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**FTCNewsLine** is an on-line quarterly newsletter of the **FAIR TRADING COMMISSION** that contains information on competition matters dealt with by the Fair Trading Commission as well as other competition agencies from around the world. The aim is to provide readers with insights into some of the matters that are prosecuted in other jurisdictions; and to assist businesses and consumers in better identifying issues that may pose competition concerns.

Competition legislation is specific to each jurisdiction and activities that are prohibited in one jurisdiction are not necessarily prohibited in other jurisdictions. For information on the prohibitions under the Jamaica's competition legislation, the **FAIR COMPETITION ACT (FCA)**, please visit our website at [www.jftc.gov.jm](http://www.jftc.gov.jm).

*In this Issue we feature issues related to the period October 1, 2016 to December 31, 2016.*

## **Consent Agreement**

In December 2016, the FTC entered into a Consent Agreement with JP Tropical Foods Limited. The Agreement relates to an investigation that was initiated by the FTC on the basis that at least one packet of JP's branded banana chip product did not contain a promotional item, which had been advertised by way of a label strip affixed to the packaging of the product.

While the label strip contained a disclaimer indicating the possibility that some packets of the product may not contain any promotional item, the FTC took the view that this disclaimer may not be sufficient to exclude liability for misleading advertisement under section 37 of the Fair Competition Act. Without admitting liability, JP Tropical Foods Limited agreed to settle the matter on certain terms by way of a Consent Agreement pursuant to the Fair Competition (Notices and Procedures) Regulations, 2000.

## **FTC Court matters**

- Following Crichton Automotive Limited's appeal of the May 2015 Supreme Court judgment in the case of Fair Trading Commission v Crichton Automotive Limited, on October 11, 2016 the Court of Appeal set the appeal for hearing on February 6, 2017.

In the judgment delivered on May 22, 2015, the Court found that Crichton Automotive Ltd (CAL) is liable for misleading representation under section 37 of the Fair Competition Act (FCA). The Court imposed a penalty of \$2 million dollars against CAL for breach of the FCA; and awarded costs to the FTC.

The case had arisen upon the FTC's investigation into an allegation that CAL had misled a customer regarding the model year of a Nissan Sunny motor car. At the time of sale, the car was represented as a 2007 model, but subsequently, valuers, the Island Traffic Authority

and Fidelity Motors Limited, the authorized Nissan dealer in Jamaica, confirmed that the motor car is in fact, a 2005 model.

- The Judicial Committee of the Privy Council in October 2016 set the appeal hearing in the FTC v Claro/Digicel case for May 2017. In July 2016, the FTC appealed to the Judicial Committee of the Privy Council to vary the judgment handed down by the Court of Appeal on December 19, 2014 with respect to a Stock Purchase Agreement between Digicel Jamaica Limited ('Digicel') and Oceanic Digital Jamaica Limited ('Claro'). The Court of Appeal held that the FTC has jurisdiction over telecommunications matters, but not over transactions between the parties.

Arising from the Judgment, the FTC now seeks to clarify issues relating to: (a) the proper interpretation of the relationship between the Fair Competition Act (FCA) and the Telecommunications Act; and (b) the interpretation of section 17 of the FCA.

### **Complaints investigated during 2016**

During 2016, the FTC investigated 317 complaints for breaches of the FCA. This comprises 238 cases that were unresolved at the end of 2015 and 79 cases which were received during 2016. The automobile and telecommunications sectors triggered the largest number of complaints.

Of the 317 cases investigated, 258 are classified as matters concerning misleading advertising; 36 as offences against competition; five as request for opinion; one as sale above advertised price; and two as tied selling. Fifteen complaints were considered as being outside the purview of the FCA; and, where appropriate, were forwarded to other agencies.

### **Shirley Playfair Lecture for February 2017**

The FTC Shirley Playfair Lecture is scheduled for February 22, 2017 at the Jamaica Pegasus Hotel in Kingston, Jamaica. The theme is "The Quest for Growth: Competition and Industrial Policy, Complementary or Estranged Bedfellows" and the lecture will be delivered by Dr. Peter-John Gordon, former Chairman and Commissioner of the FTC and current Lecturer in the Department of Economics at the University of the West Indies.

### **FTC Annual Magazine**

The FTC will release the 21<sup>st</sup> edition of its annual magazine **Compete** in January 2017. The theme, "Fair Play: Competing by the Rule" explores the different aspects of competition law and the benefits of competition to consumers, businesses and the wider economy. The magazine comprises several articles from the public and private sectors as well as highlights several activities of the FTC. It will be distributed to Government Ministries, Departments and Agencies, academic institutions, business enterprises and professionals; and will also be made available on the FTC's website at [www.jftc.gov.jm](http://www.jftc.gov.jm).