

19 November 2019

B & C Fashion Limited  
Shed 10, 7 – 23 Cain Road  
Penrose  
Auckland 0632

By email: [REDACTED]

Attention: [REDACTED]

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

1. The Commerce Commission (**Commission**) has been investigating B & C Fashion Limited (**B&C**) under the Fair Trading Act 1986 (**Fair Trading Act**). We have now completed our investigation and are writing to advise you of the outcome.
2. In summary, the Commission considers that B&C 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 Fair Trading Act, it supplied the following toys (collectively **the toys**) that did not comply with a mandatory product safety standard for children's toys (**safety standard**):<sup>1</sup>
  - 2.1 Four Peppa Pig push along toys in different colours (blue, yellow, pink and green); and
  - 2.2 A set of 12 aquatic creatures.
3. The Commission has decided in this instance to issue B&C with a warning in respect of the conduct.

### **Legal framework**

4. Section 30(1) of the Fair Trading 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.

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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 (**Regulations**).

5. 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 were manufactured, designed, labelled, or marketed for use by children over that age.<sup>2</sup>
6. 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>
7. 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.
8. Certain toys do not comply with the safety standard if they present an airway obstruction hazard, which includes squeeze toys of which the set of 12 aquatic creatures are variety of. These types of toys are subject to Template tests to determine if they present an airway obstruction hazard.<sup>4</sup>

### **The investigation**

9. Commission staff made the following purchases in 2019:
  - 9.1 Seven units of the Peppa Pig push along toys from Shin & Kim Ltd, T/A Hello Banana in Whakatane on 27 March; and
  - 9.2 three units of the set of 12 aquatic creatures from G4U Trading Ltd, T/A G4U Dollar Store in Te Atatu Peninsula on 19 March.
10. Units of the Peppa Pig Push along toys were tested by Test Research (TR) and found not to comply with the safety standard, as small parts became liberated during testing presenting a choking hazard; and a unit of the set of 12 Aquatic creatures was tested and found to not comply with the safety standard because all 12 creatures were capable of entering and penetrating past the full depth of the cavities of at least one of the test templates.
11. The Commission established that B&C imported:
  - 11.1 864 Units of the Peppa Pig push along toys in September 2017; and
  - 11.2 A total of 1774 units of the set of 12 aquatic creatures had been imported between two shipments in December 2017 and December 2018

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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).

<sup>4</sup> Clause 4.5.1 of the safety standard lists squeeze toys as being caught by this requirement and the test is detailed within clause 5.3 using test templates A and B.

12. You also confirmed that B & C supplied the toys to businesses in New Zealand as follows:
- 12.1 468 units of the Peppa Pig push along toy to 36 retailers between September 2017 and January 2019; and
  - 12.2 978 of the set of 12 aquatic creatures to 58 retailers between January 2018 and March 2019.

*B&C's position*

13. B&C was provided compliance advice by the Commission in March 2017 and May 2018, following two investigations for potentially unsafe toys. The toys the subject to those investigations were not clearly within the scope of the safety standard due to their age appropriateness. The advice provided at that time was general compliance advice about product safety compliance, and the small parts risk, and it did not directly reference the airway obstruction hazard risk.
14. During the interview regarding the toys, you advised that:
- 14.1 you had no knowledge of the safety standards relating to toys, prior to receiving compliance advice in 2017;
  - 14.2 as a result of that advice, it had obtained a copy of the Product Safety Standard (Children's Toys) Regulations 2005, but not the mandated safety standard and a small parts cylinder;
  - 14.3 you advised that you had conducted a review of the toys in stock in March 2018, to check they didn't have small parts by conducting your own drop tests, and as result of that review you removed between 20 to 30 products from supply which had included the Peppa Pig Push along toy;
  - 14.4 you also confirmed that as result of the advice they also checked all future consignment of toys to check for small parts using the small parts cylinder and carrying out the drop test;
  - 14.5 that you were not aware of the template test and had not considered this test in respect of the set of 12 Aquatic creatures. You advised that only the small parts cylinder was used to assess the safety of the set of 12 Aquatic creatures, which did not identify a problem as the creatures would not fit within the cylinder.
  - 14.6 you advised that most of your toys are sourced overseas via an agent or merchant based in China and no steps are taken with them to determine if they were compliant with the safety standard; and
  - 14.7 you advised it will ensure it now obtains a copy of the safety standard and also age determination guidance to familiarise itself of the requirements,

particularly in relation to the template tests. But in particular B&C will be looking to stop supplying toys caught by the scope of the safety standards.

15. You subsequently confirmed that:
  - 15.1 A total of 24 Toys were removed from supply following the audit carried out in March 2018; and
  - 15.2 When we originally contacted you to get clarity on the circumstances relating to the supply of the Peppa Pig toy, you advised that we had been given the wrong information, and that the Peppa Pig toys had not previously been identified through its audit March 2018 and destroyed. You have now confirmed that the Peppa Pig push along toy had passed audit and was supplied right up until January 2019.
16. In terms of this specific investigation, you have cooperated with the Commission and also contacted Trading Standards to undertake a public recall of the toys. Furthermore, following the advice you received in March 2017 and May 2018 you have implemented some checks to determine the safety of toys using a small parts cylinder.

#### **The Commission's view**

17. The Commission is of the view that B&C is likely to have breached the Fair Trading Act by supplying the toys. However, we are satisfied that in this instance issuing a warning is the most appropriate enforcement outcome.
18. We encourage you to continue to assess your compliance procedures to ensure that you comply with the Fair Trading Act. We strongly recommend that you fully avail yourself of all of the requirements of the safety standard, in particular all of the small parts testing under reasonable foreseeable abuse testing, and the Template test requirement for certain type of toys.
19. 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**

20. 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**

21. 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. •

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.
23. 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



John Lyall  
Manager - Consumer  
Competition Branch