

5 April 2023

Gujrat Enterprise Ltd, t/a Tech Xtreme
Flat 1, 16 View Road
Henderson
Auckland, 0612

By email: [REDACTED]

Attention: [REDACTED]

Fair Trading Act 1986: Warning for supplying cots that do not comply with the mandatory product safety standard, and a Cradle that is prohibited under an unsafe goods notice

1. The Commerce Commission (**Commission**) has been investigating Gujrat Enterprise Limited, t/a TechXtreme (**TechXtreme**) under the Fair Trading Act 1986 (**FT Act**). We have now completed our investigation and are writing to inform you about our views.
2. In summary, the Commission considers that TechXtreme is likely to have committed an offence under section 40(1) of the FT Act in that, contrary to:
 - 2.1 section 30(1) of the FT Act, it supplied a '*Toddler Bed With Storage – New Born Baby Bed (model BZM988)*' and a '*Sweet Dream Wooden Toddler Bed Baby Cot (model BZM613)*' (the **Cots**), that did not comply with the mandatory product safety standard for household cots (**safety standard**);¹ and
 - 2.2 section 31(5) of the FT Act, it supplied a '*Automatic Baby Cradle*' (the **Cradle**), a good declared unsafe by the Unsafe Goods (Inclined Infant Sleep Product) Permanent Prohibition Notice 2016 (**Notice**).² (collectively the **products**)
3. Screen captures of the Cots advertised for supply are at '**Attachment A**' and a Screen capture of the Cradle supplied is at '**Attachment B**'.
4. The Commission has decided in this instance to issue TechXtreme with a warning in respect of the conduct. A warning is not a finding of non-compliance; only the Courts

¹ Australian/New Zealand Standard '2172:2003 for household cots (AS/NZS 2172:2003), as adopted under the Product Safety Standards (Household Cots) Regulations 2005.

² [Unsafe Goods \(Inclined Infant Sleep Products\) Indefinite Prohibition Notice 2022 - 2022-go383 - New Zealand Gazette](#)

can decide whether a breach of the law has occurred. In this case we have determined that at this time we will not be bringing legal action to establish fault.³

How this conduct can break the law

The Cots

5. Section 30(1) of the 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.

6. The safety standard is issued pursuant to section 29 of the FT Act and mandates, with variations and omissions, the Australian/New Zealand Standard '2172:2003 Cots for household use—Safety requirements' as the product safety standard.⁴
7. The Cots when examined do not comply with the clauses of the safety standard as follows:
- 7.1 Under clause 6.1 (b)(ii) - The vertical distance between the mattress base and the top edge of the lowest side on an adjustable cot must not be:
- 7.1.1 less than 400mm when it is in the upper position. On both cots this was measured to be 320mm; and
- 7.1.2 when the access to the cot is open it must not be less than 250mm. This was measured to be 0mm; and
- 7.2 Under clauses 3.1, 6.3 and 6.4 access to cot is defined as a drop side mechanism and neither of the cots access mechanism fulfilled this requirement, as they had a hinged opening.
8. Supplying the Cots that do not meet requirements of the safety standard, is likely to be a breach of the FT Act.

The Cradle

9. Section 31(5) of the Act states:

No person shall supply, or offer to supply, or advertise to supply, goods—in respect of which there is in force a notice declaring the goods to be unsafe goods;

³ Commission's published Enforcement Response Guidelines at [41].

⁴ A copy is available to purchase from Standards New Zealand at www.standards.govt.nz

10. The Notice prohibits the supply of, or offer to supply, or advertisement to supply, inclined infant sleep products where the incline on the sleep surface is greater than seven degrees.
11. The Cradle was advertised as a sleep product on your website and in associated YouTube video content. Firstly, the use of the term '*cradle*' which is considered to be a representation of suitability for sleep. And secondly, the inclusion of the wording 'Sleeping in it is more like sleeping in mom's arms'. and the naming of the product '*cradle*' also represent it as a sleep product. Upon examination of the product, it was found that the sleep surface was greater than seven degrees and therefore an unsafe good.
12. The supply of the Cradle that is prohibited by virtue of the Notice, is likely to be a breach of the FT Act.

The investigation

13. The Commission following the receipt of a report that Cots being offered for supply by TechXtreme on www.themarket.com might not be safe, undertook checks to assess what products were being offered for supply by TechXtreme on that website. The Cradle was found for supply and purchased on 3 June 2022, but the Cots were no longer being offered for supply. The Cradle was received on 9 June 2022, and it was clear when assembled that the sleep surface was more than seven degrees.
14. On 26 July 2022 Commission staff visited TechXtreme's trade premises in Onehunga to examine Cots you had in stock. The Cots were found to not comply with the safety standard for the reasons detailed at para 8.

Communication with TechXtreme and Interview

15. TechXtreme has confirmed it:
 - 15.1 Imported 25 units of the Cradle, and 45 units of the Cots in December 2021 (from China);
 - 15.2 Supplied 16 units of the Cradle between March 2022 to June 2022; and
 - 15.3 supplied 5 units of the Cots between April 2022 and June 2022.
16. At interview, TechXtreme confirmed that prior to the investigation it had no knowledge of the safety standard or FT Act, and it was the first occasion of importing or supplying such products. TechXtreme made no check on the safety of the products, nor did it obtain any assurances of safety from the overseas suppliers. TechXtreme also advised that it no longer intends to supply such products.

17. TechXtreme undertook a recall directly with all the customers it supplied the products and has liaised with Product Safety at MBE⁵, to post a recall on the recalls website.

The Commission's view

18. The Commission is of the view that TechXtreme is likely to have breached the FT Act by supplying the Cots that do not comply with the safety standard, and supplying the Cradle which is prohibited by virtue of the Notice.
19. 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. Our decision has been made with consideration given to the prompt action taken by TechXtreme to recall the products, the low quantity of the products supplied, and that TechXtreme has not come to the attention of the Commission before.
20. We advise and encourage TechXtreme to undertake regular reviews of its compliance procedures and policies and make changes if required to prevent unsafe products from being supplied. In particular, we recommend you keep up to date with New Zealand's product safety standards and unsafe goods notices (in conjunction with the relevant regulations) and check any regulated products you supply to ensure they still meet the requirements of the applicable safety standard and/or are not prohibited.

Warning

21. This warning represents our opinion that the conduct in which TechXtreme has 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.
22. We may draw this warning letter to the attention of a court in any subsequent proceedings brought by the Commission against TechXtreme.
23. 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

24. 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.
25. We have published a series of fact sheets and other resources to help businesses comply with the FT Act, other legislation we enforce and in particular the product

⁵ Ministry of Business Innovation and Employment

safety standards for cots, which are all available on our website.⁶ Information on unsafe goods notices is available on MBIE's website.⁷

26. We encourage you to visit our website to better understand your obligations and the Commission's role in enforcing the FT Act.
27. You can also view the FT Act and other legislation at www.legislation.co.nz.

Penalties for breaching the Fair Trading Act

28. 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.
29. 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.
30. 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]
Grant McIntosh
Product Safety and Consumer Information Standards Manager

⁶ www.comcom.govt.nz/business/your-obligations-as-a-business/product-safety-standards

⁷ www.productsafety.govt.nz/for-businesses/making-sure-products-are-safe/unsafe-goods-notices

Attachment A

Model BZM988



Roll over image to zoom in

Toddler bed with storage – New Born Baby Bed

\$299.00 ~~\$409.00~~ (-27%)

Status: **In stock**

or 5 fortnightly payments of **\$59.80** with **hummm** [more info](#)
or 6 weekly interest-free payments from **\$49.83** with **LAY BUY** [what's this?](#)

- + **Add to cart** **Buy Now**

SKU: TX8415368277-2
Category: [Baby gear](#)



All

I'm shopping for...

HOME SHOP MONITORS LAPTOPS COMPUTERS

Home / Shop / Baby gear / Sweet Dream Wooden Toddler Bed Baby Cot – White with Mattress



Sweet Dream Wooden Toddler Bed Baby Cot – White with Mattress

\$299.00 – \$399.00 (-25%)

or 5 fortnightly payments of **\$59.80** with **hummm** more info

Color:

Bed with Mattress

Only Bed

Clear

\$399.00 ~~\$499.00~~

Status: **In stock**

or 6 weekly interest-free payments from **\$49.83** with **LAY BUY** what's this?

- +

Add to cart

Buy Now



Roll over image to zoom in

SKU: TX8414726684-613-1-01

Category: Baby gear

Attachment B

Sleeping in it is more like sleeping in mom's arms

