

THE JAMAICA GAZETTE

SUPPLEMENT

PROCLAMATIONS, RULES AND REGULATIONS

465

Vol. CXXIII

THURSDAY, OCTOBER 19, 2000

No. 87

No. 136

THE FAIR COMPETITION ACT

THE FAIR COMPETITION (NOTICES AND PROCEDURES) REGULATIONS, 2000

In exercise of the power conferred upon the Commission by section 52 of the Fair Competition Act and with the approval of the Minister, the following Regulations are hereby made -

16. These Regulations may be cited as the Fair Competition (Notice and Procedures) Regulations, 2000.

17. In these Regulations -

"authorized officer" means the Executive Director or an officer of the Commission authorized by the Executive Director for the purposes of these Regulations;

"informant" means a person who supplies information to the Commission regarding a complaint;

"respondent" means a person against whom -

(o) a complaint is made to the Commission; or

(p) an application is made to the court by the Commission pursuant to section 46.

Notice of Examination of Witnesses

18. Where the presence of a witness is required for the purposes of an investigation, the Commission shall serve on that witness a notice in the form set out as Form A or Form B in the Schedule as the case may require.

Form A.
Form B.
Schedule.

Notice to Produce Documents

19. -(1) Where the Commission requires a document to be produced for the purposes of an investigation, the Commission shall serve on the relevant person, a notice in the form set out as Form C in the Schedule.

Form C.

(2) The person notified pursuant to paragraph (1) shall produce the document specified in the notice within twenty days of the date of the service thereof.

Settlement Procedures

20. -(1) Where a complaint is being investigated by the Commission, the Commission may discontinue the investigation and the matter may be settled by the Commission in accordance with these Regulations.

(2) The Commission may take action under paragraph (1) -

- (q) where the respondent -
 - (xi) indicates that he wishes to settle the claims without admitting liability; or
 - (xii) admits liability and agrees to the terms of settlement proposed by the Commission;
- (r) if the Commission considers it appropriate at any time during a hearing conducted by the Commission; or
- (s) where proceedings are initiated by the Commission pursuant to section 46, upon an application by the Commission to the Court for adjournment of those proceedings in order to facilitate a settlement.

21. -(1) An authorized officer may make a recommendation for settlement to the Commission.

(2) The Commission may approve the recommendation under paragraph (1) subject to such modification as it thinks fit.

(3) Where a settlement is approved pursuant to paragraph (2), the authorized officer shall -

- (t) record the terms of the settlement in the Consent Agreement set out as Form D in the Schedule; and
- (u) provide the respondent with a copy thereof signed by the respondent.

Form D.
Schedule.

22. -(1) Where an authorized officer decides to hold an informal meeting with the respondent, the authorized officer shall notify the respondent in writing -

- (v) of the place, date and time of the meeting; and
- (w) that he may be represented by an Attorney-at-law or any other person at the meeting.

(2) If the respondent is unable to attend the meeting, he shall notify the Commission in writing at least five days before the date of the meeting.

23. -(1) In deciding whether to recommend a settlement, the authorized officer shall have regard to -

- (x) the degree of cooperation offered by the respondent during the course of investigation;
- (y) the nature, degree and gravity of the breach;
- (z) whether it is the first time that the respondent is under investigation for a breach;
- (aa) any other relevant factor.

(2) A settlement may provide for one or more of the following -

- (bb) the payment of compensation by the respondent to the informant in kind or in money, or a refund to the informant of an amount equivalent to any monetary loss suffered by the informant as a result of the breach;
- (cc) a requirement that the respondent -
 - (xiii) makes a donation to charity of such amount as is specified in the

Consent Agreement;

(xiv) makes an apology to the informant for the injury occasioned by the breach;

(dd) such other remedy as the Commission deems appropriate, having regard to all the circumstances.

24. The respondent may be required to pay the cost of the investigation and hearing, based on the gravity of the breach and the length of time, effort and money expended by the Commission in conducting the investigation or hearing.

25. Where the Commission takes action under regulation 5(2)(c), for the settlement of a matter which is before the Court -

(ee) the Commission shall notify the Court in writing of such settlement;

(ff) the settlement shall be endorsed on the records.

SCHEDULE
FORM A

(Regulations 3, 4 and 6)
(Regulation 3)

Summons to Witness to Appear before the Fair Trading Commission

TO:
(name of witness)

.....
(address of witness)

Take Notice that you are hereby required to appear before the Commission for examination pursuant to section 6 of the Fair Competition Act.

The Commission is presently conducting a complaint against
.....
(name of respondent)

Nature of Complaint

.....
.....
.....
.....

Please be present as follows:-

Date:

Time:.....

Place:.....
.....

You have a right to be represented by an Attorney-at-law or any other person.

Failure to appear without reasonable excuse may subject you to a fine not exceeding Twenty Thousand Dollars (\$20,000.00) and/or imprisonment for a term not exceeding two (2) years pursuant to section 45 of the Fair Competition Act.

Dated the day of

.....
Commissioner/Executive Director,
Fair Trading Commission.

FORM B

(Regulation 3)

Summons to witness to appear before the Fair Trading Commission

TO:

(name of witness)

.....

(address of witness)

Take Notice that you are hereby required to appear before the Commission for examination pursuant to section 7(1)(a) of the Fair Competition Act.

The Commission is presently conducting an investigation—

*Pursuant to section 5(1)(a) of the Act in order to determine whether

.....

(name of enterprise)

is engaged in business practices in contravention of the Act.

*Pursuant to section 5(1)(d) of the Act with respect to abuse of dominant

position by

(name of enterprise)

*Cross out whichever is inapplicable.

Please be present as follows:

Date:

Time:

Place:

.....

You have a right to be represented by an Attorney-at-law or any other person.

Failure to appear without reasonable excuse may subject you to a fine not exceeding Twenty Thousand Dollars (\$20,000.00) and/or imprisonment for a term not exceeding two (2) years pursuant to section 45 of the Fair Competition Act.

Dated the day of

.....

Commissioner/Executive Director,
Fair Trading Commission.

FORM C

(Regulation 4)

NOTICE TO PRODUCE DOCUMENTS

CASE NO: FTC -

IN RELATION TO AN INVESTIGATION BY THE FAIR TRADING COMMISSION

Nature of Investigation

.....

TO:

(name of person required to provide documents)

.....

(address)

Take Notice that pursuant to section 7(1)(b) of the Fair Competition Act the Commission requires you to produce for its inspection the following document(s) which must be produced at the offices of the Fair Trading Commission located at

.....

.....

within twenty (20) days of the date of service of this Notice.

Description of Documents required

.....

.....

Failure to produce the document(s) as required is an offence under section 43 of the Fair Competition Act and subject to the offender to a fine not exceeding One Hundred Thousand Dollars (\$100,000.00) and/or imprisonment for a term not exceeding two (2) years.

.....

Date

.....

Commissioner/Executive Director,
Fair Trading Commission

FORM D

(Regulation 6 (3))

Consent Agreement

This Agreement is made theday of,
between the Fair Trading Commission, a body corporate established under the Fair
Competition Act, with its offices located at
in the parish of(hereinafter
called "the Commission"), of the First Part and
[RESPONENT]of the Second
Part.

WHEREAS:

(insert paragraphs containing facts and law)

IT IS HEREBY AGREED:

(insert paragraphs containing terms agreed upon)

FORM D, *contd.*

The parties hereto agree to waive any and all further procedural steps, any right to seek judicial review, or otherwise to challenge or contest the validity of this Agreement.

However, should the Respondent fail to implement the terms herein agreed to, the Commission may thereafter either withdraw its acceptance of this Agreement and take such action as it considers appropriate and so notify the respondent, or issue and serve a complaint in such form as the circumstances may require.

The respondent understands and accepts that formal proceedings may be instituted against him by the Commission on failure to abide by this Agreement.

.....
Respondent.

.....
Executive Director,
Fair Trading Commission.

.....
Chairman,
Fair Trading Commission.

Dated the 11th day of September, 2000.

Chairman,
Fair Trading Commission.

Approved:

PHILLIP PAULWELL,
Minister of Industry,
Commerce and Technology.

No. 17/12/05, 17/12/09