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

Wednesday 31st July, 2019

SPAR Eden Island (Pty) Ltd
Eden Plaza
Eden Island
Mahe

Att'n: Mr. Samad Suleman

Dear Mr. Suleman,

RE: FTC v SPAR Eden Island (Pty) Ltd (CPA.INS17.67) – 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.

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,

Lalande

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

Cc: CEO-FTC

THE FAIR TRADING COMMISSION

BEFORE THE BOARD OF COMMISSIONERS

(Consumer Protection Act, 2010)

IN THE MATTER OF;

THE FAIR TRADING COMMISSION
V
SPAR EDEN ISLAND (PTY) LTD

Case No: CPA/INS17/67

Complainant – Fair Trading Commission
Respondent – SPAR Eden Island (Pty) Ltd

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

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

For the Respondent
Mr. Samad Suleman
Mr. Anthony Derjacques – Attorney-At-Law

RULING

[1]The Fair Trading Commission (the Commission), pursuant to Section 33(1)(j) of the Fair Trading Commission Act, 2009 which empowers the Commission to inspect goods, conducted a joint an inspection together with the Public Health Authority on the 2nd of March, 2017, at the business premises of SPAR Eden Island (Pty) Ltd trading as Food Mart situated at Eden Plaza, Eden Island, Mahe (the respondent), a business and a supplier of goods as defined by Section 2 of the Fair Trading Commission Act, 2009 and Section 2(1) of the Consumer Protection Act, 2010 (the Act). At the time of the inspection the respondent held a wholesaler/retailer license and bearing the license number 162940 (See CE1).

[2]During the inspection officers of the Commission observed 5 products (40 items) on display and being offered for sale with labels which contained information that were not in plain language contrary to Section 19(1)(b) of the Consumer Protection Act, 2010 and by virtue of which is also a breach of Section 50(1) of the Act relating to general safety requirements. Moreover, the officers observed 3 products (37 items) being offered for sale without their prices being displayed contrary to Section 20(1) of the same Act. Further, 1 product (3 items) was found to be on display for sale with their expiration date stickers ripped off pertaining in to a breach of Section 22(4)(b) as well as Section 50 of the Act. Also, 44 products (752 items) were found to be on display and being offered for sale past their expiry date contrary to Section 24 of the Act which is also a contravention of Section 50(1)(a) of the Act. Additionally, 1 product (1 item) had no expiry date and 6 products (48 items) from the respondent's in-house bakery did not have a production or expiration date and in addition 3 frozen meat products (11 items) imported by the respondent and packed in-house did not contain a production or expiration date all pertaining to a breach of Section 50(1) of the Consumer Protection Act, 2010.

[3]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)(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 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 **22(4)(b)** read with Section **22(1)(a)(*vii*)** and Section **22(2)(b)** which provides that *"A person shall not alter, deface, cover, remove, or obscure a trade description applied to any goods in a manner calculated to mislead consumer." [22(1)(a)(vii) For the purposes of this section, "trade description" means any description, statement, or other direct or indirect indication, other than a trademark as to the expiry date of the goods."] [22(2)(b) For the purposes of this section, a trade description is applied if it is applied to any covering, label or reel thing in, on or with which the goods are packaged, or attached to the goods.]*

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

[4]This matter was called before the Board of Commissioners on 4th September, 2018 for a hearing and all parties duly appeared. Ms. Salina Sinon, Legal Officer of the Fair Trading Commission, called Ms. Elza Robert, Analyst of the Market Surveillance Department of the Fair Trading Commission, to give evidence in support of the Commission's case. Ms. Robert testified that inspection of goods is part of her duties and she was part of the team who inspected the respondent's business premises on the 2nd of March, 2017 whereby it was observed that the respondent was in breach of the Consumer Protection Act, 2010 (as depicted in paragraph 3) and she recorded those breaches in the Commission's Inspection Form (See CE2). Ms. Robert also testified that she compiled an inspection report detailing her findings which she produced to the Board and was marked as CE3. Ms. Robert was cross-examined by Mr. Derjacques, Attorney-At-Law, representing the respondent whereby Ms. Robert reiterated, with regards to the issue of plain language, that the recognized national languages of Seychelles is Creole, French and English and those are the languages

that should appear on products on sale in Seychelles, hence other languages, Italian for instance, although recognized world wide is not widely spoken or understood or spoken in Seychelles thus cannot be the only language to appear on a product being displayed for sale to consumers in Seychelles.

[5]Upon concluding the cross-examination of the Commission's witness, Mr. Derjacques informed the Board that he would not be contesting the facts of the case and requested that he be given the chance to submit mitigating factors for consideration by the Board on behalf of the respondent. Ms. Sinon moved as per the contraventions in the notice of complaint and requested the opportunity to file written submissions on penalties. Both applications were granted. It was agreed that the respondent would file his submissions by the 18th of September, 2018 and upon receipt the Commission would have until the 2nd of October, 2018 to file theirs. The respondent requested for this deadline to be extended up to 28th September, 2018 which the Board allowed. To date the Board has only received written submissions from the Commission on penalties. The Board shall therefore proceed to write its decision based on the evidence it has on record and without the submission of the respondent.

[6]In her submissions Ms. Sinon urged the Board to impose penalties as set out under Section 67(1)(b) 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 a person other than an individual, to pay a penalty of a sum not exceeding SR400,000."* She submitted that when considering a suitable penalty the Board shall have regard to Section 67(3)(a), (c), (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; (c) the behavior of the respondent; (e) the level of profit derived from the contravention; (f) the degree to which the respondent co-operated with the Commission; and (g) whether the respondent has previously been found in contravention of this Act."*

[7]Ms. Sinon first addressed the nature of the contravention. She submitted that all of the expired products observed during the inspection were food items hence presented a health risk to consumers who could have purchased and consumed those items. Ms. Sinon also submitted that the products which did not contain expiry dates were cakes, savory rolls and packaged meat. All of those goods may cause a person to fall sick if consumed past the period which it is safe for consumption hence why an expiry or production date is very important to be indicated. Ms. Sinon then went on to address duration of the contravention whereby she submitted that as per the Commission's records the respondent was inspected on the 3rd of March, 2016, 18th of March, 2016

and 2nd of March, 2017 and all three occasions the respondent was found to be in contravention of the Consumer Protection Act, 2010 with the contravention of Section 24 being present at all three instances as well as seeing an increase in the amount of items found in contravention of the Act with aggravates the gravity of the contravention. Ms. Sinon submitted that this also meant that the respondent could have derived a profit from the breaches given that the contravention was spread over a time span of at least one year and during that time consumers could have purchased those expired items. In relation to the behavior of the respondent Ms. Sinon submitted that the respondent has been educated on several occasions with regards to the requirements of the Consumer Protection Act yet the respondent has continued to re-offend over the years. The respondent has appeared before the Board before and had given commitments that the breaches had been rectified and committed to ensure that the situation ceases and does not reoccur but the respondent still continues to re-offend showing a non-compliant pattern in its behavior. Ms. Sinon also submitted that the respondent previously appeared before the Board of Commissioners for a hearing on the 8th of June, 2016 and was subsequently fined SCR.1,000 for several breaches of the Consumer Protection Act, 2010 *(See FTC vs. SPAR Eden Island (Pty) Ltd – CPA/INS16/018)* hence the respondent has previously been found in contravention of the Act and the fine imposed had no deterrent effect. With regards to the degree to which the respondent has co-operated with the Commission Ms. Sinon submitted that when the parties appeared before the Board of Commissioners for a mention on 3rd April, 2018 the respondent informed the Board that they do not accept some of the breaches therefore the Board proceeded to schedule the matter for hearing on 4th September, 2018. On that day, the hearing proceeded to hearing one witness on behalf of the Commission only to accept liability in the end. Ms. Sinon submitted that shows non-co-operation and a waste of the Board's time given that the respondent had all the information which the Commission was relying upon hence could have accepted liability in April rather than September. Ms. Sinon concluded by urging the Board when imposing a penalty to consider that the respondent is a well-established chain in similar businesses in other countries around the world and therefore has a significant turnover.

[8]The Board has deliberated on the matter and has taken into account all evidence adduced. Based on the evidence and the respondent's admission the Board of Commissioners hereby finds the respondent, SPAR Eden Island (Pty) Ltd trading as Food Mart, to be in contravention of Section 19(1)(b) read with Section 19(2)(a), Section 20(1) read with Section 20(3), Section 22(4)(b) read with Section 22(1)(a)(*vii*) and Section 22(2)(b), Section 24 and Section 50(1)(a) read with Section 50(2)(a) and (c) of the Consumer Protection Act, 2010.

[9]When deciding on a suitable penalty the Board has given due consideration to Section 67(3) of the Consumer Protection Act, 2010. The Board agrees with the submissions filed by Ms. Sinon and gives particular weight to the fact the respondent has been found in contravention of the Consumer Protection Act, 2010 by the Market Surveillance Department of the Commission and the respondent has been fined by this Board once before hence the respondent is well aware of the provisions of the Consumer Protection Act, 2010 yet continues to breach the provisions of this Act. The Board also takes notes of the nature of the contraventions, especially that of Section 22 whereby one product that had stickers ripped off then bundled with another product and offered to consumers as a promotion is particularly misleading and dishonest on the part of the respondent. The Board views this as an aggravating factor to the breaches by the respondent. Consequently, the Board shall impose a financial penalty 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 SR8,000;**

- **For the contravention of Section 20(1) read with Section 20(3) the sum of SR6,000;**

- **For the contravention of Section 22(4) read with Section 22(1)(a)(vii) and Section 22(2)(b) the sum of SR6,000;**

- **For the contravention of Section 24 the sum of SR40,000;**

- **For the contravention of Section 50(1)(a) read with Section 50(2)(a) the sum of SR40,000.**

All payments are to be made by the respondents at the office of the Fair Trading Commission not later than sixty (60) calendar days from the date of receipt of this ruling

[10]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 ..31st.... day of July, 2019.

Mr. Victor Pool
Commissioner
(Presiding)

Mr. Philippe Chong-Seng
Commissioner

Mrs. Jenna Thelermont
Commissioner

Mr. Michael Nalletamby
Commissioner