

20 December 2018

[REDACTED]  
Japan Mart 2014 Company Limited

[REDACTED]  
Unit J1, 4 Antares Place  
Mairangi Bay  
Auckland

By email: [REDACTED]

Copy to: [REDACTED]

Dear [REDACTED]

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

1. The Commerce Commission (**Commission**) has been investigating Japan Mart 2014 Company Limited (**Japan Mart**) under the Fair Trading Act 1986 (**Fair Trading Act**). We have now completed our investigation and are writing to advise you of the agreed outcome.
2. In summary, the Commission considers that Japan Mart is likely to have committed an offence against section 40(1) of the Fair Trading Act in that, contrary to section 30(1) of the Act, it supplied toy trumpets that did not comply with a mandatory product safety standard for children's toys (**safety standard**).<sup>1</sup> It has decided to issue Japan Mart with a warning in respect of the conduct.

### **Legal framework**

3. Section 30 of the Fair Trading Act states:
  - (1) 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.
4. The 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

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<sup>1</sup> The Australian/New Zealand Standards for children's toys (AS/NZS ISO 8124.1.2002), as adopted under the Product Safety Standard (Children's Toys) Regulations 2005.

were manufactured, designed, labelled, or marketed for use by children over that age.<sup>2</sup>

5. Toys do not comply with the 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.<sup>3</sup>
6. The intention of the reasonably foreseeable abuse tests is to simulate the exposure of a toy to structural damage as a result of dropping, pulling, twisting and other actions likely to be performed by a child interacting with the toy. The tests set out within the safety standard include a drop test, a torque test, and a tension test.

### The investigation

7. On 27 February 2017 the Commission purchased three units of a toy trumpet (**Toy Trumpet**) from Japan Mart's store in Manukau, as we had concerns the Toy Trumpet may not comply with the safety standard.
8. One unit of the Toy Trumpet was sent for testing to Materials and Testing Laboratories Limited (**MTL**) in March 2017 to assess its compliance with the safety standard. MTL's testing concluded that the Toy Trumpet failed to comply with the safety standard because small parts became detached from the Toy Trumpet during torque testing.
9. The Commission sent a further unit of the Toy Trumpet to Choice Test Research (**Choice**) for testing in May 2018. Choice's testing also concluded that the Toy Trumpet failed to comply with the safety standard because a small part became detached from the Toy Trumpet during tension testing. This particular small part was liberated during both MTL and Choice testing.
10. The Commission established that Japan Mart imported 36 units of the Toy Trumpet from Japan between May and November 2016. These were available for supply in two of its five stores (Manukau and Henderson). At interview you admitted Japan Mart had failed to conduct checks on the Toy Trumpet, to ensure it met the mandatory requirements in New Zealand. You advised that Japan Mart relied upon the toys being safe for the Japanese market and therefore safe for the New Zealand market. You indicated that toys form less than 5% of Japan Mart's business, and that toys for children aged 36 months and under represented less than 2% of that figure.
11. Japan Mart cooperated with the Commission's investigation and also contacted Trading Standards to undertake a public recall of the Toy Trumpet. In addition, Japan Mart displayed notices about the Toy Trumpet in all its stores and on its website.

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<sup>2</sup> Section 4(1) of the Regulations.

<sup>3</sup> 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).

**The Commission's view**

12. The Commission is of the view that Japan Mart is likely to have breached the Fair Trading Act by supplying the Toy Trumpet. However, the Commission is satisfied that Japan Mart's conduct can be appropriately addressed by the terms set out in our letter dated 18 September 2018, which include issuing this warning.
13. While we will not be taking any further action against Japan Mart at this time, we will take this warning into account if this conduct continues or if Japan Mart 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 Japan Mart.
14. This warning letter is public information and will be published on our website. We may also make public comment about our investigation and conclusions, including issuing a media release or making comment to media.

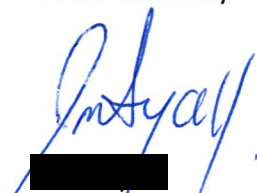
**The Commission's role**

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. Regulations setting mandatory safety standards for certain products are enforced by the Commission under the Fair Trading Act.

**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.
18. Thank you for your assistance with this investigation. Please contact [REDACTED] on [REDACTED] or by email at [REDACTED] if you have any questions in relation to this letter.

Yours sincerely



[REDACTED]  
Manager - Consumer  
Competition Branch