

**IN THE MATTER BEFORE THE BOARD
OF THE COMPETITION AND CONSUMER
PROTECTION COMMISSION**

BETWEEN

Mr Hanford Chaaba

COMPLAINANT

AND

Africa Supermarkets T/A Shoprite Zambia

RESPONDENT

BEFORE:

**Commissioner Kelvin Fube Bwalya-Chairman
Commissioner Simomo S. Akapelwa-Vice Chairman
Commissioner Musenga A. Musukwa-Member
Commissioner Goodwell L. Kapema-Member
Commissioner John Mulongoti-Member
Commissioner Ireen Zeko Mbewe-Member**

DECISION

1. Below is a summary of the facts and findings presented by the Competition and Consumer Protection Commission ("the Commission") to the Board following investigations it carried out in the above case.

Information and Relevant Background

It was submitted that:

2. On 13th January 2014 the Competition and Consumer Protection Commission (the Commission) received a complaint from Mr Hanford Chaaba (the Complainant) who alleged that Shoprite Zambia Cairo Road (the Respondents) had engaged in unfair trading practices contrary to Section 52(1) of the Competition and Consumer Protection Act No 24 of 2010 (the Act).

3. Specifically, the Complainant alleged that on Thursday 9th January, 2014 while in Shoprite Cairo, he discovered expired Take 5 Mango flavour (500mls) drinks in Shoprite Cairo Road. The Complainant alleged that the Respondent had reduced the price of the drinks from K7.99 to K2.99. The Complainant alleged that he got interested and discovered that the drinks had an expiry date of 5th January, 2014. The Complainant alleged that he got concerned and approached the

Respondent's Administration Manager at the Cairo Road store, Mr Godfrey Chitalu who appeared not to be concerned and actually tried to justify the selling of the expired drinks.

4. The Complainant alleged that Mr Chitalu stated that such drinks were stocks ordered for the festive season and had hoped that the products would be cleared by New Year's Day. The Complainant further alleged that Mr Chitalu informed him that food stuffs usually had a short shelf life and that at times, stocks were received a week before their expiry date and that the products could not just be removed from the shelves. The Complainant alleged that Mr Chitalu informed him that he did not understand how the system operated and challenged the Complainant to get attached to Shoprite specifically to his department so that the Complainant could learn how the system operated.

5. The Complainant further alleged that Mr Chitalu justified the existence of expired drinks on the shelves and he lacked skill and care in handling the matter. The Complainant alleged that he requested that all the expired drinks be removed from the shelf. The Complainant alleged that he purchased one of the expired drinks as evidence that Shoprite was selling expired products and decided to make a complaint with the Commission.¹

Legal Contravention and Assessment Tests

Legal Contravention

It was submitted that:

6. The alleged conduct engaged in by the Respondent appeared to be a breach of Section 52(1) of the Competition and Consumer Protection Act No. 24 of 2010 (the Act).

7. Section 52(1) of the Act reads, "A person or an enterprise shall not sell any goods to consumers unless the goods conform to the mandatory safety standard for the class of goods set by the Zambia Bureau of Standards or other relevant competent body."

Assessment Tests

For the purpose of analysis of possible violation of Section 52 (1) of the Act, the following assessments tests were used:

8. Whether Shoprite Zambia is a "person" or "enterprise";
9. Whether Shoprite Zambia supplied consumers with goods that do not conform to a mandatory consumer product information standard for

the class of goods set by the Zambia Bureau of Standards or other relevant competent body.

Investigations conducted

It was submitted that:

10. The Commission sent a Notice of Investigations to the Respondent on 16th January 2014 regarding the allegations raised. The Commission also collected the mentioned drinks as evidence to ascertain the allegations raised against the Respondent.

Findings

The Parties

The Complainant

It was submitted that:

11. The Complainant was Mr Hanford Chaaba of Chilanga in Lusaka. The Complainant is a Public Relations Officer at the Competition and Consumer Protection Commission.

The Respondent

It was submitted that:

12. The Respondent was African Supermarkets Limited trading as Shoprite Zambia whose registered address is Plot Number 19255, Manda Hill Shopping Complex, Corner of Great East and Manchinchil Roads. The Respondent has several retail shopping outlets across the country.²

Submissions from the Respondent

It was submitted that:

13. In their submissions the Respondent stated that the complaint that had been submitted to the Commission by the Complainant has a bearing upon the alleged display at the Shoprite supermarket Cairo road of expired take 5 Mango flavoured drinks. The Respondent submitted that according to the Complainant the drinks concerned had an expiry date of 5th January 2014. This incident occurred on 9th January 2014, and that it was understood that the Complainant is the Public Relations Officer of the Commission.

² <http://www.shoprite.co.zm/Pages/AboutUs.aspx>

14. The Respondent submitted that apart from the foregoing, the Complainant levelled certain accusations against this company which are dealt with hereunder and which also have a bearing upon a perceived lack of skill and care in the handling of this matter by an employee of this company.

15. The Respondent submitted that the company and all other companies within the Shoprite group that trade in many African countries adhere to corporate policies and has overtime established a reputation of providing quality and affordable products to the consumer. The Respondent submitted that the Shoprite Group had a stringent corporate policy as far as expired products were concerned in that these products must be removed from shelves prior to the expiry date and would not be offered for sale to the public.

16. The Respondent submitted that the company traded in approximately 20,000 product lines in the Cairo Road Shoprite Supermarket and followed a strict quality control measures to ensure that customers were provided with quality products. The Respondent submitted that as a matter of daily practice procedures had been put in place to check for products that were about to expire three months before they did so with a view to action taken to clear them by way of sale before they expired, or returned to the supplier where a returns agreement existed, or destruction in the case of sensitive items such as baby foods which they did not reduce to clear and goods which had reached their expiry date.

17. The Respondent submitted that information about expiry dates captured and, in terms of our surveillance systems, the Respondent was able to identify an item that was about to reach the end of its shelf-life. The Respondent submitted that stock that has expired would be removed from the sales floor and returned to the supplier or discarded through destruction via the local council or municipality.

18. The Respondent submitted that as part of their corporate policy all staff engaged in the supermarket undergo merchandising training with the emphasis on quality control and the need to identify and remove products from the shelf that were about to reach their expiry dates.

19. The Respondent submitted that after having discussed the issue with Mr Chitalu (who was identified by name in the letter under reply), it was apparent that he did not under any circumstances attempt to justify to the Complainant the display of expired products. The

Respondent submitted that all supermarket staff were conversant with the company policy that expired products may not be displayed and/or sold to customers under any circumstances. The Respondent submitted that Mr Chitalu had been a Middle Manager for over five years now and was well versed and well trained in these procedures and cognisant of the legal and internal disciplinary consequences of acting in the manner alleged. The Respondent submitted that any assumption on the part of the display of expired products was regretted. The Respondent submitted that the Commission could rest assured that this was indeed not the case.

20. The Respondent submitted that it was correct that the price of the relevant products was reduced from K7.49 to K2.99, and that the price reduction was inspired by the impending expiry date and an intention to clear such stock as far as possible before that date.

21. The Respondent submitted that apart from having been alerted by the Complainant of expired stock on their shelves it was established that amongst all the products displayed only four had an expiry date of 5th January 2014. The Respondent submitted that these products were immediately removed. The Respondent submitted that according to Mr Chitalu, he attempted to explain to the Complainant systems operated by the company as far as the flagging of expired stock was concerned. The Respondent submitted that he attempted to be helpful and informative. The Respondent submitted that the Complainant's subjective perception that Mr Chitalu lacked skill and care in the handling of this matter was likewise regretted. The Respondent submitted that they would like to reassure the Commission that all their staff were properly trained, conversant with company policies and required to act courteously to all customers and authorities.

22. The Respondent submitted that it was important to mention that the company did not receive any customer complaints regarding expired products referred to above apart from the Complainant. The Respondent submitted that it was difficult to explain how this had happened, given the fact that the company had systems in place to identify products with impending expiry dates. The Respondent submitted that it was however possible that the stock on the shelves could have been rearranged inadvertently by a consumer and that this was not immediately picked up by their surveillance systems.³

³ Submissions received from the Respondent dated 29th January 2014 and received by the Commission on 30th January 2014

Submissions from the Respondent on the Preliminary Report

It was submitted that:

23. On 19th March 2014, the Respondent made submissions to the Commission on the preliminary report sent to them. The Respondent submitted that they were willing to settle the matter amicably and had further instituted internal disciplines on their side. The Respondent stated that the 3 Managers at their Cairo Road outlet had been counselled and disciplined and had in turn counselled and disciplined the staff under them as part of both punishment and training.

24. The Respondent further submitted that in order to amicably resolve this matter, they proposed to pay K 10,000.00 and the managers and staff at the Cairo Road outlet would pay the other K10,000.

Relevant Findings

It was submitted that:

25. A close examination of the products of the seized products revealed that it had an expired date of 5th January 2014 and the products were still on the shelf available to consumers on 9th January 2014 and was purchased by the Complainant on the 9th of January 2014.

Previous Cases Involving the Respondent

It was submitted that:

26. A review of the Commission's records revealed that this is the second time the Respondent is being reported to the Commission for the on allegations of unfair trading involving the breach of section 52(1) of the Act. The first case was received on 23rd January 2013, when the Commission received a complaint from Mr. Arthur D. Sikopo who alleged that on 21st January 2013 he bought a pack of oranges from Shoprite Cairo Road worth K 18.98.

Analysis of Conduct

Whether Shoprite Zambia is an "enterprises" or person

It was submitted that:

27. The Act defines an Enterprise as "a firm, partnership, joint-venture, corporation, company, association and other juridical persons, which engages in commercial activities and includes their branches, subsidiaries, affiliates of other entities, directly or indirectly, controlled by them".

28. African Supermarket Limited (Reg No. 33740/95) trading as Shoprite is registered in Zambia and has sales outlets throughout Zambia in which the said products were being availed for sale. Therefore the Respondent is an enterprise as defined under the Act

Whether goods sold conform to the mandatory safety standard for the class of goods set by the Zambia Bureau of Standard or other relevant competent body;

29. According to Section 3(b) of the Food and Drugs Act it provides that **"Any person who sells any food that consists in whole or in part of any filthy, putrid, rotten, decomposed or diseased substance or foreign matter, or is otherwise unfit for human consumption shall be guilty of an offence".**

30. Further Section 4 of the same Act states that **"Any person who labels, packages, treats, processes, sells or advertises any food in a manner that is false, misleading or deceptive as regards its character, nature, value, substance, quality, composition, merit or safety, or in contravention of any regulations made under this Act, shall be guilty of an offence."**

31. Section 52(1) of the Act when read with Section 3(b) and Section 4 of the Food and Drugs Act, makes the selling of food with foreign matter an offence if the product becomes rotten, decomposed or otherwise unfit for human consumption.

32. The product in question had an expiry date of 5th January 2014 but was still on the shelf and still on sale to the public on 9th January 2014 when it was purchased by the Complainant.

Board Deliberations

33. Having considered the facts and submissions given the Board resolved that the Respondent as an enterprise did engage in unfair trading practices by offering for sale expired Take 5 Mango Flavoured to the public.

Board Determination

34. The facts and evidence have shown that the Respondent was in violation of Section 52(1) of the Act.

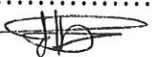
Board Directive

35. From the analysis and conclusions given the Board of Commissioners hereby:

i. Direct that the Respondent be prosecuted.

Note: Any party aggrieved with this order or directive may, within thirty (30) days of receiving the order to direction, appeal to the Competition and Consumer Protection Tribunal.

Dated this 20th June 2014


.....
Chairperson
Competition and Consumer Protection Commission