

7 June 2018

Good Choice Limited  
[REDACTED]

Epsom  
Auckland 1023

Dear [REDACTED]

### **Fair Trading Act 1986: Warning**

1. The Commerce Commission has been investigating Good Choice Limited (**Good Choice**) under the Fair Trading Act 1986 (**Act**). We have now completed our investigation and are writing to you to alert you to our concerns.
2. In summary, the Commission considers that Good Choice is likely to have committed an offence under section 30(1) of the Act in that it supplied goods, namely children's nightwear, that did not comply with the mandatory product safety standard for children's nightwear.
3. Under section 30(1) of the Act, if a mandatory product safety standard applies, a person must not supply goods unless that person complies with that product safety standard.
4. In this case, the joint Australian/New Zealand Standard AS/NZS 1249:2014 Children's nightwear and limited daywear having reduced fire hazard (the Safety Standard) applies to new and used clothing suitable for children to wear as nightwear.
5. To comply with the Safety Standard, children's nightwear must bear a fire hazard information label stating either:
  - 5.1 "CAUTION KEEP AWAY FROM HEAT AND FLAME"; or
  - 5.2 "WARNING HIGH FIRE DANGER KEEP AWAY FROM HEAT AND FLAME".

### **Our investigation**

6. As part of the Commission's product safety inspection programme, the Commission purchased three items of children's nightwear from Good Choice<sup>1</sup> to investigate whether Good Choice supplied children's nightwear that complied with the Safety Standard.

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<sup>1</sup> On 5 October 2017.

7. The items are:
  - 7.1 “Pink Tinkerbell” pyjamas;
  - 7.2 “Purple Tinkerbell” pyjamas; and
  - 7.3 “Blue Cars” pyjamas.
8. Photos of the nightwear are in **Attachment A**.
9. On inspection, it was clear that the fire warning labelling on the pyjamas did not comply with the Safety Standard. Good Choice confirmed it had sold 13 sets of the affected nightwear to consumers (including three sets to Commission staff).
10. We also understand that you have contacted the Ministry of Business, Innovation and Employment’s Trading Standards Division and commenced the recall process, and placed a sign in your shop window stores requesting that purchasers return the items in exchange for a full refund.

#### **The Commission’s view**

11. As indicated, the Commission’s view is that Good Choice’s conduct is likely to have breached the Act in that, contrary to section 30(1) it supplied children’s nightwear with incorrect fire hazard labelling. However we will not be taking any further action against Good Choice relating to that conduct and have concluded that the appropriate enforcement response is to issue a warning.
12. Please note that we will take this warning into account if this conduct continues or if Good Choice engages in similar conduct in the future. We may also draw this warning to the attention of a court in any subsequent proceedings brought by the Commission against Good Choice.
13. We recommend that you seek legal advice and encourage you to regularly review your compliance procedures and policies.
14. This warning letter is public information. We may make public comment about our investigations and conclusions, including issuing a media release or making comment to media.

#### **The Commission’s role**

15. The Commission is responsible for enforcing and promoting compliance with a number of laws that promote competition in New Zealand, including the Fair Trading Act. The Act prohibits false and misleading behaviour by businesses in the promotion and sale of goods and services.

**Penalties for breaching the Fair Trading Act**

16. Only the courts can decide if there has actually been a breach of the Fair Trading Act. The court can impose penalties where it finds the law has been broken. A company that breaches the Fair Trading Act can be fined up to \$600,000 and an individual up to \$200,000 per offence.
17. You should be aware that our decision to issue this warning letter does not prevent any other person or entity from taking private action through the courts.

**Further information**

18. We have published a series of fact sheets and other resources to help businesses comply with the Fair Trading Act and the other legislation we enforce. These are available on our website at [www.comcom.govt.nz](http://www.comcom.govt.nz). We encourage you to visit our website to better understand your obligations and the Commission's role in enforcing the Act.
19. You can also view the Fair Trading Act and other legislation at [www.legislation.co.nz](http://www.legislation.co.nz).
20. Please contact [REDACTED] on [REDACTED] or by email at [REDACTED] if you have any questions about this letter.

Yours sincerely

  
John Lyall  
Auckland Manager

# Attachment A



