



Board of Commissioners Ruling

The following case was heard and adjudicated on by the Board of Commissioners in relation to the Consumer Protection Act 2010:

In a ruling delivered on the 20th of February 2018, in the case of the **Fair Trading Commission v Marsha Naidoo (Trading as Organic life)**, the Board Of Commissioners found the respondent to be in breach of **Section 24 (1) of the Consumer Protection Act 2010**, in that she offered goods for sale that were past their expiry dates.

The facts as outlined and presented by the Fair Trading Commission (FTC) was that during an inspection dated 13th December 2016, carried out at Mrs. Naidoo's business, Organic life, the respondent was found to be in breach of Section 24 (1) of the Consumer Protection Act 2010,(CPA 2010) by offering for sale 106 items past their expiry dates.

In light of the gravity of the contravention of Section 24 (1) of the CPA, 2010, the Commission filed a case before the Board of Commissioners.

The respondent was then summoned to appear before the Board of Commissioners on the 24th of May, 2017. She appeared represented by Mr. Kirschlee Naidoo, who informed the Board that the respondent would not be contesting the breach. He went on to explain that the items were ordered in bulk with different expiry dates and they were not checked individually before being placed on the shelves. He then added that the items that were found to be in contravention of the CPA 2010, had been disposed of and they had amended their procedures, and items were now checked prior to being placed on the shelves.

Mr. Naidoo concluded by assuring the Board that although these products should not have been offered for sale they did not pose any danger to human health and prayed that instead of a fine they be educated as to the requirements of the Consumer Protection Act, 2010, so that this incident would not be repeated.

The Board took note of Mr. Naidoo's submissions and instructed the Commission to conduct a follow up inspection at the respondent's premises to ensure that the said expired products had indeed been removed before they ruled on the matter.

On the 31st of May 2017, the parties reappeared before the Fair Trading Commission. The Senior Legal Officer representing the Fair Trading Commission informed the Board that a second visit had been carried out by the Commission at the respondent's premises on the 30th of May, 2017, as per instructions, and based on the inspection form the products previously found to be in contravention of

Section 24 (1) of the CPA 2010, were no longer displayed or offered for sale. However, three other different items were found displayed and offered for sale past their expiry dates. The respondent who was present that day stated that they may have missed out on these three items.

The parties were once again summoned to appear before the Board on the 19th of July 2017, but the respondent failed to attend. The Senior Legal Officer for the Fair Trading Commission moved for a judgment based on the respondent's own admission and the evidence adduced. She prayed that a reasonable penalty be imposed on the respondent while having regard to the fact that the respondent has admitted to the breach. The Senior Legal Officer then submitted through written submissions that the evidence will show a cavalier approach to compliance with the CPA 2010, on the part of the respondent given that different expired items were found on different occasions, even after a commitment was made to the Board.

Taking all of the above into consideration in deciding of a suitable penalty for the respondent, namely the respondent's admission and the fact that the respondent's premises had been inspected on, on more than one occasion. Also, having regard to **Section 67 (3) of the CPA 2010**, namely the amount of items found to be in contravention, the Board found the respondent to be in breach of Section 24 (1) of the CPA, 2010.

A fine of, ***SCR - 10, 000-*** for the breach of ***Section 24 (1) CPA 2010*** was imposed on the respondent, to be paid within 60 days from the date of ruling.

The parties are free to appeal against this ruling to the Appeal tribunal as per Section 44 of the Fair Trading Act 2009 and Section 77(1) Consumer Protection Act 2010.

Complete rulings of the Board of Commissioner can be accessed via website (www.ftc.sc) or viewed at the FTC office.