

**THE COMPETITION AND CONSUMER
PROTECTION TRIBUNAL**

APPEAL NO. 2020/CCPT/016/CON.

BETWEEN

PICK N' PAY ZAMBIA LIMITED

APPELLANT

AND

COMPETITION AND CONSUMER PROTECTION

RESPONDENT

COMMISSION

**CORAM: Mrs. Eness C. Chiyenge (Chairperson), Mrs. Miyoba B. Muzumbwe-Katongo (Vice
Chairperson), and Mr. Buchisa K. Mwalongo (Member)**

For the Appellant: Mr. C. Samechi of Messrs Philsong and Partners Legal Practitioners

For the Respondent: Mrs. M.M. Mulenga, Manager Legal Services and Ms. M. Mtonga Senior Legal
Officer – Competition and Consumer Protection Commission

JUDGMENT

Legislation referred to:

1. Competition and Consumer Protection Act No. 24 of 2010, sections 45 (a) and (b), 46 (1) and 47 (a) (v).
2. Competition and Consumer Protection (Tribunal) Rules, S.I. No. 37 of 2012, Rule 15 (2).

Cases referred to:

1. Insurers Association and 15 Others v. The Competition and Consumer Protection Commission 2018/CCPT/022/COM.
2. Spar Limited v. Danny Kaluba & Competition and Consumer Protection Commission 2016/CCPT/009/CON.
3. Macnicious Mwimba v. Airtel Networks Plc & Competition Commission Appeal No. 2014/CCPT/015/CON.
4. Australian Competition and Consumer Commission v. Coles Supermarkets Australia PTY Limited [2014] FCA 634.
5. Italian School of Lusaka v. Competition and Consumer Protection Commission Appeal No. 2016/CCPT/017/CON.
6. Director General of Fair-Trading v First National Bank [2002] 1 AC 482; [2001] UKHL 52.
7. Communications Authority v Vodacom Zambia Limited (SCZ) Judgement No. 21 of 2009) and Williams Masautso Zulu v Avondale Housing Project Limited (1982) ZR 172.

7. Communications Authority v Vodacom Zambia Limited (SCZ) Judgement No. 21 of 2009) and Williams Masautso Zulu v Avondale Housing Project Limited (1982) ZR 172.

Other works referred to:

1. Zambia Association of Manufacturers, "Proudly Zambian Campaign – Beyond the Logo", November 5, 2020. <http://zam.co.zm>proudly-zambian-campaign-beyond-the-logo/> (Seen on 31st February 2022 at 13:00 hours.)
2. Chitty on Contract, 27th Edition, paragraph 6-019.

INTRODUCTION

1. This is our judgement in the appeal by Pick n Pay (hereinafter referred to as "the Appellant") against the decision of the Competition and Consumer Protection Commission (hereinafter referred to as "the Respondent") dated 28th August 2020.

BACKGROUND

2. The decision of the Respondent herein came about as a result of complaints from the general public against the Appellant, alleging that the it had labelled certain products it was selling, such as Dale Cheese, as "Proudly Zambian" when in fact these products were not manufactured in Zambia.
3. Briefly, the background to the said decision is that the Respondent on the 18th April, 2020 carried out investigations to ascertain whether the Appellant was labelling foreign manufactured products with the label "Proudly Zambian". The Respondent as a matter of fact found that the Appellant's Woodlands outlet had labelled Dale Cheese products with the label "Proudly Zambian". The finding of the Respondent at the Appellant's Woodland outlet was also that there was on the same cheese an original label that had an address for the manufacturer that read "Bandini Cheese, 15 Landsborough Street Robertsham, 2190 JHB, South Africa" (being a South African Address).
4. Following the investigations, in respect of which the Respondent issued a Notice of Investigation to the Appellant together with a letter dated 30th March 2020, the Appellant was found to have violated section 46(1) as read together with section 45(a) and (b) and section 47(a)(v) of the Competition and Consumer Protection Act No. 24 of 2010 (hereinafter referred to as "the Act). The Respondent proceeded to fine the Appellant 0.5% of its annual turnover.

5. The Appellant in responding to the Notice of Investigation had asserted that Pick n Pay only used the labelling “Proudly Zambia” on products made at the store level. That these products were labelled “Proudly Zambian” as all ingredients were sourced locally. Furthermore, the Appellant undertook to remove these labels also from our stores.
6. Following the said response, the Respondent reached its findings and verdict. The Respondent’s investigation and initial findings are reflected in its Preliminary Report (at pages 18-22 the Record of Proceedings (the RoP)). The Appellant in response to the Preliminary Report in essence asserted that it had labelled the cheese product in issue properly (with respect to details of the manufacturer including the South African address) in terms of section 50 of the Act. Further, that the “sticker” in contention read, “P n P Proudly Zambian”, and that these words meant that the company itself was proudly Zambian, not the product. Further, that the said “sticker” did not mislead consumers, did not constitute, and was separate from, the label put on the product pursuant to section 50 of the Act. (See letter at pages 25-27 of the RoP, reproduced later in the Respondent’s decision subject of the appeal, at pages 38-40 of the RoP)
7. In its final decision, the Respondent’s Board of Commissioners reached the finding that the Appellant did engage in unfair trading practices as relates to misleading consumers thereby distorting or likely to distort their purchasing decisions in terms of section 45 (a) read together with section 46 (1). Further, that the Appellant did compromise the standard of good faith which an enterprise can reasonably be expected to meet, hence violation of section 46 (1) as read together with section 45 (b) of the Act. Further, that the Appellant did engage in unfair trading practices as relates to false representation that any goods or services have sponsorship, approval or affiliation, that they do not have, hence violation of section 47 (a) (v) of the Act. (See pages 37, 38, and 40 of the RoP.)
8. The Appellant being dissatisfied with the decision of the Respondent filed six grounds of appeal as follows:
- (1) That the Respondent misdirected itself when it overlooked the Appellant submissions that the insertion of the price tag with the words “PNP Proudly Zambian” does not amount to product labelling under section 50 of the Act.
 - (2) That the Respondent misdirected itself when it found that the Appellant engaged in unfair trading practices as relates to the false representation when the conduct alleged was not of a misleading nature.
 - (3) That the Respondent’s decision that the Appellant engaged in unfair trading practices as relates to the false representation was not of a misleading nature as perverse as it was

made in the absence of any relevant evidence properly before the Board to that effect and was clearly made upon a misapprehension of the facts and or evidence and it is a finding which, on a proper view of the evidence, no Board acting correctly, can reasonably make. (this is copied exactly as written by the Appellant)

- (4) That the Respondent misdirected itself when it found that the Appellant engaged in unfair trading practices as it relates to the standard of honesty and good faith which an enterprise is required to meet when the conduct alleged did not amount to unfair trading practices either as alleged or at all or neither did the conduct complained of compromise the standard of honesty and good faith within the meaning of the Act.
- (5) That the Respondent decision that the Appellant engaged in unfair trading practices as relates to the compromise of the standard of honesty and good faith which an enterprise is required to meet was perverse as it was made in the absence of relevant evidence properly before the board to that effect and was clearly made upon misapprehension of the facts of evidence and it is a finding which on a proper view of evidence no board action correctly can reasonably make.
- (6) That the Respondent misdirected itself when it held that the Appellant contravened Section 46(1) and Section 45(a)(b) and section 47(a)(v) of the Act.

APPEAL HEARINGS

9. We heard the appeal on 23rd August and 10th September 2021. The Appellant called one witness while the Respondent opted not to call any witness but relied on the RoP. Before we could go into hearing the Appellant's witness, counsel for the Appellant informed us that he had a preliminary issue that the Appellant wanted to raise. In order for us to determine whether the issue was something that could be raised without a formal application, we allowed counsel to explain what the issue was about. Counsel said that the Appellant had an issue with the manner in which the Respondent had raised its charges against the Appellant. That this was because the Respondent had in all its investigative proceedings left out the words "P n P". This was in reference to the Appellant's use of the words complained of, i.e., "Proudly Zambian" on the product in issue (so that the charges should have referred to the words "P n P Proudly Zambia"). According to the Appellant, the charges as they stood skewed the case against the Appellant.
10. In our ruling, we agreed with the position taken by the Respondent that the nature of the issue that the Appellant intended to raise went to the core of the appeal. That therefore we could not deal with the issue without considering and determining the appeal itself.

11. We heard the Appellant's witness on 10th September, 2021. We refer to her testimony in our consideration of the appeal below.
12. The sixty days within which the Competition and Consumer Protection (Tribunal) Rules, S.I. 37 of 2012 (Tribunal Rules) (Rule 32 (2)) require the Tribunal to render its decision having expired, we sat on 8th December 2021 to renew the appeal proceedings. Both parties opted to rely on the proceedings already before us. When sixty days again expired, we sat on 19th April, 2022 to renew the appeal proceedings. The parties opted to rely on the records already before this Tribunal.

13. ARGUMENTS

Ground one

14. In respect of Ground one, the Appellant submitted that the inserted price tag bearing the words "P n P Proudly Zambian" on a Dale Cheese products did not mean that the cheese were manufactured in South Africa and continued to argue that the decision of the Commission was based on an allegation that the said words amounted to product labelling thereby misrepresenting the product as one manufactured in Zambia when in fact it was not.
15. To advance their argument, the Appellant cited section 50 (1) of the Act, which reads as follows:

"A product that is sold in Zambia shall have a label to clearly indicate the product name, the ingredients used in the product, the date of manufacture expiry date of the product, the manufacturer's name, the physical location of the manufacturer, the telephone number and any other details of the manufacturer".
16. The Appellant contended that the words in question were placed on a price tag and connoted that Pick n Pay Zambia is proudly a Zambian Company contrary to what was alleged by the Respondent. In addition, counsel submitted that the Dale Cheese actually provided the information required by section 50, namely, the correct name, email addresses and details of South African manufacturer. Counsel for the Appellant argued that the price tag was inserted on the product and did not label the product as being manufactured in Zambia and neither did the price tag mislead consumers that the goods manufacturer was Zambian. Counsel for the Appellant further contended that the insertion of a price tag with the words "P n P Proudly Zambian" did not amount to labelling of a foreign product as if the same was locally sourced and contended that the Respondent clearly misdirected itself when it arrived at this conclusion.

17. In respect of Ground One, the Respondent contended that the allegations against the Appellant were not in terms of section 50 of the Act but rather in terms of section 46(1) as read together with section 45(a) and (b) and section 47(a)(v).

Grounds two and three

18. In respect of Ground two and three the Appellant referred, *inter ali*, to section 45 (a) of the Act which reads as follows:

A trading practice is unfair if-

(a) it misleads consumers;

and thereby distorts, or is likely to distort, the purchasing decisions of consumers.

19. Counsel for the Appellant contended that no reasonable consumer who upon seeing and or reading the product label on the Dale Cheese would construe a price tag with the words “P n P Proudly Zambian” to mean that the product was manufactured locally. To support their contention, the Appellant cited Chitty on Contract, 27th Edition (2) at paragraph 6-019 which states as follows:

“It is essential that if the misrepresentation is to have legal effect, it should have operated on the mind of the representee. However, once it is proved that a false statement was made which was likely to induce the contract, it is a fair interference of fact (though not an inference of law) that he was influenced by the statement.”

20. From the foregoing, counsel for the Appellant contended that the conduct was not of a misleading nature to warrant a false representation, and that the Dale Cheese product was labelled clearly for the purpose of indicating the product’s name, the ingredients used in the product, the date of manufacturer and the expiry date of the product, the South African manufacturer’s name, the physical location of the manufacturer, the telephone number and all the other necessary contact details of the said manufacturer. Counsel submitted that the Respondent’s finding that there was false representation was totally misplaced as there was ample information on Dale Cheese product to communicate to the Appellant’s customers that it was not locally sourced.

21. In respect of Ground Two, the Respondent contended that contrary to the Appellant’s assertion, the Appellant did falsely represent that the Dale Cheese products were “Proudly Zambian” when in fact they were not thereby misleading the consumers. In respect of Ground Three, the Respondent argued that the decision of the Board of Commissioners was based on relevant evidence and that the Board of Commissioners acted correctly and reasonably in finding that the Appellant falsely represented to the consumers that the wording Dale Cheese products were “Proudly Zambian” when in fact it was not so.

Grounds four and five

22. Under these grounds of appeal, Counsel for the Appellant argued that the Respondent's decision should be reversed as it was perverse and made based on a misapprehension of facts as the Appellant's dealings were bona fide and in effect did not compromise the standard of honesty and good faith which an enterprise is required to meet.
23. Further, counsel for the Appellant contended that the standard of honesty and good faith is enshrined in section 50 of the Act and that this standard was met by the Appellant in that the Dale Cheese product clearly indicated all the details required under section 50 of the Act.
24. To augment the foregoing, counsel for the Appellant cited the case of **Communications Authority v Vodacom Zambia Limited (SCZ) Judgement No. 21 of 2009** and **Williams Masautso Zulu v Avondale Housing Project Limited (1982) ZR 172** (the **Communications Authority v Vodacom case**) in which the Supreme Court held as follows:
- “The Appellate Court will not reverse the findings of fact made by a trial judge unless it is satisfied that the findings in question were either perverse or made in the absence of any relevant evidence or upon the misapprehension of the facts or that they were findings which, on a proper view of the evidence, no trial Court acting correctly can reasonably make”.*
25. Counsel for the Appellant contended that no Board acting correctly can reasonably hold that a price tag indicating that a company is proudly Zambian contravenes the provisions of the Act.
26. In respect of Ground Four, the Respondent contended that it was within the ambit of the Act when it found that the Appellant contravened section 46(1) as read together with section 45(a)(b) and section 47(a)(v) of the Act.
27. The Respondent, at paragraph 5 of the Head of Arguments, provided the meaning of the word “mislead” in the English Dictionary and the word is defined as follows, “to give a wrong idea or impression” while “distortion” is defined as “pull out of shape”. The Black's Law Dictionary defines “falsely represent” as to make a deceitful and untrue statement for ulterior motives. The Respondent nodded that the Appellant created a label which indicated several details on it such as their trade name, the product.
28. The Respondent further argued in paragraph 8 of the Head of Arguments that the label in contention is a price tag. That, however, the Tribunal should note that the label in addition to the price had information pertaining to the nature of the product and that from the label itself it is crystal clear that the Appellant was informing the consumer that Dale Cheese was

actually a Zambian product when in the actual sense it was not thereby falsely representing and compromising the standard of honesty and good faith that the Appellant is expected to meet.

29. To augment their contention further, the Respondent at paragraph 8 of their Heads of Argument cited the case of **Director General of Fair Trading v First National Bank (2002) 1 AC 482 (2001) UKHL 52** in which the Court held as follows:

“The requirement of good faith in this content is one of fair and open dealing. Openness requires that the terms should be expressed fully, clearly and legibly, containing no concealed pitfalls or traps. Appropriate prominence should be given terms which might operate disadvantageously to the consumer. Fair dealing requires that a supplier should not, whether deliberately or unconsciously, take advantage of the consumer’s necessity, indigence, lack of experience, unfamiliarity with the subject matter of the contract, weak bargaining position or any other factor.... Good faith in this context is not an artificial or technical concept; no ...is it a concept wholly unfamiliar to British lawyers. It looks to good standards of commercial morality and practice”.

30. The Appellant argued that in the Email dated 3rd April, 2020 shown at page 11 of the RoP, paragraph 4 of the said Email quantified that:

“We as Pick n Pay use the labelling “Proudly Zambian “on products made at store level. These products were labelled “Proudly Zambian” as all the ingredients were sourced locally. However, we will remove these labels also from all our sources.” The Respondent argued that the Appellant’s phrase, the label proudly Zambian is only used when all the ingredients are in effect sourced locally as it were. The Respondent further contended that the product in contention was actually made in South Africa by Bandini Cheese, 15 Landsborough Street Robertsham 2190 JHB and continued to argue that the only reasonable inference drawn from herein is that the ingredients listed on the original label were sourced from South Africa and not Zambia. The Respondent further argued that the Appellant had no reasonable cause to label the Dale Cheese products as “Proudly Zambian” in effect as the products were not made at the store level nor were the ingredients sourced locally.”

31. The Respondent continued to argue in relation to the assertion by the Appellant that the words P n P proudly Zambian on the price tag do not amount to product labelling as envisioned under section 50(1), that is, to provide all details of the manufacturer. That the Respondent in its investigation did not relate the conduct of the Appellant to section (50(1) of the Act but to section 46(1) as read together with section 45(a)(b) of the Act. The

Respondent argued in its submission that the demeanour of Appellant was sitting on false representation and thus compromising the standard of honesty and good faith.

32. The Respondent further contended that the assertion by the Appellant that the label in contention is a price tag and submitted that the Appellant printed the information on the label for the purpose of conveying to consumers that the Dale Cheese was made in Zambia when it was not so. The Respondent also argued that in its investigation supported by the email at page 11 of the of the RoP, authored by Mr. Dirk Edwards, Senior Buyer at Pick n Pay who vividly said that the label “Proudly Zambian” is used on products made at the store level which is a contradiction to the assertion by the Appellant that the words Proudly Zambian” refer to the Appellant as being a proudly Zambian Company.

33. To augment the foregoing submissions, the Respondent cited the case of **Robertson v Di Ciccio (1972) R TR 431 at 431**. The brief facts of the case are that the Defendant had placed an advertisement in a local newspaper circulating in Teesside under the following terms:

“Ford Angelia, 1965, taxed, tested full year, beautiful car, all good tyres, good engine, 225 pounds or near offer....”

Lord Widgery CJ stated as follows:

“We are unanimous in thinking that in the ordinary use of such an adjective as (beautiful” when applied to motor car, it is at least likely that the person hearing that description of the car will think that it is intended to refer not only to the outside appearance, but also to the quality of its running and matters of that kind. In other words, a “beautiful car” or a car described as beautiful car is likely to be taken by those who hear the description as a car which runs beautifully and accordingly to be represented with respect to its performance under section 2. Given that, it becomes obvious in this case that the description was false because the car would not run beautifully or at all.....”

34. The Respondent, employing the principle outlined in the said case, argued that the use of the words “proudly Zambian” when applied to the Dale Cheese product likely made the consumer who read these words think that the Dale Cheese was manufactured in Zambia and or approved and or affiliated with the proudly Zambian campaign mooted by ZAM. Additionally, the Respondent contended that the Appellant did not dispute the idea that they labelled the Dale Cheese products with their own label and continued to argue too, that their investigation was not premised on section 50(1) the Act but on section 46(1) as read together with Section 45(a)(b) and section 47(a)(v) of the same Ac. That therefore it follows that the

Board's decision was *firma terra* when it found that the Appellant violated the aforesaid sections of the Act.

35. In respect of Ground five the Respondent argued that the decision of the Board of Commissioners was premised on relevant evidence and that the Board of Commissioners acted correctly and reasonably in finding that the Appellant compromised the standard of honesty and good faith which the Appellant is expected to meet. The Respondent further contended that the matter is premised on section 46(1) as read together with section 45(a)(b) and section 47 (a)(v) of the Act.

Ground six

36. The Appellant contended that the Appellant did not contravene section 46(1), section 45(a) and (b) and section 47(a)(v) of the Act and therefore submitted that the fine imposed on the Appellant be set aside and that costs be awarded to the Appellant.
37. In respect of Ground Six, the Respondent contended that the Commission was within the realm of the law when it held that Appellant contravened Section 46(1) as read together with Sections 45(a) and (b) and 47(a)(v). The Respondent continued to argue that the issue at hand is the use of the words "proudly Zambian" on the label endorsed by the Appellant on the Dale Cheese products that are made in South Africa. The Respondent further referred to the images of the label appearing at page 34 of the RoP and indicated to this Tribunal that the label of the South African manufacturer was attached at the back of the Dale Cheese product whereas the Appellant's was attached at the front of the Dale Cheese product and as such the Appellant knew of this fact but went ahead and printed on the label in addition to the price of the product the wording "Proudly Zambian".
38. The Respondent cited the case of **Airtel Networks Zambia Plc v CCPC and MacnicousMwimba v Airtel Networks Zambia and CCPC 2014/CCPT/015/CON judgment delivered by this Honourable Tribunal dated 28th February, 2018 at pages 29, 30 and 31**. The Tribunal held as follows:

"We have found no reason to arrive at a different finding from that reached by the Commission that by calling that tariff "Unlimited Data Plan" Airtel misled the Complainant as he believed that he would continue to use the internet service despite having exhausted his fair use quota. There was evidence to the effect on record, which was also referred to at the hearing of the Appeal, as we indicate elsewhere with that

issue. This is because such evidence is unnecessary and would not itself conclusively determine the question of violation of the provisions in issue in the absence of a determination on the basis of the objective test, which alone is conclusive. Partly because of this same reason, we have not given serious consideration to the evidence by the second witness that a number of consumers, apart from the Complainant, complained to ZICTA about the perceived misuse of the word “unlimited” in Airtel’s advertisement of the product in issue. The other reason is that no documentary evidence of any such complaint was presented before the Commission or Tribunal.

In our view, the objective test would in respect of both sections 45(a) and 47(a)(v) relate to consumers who were either purchasers or prospective purchasers of internet services or products for direct consumption. In respect of section 45 (a), the objective test is whether the advertisement was misleading to ordinary or reasonable members of the public who were purchasers or prospective purchasers for direct consumption of the internet services or products and thereby distorted, or was likely to distort, the purchasing decisions of such consumers. Similarly, in respect of section 47(a)(v), the objective test is whether Airtel’s advertisement amounted to false representation about the characteristics of the product or service to ordinary or reasonable members of the public who were purchasers or prospective purchasers, for direct consumption, of internet services or products..... Therefore, the language of the provisions alleged to have been violated, interpreted in the context of the whole Act and in particular Part VII which is specifically concerned with consumer protection, would not permit an interpretation that overlooks unfair trading practices, or false representation in respect of goods or services on the market simply because there is no proof that a complainant or anyone was a victim of an alleged violation and or proof that such a person actually suffered damage or injury as a result.”

39. The Respondent further made submissions, by relying on the said case, that there is no doubt that the Appellant, by endorsing the words “Proudly Zambian” on the Dale Cheese products, mislead ordinary or reasonable members of the public who were purchasers or prospective purchasers, for direct consumption of the Dale Cheese products, and thereby distorted or likely distorted, the purchasing decisions of such consumers. That consequently, such consumers would probably believe in their minds that they were purchasing cheese products made in Zambia when actually not. In addition, that the Appellant further compromised the standard of honesty and good faith it was expected to meet, being one of the largest supermarkets in Zambia.

40. To further their arguments, the Respondent cited the case of **Australian Competition and Consumer Protection v Coles Supermarkets Australia (PTY) Limited** whose brief facts are that the Australian Competition and Consumer Commission claimed that Coles Supermarkets Australian Pty Limited had engaged in misleading conduct in the manner in which it advertised and sold bread. The particular words used were: “Baked Today, Sold Today”, “Freshly Baked In-Store”, The Federal Court of Australia held as follows:

“Where conduct or representations is or are directed to members of the public at large, the conduct or representations must be judged by their effect on “ordinary” or “reasonable” members of the class of prospective purchasers....In a context such as the present, the purchasing of a staple such as bread in a supermarket, the ordinary or reasonable person may be intelligent or not, may be well educated or not, will not likely spend any time undertaking an intellectualised process of analysis, will often be shopping for many other items, and will be likely affected by an intuitive sense of attraction rather than by any process of analytical or logical choice. The dominant message of advertising for bread is likely to be simple, though intuitively diffuse. What is reasonable care by members of the public....must be judged in the above context...”

41. That the Appellant cannot, therefore, expect that all the consumers who bought or were likely to procure the Dale Cheese products from their supermarkets would turn to the back of the product so as to read the original label of the product. The words printed or endorsed “Proudly Zambian” on the cheese products were not selective as to readers. The Appellant would be assumed to know that the readers would include the shrewd and ingenuous, the educated and the uneducated and the experienced inexperienced in commercial transactions. That the Appellant could not therefore assume that a consumer would be able to supply for himself or herself (often) omitted facts.
42. The Respondent argued that it is clear from the evidence adduced in the RoP and the arguments raised aforementioned, that the Respondent was on firma terra when it held that the Appellant violated the language and meaning of section 46(1) as read together with section 45(a) and (b) and section 47(a)(v) of the Act and therefore, the fine of 0.5% of the Appellant’s annual turnover was correctly imposed and should not be set aside as it is meant to deter the Appellant and other enterprises in future from engaging in such conduct.
43. The Respondent further contended that the Appellant’s submission lacks merit and should be dismissed in its entirety as the evidence on record shows that the Appellant falsely represented that Dale Cheese product was locally made, thus compromising the standard of honesty and good faith that they are expected to meet, thereby distorting or likely to distort

the purchasing decisions of consumers. Furthermore, the Appellant by labelling “Proudly Zambian” on the Dale Cheese product falsely represented that the Dale Cheese product had the sponsorship, approval and or affiliation of the Proudly Zambian campaign mooted by ZAM.

CONSIDERATION AND DETERMINATION

44. Both the Appellant and the Respondent filed heads of argument to support their respective grounds of appeal and opposition thereto. We have carefully perused the decision of the Respondent including the complaint and the inquiry leading to the decision subject of the appeal. We have also perused the Appellant’s grounds of appeal and the Respondent’s opposition thereto. We have also considered the evidence presented before us and arguments by counsel for the respective parties. We shall refer to these material as we see necessary.
45. In considering the appeal, we have also addressed our minds to the question whether or not the Respondent omitted reflecting all the words used by the Appellant in the label complained of and whether or not this omission, if any, may have had the effect of skewing the case against the Appellant. This issue was raised by counsel for the Appellant orally and we ruled that it could not be separated from our consideration of the appeal itself. We now address our minds to the issue before delving into the grounds of appeal.
46. It is true that in raising charges against the Appellant and in its assessment of the issues relating to the same, the Respondent focussed on the words “Proudly Zambian” to the exclusion of the words immediately before these words on the label or sticker in contention, that is, “P n P”. The full reading of the same therefore otherwise being “P n P Proudly Zambian”. However, the Respondent did produce, as part of the evidence gathered in its investigations, pictures of both labels – one relating to details of the manufacturer of the cheese product (showing among details the address in South Africa) and another label (which the Appellant refers to as “sticker” reading “P n P Proudly Zambian”. **(See pages 18 and 19 of the RoP)** Hence, the omission in essence relates to the Respondent’s description of the allegedly offending words, leaving out the words which precede those allegedly offending words.
47. We have found that in its Notice of Investigation, the Respondent raised issue with the Appellant’s alleged labelling of products not manufactured in Zambia as “Proudly Zambian” and specifically singled out the Appellant’s Dale Cheese products which were allegedly labelled “Proudly Zambian” when in actual fact not manufactured in Zambia. We have also

found that the Appellant, in responding to the charges in the Notice of Investigation, in their email dated 3rd April 2020, stated as follows:

"We order products from suppliers and the labelling as such on their relevant products is done by them. We merely order the products daily.

If a manufacturer imports stocks and labels it "Proudly Zambia" (sic) we will not be able to know that until it is brought to our attention.

As such we have notified the relevant parties to ensure only locally made products can be labelled "Proudly Zambia".

I would suggest from my side to assist all retailers that CCPC also check all local suppliers manufacturing plants. This will alleviate any future issues in terms of retailers getting the wrong labelled products.

We as Pick n Pay only use the labelling "Proudly Zambia" on products made at the store level. These products was (sic) labelled "Proudly Zambia" as all ingredients was sourced locally. However, we will remove these labels also from our stores.

Regards

Dirk Edwards

Senior Buyer

Pick n Pay Zambia" (See page 11 of the RoP)

48. Therefore, at that stage there was no issue of the labelling "Proudly Zambian" being used in reference to "P n P" as a Zambian incorporated company. It was afterwards following the Respondent's findings in the Preliminary Report, that the Appellant heavily canvassed the position that the words "Proudly Zambian" were used in reference to the words "P n P", that is, Pick n Pay, as a Zambian company.
49. We have also observed that although the Appellant's submissions on the findings in the Preliminary Report were reflected in the Respondent's Decision subject of the appeal word for word, the Respondent in reaching its findings and conclusions did not specifically deal with the issue.
50. We have said over and over again that the Respondent has a duty to address itself to all issues raised or that may have a bearing on the outcome of an investigation. If the Respondent did not consider the issue to have any or significant weight on or relevance to the outcome of its investigation, it should have said so and substantiated its position instead of simply ignoring the point. Having said so, we cannot ascertain whether the Respondent's failure to specifically address the said issue skewed its findings against the Appellant apart

from our determination of the merits of the appeal. We shall therefore address the issue as we see appropriate in our consideration of the grounds of appeal.

51. Each party has argued some of the grounds together as they saw fit. We have not followed any such order; instead, we have considered ground one separately; grounds two and three together, as they relate to section 45 (a) read together with section 46 (1); grounds four and five together, as they relate to section 45 (b) read together with section 46 (1); and ground six separately as it is a general assertion that the Respondent erred in finding that the Appellant violated sections 46 (1), 45 (a) and (b) and 47 (a) (v) of the Act (more specifically, we deal with section 47 (a) (v) which is not dealt with in the other grounds of appeal).

Ground One

52. It is the contention of the Appellant in ground one that the Respondent misdirected itself when it overlooked the Appellant's submission that insertion of the price tag with the words "PnP Proudly Zambian" does not amount to product labelling under section 50 of the Act.

53. In respect of Ground one, the Respondent contended that the allegations against the Appellant were not in relation to section 50 of the Act but in relation to section 46(1) as read together with section 45(a)(b) and section 47(a)(v) of the Act.

54. In her evidence in chief, the Appellant's witness testified, inter alia, that the cheese in issue had two labels. She said:

"What we have in front of me here is two labels. The one on the left is a label from the supplier. A label indicates the product description, the product name, ingredients in the product and the place of manufacture for the product. The label on my right is a Pick and Pay label which has the description of the product, the weight and price of the product. So, what it means here is the actual product itself the Dale Cheese is supplied to us as Pick and Pay on random words. By random words the product does not have the fixed word, so the retailer is supposed to put the sale value of the item. Hence the price tag on the left. What is happening here is nothing unfair to our customers. The business is merely conveying the sale value of the item in this product on the sticker. Pick and Pay is a Zambian registered company and we like to use a proudly Zambia slogan to just express that it is a Zambian Company."

55. Thus, the said testimony confirms that on the same product in issue there was a label that allegedly responded to section 50 of the Act in that it was product description, the product name, ingredients, and the place of manufacture of the product. It is also evident that this is the label shown on the left at pages 18 and 19 of the RoP. The testimony also confirmed that there was another label, which the Appellant refers to as "a sticker". According to the

witness, this “sticker” (on the right side of the picture at pages 18 and 19) was intended to convey the sale value of the product. The “sticker” also read “P n P Proudly Zambian”.

56. Our understanding of the case before us is that the Respondent’s charges were not founded on the label on the left side of the picture, which allegedly responded to section 50 of the Act. The charges were founded on the label (called “sticker” by the Appellant) on the right side of the picture. Specifically, the charges relate to the words “Proudly Zambian” used in the statement “P n P Proudly Zambian”. We do not see anything in sections 45, 46 and 47 connecting the offences to the requirement of a product label in the terms of section 50 of the Act. We therefore agree with the Respondent and we respectfully dismiss ground one.

Grounds Two and Three

57. The Appellant contended in respect of ground two that the Respondent misdirected itself when it found that the Appellant engaged in unfair trading practices as relates to false representation when the conduct alleged was not of a misleading nature. In response thereto the Respondent argued that the Appellant did falsely represent that the Dale Cheese products were “Proudly Zambian” when in fact not thereby misleading consumers.
58. The Respondent contended that the Appellant had labelled the Dale Cheese, non-indigenous products, as “Proudly Zambian”. The Appellant argued that the label in question relate to Pick n Pay itself as a company incorporated in Zambia and not the product Dale Cheese.
59. Under ground three, the Appellant challenged as unfounded the Respondent’s decision that the Appellant engaged in unfair trading practices as relates to false representation, arguing that the alleged conduct was not of misleading nature. That the Respondent’s finding is perverse as it was clearly made in the absence of any relevant evidence to that effect properly before the Board of Commissioners, and was clearly made upon a misapprehension of the facts and or evidence. Further, that it is a finding which, on proper view of the evidence, no Board acting correctly, can reasonably make. The Tribunal has noted that ground three of appeal, though lengthy, is not substantially different from ground two.
60. The cardinal question for our determination under these grounds of appeal is whether the conduct of the Appellant amounted to unfair trading practice as alleged by the Respondent, i.e., whether the Appellant’s label, by use of the words “Proudly Zambian”, amounted to a representation that the product was produced in Zambia in contravention of section 45 (a) as read together with section 46 (1).
61. Sections 45 (a) and 46 (1) read as follows:

45. A trading practice is unfair if-

(a) it misleads consumers;

(b) ...; or

(c) ...;

and thereby distorts, or is likely to distort, the purchasing decisions of consumers.

46. (1) A person or an enterprise shall not practice any unfair trading.

62. The Appellant's argument that the Respondent acted under a misapprehension of the facts because, according to the Appellant, the words in "P N P Proudly Zambian" referred to the company itself and not the product brings into issue the element of *mens rea*. The Appellant's argument also brings into question what is meant by the word "consumers", the word "misleading", the word "distort" and the words "Proudly Zambian".

63. In some past decisions of the Tribunal, such as our recent judgment in the case of the **Insurers Association and 15 Others v. The Competition and Consumer Protection Commission 2018/CCPT/022/COM. (the Insurers case)**, we have addressed the subject of *mens rea* in non-criminal regulatory offences. In the cited case, we quoted at length our holding in the case of **Spar Limited v. Danny Kaluba & Competition and Consumer Protection Commission 2016/CCPT/009/CON. (the Spar case)**. We repeat what we said in the **Insurers case**, including our quotations from the **Spar case**.

46. In the case of **Spar Zambia Limited v. Danny Kaluba and the Competition and Consumer Protection Commission 2016/CCPT/009/CON (the Spar case)**, we considered the question whether the alleged contravention of section 51 (1) of the Competition Act is one to which the common law presumption of the requirement of proof of *mens rea* (a guilty mind) applies; and if so, whether the Appellant's unintentionally committed the act complained of. We observed that distinguishing between offences to which the common law presumption of the requirement of proof of a guilty mind and those to which the presumption does not apply has been subject of court decisions for centuries. We looked at the extensive review by Mr. Charles, J. in the High Court (appeal) case of **Chitambala Ntumba v. The Queen (1963-1964) Z. and N.R.L.R. 132**, in which the learned Judge made the observations outlined below, and for full appreciation, we quote at length from our text in the Spar case.

47. In 1895, in **Sherras v. De Rutzen [1895] 1 Q.B. 918 at page 921**, Wright, J, stated the law, as it appeared to have developed by then, in these words:

"There is a presumption that *mens rea*, an evil intention, or a knowledge of the wrongfulness of the act, is an essential ingredient in every offence; but that presumption

is liable to be displaced either by words of the statute creating the offence or by the subject matter with which it deals, and both must be considered ."

48. He then went on to say that the classes of statutes in which the presumption has been found to have been negated may perhaps be reduced to three:

(i) those by which the legislature has seen fit, in the public interest, to prohibit under penalty acts which are not criminal in themselves;

(ii) *those prohibiting under penalty acts which amount to a public nuisance;*

(iii) *those allowing proceedings in criminal form as a summary mode of enforcing civil rights.*

49. The learned judge's attempt to classify the statutes in which the common law presumption was commonly found to have been rebutted led many subsequent judges to concentrate more on whether or not a particular statute fitted into one of the categories of exceptions than upon whether or not it was necessary to exclude the presumption in order to achieve effectively the manifest objects of the legislature. As a result the authorities on the subject had become ...confusing by 1943"(Underline ours)

50. In reviewing the confusion that ensued in the interpretation of the law on the presumption, Charles J cited observations by Jordan, CJ, in R. v. Turnbull(1943) 44 S.R (N.S.W.) 608; 18 A.L.J., of conflicting decisions that ensued from the Sherras v. DeRutzencase. Lord Jordan labelled some of the decisions as decided on conjectures. In his judgment, Charles, J., quoted extensively from decided cases on the subject, which in summary can be said to have formulated the following principles:

51. At common law there must always be *men srea* to constitute a crime; if a person can show that he acted without *mens rea* that is a defence to a criminal prosecution. Unless a statute, either expressly or by necessary implication, rules out *mens rea* as a constituent part of a crime the court should not find a man guilty of an offence against the criminal law unless he has a guilty mind.

52. These principles were acted on in several later cases by the King's Bench Divisional Court, presided over by Lord Goddard (for example, in Harding v.Price[1948] 1 All E.R. 283, 68 T.L.R 111; Reynolds v. G. H. Austinand Sons Ltd. [1951] 1 All E.R. 606; and Gardner v. Akeroyd [1952] 2 All E.R. 306).

53. In **Lim Chin Aik v. Reginam**[1963] 1 All E.R. 223, Lord Evershed, in giving the advice of the Board, which consisted of himself, Viscount Radcliffe and Lord Devlin, referred to the dictum of Wright, J, in **Sherras v. De Rutzen** and quoted the second principle with approval. He then said, of determining the intention of the legislature where a guilty mind as an ingredient of the offence is not expressly ruled out by the legislature:

54. "The adoption of these formulations of principle does not, however, dispose of the matter. Counsel for the respondent, indeed, as their Lordships understood, did not challenge the formulations. But the difficulty remains of their application. What should be the proper inferences to be drawn from the language of the statute or statutory instrument under review . . .? More difficult perhaps still: what are the inferences to be drawn in a given case from the ' subject-matter with which (the statute or statutory instrument) deals '?

55. Where the subject-matter of the statute is the regulation for the public welfare of a particular activity - statutes regulating the sale of food and drink are to be found among the earliest examples - it can be and frequently has been inferred that the legislature intended that such activities should be carried out under conditions of strict liability. The presumption is that the statute or statutory instrument can be effectively enforced only if those in charge of the relevant activities are made responsible for seeing that they are complied with. When such a presumption is to be inferred, it displaces the ordinary presumption of *men srea*. Thus sellers of meat may be made responsible for seeing that the meat is fit for human consumption and it is no answer for them to say that they were not aware that it was polluted. If that were a satisfactory answer, then as Kennedy, L.J., pointed out in **Hobbs v. Winchester Corporation** [1910] 2 KB 471 at pages 482-5, the distribution of bad meat (and its far-reaching consequences) would not be effectively prevented. So a publication may be made responsible for observing the condition of his customers - **Cundy v. Le Cocq**(1884) 13 Q.B.D. 207.

56. But it is not enough in their Lordships' opinion merely to label the statute as one dealing with a grave social evil and from that to infer that strict liability was intended. It is pertinent also to inquire whether putting the defendant under strict liability will assist in the enforcement of the regulations. That means that there must be something he can do, directly or indirectly, by supervision or inspection, by improvement of his business methods or by exhorting those whom he may be expected to influence or control, which

will promote the observance of the regulations. Unless this is so, there is no reason in penalising him, and it cannot be inferred that the legislature imposed strict liability merely in order to find a luckless victim. This principle has been expressed and applied in **Reynolds v. G. H. Austin And Sons Ltd**(supra) and **James and Sons Ltd. v. Smees; Green v. Burnett** [1954] 3 All E.R., 273. Their Lordships prefer it to the alternative view that strict liability follows simply from the nature of the subject-matter and that persons whose conduct is beyond any sort of criticism can be dealt with by the imposition of a nominal penalty. This latter view can perhaps be supported to some extent by the dicta of Kennedy, L.J., in **Hobbs v. Winchester Corporation** (supra) and of 135 Donovan, J, in **R. v. St. Margaret's Trust Ltd.** [1958] 2 ALL E.R. 289 at page 293. But though a nominal penalty may be appropriate in an individual case where exceptional lenience is called for, their Lordships cannot, with respect, suppose that it is envisaged by the legislature as a way of dealing with offenders generally. Where it can be shown that the imposition of strict liability would result in the prosecution and conviction of a class of persons whose conduct could not in any way affect the observance of the law, their Lordships consider that, even where the statute is dealing with a grave social evil, strict liability is not likely to be intended." (Underline ours)

57. The learned Judge Charles in concluding his judgment in the **ChitambalaNtumba** case then went on to state:

"It follows, in my judgment, that the rule relating to mens rea as an element of a statutory offence is this: In the absence of express provision for the offence containing a mental element, it is presumed that the legislature intended that the offence can only be committed by persons with knowledge of the existence or occurrence of the facts or circumstances constituting it. That presumption may be negatived expressly or impliedly. It is negatived impliedly if, but only if, the offence is created in such terms and context as clearly manifest an intention to make it one of absolute liability, or if the substantial suppression of the mischief at which the offence is directed would not be achieved unless the offence was one of absolute liability.

In determining whether absolute liability is necessary to achieve a substantial suppression of the mischief at which the offence is directed regard is to be had to the nature of the offence: to the nature of the mischief to which the offence is directed: to "knowledge" covering actual knowledge, correct belief and

deliberate ignorance but not careless ignorance (see as to that, Nkoloso v. The Queen H.P.A. 12763); to the burden of proving knowledge often being lightened by the accused having the burden of adducing evidence of ignorance, as his state of mind is a matter peculiarly within his own knowledge; and to the extent to which the ignorant are likely to indulge in the mischief and defeat its suppression. Even when necessity is revealed for construing the offence as covering the carelessly ignorant, the necessity may not extend to including the ignorant without fault within the scope of the offence. In that case the provision creating the offence is to be construed as if it contained the words " knowing of or with reason to believe " in respect of the facts constituting the offence."
(Underline ours)

58. In relation to the **Spar case** that was before us, we observed in conclusion that in reviewing the wide array of authorities on the subject matter, we bear in mind that typically the offences dealt with in the cited cases would, in our jurisdiction, be categorised as criminal offences and adjudicated upon by criminal courts, though they are not contained in the Penal Code, Chapter 87 of the Laws of Zambia. That in the case before us we were dealing with a non-criminal regulatory offence which is penal. And that neither the 2nd Respondent nor this Tribunal had the jurisdiction to adjudicate on criminal offences in the Competition Act. We, concluded that it is firmly established, as guided by the **Sherras v. De Rutzen** case and subsequent case law, that (regulatory or public welfare) offences by which the legislature has seen fit, in the public interest, to prohibit under penalty acts which are not criminal in themselves, do not carry the common law presumption of the requirement of *mens rea*, if the offence is created in such terms and context as clearly manifests an intention to make it one of absolute liability. One way in which this legislative intention is implied is if the substantial suppression of the mischief at which the offence is directed would not be achieved unless the offence was one of absolute liability. Other factors have been cited as the gravity of the penalty.

59. We went on to state that the question therefore in the case before us arose, "what is the mischief (public policy) behind the provision in issue? In part, the public policy can simply be stated as found in the title of the Competition Act itself and that of Part VII – "Competition and Consumer Protection". Specifically, s. 51 (1) is intended to protect

consumers from paying a higher price from that for which a product or service is offered (as displayed) by the seller.”

1. Furthermore, we said, “we are of the view that the said public policy and the suppression of the mischief behind the provision would be defeated if the offence was not one of absolute liability because implementation of the requirement of the law is exclusively a responsibility of the Appellant and the 2nd Respondent is not privy to the processes by which the Appellant secures adherence to the law. Whether or not the act in issue was committed deliberately, by negligence or honest mistake despite all diligent efforts are matters within the exclusive knowledge of the Appellant. Requiring the 2nd Respondent to prove a guilty intention on the part of a supplier of consumer goods and services in the position of the Appellant would make prosecution of such offences almost impossible and thereby defeat the suppression of the mischief.”

2. The law around the subject of mens rea in non-criminal regulatory offences, particularly in competition law, continues to evolve. But at the most, the issue must be determined within the confines of the subject statute. Clearly, in the *Spar case* we arrived at our conclusion on account of the nature of the offence in issue.”

64. Applying the said principles to the present case, we are of the firm view that it would be extremely difficult to achieve suppression of the mischief behind the offences in issue if the finding of guilt were conditioned on the Respondent proving the element of mens rea. That is, the suppression of unfair trade practices of misleading consumers, or compromising the standard of honesty and good faith which an enterprise can reasonably be expected to meet, and thereby distorting, or likely to distort, the purchasing decisions of consumers (per section 45 (a) and (b) of the Act); or making false representation that any goods or services have sponsorship, approval, affiliation, performance characteristics, accessories, uses or benefits that they do not have (per section 47 (a) (v)).

65. We therefore conclude that the offences in issue call for strict liability. Therefore, the suggestion by the Appellant that the Respondent misapprehended the facts and erred in its finding on the facts and evidence because, according to the Appellant, the words complained of related to the company itself and not the product cannot be accepted as doing so would be opening the interpretation of the provisions in issue to alleged subjective views or intentions

of alleged violators. The question of guilt should be determined on the objective standard, which we apply.

66. On the question of what is meant by “consumers” in section 45 of the Act, section 2 (1) of the Act defines the term “consumer” in paragraph (b), which relates to Part VII (under which sections 45, 46 and 47 all fall), as “*any person who purchases or offers to purchase goods or services otherwise than for the purpose of re-sale, but does not include a person who purchases goods or services for the purpose of using the goods or services in the production and manufacture of any other goods for sale, or the provision of another service for remuneration;*” Thus in a previous case, we held that:

“... the consumers in view in section 45 of the Act are those covered by the definition in paragraph (b). In the present case, these are members of the public who were either purchasers or prospective purchasers of internet services or products for direct consumption. By “direct consumption”, is meant not using the product for resale or in the production of any other goods for sale or the provision of another service for remuneration.”

67. It is not in contention, and we merely mention for the sake of clarity, that the product in issue was being sold to direct consumers (the Appellant being notoriously known as a retailer). And that the consumers contemplated in sections 45, 46 and 47 of the Act were either purchasers or prospective purchasers of the product.

68. As to what is meant by “misleading”, we note that according to Longman Dictionary of Contemporary English, page 664, the word ‘**mislead**’ is defined as follows:- “*to cause someone to think or act mistakenly or guide wrongly*”. As for the word “distort”, as argued by counsel for the Respondent, Black’s Law Dictionary defines the word “distortion” as meaning “*to pull out of shape*”. In the context of this case, one of the ingredients of the offence is to the effect that purchasing decisions of consumers were, or were likely to be, pulled out of alignment with what such decisions would have been if the product in question had not been labelled “Proudly Zambian”. Therefore, simply put, in the case before us, the labelling “Proudly Zambian” would amount to contravention of section 45 (a) as read with section 46 (1) if it *causes consumers to be mistaken or if it wrongly guides consumers so that their purchasing decisions are pulled out of alignment with what such decisions would have been if the product in question had not been labelled “Proudly Zambian”*.

69. As to what is meant by the words “Proudly Zambian”, the same would be best understood in the sense that an ordinary Zambian consumer of the product would relate to. The Appellant argues that the words were meant to refer to the company Pick n Pay, and not the cheese

product. We have rejected the suggestion that *mens rea* as a subjective intention is an element of the offences in issue. Instead, applying the objective test, we pose the question whether an ordinary or reasonable consumer would understand the words complained of in the sense suggested by the Appellant, i.e., that they referred to the company P n P being Zambian.

70. The Appellant's witness testified in her evidence in chief, *inter alia*, "... *what is happening here is nothing unfair to our customers. The business is merely conveying the sale value of the item in this product on the sticker. Pick and Pay is a Zambian registered company and we like to use a proudly Zambia slogan to just express that it is a Zambian Company.*"
71. Under cross-examination as to whether the slogan appears outside the Pick n Pay outlets in Zambia, and whether the shops are labelled with that slogan, the witness said the slogan appears inside the outlets, and that it used to appear on shopping bags but following the prohibition of its use by the Respondent, it is no longer used on shopping bags. She further testified that the Appellant did not use the slogan on receipts but used it only on products. That is, that the stickers were only placed on products. The witness also testified that the label (or "sticker") in issue is placed at the back of the product while the other label is at the front. Further, that a consumer has to look at the sticker in issue at the back to see the price of the product.
72. The Respondent has in its arguments in respect of section 47 (a) (v), asserted that the "Proudly Zambian" is a marketing campaign that was spearheaded by the Zambia Chamber of Commerce Association of Manufacturers (ZAM) to promote locally manufactured products. Although under grounds two and three of appeal we are dealing with sections 45 (a) and (b) and 46 (1) of the Act, we find it necessary to address our minds to the essence of "Proudly Zambian" not only in terms of what one may consider as the ordinary meaning that an ordinary or reasonable consumer may attribute to the words. In addition, we are of the view that, for comprehensiveness, the words should be examined in relation to the "Proudly Zambian Campaign" in reference to which the words were allegedly used.
73. We have found an article on the ZAM internet website which provides information on this subject. The article reads in part:

"Initiated by the Ministry of Commerce, Trade and Industry in 2004, the Proudly Zambian Campaign seeks to spur job creation and economic development through the promotion of production and consumption of high-quality Zambian products. The Proudly Zambian marketing campaign gives each and every Zambian an opportunity to

be part of those who want to ensure this country has a better future. No effort is too small.

It is important to stress that not all Zambian products on the local market are Proudly Zambian. Proudly Zambian products carry an official logo as shown below.

.....

.....

The Proudly Zambian Campaign recognises that consumers want to buy goods of high standard and quality. To assure consumers of this quality, products certified as ‘Proudly Zambian’ go through a vetting process to ensure that it is of the highest standard to be classified under the campaign. Proudly Zambian products therefore, come with a quality assurance mark to assure the consumer that the product has passed the standards test and is ready for consumption.

.....

....

.....

.....

.....

As Zambians, it is our duty to develop our industrial base and economy. We have a responsibility to create jobs for our growing population. As a consumer, you can play a part in supporting economic development and employment creation by choosing to support and buy local products. So, next time you want to buy a product, think local first.¹ (Underline ours)

74. We take judicial notice of the fact that the PZC is a marketing strategy for locally manufactured goods and that ordinary consumers understand it as such, having been widely publicized in the country. We do so in line with Rule 15 (2) of the Tribunal Rules. The foregoing information from the said article on the “Proudly Zambian” marketing campaign also makes it clear that such goods and services go through a vetting process to ensure that the goods and services and their producers meet prescribed criteria before they are approved. The campaign is not for promoting companies or other enterprises incorporated or registered in Zambia.

¹ Zambia Association of Manufacturers, “Proudly Zambian Campaign – Beyond the Logo”, November 5, 2020. <http://zam.co.zm>proudly-zambian-campaign-beyond-the-logo/> (Seen on 31st February 2022 at 13:00 hours.)

75. We apply the foregoing findings to the case before us. In answering the question whether an ordinary or reasonable consumer would, in the circumstances of this case, be misled that the cheese was locally produced, we must first of all establish what kind of evidence is required. The Appellant argued, citing authors on contract, “Chitty on Contract, 2^{7th} Edition (2) at paragraph 6-019 which states as follows:

“It is essential that if the misrepresentation is to have legal effect, it should have operated on the mind of the representee. However, once it is proved that a false statement was made which was likely to induce the contract, it is a fair interference of fact (though not an inference of law) that he was influenced by the statement.”

76. We have in our interpretation of the section in issue held in the past that it is unnecessary to adduce evidence that a particular consumer was misled and that consequently their purchasing decision was distorted. That even though such evidence, if adduced, is relevant and admissible, it is inconclusive. That this is because the provision in issue does not hang on the subjective test as to the experience of a particular consumer or particular consumers. In line with what we have already said above as to who is in contemplation as consumers in the section, the applicable test is an objective one; that is, of an ordinary or reasonable consumer.

77. We are further satisfied that the authors of Chitty on Contract, referred to by counsel for the Appellant, went further to state, “... *once it is proved that a false statement was made which was likely to induce the contract, it is a fair interference of fact (though not an inference of law) that he was influenced by the statement*”.

78. We refer to our holding in the case of **Macnicious Mwimba v. Airtel Appeal No. 2014/CCPT/015/ CON** in which we referred to case law of some foreign jurisdictions on the question of evidence expected in such cases. For instance, in the case of **Australian Competition and Consumer Commission v. Coles Supermarkets Australia PTY Limited [2014] FCA 634** referred to by counsel for the Respondent, one of the prohibitions in issue was couched in these terms:

“A person must not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.” (Section 18(1) of the Australian Consumer Law (“ACL”))

79. The Federal Court of Australia had this to say concerning criticism that there was no evidence of a person having been misled (at pages 12 – 13):

“Where conduct or representations is or are directed to members of the public at large, the conduct or representations must be judged by their effect on “ordinary” or “reasonable” members of the class of prospective purchasers: In a context such as the present, the purchasing of a staple such as bread in a supermarket, the ordinary or reasonable person may be intelligent or not, may be well educated or not, will not likely spend any time undertaking an intellectualised process of analysis, will often be shopping for many other items, and will be likely affected by an intuitive sense of attraction rather than by any process of analytical or logical choice. The dominant message of advertising for bread is likely to be simple, though intuitively diffuse. What is reasonable care by members of the public ... must be judged in the above context.

....

*Evidence that someone was actually misled or deceived may be given weight. The presence or absence of such evidence is relevant to an evaluation of all the circumstances relating to the impugned conduct. Where the conduct and representations are to the public generally and concern a body of simple direct advertising, the absence of individuals saying they were misled may not be of great significance. There was no such evidence here. The ACCC was criticised for that. That criticism is unfounded. The objective assessment of advertising using ordinary English words in an attempt to persuade can be undertaken without the lengthening of a trial by the bringing of witnesses of indeterminate numbers. Language, especially advertising, seeking to raise intuitive senses and associations, can have its ambiguities and subtleties. The task of evaluating the objective character and meaning of the language in the minds of reasonable members of the public is not necessarily one that will be assisted in any cost-effective manner by calling members of the public. The question is one for the Court: *Taco Company of Australia v Taco Bell Pty Ltd (1982) 42 ALR 177 at 202.**

*Half-truths may be misleading by the insufficiency of information that permits a reasonably open but erroneous conclusion to be drawn: *Fraser v NRMA Holdings Ltd (1994) 124 ALR 548 at 563; Tobacco Institute of Australia Limited v Australian Federation of Consumer Organisations Inc (1992) 38 FCR 1 at 50.* In *Tobacco Institute, Hill J* referred to the valuable observations of *Sheldon J* and *Sheppard J* ... in *CRW Pty Ltd v Sneddon (1972) AR (NSW) 17 at 28*, as well as making pertinent and valuable observations of his own. *Hill J* said the following at 50:*

*‘However, as was observed by Sheldon and Sheppard JJ in *CRW Pty Ltd v Sneddon (1972) AR (NSW) 17 at 28* (the context was the Consumer Protection Act 1969*

(NSW): "An advertisement published in a newspaper is not selective as to its readers. The bread is cast on very wide waters. The advertiser must be assumed to know that the readers will include the shrewd and the ingenuous, the educated and the uneducated and the experienced and inexperienced in commercial transactions. He is not entitled to assume that the reader will be able to supply for himself or (often) herself omitted facts An advertisement may be misleading even though it fails to deceive more wary readers." (Italics ours)

80. Therefore, as we have earlier alluded to, it emerges clearly that the consumers in view constitute any purchasers or prospective purchasers of the cheese product in issue. Further, that as pertains to evidence, we make an evaluation based on the objective test as to whether a reasonable consumer could be misled that the product was produced in Zambia; and not subjective test as to whether any particular consumer was misled. In this regard, we take the approach that was taken in the case we have just referred to. Cheese being food stuff, its consumers - the ordinary or reasonable members of the public - *may be intelligent or not, may be well educated or not, will not likely spend any time undertaking an intellectualised process of analysis, will often be shopping for many other items, and will be likely affected by an intuitive sense of attraction rather than by any process of analytical or logical choice.*
81. In our view, the Appellant's assertion that the words "P n P Proudly Zambian" referred to the company being incorporated in Zambia does not make sense. It is inconceivable that consumers out shopping in P n P would be expecting to be informed on a product label that P n P is incorporated or registered in Zambia. Indeed if such were the case, for argument sake, why would the label not run something like "P n P Incorporated in Zambia" or "P n P Registered in Zambia" or "P n P a Proudly Zambian company"? We therefore reject the Appellant's argument.
82. In the context of the "Proudly Zambian" marketing campaign, we recognise and take judicial notice of the notorious fact that the campaign has been widely publicised in the country as promoting the consumption of locally produced goods and services. It is also our view that even though ordinary or reasonable consumers may not know details such as the logo and the vetting processes that such products and the enterprises go through in order to be approved, they understand the words "Proudly Zambian" to refer to locally produced goods and services. At any rate, not all locally produced goods and services fly under the "Proudly Zambian" logo, but such will still be understood by ordinary or reasonable consumers to be locally produced if labelled or otherwise described as "Proudly Zambian".

It is possible that an ordinary or reasonable consumer would see and read the product label which the Appellant's witness said was at the front of the cheese, giving a description of the product including the manufacturer's name and physical address (South Africa). However, it is also likely that an ordinary or reasonable consumer would only see and read the label on the other side of the product with the price and the words "P n P Proudly Zambian". After all, it is likely that ordinary or reasonable consumers would be looking out for and be immediately attracted by the price of the product and other information on the product such as its place of manufacture or production, and the label or sticker with the price of the product and the words "Proudly Zambian" would respond to such consumers and they would see no need to look for any other label.

84. Furthermore, borrowing the reasoning by Federal Court of Australia in the case of **Australian Competition and Consumer Commission v. Coles Supermarkets Australia PTY Limited**, which we have referred to above, we take the view that an ordinary or reasonable consumer would be unlikely to engage in an analysis as to whether the words "Proudly Zambian" refer to "P n P" as a company, even assuming such a proposition were reasonable (which we have already ruled out).
85. The last question we must address under these grounds of appeal is whether the words in issue, being understood in the way that we have determined, were not only misleading, but also distorted or were likely to distort the purchasing decisions of consumers, i.e., the purchasing decisions of consumers were, or were likely to be, pulled out of alignment with what such decisions would have been if the product in question had not been described as produced in Zambia. No special skill or expertise is needed to appreciate that the description in issue, that the cheese was produced in Zambia, would distort or would have likely distorted consumers' purchasing decisions. Information such as place of manufacture of products is provided to, *inter alia*, help consumers in making their purchasing decisions. Some consumers would especially be attracted to buy the product on account of its being produced in Zambia.
86. Such a consumer might, however, later after buying the product have discovered that there were two labels - one describing the place of manufacture of the cheese as South Africa and the other stating to the effect ordinarily and reasonably understood that the product was produced in Zambia. The consumer will have already purchased the product, likely influenced by the description that it is proudly Zambian (e.g., those who align with the "Proudly Zambian" marketing campaign). Such later discovery would be of no use in

helping consumers to base their purchasing decisions on correct information as to place of manufacture.

87. We accordingly dismiss grounds two and three of appeal and proceed to consider grounds four and five.

Grounds four and five

88. The Appellant in ground four contends that the Respondent misdirected itself when it found that the Appellant engaged in unfair trading practices as relates to the standard of honesty and good faith which an enterprise is required to meet when the conduct alleged did not amount to unfair trading practice either as alleged or at all, and neither the conduct complained of compromised the standard of honesty and good faith within the meaning of the Competition Law aforesaid.

89. The Respondent's response to ground four of appeal is that it was on firm ground and well within the ambit of the law when it found that the Appellant engaged in unfair trading practice in relation to the standard of honesty and good faith which an enterprise is expected meet. The Respondent submitted that it properly found that Appellant engaged in unfair trading practice in relation to the standard of honesty and good faith which an enterprise is expected to meet. That the fact that members of the public complained that the Appellant's outlet in Makeni was selling cheese with labels indicating "Proudly Zambian" when in fact it was a South African product was confirmation that the Appellant engaged in unfair trading practice contrary to section 46 (1) (a) read together with Sections 45 (a) and (b) and 47(a) (v) of the Act.

90. Under the present grounds of appeal, we deal with section 45 (b) as read with section 46 (1) of the Act. Section 45 (b) reads:

"A trading practice is unfair if—

(a)...

(b) it compromises the standard of honesty and good faith which an enterprise can reasonably be expected to meet; or

(c) ...;

and thereby distorts, or is likely to distort, the purchasing decisions of consumers."

91. The question therefore is whether the Appellant in its description "P n P Proudly Zambian" on the label or sticker in issue compromised the standard of honesty and good faith which an enterprise can reasonably be expected to meet. In interpreting the provision, we extensively refer to what we said in our decision in the case of the **Italian School of Lusaka v.**

Competition and Consumer Protection Commission Appeal No. 2016/CCPT/017/CON
in which we also cited a number of other cases and authors on the subject). We held:

“133. In our attempt to provide an understanding of sections 45 (b) as read with section 46 (1) of the Act, we have reviewed the said provisions of the Act in the context of what is commonly understood as “standard of honesty and good faith” at common law and in consumer protection legislation, according to decided cases. The piecemeal development of the doctrine of honesty and fair dealing (good faith) in English contract law has been steadily growing, though perhaps outmatched by other jurisdictions. The duty of good faith is increasingly implied by courts or by statutory intervention in a number of jurisdictions. One author on the subject puts it this way²:

“The long-standing US recognition of a doctrine of good faith and subsequent adoption in numerous common law countries indicates that the doctrine is no marker between civil and common law. In addition, the Scottish case *Smith v Bank of Scotland*³ is strong House of Lords authority for recognising a broad principle of good faith. Recently Canada has recognised an implied duty of good faith in commercial contracts in some situations.⁴ An Australian judge summed up the imperative reason for Australia and other jurisdictions to have a contractual duty of good faith: the duty of good faith ‘is in these days the expected standard, and anything less is contrary to prevailing community expectations.’⁵.... Honesty and fair dealing are rooted social norms. These should be recognised as a positive duty rather than maintaining the traditional assumption that freedom of contract constitutes a negative freedom This shared value is rarely inserted into the written contract, since even to do so may suggest dishonesty.⁶ The social expectation of honesty has already been recognised in the House of Lords case of *HIH Casualty v Chase Manhattan Bank*.⁷ In that case a statement was interpreted by Lord Bingham⁸ and Lord Hoffmann⁹ to exclude deceit, based on a shared expectation of honesty and

² Rosalee S Dorfman, “The Regulation of Fairness and Duty of Good Faith in English Contract Law: A Relational Contract Theory Assessment” (Published on 13th October 2015) at page 112. <http://newjurist.com/fairness-in-english-contract-law.html>

³ *Smith v Bank of Scotland* [1997] UKHL 26; [1997] 2 FLR 862 (HL) 111, 121 (Lord Clyde).

⁴ *156 Transamerica Life Inc v ING Canada Inc* (2003) 68 OR (3d) 457, 468.

⁵ *Renard Constructions (ME) Pty v Minister for Public Works* (1992) 44 NSWLR 349 [95] (Priestly JA)

⁶ *Yam Seng Pte Ltd v International Trade Corporation Ltd* [2013] EWHC 111 (QBD).

⁷ [2003] 2 Lloyd’s Rep 61 (HL).

⁸ *ibid* [15].

⁹ 162 *ibid* [68].

good faith.”

134. In our decision in the case of **Macnicious Mwimba v. Airtel Networks Zambia Plc & Competition and Consumer Protection Commission**, which we have cited previously, we quoted Lord Bingham’s finding in the leading House of Lords case of **Director General of Fair Trading v First National Bank [2002] 1 AC 482; [2001] UKHL 52** on the question of good faith, which fell to be determined in the context of a statutory prohibition of unfair contract term. He said:

“The requirement of good faith in this context is one of fair and open dealing. Openness requires that the terms should be expressed fully, clearly and legibly, containing no concealed pitfalls or traps. Appropriate prominence should be given to terms which might operate disadvantageously to the customer. Fair dealing requires that a supplier should not, whether deliberately or unconsciously, take advantage of the consumer's necessity, indigence, lack of experience, unfamiliarity with the subject matter of the contract, weak bargaining position or any other factor listed in or analogous to those listed in Schedule 2 of the regulations. Good faith in this context is not an artificial or technical concept; nor, since Lord Mansfield was its champion, is it a concept wholly unfamiliar to British lawyers. It looks to good standards of commercial morality and practice. Regulation 4(1) lays down a composite test, covering both the making and the substance of the contract, and must be applied bearing clearly in mind the objective which the regulations are designed to promote.”

92. Applying the foregoing principles to the facts of this case, we find that the standard of honesty and good faith is reasonably expected of the Appellant, as it is of any enterprise engaged in supplying goods and services to consumers in Zambia. We further find, applying the objective test, that no reasonable inference can be drawn from the Appellant’s use of the words “P n P Proudly Zambian” other than a motive to deceive unsuspecting consumers that the cheese product was produced in Zambia.
93. In reaching our conclusions, we repeat our findings in our determination of grounds two and three of appeal. It is possible that an ordinary or reasonable consumer would see and read the product label which the Appellant’s witness said was at the front of the cheese, giving a description of the product including the manufacturer’s name and physical address (South Africa). However, it is also likely that ordinary or reasonable consumers would only see and read the label on the other side of the product with the price and the words “P n P Proudly Zambian”. After all, it is likely that ordinary or reasonable consumers would be looking out

for and be immediately attracted by the price of the product and other information on the product such as its place of manufacture or production, and the label or sticker with the price of the product and the words “Proudly Zambian” would respond to such consumers and they would see no need to look for any other label.

94. It is also our finding under the said grounds of appeal that, borrowing the reasoning by Federal Court of Australia in the case of **Australian Competition and Consumer Commission v. Coles Supermarkets Australia PTY Limited**, ordinary or reasonable consumers would be unlikely to engage in an analysis as to whether the words “Proudly Zambian” refer to “P n P” as a company, even assuming such a proposition were reasonable (which we have already ruled out). We have also reasoned that if indeed the Appellant had intended the words “Proudly Zambian” to refer to the company P n P as incorporated in Zambia, there is no reason the label would have not simply stated “P n P Incorporated in Zambia” or “P n P Registered in Zambia” or “P n P a Proudly Zambian company”, which would have been in conformity with the requirement of good faith described by Lord Bingham’s in the leading House of Lords case of **Director General of Fair Trading v First National Bank** (which we have referred to above). That is the requirement of fair and open dealing, openness requiring that terms should be expressed fully, clearly and legibly, containing no concealed pitfalls or traps. This way, by compromising the standard of honesty and good faith, which is reasonably expected of it, the Appellant distorted or was likely to distort consumers’ purchasing decisions by influencing them to purchase the cheese on account of it having been represented as produced in Zambia.
95. We therefore find no basis for the Appellant’s reliance on the Supreme Court’s holding in **the Communications Authority v. Vodacom case** and suggesting that the Respondent’s “... findings in question were either perverse or made in the absence of any relevant evidence or upon the misapprehension of the facts or that they were findings which, on a proper view of the evidence, no trial Court acting correctly can reasonably make”. To the contrary, the Respondent’s findings of fact were supported by evidence and are in line with decided cases on the subject of the standard of honesty and good faith reasonably expected of enterprises in their dealings with consumers.
96. Accordingly, we dismiss grounds four and five of appeal and move to ground six of appeal.

Ground six

97. This ground of appeal *inter alia* relates to section 47 (a) (v) of the Act, which the Appellant denies violating, and to which we restrict ourselves, having addressed the other sections this ground of appeal deals with. The section reads:

“A person who, or an enterprise which—

(a) falsely represents that—

(i) ...;

(ii) ...;

(iii) ...;

(iv) ...; or

(v) any goods or services have sponsorship, approval, affiliation, performance characteristics, accessories, uses or benefits that they do not have; or

(b) ...

is liable to pay the Commission a fine not exceeding ten percent of that person’s or enterprise’s annual turnover or one hundred and fifty thousand penalty units, whichever is higher.”

98. What is in issue is whether the Appellant falsely represented to consumers that the cheese in issue was endorsed by, approved by and/or was affiliated to the Proudly Zambian Campaign (PZC) spearheaded by ZAM, which is what was alleged and found by the Respondent. The Respondent did not go further to provide information on the Proudly Zambian Campaign. However, we have taken the liberty to conduct some research on the subject, as alluded to earlier. The relevant text of the article on the ZAM website that we referred to earlier in our consideration of grounds two and three of appeal reads:

“... It is important to stress that not all Zambian products on the local market are Proudly Zambian. Proudly Zambian products carry an official logo as shown below.

....

The official logo differentiates a Proudly Zambian product from other products. The official logo is a mark of quality assurance and national pride.

The Proudly Zambian Campaign recognises that consumers want to buy goods of high standard and quality. To assure consumers of this quality, products certified as ‘Proudly Zambian’ go through a vetting process to ensure that it is of the highest standard to be classified under the campaign. Proudly Zambian products therefore, come with a quality assurance mark to assure the consumer that the product has passed the standards test and is ready for consumption.

The vetting process extends to good labour practices. Companies producing Proudly Zambian products are inspected to ensure that they adhere to good labour practices. The importance of inspections is to uphold labour ethics and ensure that Proudly Zambian products are produced by a workforce that is treated with utmost respect and not subjected to inhuman treatment.

The products under Proudly Zambian are also produced in environmentally friendly factories. The company producing the product(s) must comply with the Zambia Environment Management Authority (ZEMA) regulations to ensure their production processes do not degrade the environment.

The company must also be tax compliant in accordance with the laws of Zambia. The company wishing to obtain the logo must have a valid tax clearance certificate to demonstrate that the company is a good citizen that upholds good business practice. Holistically, the campaign utilises several facets that ensure that not only products are benefitting but also the Government since tax revenue is used to finance the development of economic infrastructure and other government programmes that support economic growth and development in Zambia.”

99. We have also observed that on the same website there are downloads for application forms for chain store logos, application forms for logos for goods and application forms for logos for services.¹⁰ Thus confirming that the Proudly Zambian producers of goods or services and the goods and services themselves have to undergo a vetting process in order to qualify for approval or affiliation.

100. False representation may be understood from an example of actionable fraud, which is defined by Black’s Law Dictionary as, *inter alia*, “... deception practiced in order to induce another to part with property or surrender some legal right. A false representation made with an intention to deceive; such may be committed by stating what is known to be false or by professing knowledge of the truth of a statement which is false, but in either case, the essential ingredient is a falsehood uttered with intent to deceive....”¹¹ (Underline ours)

101. We have reviewed the facts of this case and made our findings so far in relation to offences in respect of sections 45 (a) and (b) and 46 (1). We note the essence of the Proudly

¹⁰ zam.co.zm/pzc/ (Seen on 2nd March 2022 at 17:00 hours.)

¹¹ Black’s Law Dictionary. Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern. By HENRY CAMPBELL BLACK, M. A. SIXTH EDITION BY THE PUBLISHER’S EDITORIAL STAFF. (1990) <https://karnatakajudiciary.kar.nic.in/hcklibrary/PDF/Blacks%20Law%206th%20Edition%20-%20SecA.pdf> (See on 2nd March 2022 at 17: 20 hours)

Zambian Campaign and what it entails to attain approval or affiliation for a producer of Zambian goods or services and the goods and services themselves. We have taken judicial notice of the fact that the Proudly Zambian Campaign is well known by ordinary consumers as a marketing strategy for Zambian produced goods. Therefore, we can safely infer that a product such as, in this case, cheese with a label or sticker (as the Appellant calls it) reading, "Proudly Zambian" would be misunderstood by ordinary or reasonable consumer to be a Zambian product and that such consumers may thereby be influenced to decide to buy the product. Furthermore, it is our understanding that not all ordinary or reasonable consumers who are aware of the Proudly Zambian Campaign are also aware of all details such as the logo and vetting process required for a product to gain approval of the Proudly Zambian Campaign. It is also safe to infer that such ordinary or reasonable consumers who are aware of the Proudly Zambian Campaign but not the details thereof may be misled to believe that the product is a Zambian product, but not misled that it has the endorsement of, approval of or affiliation to the Proudly Zambian Campaign. Ordinary or reasonable consumers who are aware of the requirements for a product to be approved by the Proudly Zambian Campaign would not, in our view, be misled that the cheese has such endorsement, approval or affiliation. This is because the words in issue "Proudly Zambian" do not go as far as misrepresenting that the product has such an endorsement. This is because the words on the label or sticker were not accompanied by the PZC logo.

102. We further observe that the Respondent did not address itself to any relevant considerations so as to reasonably make an evaluation of the subject in issue. We cannot find any rational basis for the Respondent's finding that the Appellant falsely represented to consumers that the cheese in issue were endorsed by, approved by and or were affiliated to the Proudly Zambian Campaign (PZC) spearheaded by ZAM.
103. Whereas the offence is one of strict liability in so far as the question of *mens rea* is concerned (i.e., it does not matter what the Appellant's subjective intention was), for violation of section 47 (a) (v) to be upheld, it ought to be proven that the Appellant's use of the words "Proudly Zambian" was aligned to the PZC. This is because the Appellant may have merely falsely represented that the cheese was proudly Zambian in the sense that it was touted as produced in Zambia.
104. We accordingly allow this ground of appeal and reverse the Respondent's finding in this respect (that is, in respect of violation of section 47 (a) (v) of the Act). However, this reversal has no implication on the fine imposed by the Respondent as it is the minimum fine

for any of the violations and the fine was imposed in respect of all the three violations together.

105. We also remind the parties that section 46 (2) of the Act reads:

“A person who, or an enterprise which, contravenes subsection (1) is liable to pay the Commission a fine not exceeding ten percent of that person’s or enterprise’s annual turnover or one hundred and fifty thousand penalty units, whichever is higher.”

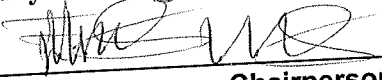
106. This means that while not exceeding ten percent of an enterprise’s annual turnover, if ten percent of the annual turnover is less than one hundred and fifty thousand penalty units, the said penalty units shall apply, being the higher. One hundred and fifty thousand penalty units per the value of thirty ngwee per unit at the time of the Respondent’s decision translates into forty-five thousand Kwacha (K45,000)¹². We also observe that according to the applicable Guidelines annexed to the Respondent’s Decision, while 0.5% of annual turnover is the minimum, the fine has indicative caps calibrated based on the annual turnovers.

107. In conclusion, the Respondent’s Decision is upheld save for the finding in respect of section 47 (a) (v) which, we repeat, has no implication for the fine.

108. In light of the outcome, each party shall bear its own costs.

109. Leave to appeal is granted. A person aggrieved with this judgment may appeal within thirty days.

Delivered at Lusaka this 13th day of May 2022.


Mrs. Eness C. Chiyenge – Chairperson


Mrs. Miyoba B. Muzumbwe-Katongo – Vice Chairperson


Mr. Buchisa K. Mwalongo – Member

¹² Penalty units are calculated according to the prevailing rates prescribed by the Fees and Fines Act, Cap. 45.