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M&J

CASE FILE NUMBER: CONS/28/10/2024/01337/KSM/MK

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

BETWEEN

Gandy Mulemba

COMPLAINANT

AND

Prada Investment Limited

RESPONDENT

BEFORE:

Commissioner Angela Kafunda
Commissioner Sikambala M. Musune
Commissioner Derrick Sikombe
Commissioner Bishop Dr. Wilfred Chiyesu
Commissioner Pelmel Bonda
Commissioner Onesmus Mudenda

- Chairperson
- Vice Chairperson
- Member
- Member
- Member
- Member

DECISION

Below is a summary of the facts and findings presented by the Commission to the Board of the Commission following investigations carried out in the above case.

Introduction and Relevant Background

It was submitted that:

1. On 23rd October 2024, the Competition and Consumer Protection Commission (“the Commission”) through its Lusaka office received a complaint from Ms. Gandy Mulemba (“the Complainant”) against Prada Investments Limited (“the Respondent”). Specifically, the Complainant alleged that on 12th September 2024 she purchased a generator from the Respondent at the cost of K8,500.00 (receipt no. 4661). The Complainant alleged that she used the generator twice a week for approximately four hours to power her refrigerator and television set. The Complainant alleged that within three weeks of use the fuel supply tube became loose leading to leakage of fuel from the generator. The Complainant alleged that her son attempted to fix the problem, but the generator became increasingly dangerous to use as the fuel continued to leak. The Complainant alleged that she engaged the Respondent on the matter and requested for a replacement or repair, but the Respondent refused to acknowledge any warranty on the generator. The Complainant alleged that she had engaged the Respondent on several occasions to resolve

the matter, but to no avail. The Complainant wanted the Respondent to replace or repair the generator.

2. The Commission also observed that the Respondent had displayed a notice on their tax invoice which read; "*Once goods are bought cannot be returned unless there is electrical fault.*" which appeared to be a disclaimer. (See Annexure 1).

Legal Contravention and Assessment Tests

Legal Contravention

It was submitted that:

3. The alleged conduct appeared to be in contravention of Section 48(1) and Section 49(1) of the Competition and Consumer Protection Act No. 24 of 2010, as amended by the Competition and Consumer Protection (Amendment) Act No. 21 of 2023 ("the Act").
4. Section 48(1) of the Act stated that;
"An owner or occupier of a shop or other trading premises or platform shall not cause to be displayed any sign or notice that purports to disclaim any liability or deny any right that a consumer has under this Act or any other written law."
5. Section 48(2) of the Act stated that;
"A person who, or an enterprise which, contravenes subsection (1) is liable to pay the Commission-
 - (a) *in the case of a person, a penalty not exceeding one hundred and fifty thousand penalty units; or*
 - (b) *in the case of an enterprise, a penalty not exceeding ten percent of that enterprise's annual turnover."*
6. Section 49(1) of the said Act stated that;
"A person or an enterprise shall not supply a consumer with goods that are defective, not fit for the purpose for which they are normally used for or for the purpose that the consumer indicated to the enterprise."
7. Section 49(3) of the Act stated that;
"A person who, or an enterprise which, contravenes subsection (1), shall
 - (a) *within seven days or an agreed reasonable time of the supply of the goods concerned, refund the consumer the price paid for the goods; or*

(b) if practicable and if the consumer so chooses, replace the goods with goods which are free from defect and are fit for purpose for which they are normally used or the purpose that the consumer indicated to the person or the enterprise."

Assessment Tests

It was submitted that:

The following assessment tests were used to consider Section 48(1) of the Act;

8. Whether Prada Investment Limited was an owner or occupier of a shop or other trading premises or platform;
9. Whether Prada Investment Limited displayed a sign or notice; and
10. Whether the sign or notice purported to disclaimed any liability or deny any right that a consumer has under the Act or any other law.

The following assessment tests were used to consider Section 49(1) of the Act;

11. Whether Ms. Gandy Mulemba was a "consumer";
12. Whether Prada Investment Limited was a "person" or an "enterprise";
13. Whether Prada Investment Limited supplied Ms. Gandy Mulemba with goods that are defective, goods that was not fit for the purpose for which they are normally used.

Investigations Conducted

It was submitted that:

14. The Notice of Investigation and an accompanying letter were duly served on the Respondent on 13th November 2024.¹ The Commission reviewed the Respondent's tax invoice no. 4661 dated 12th September 2024.

¹ Acknowledgement of receipt dated 13th November 2024

Findings

The Parties

The Complainant

It was submitted that:

15. The Complainant was Ms. Gandy Mulemba, a resident of Lusaka, Lusaka Province. Section 2 of the Act defined a consumer 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.”² Therefore, the Complainant was a consumer as she purchased a generator from the Respondent for her personal use.³

The Respondent

It was submitted that:

16. The Respondent was Prada Investment Limited. A search at Patents and Companies Registration Agency (PACRA) revealed that the Respondent was a registered as a local company with registration number 120030052594 and registered address as Plot No. 10106, Mumbwa Road, Chinika Area, Lusaka.⁴ The Respondent, however, traded from a shop situated along Freedom Way, Town Centre. Section 2 of the Act defined an enterprise as, “a firm, partnership, joint-venture, corporation, company, association and other juridical persons, which engage in commercial activities, and includes their branches, subsidiaries, affiliates of other entities, directly or indirectly, controlled by them.”⁵ Therefore, the Respondent was an enterprise as envisaged by the Act as it was a company engaged in retail business.

² Competition and Consumer Protection Act No. 24 of 2010, as amended by Act No. 21 of 2023

³ CCPC Form IV dated 23rd October 2024.

⁴ Patents and Companies Registration Agency (PACRA) printout dated 27th March 2025

⁵ Competition and Consumer Protection Act No. 24 of 2010, as amended by Act No. 21 of 2023

Submissions from the Respondent⁶

It was submitted that:

17. In an email dated 21st November 2024 the Respondent submitted that on 12th September 2024 they sold a generator to the Complainant at the cost of K8,500.00. The Respondent submitted that the generator later developed a fault with the fuel supply tube, prompted the Complainant to send her son to lodge a complaint with them. The Respondent submitted that they advised the son to bring the generator along with the tax invoice so that their technician could assess and repair it.
18. The Respondent submitted that they did not refuse to address the matter and that the fault was minor and could be resolved at the cost of K30.00. The Respondent submitted that they could not proceed with the repair because the Complainant had left the generator and the tax invoice at home.
19. The Respondent submitted that they were surprised to receive a letter from the Commission because they were not given the full opportunity to address the matter. The Respondent submitted that they remained ready and willing to resolve the matter as soon as the Complainant presented the generator and the receipt to them.

Further Submissions from the Complainant

It was submitted that:

20. In a telephone conversation dated 21st November 2024, the Complainant submitted that within three weeks of using the generator, the fuel supply tube became loose leading to leakage of fuel from the generator.
21. The Complainant submitted that she engaged her son to fix the problem because she thought the problem was small. The Complainant submitted that when her son attempted to fix the problem, the generator became increasingly dangerous to use as the fuel continued to leak.⁷
22. The Commission noted that the attempt by the Complainant to repair the generator constituted tampering with evidence and in effect voided the warranty.

⁶ The Respondent's email dated on 21st November 2024

⁷ Telephone conversation between I-Kasama and the Complainant dated 21st November 2024

23. In another telephone conversation dated 29th November 2024, the Commission engaged the Complainant on the need to take back the generator to the Respondent for them to repair it. However, the Complainant submitted that she had already engaged another third-party expert to repair the generator.⁸

Review of Receipt Number 4661⁹

It was submitted that:

24. A review of tax invoice number 4661 dated 12th September 2024 revealed that a notice which stated that: “Once goods are bought cannot be returned unless there is electrical fault” was displayed.

Submissions to the Commission’s Preliminary Report

It was submitted that:

25. The Commission served the preliminary report on the Respondent on 7th August 2025. The Respondent’s Director visited the Commission’s head office on 12th August 2025 and did not dispute the report.

Relevant Findings

It was submitted that:

26. The Commission established that on 12th September 2024 the Complainant purchased the generator from the Respondent at the cost of K8,500.00.¹⁰

27. The Commission noted the Complainant’s submissions that within three weeks of using the generator, it developed a fault with the fuel supply tube, leading to fuel leakage.

28. The Commission noted the Complainant’s submissions that she attempted to repair the generator through her son, but the problem worsened. The Commission, as such, established that the Complainant tampered with the evidence.

29. The Commission established that the Respondent had offered to repair the generator, but the Complainant had already engaged another third-party to

⁸ Telephone conversation between I-Kasama and the Complainant dated 29th November 2024

⁹ The Respondent’s tax invoice no. 4661 dated 12th September 2024

¹⁰ The Respondent’s tax invoice no. 4661 dated 12th September 2024

repair the generator.

30. The Commission established that the Respondent had displayed a notice on the tax invoice which stated: “*Once goods are bought cannot be returned unless there is electrical fault.*”¹¹

Previous Cases Involving the Respondent

It was submitted that:

31. A review of the Respondent’s case file revealed that there was no case in which the Respondent was found to have contravened Section 48(1) or Section 49(1) of the Act.

Analysis of Conduct

It was submitted that:

In analyzing the case for possible violation of Section 48(1) of the Act, the following assessment tests are used:

Whether Prada Investment Limited was an owner or occupier of a shop or other trading premises or platform;

It was submitted that:

32. The Black’s Law dictionary defined an owner as, “*one who has the right to possess, use, and convey something; a person in whom one or more interests are vested*”. Black’s Law dictionary also defined an occupant as, “*one who has possessory rights in, or control over, certain property or premises*”.¹² Furthermore, a shop in Black’s Law Dictionary was defined in part as, “*a building in which goods and merchandise are sold at retail...*”¹³ The Respondent carried out their retail trading business at a shop located along Freedom Way, in Town Centre, Lusaka.¹⁴ Therefore, the Respondent was an occupier of the said shop.¹⁵

¹¹ The Respondent’s tax invoice no. 4661 dated 12th September 2024

¹² Black’s Law dictionary, fifth edition, page 987

¹³ Ibid, p. 1547

¹⁴ Tax Invoice no. 4661 dated 12th September 2024

¹⁵ The Respondent’s tax invoice no. 4661 dated 12th September 2024

Whether Prada Investment Limited displayed a sign or notice;

It was submitted that:

33. In the Competition and Consumer Protection Tribunal case of **Zamm Imports Limited Vs the Commission 2014/CCPT/008/CON**, “display” was defined as “*to notify, inform or send a message to one who is a customer or consumer publicly or privately.*”; and that it could be also stretched to mean “*displaying on a consumer’s or customer’s receipt*”.¹⁶ It was further held that “*display can not only be restricted to public, on a wall, bill board, notice board, or public place but also on a receipt*.¹⁷ This, therefore, meant that the exhibit can either be notice on the wall, at the till or printed on the receipt, invoice or any other document related to a transaction between a consumer and an owner or occupier of a shop or any other trading premises. The Commission established that the Respondent’s tax invoice no. 4661 dated 12th September 2024 had a notice which read: “*Once goods are bought cannot be returned unless there is electrical fault.*”¹⁸ Therefore, the Respondent displayed a notice.

Whether the sign or notice purported to disclaim any liability or deny any right that a consumer has under the Act or any other law.

It was submitted that:

34. The Black’s Law Dictionary defined “disclaimer” as “*a repudiation of another’s legal right or claim.*”¹⁹ The Act infers a disclaimer as “*any sign or notice that purports to disclaim any liability or deny any right that a consumer has under the Act or any other written law.*”²⁰ In this context, notices that limited the consumer’s right to return defective goods unless specific conditions were met unfairly restricted redress. The disclaimers had the potential to mislead consumers into believing they could not return products for any other legitimate reasons, such as unsatisfactory quality, misrepresentation, or failure to meet the agreed specifications. In the matter at hand, the Commission established that tax invoice no. 4661 dated 12th September 2024 contained a notice which stated that “*Once goods are bought cannot be returned unless there is electrical fault.*”²¹ The Commission sought to analyse the notice as displayed by the Respondent.

¹⁶ Zamm Imports Limited v Commission (2014) CCPT 008 CON, Page. 12.

¹⁷ Ibid

¹⁸ The Respondent’s tax invoice no. 4661 dated 12th September 2024

¹⁹ Black’s Law dictionary, fifth edition

²⁰ Competition and Consumer Protection Act No. 24 of 2010, as amended by Act No. 21 of 2023

²¹ The Respondent’s tax invoice no. 4661

35. The Commission established that the notice in question purported to disclaim all liability on all goods with non-electrical defects, such as poor performance. That was, the notice denied consumers the right to return any good purchased from the Respondent unless such a good had an electrical fault. The Commission established that the notice contradicted the consumer's statutory right to return unsuitable goods for reasons beyond electrical faults. The Commission established that the notice also imposed a narrow and restrictive condition that undermined the consumer protection objectives enshrined in the Act, which aimed to ensure that consumers have access to fair remedies when goods were defective, unsuitable or were purchased under misrepresentation. For instance, the Complainant purchased a generator and if it had a manufacturing defects, damaged packaging, or missing components, she would have been unfairly denied redress based on the notice. The Commission further established that the notice further unjustly absolved the Respondent of responsibility for non-electrical defects and attempted to limit the Consumer's right to redress, creating an imbalance that undermined the principles of fairness and accountability.

36. The High Court ruling in **Zambiri Traders Limited Vs the Commission 2014/HPC/0011²²** established that disclaimers are treated as strict liability cases under Section 48(1) of the Act. In the matter at hand, the notice in issue created a significant limitation on consumer rights by unjustly restricting returns only to goods that had electrical faults, thereby disregarding other potential defects or sources of dissatisfaction. The Commission established that the notice restricted consumers' right to a remedy, even in cases where the goods might have been unsuitable for their intended purpose, or where they did not meet the expected quality, despite not being electronically faulty. The Commission established that preventing consumers from returning goods for reasons other than electrical faults undermined the protections guaranteed under Section 48(1) of the Act, which sought to ensure that consumers could seek redress for any product that does not perform as expected, not just for electrical issues. The Commission further established that the Respondent's notice was an attempt to avoid responsibility for defective products and was considered both unfair and unenforceable under the provisions of Section 48(1) of the Act. Consequently, by displaying a notice that purported to disclaim liability or deny the consumer's statutory rights, the Respondent violated Section 48(1) of the Act.

²² Zambiri Traders Vs CCPC delivered on 3rd June 2014

In analyzing possible violation of Section 49(1), the following assessment tests will be used;

Whether Ms. Gandy Mulemba was a "consumer";

It was submitted that:

37. Ms. Gandy Mulemba was a consumer pursuant to Section 2 of the Act. Refer to paragraph 15 above.

Whether Prada Investment Limited was a "person" or an "enterprise";

It was submitted that:

38. Prada Investment Limited was an enterprise as per paragraph 16 above.

Whether Prada Investment Limited supplied Ms. Gandy Mulemba with goods that are defective, goods that are not fit for the purpose for which they are normally used

It was submitted that:

39. The Act defined supply as, "includes, in relation to goods, the supply, including resupply, by way of sale, exchange, lease, hire or hire purchase of the goods."²³ In line with this definition, the Commission established that the Respondent supplied the Complainant a generator as evidenced by receipt no. 4661 dated 12th September 2024.²⁴
40. In the matter at hand, the Commission established that the matter in issue was to ascertain whether the generator sold to the Complainant by the Respondent had been defective at the time of sale or whether the damage occurred after purchase due to misuse or external factors. The Commission noted the Complainant's submissions that within three weeks of using the generator, it had developed a fault with the fuel supply tube, leading to fuel leakage. The Commission further noted the Complainant's submissions that she had engaged her son to fix the generator, but the generator became increasingly dangerous to use as the fuel continued to leak. The Commission therefore established that by attempting to repair the generator through her son, the Complainant had compromised the integrity of the evidence, making it impossible for the Commission to independently verify the alleged defect. The Commission established that the inability to ascertain the generator's

²³ Competition and Consumer Protection Act No. 24 of 2010, as amended by Act No. 21 of 2023

²⁴ Tax invoice no. 4661 dated 12th September 2024

original condition from the beginning of the matter prevented the Commission from investigating whether the Respondent had supplied a defective generator to the Complainant. The Commission, therefore, could not establish violation of Section 49(1) of the Act, as the Complainant had tampered with the evidence.

41. The Commission noted that after its intervention in the matter, the Respondent offered to repair the generator. However, the Complainant submitted that she had engaged another third-party expert who repaired the generator.

Board Deliberation

42. Having considered the facts, evidence and submissions in this case, the Board resolves that the Respondent did engage in unfair trading practices as relates to the display of a disclaimer in violation of Section 48(1) of the Act.
43. The Board further resolves that the Respondent did not violate Section 49(1) of the Act.

Board Determination

44. The facts and evidence of this case have shown that the Respondent was in violation of Section 48(1) of the Act. The facts and evidence of the case further showed that the Respondent had not violated Section 49(1) of the Act.

Board Directive

45. The Board hereby directs that:
 - i. The case on Section 49(1) of the Act is closed;
 - ii. The Respondent deletes the notice displayed on their tax invoices which states: "*Once goods are bought cannot be returned unless there is electronical fault*", and submits proof thereof to the Commission within 30 days of receipt of the Board Decision;
 - iii. The Respondent develops a clear and consumer-friendly return policy, and submit to the Commission for review within 30 days of receipt of the Board Decision;
 - iv. The Respondent pays a penalty of 0.5% of their annual turnover for the year 2023 with a cap of K40,000.00 for displaying a disclaimer on their receipt in accordance with Section 48(2) of the Act and in line with the

**BOARD DECISION ON ALLEGATIONS OF UNFAIR TRADING PRACTICES AGAINST PRADA
INVESTMENT LIMITED BY MRS. GANDY MULEMBA OF LUSAKA DISTRICT**

Competition and Consumer Protection Commission Guidelines for Administration of Fines, 2019 (**Refer to Appendix 1**); and

v. The Respondent is ordered to submit to the Commission, their audited books of accounts for 2023 within 30 days of receipt of the Board Decision so that the Commission determines how much they are liable to pay in accordance with Section 58(1) of the Act.

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

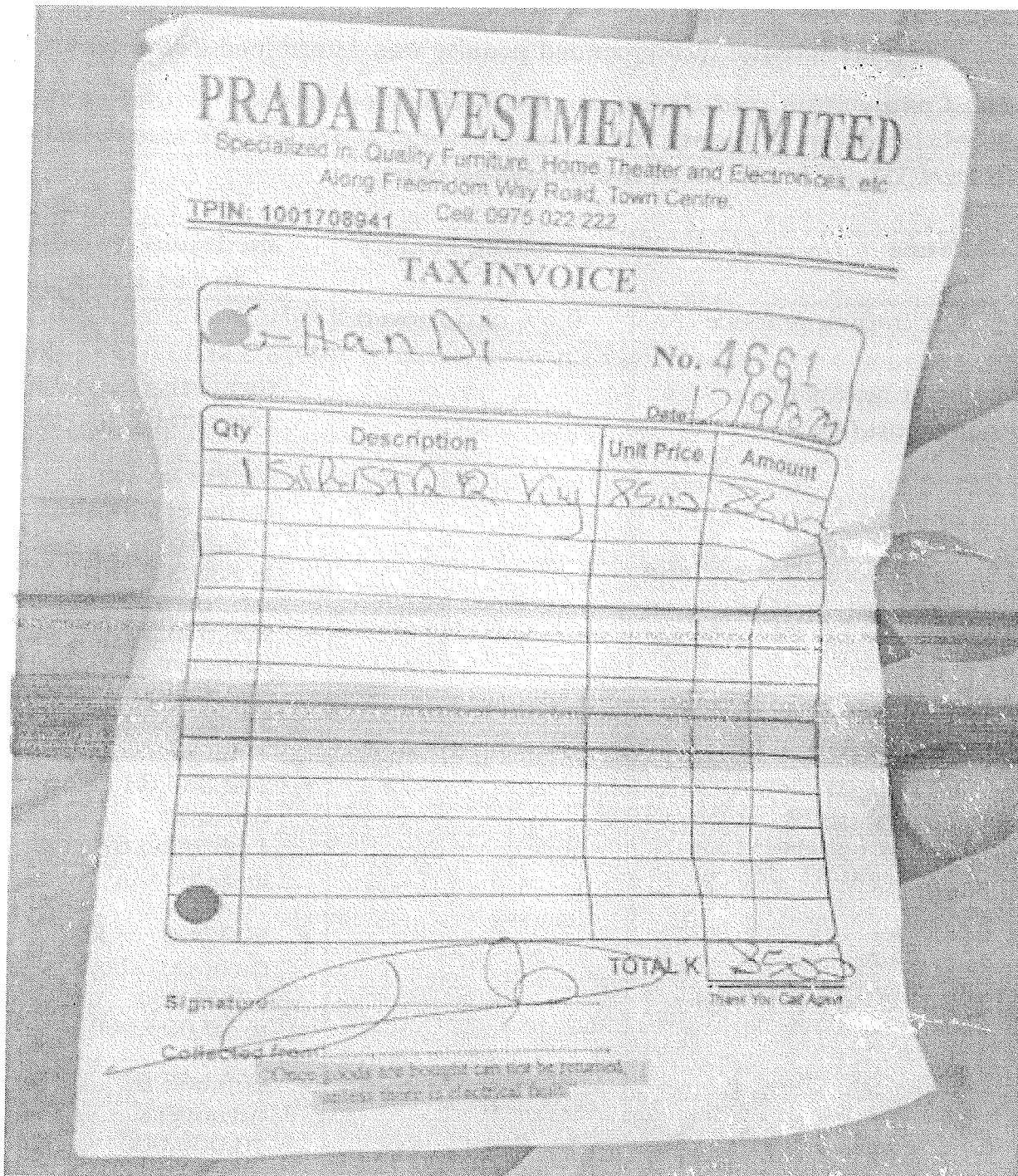
Dated this 10th day of October 2025

Akentuwele

Chairperson

Competition and Consumer Protection Commission

Annexure 1: Respondent's tax invoice



Appendix 1. Calculation of the Penalty

The Calculation of the recommended penalty was determined as follows-

(a) ***The Competition and Consumer Protection Commission Guidelines for Administration of Fines, 2019 sets a base of 0.5% for offences relating to Part VII of the Act with the following caps;***

Offence	Starting Penalty	Maximum Penalty in Fee Units
Unfair trading practice	0.5% of turnover	<ul style="list-style-type: none">• 3,333.33 for turnover up to 166,666.67
False or misleading representation		<ul style="list-style-type: none">• 33,333.33 for turnover above 166,666.67 up to 833,333.33
Price Display		<ul style="list-style-type: none">• 133,333.33 for turnover above 833,333.33 up to 1,666,666.67
Supply of defective and unsuitable goods and services		<ul style="list-style-type: none">• 233,333.33 for turnover above 1,666,666.67 up to 5,000,000
Section 49 except for Section 49(1)		<ul style="list-style-type: none">• 500,000 for turnover above 5,000,000 up to 10,000,000
		<ul style="list-style-type: none">• 666,666.67 for turnover above 10,000,000 up to 16,666,666.7
		<ul style="list-style-type: none">• 1,666,666.67 for turnover above 16,666,666.7
Display of Disclaimer	0.5% of turnover	100,000

(b) The Competition and Consumer Protection Commission Guidelines for Administration of Fines, 2019 further provides for additions as follows-

- (i) The starting point of a financial penalty will be a penalty not less than 0.5% of the annual turnover for first time offenders.
- (ii) The starting point of a financial penalty for a repeat offender will be the previous penalty charged by the Commission.
- (iii) Thereafter, the Commission will be adding a 10% of the fine determined in step (ii) above.

(c) Whether the Respondent is a repeat offender under Section 48(1) of the Act;

The Commission's review of the case file for the Respondent showed that the Respondent is a first offender under this provision of the Act. As such, the penalty will be 0.5%.

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