


8 September 2020

Jay International Ltd



By email: 

Attention: Directors – Jae Yool Lee & Yeon Sook Jeon

Fair Trading Act 1986: Warning for supplying and/or offering to supply children's toys that did not comply with a mandatory product safety standard

1. The Commerce Commission (**Commission**) has been investigating Jay International Ltd (**Jay**) t/a 123 Dollar Store, Huntly under the Fair Trading Act 1986 (**FT Act**). We have now completed our investigation and are writing to inform you, as the directors of the business, about our views.
2. The Commission considers that Jay is likely to have committed offences under section 40(1) of the FT Act in that, contrary to section 30(1) of the FT Act, it supplied and offered for supply three toys, a 'Colourful hammer' (**hammer**); baby hand rattles (**baby rattles**) and dolphin bath toy (**bath toy**) (together referred to as the **toys**) that did not comply with the mandatory product safety standard (**safety standard**).¹ Photographs of the toys are at **Attachment A**.
3. The Commission has decided in this instance to issue Jay with a warning in respect of the conduct. A warning is not a finding of non-compliance; only the courts can decide whether a breach of the law has occurred, and we have determined that at this time we will not be bringing legal action.²
4. However, if this conduct is continuing, we recommend that you take immediate action to address our concerns and seek legal advice about complying with the FT Act.

The Australian/New Zealand Standard for children's toys (AS/NZS ISO 8124.1.2002), as adopted under the Product Safety Standard (Children's Toys) Regulations 2005.

² Commission's published *Enforcement Response Guidelines* at [41].

How this conduct can break the Law

5. Section 30(1) of the FT Act states:

If a product safety standard in respect of goods relates to a matter specified in section 29(1), a person must not supply, or offer to supply, or advertise to supply those goods unless that person complies with that product safety standard.

Toy safety standard

6. The toy safety standard applies to toys manufactured, designed, labelled, or marketed for use by children up to and including 36 months of age whether or not the toys were manufactured, designed, labelled, or marketed for use by children over that age.³
7. Toys do not comply with the toy safety standard if they have small components or small components come off the toy during reasonably foreseeable abuse testing, because these components create a choking hazard for young children.⁴ Toys also do not comply with the safety standard if their size and shape mean that they risk becoming lodged in a child's airway.⁵
8. The toys that Jay International supplied liberated small parts when tested.

The investigation

9. The Commission has investigated Jay after a product safety inspection on 26 February 2019 identified, and resulted in the purchase of, toys which were suspected to not comply with the product safety standard.
10. Testing of the toys by Test Research showed that the toys failed to comply with the safety standard. The testing of the colourful hammer and bath toys liberated small parts that were smaller than the required size outlined in the safety standard. These parts present a choking risk.
11. Testing also showed that the baby rattles were not compliant as the size and shape failed to conform to the required standards as they extended beyond the limits of the testing template, presenting a choking hazard for infants.

Jay's response

12. Jay confirmed that it supplied the toys, advising that one of the toys had been in store when it took over the business from the previous owner. It acknowledged that it had procured the two remaining toys which were found to be non-compliant as well, but only small quantities were supplied. It co-operated with the Commission's

³ Section 4(1) of the Regulations.

⁴ Sub-clause 4.4.1 of the AS/NZS ISO 8124.1.2002 states "removable components thereof and components liberated during testing in accordance with 5.24 (reasonably foreseeable abuse tests) shall not fit entirely, whatever their orientation, into the small parts cylinder when tested in accordance with 5.2 (small parts).

⁵ Clause 4.5.1 of the safety standard states certain toys shall not be capable of penetrating past the test templates.

investigation and removed the products from supply and initiated a recall notice in the store.

13. During the course of the investigation Jay was found to have limited knowledge of the relevant safety standards in relation to children's toys. Further, Jay had no formal or informal compliance programme in place to ensure that product safety standards were met.

The Commission's view

14. In this case, and having fully considered relevant information received, the Commission's view is that Jay is likely to have breached section 30(1) of the FT Act each time it supplied or offered to supply the toys.
15. We have reached this view as we consider that the toys did not comply with the safety standard.

Warning

16. After weighing up the factors set out in our Enforcement Response Guidelines, we have decided it is appropriate and sufficient to conclude our investigation by issuing this warning letter rather than by issuing legal proceedings.
17. This warning represents our opinion that the conduct in which Jay have engaged is likely to have breached the FT Act and that legal action remains available to the Commission in future if the conduct continues or is repeated.
18. We may draw this warning letter to the attention of a court in any subsequent proceedings brought by the Commission against Jay.
19. This warning letter is public information and will be published on the case register on our website. We may also make public comment about our investigations and conclusions, including issuing a media release or making comment to media.

The Commission's role

20. The Commission is responsible for enforcing and promoting compliance with a number of laws that promote competition in New Zealand, including the FT Act. Regulations setting mandatory safety standards for certain products are enforced by the Commission under the FT Act.

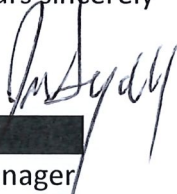
Penalties for breaching the FT Act

21. As indicated above only the courts can decide if there has actually been a breach of the FT Act. The court can impose penalties where it finds the law has been broken. A company that breaches the FT Act can be fined up to \$600,000 and an individual up to \$200,000 per offence.
22. 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

23. We recommend that you seek legal advice and encourage you to regularly review your compliance procedures and policies.
24. We have published a series of fact sheets and other resources to help businesses comply with the FT Act and the other legislation we enforce. These are available on our website at www.comcom.govt.nz. We encourage you to visit our website to better understand your obligations and the Commission's role in enforcing the FT Act.
25. You can also view the FT Act and other legislation at www.legislation.co.nz.
26. Thank you for your assistance with this investigation. Please contact [REDACTED] on [REDACTED] if you have any questions about this letter.

Yours sincerely


[REDACTED]

Manager
Competition and Consumer Branch

ATTACHMENT A



