person. The Board went on to ascertain Mr. Balasubbramanian'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 were new and 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 given that the shop is small and he do not make that much profit. The respondent assured the Board that this incident will not recur. Ms. Sinon moved as per the contraventions in the notice of complaint and requested the opportunity to file written submissions on penalties.

[3]Ms. Sinon 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), (e) 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; (e) the level of profit derived from the contravention; and (f) the degree to which the respondent co-operated with the Commission."* Ms. Sinon first addressed the nature of the contravention. She submitted that some of the expired products on sale were food products as well as skin products hence presented a health risk to consumers who could have purchased used and/or consumed these items. Ms. Sinon went on to address duration of the contravention whereby it was observed that one of the products had been expired for thirteen months and several others for several months which led her to believe that the respondent had ample time to spot and remove those products and hence was deliberately selling those products to make a profit as discarding expired products presents a loss for retailers. Ms. Sinon then addressed the gravity of the contraventions and submitted that it would have been impossible for the respondent not to have notice that 2,515 items did not have their prices displayed and 206 items were expired, additionally the respondent was not providing any receipt to consumers at all, thus leading her to believe again that the respondent's act was deliberate therefore aggravating the breach. Ms. Sinon also submitted that the respondent stated to the Board that his monthly turnover was SR.175, 000 this shows that the respondent had been making money from the items given that the contraventions had

been ongoing for several months thus the likelihood that consumers have unknowingly bought these items hence contributing to the respondent's profit. Moreover, that not displaying prices and not providing receipt gives retailers leeway to randomly sell the goods at a higher price with consumers having no way of verifying the actual price of the items. She also submitted on the degree to which the respondent has co-operated with the Commission hence addressing the respondent's mitigation and argued that although the respondent accepted liability and did not waste the Board's time this does not erases the respondent responsibility to be compliant with the law. Ms. Sinon concluded her submissions by cited 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. Nateshkumar Balasubramanian trading as N.P Balu Shopping Centre, 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) 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. Sinon. 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. The Board also takes cognizance of the numerous breaches of the law and the high volume of the items in contravention (over 2800). 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 SR4,000;**

- **For the contravention of Section 20(1) read with Section 20(3) the sum of SR20, 000;**

- **For the contravention of Section 24 the sum of SR6,000;**

- **For the contravention of Section 25(1) the sum of SR6,000;**

- **For the contravention of Section 50(1)(a) read with Section 50(2)(a) the sum of SR12,000.**

All payments are to be made by the respondent, Mr. Nateshkumar Balasubramanian, at the office of the Fair Trading Commission not later than sixty (60) calendar 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 November, 2018.

Ms. Karen Domingue
Chairperson

Mrs. Jenna Thelermont
Commissioner

Mr. Michael Nalletamby
Commissioner