



# **PRESS RELEASE**

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## **RECENT DECISIONS BY THE BOARD OF COMMISSIONERS OF THE COMPETITION AND FAIR TRADING COMMISSION**

The Board of Commissioners of the Competition and Fair Trading Commission (CFTC) held a meeting in Lilongwe on 26<sup>th</sup> March 2020, to consider and adjudicate over cases.

The Commission considered, adjudicated and noted a total of 112 cases, which included 86 cases of unfair trading practices and 36 cases of restrictive business practices.

This statement provides a summary of the Commission's determinations on some of the cases, highlighting facts and orders made.

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**JAMES KAPHALE**  
**EXECUTIVE DIRECTOR**

## **1.0. UNFAIR TRADING PRACTICES**

### **1.1. Alleged Unconscionable Conduct by Eazy Borehole Drillers**

The Secretariat received a complaint alleging that Eazy Borehole Drillers was engaged in unfair trading conduct. The Complainants alleged that they paid MK 2,700,000.00 as full payment for drilling a 60-meter deep irrigation borehole at Thondwe; and MK 1,350,000.00 as part payment for another 60m deep borehole at their household use at Naisi Spur in Zomba.

However, for the first borehole at Thondwe, the Respondent allegedly drilled only a 35m borehole which did not yield any water. Likewise, the borehole that was drilled at Naisi Spur did not meet the required specifications in terms of depth and water yielded.

The investigations launched by Secretariat established that the Respondent engaged in unconscionable conduct contrary to Section 43(1)(g) of the CFTA as the Respondent was paid for drilling services of two boreholes with a minimum depth of 60m but only drilled around half the depth that was agreed.

Based on the above, the Commission made the following orders:

- The Respondent should pay a fine of Five Hundred Thousand Malawi Kwacha (MK 500,000) for violation of Section 43(1)(g) of the CFTA.
- The Respondent should complete drilling of the borehole at Thondwe to the prescribed 60m depth.
- The Respondent should complete drilling of the borehole at Naisi to the prescribed 60m depth.
- The Respondent should cease and desist from engaging in unconscionable conduct.

### **1.2. Alleged Supply of Expired Products by Naheed Supermarket**

The Secretariat received a complaint on 29<sup>th</sup> June 2020, alleging that Naheed Supermarket sold expired Yozi Shake Peach flavor to the complainant.

Investigations showed that the Respondent engaged in supply of a product likely to cause injury or physical harm to consumers contrary to Section 43(1)(g) of the CFTA. Investigations further established that the Respondent had in stock more products that were expired.

Based on the above, the Commission made the following orders:

- The Respondent should pay a fine of Five Hundred Thousand Kwacha (MK 500,000) for supplying expired products.
- The Respondent should cease and desist from engaging in unfair trade practices.
- That according to the Business Licensing Act a foreigner is not supposed to operate in that area as such Secretariat should ascertain the nationality of the business owner and report to Ministry of Trade for further action.

### **1.3. Alleged Misleading Conduct by Health and Beauty Care Pvt. Limited**

The Secretariat launched investigations on Health and Beauty Care Pvt. Ltd for alleged supply of products likely to cause injury or physical harm to consumers after they found the Respondent with a 200 ML bottle of “Hand & Body Lotion” manufactured by them with two labels indicating different sets of manufacturing and expiry dates.

One label indicated that the manufacturing date was April 2014 with an expiry date of March 2017; while the other label indicated a manufacturing date of March 2017 and expiry date of February 2019.

The Respondent did not respond to the notice of investigation (NOI), however, the Commission established that the Respondent’s conduct was a violation of Section 43(1)(d) from the information that was available to them.

Thus the Commission made the following orders:

- The Respondent should pay a fine of Two Million Kwacha (MK2,000,000) for engaging in unfair trade practices;

- The Respondent should pay a fine of Two Million Malawi Kwacha (MK 2,000,000.00) for their uncooperative behavior towards the Commission;
- The Respondent should cease and desist from engaging in misleading conduct.

#### **1.4. Alleged Supply of Uncertified Products by Farmers World Limited**

The Secretariat commenced investigations against Farmers World on allegations of supplying an uncertified product following shop inspections which the Commission conducted at Farmers World- Kasungu Branch on 19th September, 2019.

During the inspections, the Commission found that Farmers World was stocking “PERFECT Scones and Mandasi Flour” without labels to show that the product was certified by Malawi Bureau of Standards.

Investigations established that the product was in actual fact certified by the MBS, under a Pre-certification regime. The manufacturer of the product (HMS Foods and Grains Ltd) furnished the Commission with the pre-certification certificate. The manufacturer, however, had not put the pre-certification mark on the packaging of the product; hence the product was insufficiently labeled.

Following deliberations, the Commission made the following orders:

- The Respondent should pay a fine of Five Hundred Thousand Kwacha (MK500,000) for infringement of the CPA.
- The Respondent should cease and desist from providing products with insufficient labelling.

#### **1.5. Alleged Supply of Products Which Do Not Comply with Labelling Standards by Dairibord Malawi Limited**

The Secretariat commenced investigations against Dairibord Malawi Limited for the supply of products likely to cause injury or physical harm to consumers following shop inspections conducted in April and May, 2018 during which the Commission found stocks of Dairibord “Flavored Yoghurt” which had two expiry dates printed on the labels.

The Secretariat also found that Dairibord “Super Creamy Chambiko” did not have any label to show that the product was certified by the MBS; neither did the product have expiry dates indicated.

Investigations established that the Chambiko product was duly certified by the MBS. However, the Respondent did not put the certification mark on the product.

It was also established that the Chambiko product did not display expiry dates to guide the consumers. The expiry dates may have been erased due to the substandard ink used by the Respondent.

The Respondent took measures to remedy the situation by inspecting their products across the country and recalling the products which were not compliant.

Following deliberations, the Commission made the following orders:

- The Respondent should pay a fine of Five Hundred Thousand Malawi Kwacha (MK 500,000) for insufficient and improper labelling of products.
- The Respondent should cease and desist from engaging in insufficient and improper labelling of products.

#### **1.6. Alleged Unconscionable Conduct by Peacock Seed Enterprises Limited**

The Secretariat received a complaint alleging that Peacock Seed Enterprises Limited supplied the complainant with 28,250 kg of maize seed worth MK 9,785,868.75 during the 2016/17 season.

The Complainant was to be paid MK 8,992,292.69 of which she was only paid MK6,600,000.00, leaving a balance of MK 2,392,292.69.

Investigations established that there was a contract that was signed between the parties under which the Complainant satisfied her obligations by supplying the maize seed as per the contract.

However, the Respondent did not fully fulfil their obligations as they had not paid the full amount for the contracted volumes.

The Commission concluded that the Respondent had contravened Section 43(1)(g) of the CFTA. Secretariat reported that they had received information in form of copies of cheques, showing that the Respondent had paid the outstanding balance.

Following deliberations, the Commission made the following orders:

- The Secretariat should verify with the Complainant that the Respondent paid the Complainant the outstanding balance of MK 2,392,292.69.
- The Respondent should pay a fine of Five Hundred Thousand Kwacha (MK 500,000) for engaging in unconscionable conduct; and
- The Respondent should cease and desist from engaging in unconscionable conduct towards seed growers.

#### **1.7. Alleged Excluding liability for defective goods and failure to give warranty or guarantee on long use goods by SANU Mobile Limited**

The Secretariat received a complaint against SANU Mobile Ltd for alleged exclusion of liability for defective goods and failure to give warranty or guarantee on long use goods.

The Complainant alleged that on 14<sup>th</sup> March, 2019, the complainant purchased a car battery from the Respondent's shop at MK 52,000.

Soon after, he discovered that the battery was not functioning. The Complainant brought the matter before the Respondent on 4<sup>th</sup> April, 2019, however, he was not given any remedy. Further, the receipt issued by the Respondent carried a prohibitive disclaimer, which stated that: "Goods once purchased are not returnable."

Investigations by the Secretariat established that the battery developed a fault within less than a month of purchase. The timeframe was too short for a product meant for long use.

It was further established that the Respondent did not provide a remedy to the Complainant, and that the receipt issued by the Respondent carried a disclaimer. The Respondent did not give warranty or guarantee on the product despite the fact that the battery is a product for long use.

The Commission concluded that the conduct by the Respondent Contravened Sections 43(1)(b) of CFTA and 34(4) of the CPA.

Following deliberations, the Commission made the following orders:

- That the Respondent should refund the Complainant the price of the battery or alternatively that the Respondent should give the Complainant another battery in exchange;
- That the Respondent should pay a fine of Five Hundred Thousand Kwacha (MK 500,000) for engaging in exclusion of liability for defective goods;
- That the Respondent should cease and desist from engaging in exclusion of liability for defective goods.

#### **1.8. Alleged Excluding liability for defective goods and failure to give warranty or guarantee on long use goods by Total Electronics Limited**

The Secretariat received a complaint against Total Electronics Ltd for allegedly excluding liability for defective goods and failure to give warranty or guarantee on goods meant for long term use.

The Complainant alleged that on 2<sup>nd</sup> December 2020, he purchased a television screen (TV) from the Respondent's shop at MK400,000. On 23<sup>rd</sup> December, 2020 the TV developed fault in form of the back-light that went off.

The Complainant brought the matter before the Respondent soon after. The Respondent requested the Complainant to pay an extra MK 30,000 to engage a technician to fix the TV. However, the TV was never fixed.

Investigations found that the TV developed a fault within less than a month of purchase. The timeframe was too short for a product meant for long use.

The Respondent did not provide a satisfactory remedy to the Complainant and the Respondent did not give warranty or guarantee on the product despite the fact that the TV is a product for long use.

Following intervention by the Commission, the Respondent exchanged the defective TV for the Complainant.

Investigations showed that the conduct by the Respondent Contravened Sections 43(1)(b) CFTA & Section 34(4) of the CPA.

The Commission made the following orders:

- The Respondent should refund Thirty Thousand Kwacha (K30,000) to the Complainant that was paid to the Respondent for repairs;
- The Respondent should pay a fine of Five Hundred Thousand Kwacha (MK 500,000) for engaging in exclusion of liability for defective goods;
- The Respondent should cease and desist from engaging in excluding liability for defective goods.

#### **1.9. Alleged Supply of Uncertified Products by HMS Foods and Grains Ltd**

The Secretariat commenced investigations against HMS Foods and Grains Ltd on allegations of supplying uncertified flour products.

The investigation was instituted following shop inspections which the Commission conducted at Farmers World, Kasungu Branch on 19<sup>th</sup> September, 2019 which found stocks of “PERFECT Scones and Mandasi Flour” which raised suspicion that they were not certified by the MBS.

The said product, which is manufactured by the Respondent, did not have marks/labels to show that the products had been certified by MBS.

The investigations established that the product was, in actual fact, certified by the MBS, under a pre-certification regime. The Respondent furnished the Commission with a pre-certification certificate.

However, the Respondent did not put the pre-certification mark on the packaging of the product, hence the product was insufficiently labeled contrary to the provisions of the CPA.

Following deliberations, the Commission made the following orders:



- The Respondent should pay a fine of Five Hundred Thousand Malawi Kwacha (MK 500,000) for supplying products with insufficient labels.
- The Respondent should cease and desist from engaging in insufficient labelling of products.

#### **1.10. Alleged Unconscionable Conduct by InterCape Bus Service**

The Secretariat received a complaint on allegations of unconscionable conduct by Intercape Bus Service.

The Complainant alleged that, he lost his luggage weighing 81kgs on the Intercape bus which he boarded from South Africa to Malawi on 14th October, 2018.

After reporting the missing luggage to the Respondent, he was advised to wait, expecting that the bag could be on the next Intercape bus. However, the bag was not on that bus either.

The Complainant was later informed that the bag was left in South Africa, due to limited packing space, and would be dispatched soon. However, the bag was never sent.

Investigations found that Ticket No.: 1410163354RM343 was used which was proof that the Complainant boarded the Respondent's bus.

The waybill furnished by the Complainant also indicated that he deposited two pieces of luggage weighing 47.4 kg and 81 kg with Intercape.

Following deliberations, the Commission resolved as follows:

Resolutions:

- The Respondent should refund the Complainant Seven Hundred and Twenty Thousand Kwacha (MK 720,000) which was the cost of the items that were in the lost luggage;
- The Respondent should pay a fine of Five Hundred Thousand Malawi Kwacha (MK 500,000) for violation of Section 43(1)(g) of the CFTA; and
- The Respondent should cease and desist from engaging in unconscionable conduct.

### **1.11. Unconscionable Conduct by Be Forward Company**

The Secretariat commenced investigations against Be Forward Company (Malawi) Ltd for alleged unconscionable conduct following a complaint.

The Complainant alleged that he purchased Mercedes Benz - E-Class from the Respondent at MK 4,504,000.00, (USD 5,779. The Complainant further paid USD 850 which covered port clearance charges and cost of delivery to Lilongwe.

When the Complainant went to collect the vehicle from Allied Freight Agencies he noticed that the brakes were very hard to press, the car was not stable on the road, and it was making a taping sound.

Upon engaging the Respondent, the Complainant was told to submit full details of the fault. The Complainant took the vehicle to Automotive Products Limited (authorized dealer of Mercedes Benz) for diagnosis where it was established that the engine had ceased to function and there was a need to replace the entire engine and suspension. The Complainant submitted the diagnosis report to them Respondent, but no remedy was provided.

Following deliberations, the Commission made the following orders:

- The Respondent should refund to the Complainant Five Million Sixty-Three Thousand Seven Hundred Ninety-Two Kwacha (MK 5,063,792.00) being the amount spent to purchase the vehicle or alternatively provide him with a replacement vehicle;
- The Respondent should pay a fine of (Five Hundred Thousand Kwacha (MK 500,000) for supplying defective goods; and
- The Respondent should consider extending the warranty from 5 days to 30 days.

## **2.0. Restrictive business practices**

The Board noted the following cases pertaining to anti-competitive business practices on which the Secretariat had conducted preliminary investigations and had proceeded to close them at a preliminary stage

- 2.1. Alleged Anti-Competitive Business Practice by Tiger puffs;
- 2.2. Alleged Anti-Competitive Business Practice by MPICO Malls Plc;
- 2.3. Alleged Anti-Competitive Business Practice on Vending Escom Tokens by Airtel Malawi;
- 2.4. Alleged Anti-Competitive Business Practice by Agricultural Commodity Exchange (ACE);
- 2.5. Alleged Price Fixing by Minibus Owners Association, Mzuzu;
- 2.6. Alleged Price Fixing by Minibus Owners Association, Lilongwe;
- 2.7. Alleged acquisition of Cilcon Limited by SR Nicholas;
- 2.8. Alleged anti-competitive practices by by African Parks.