

26 November 2020

Mighty Ape Limited  
24 – 28 Highgate Parkway  
Silverdale  
Auckland 0932

By email: [REDACTED]

cc: [REDACTED]

Attention: [REDACTED]

Copy to: [REDACTED]

## **Fair Trading Act 1986: Warning for failure to comply with the Product Safety Standard for Pedal Bicycles**

1. The Commerce Commission (**Commission**) has been investigating Mighty Ape Limited (**Mighty Ape**) under the Fair Trading Act 1986 (**the FT Act**). We have now completed our investigation and are writing to inform you about our views.
2. The Commission considers that Mighty Ape is likely to have committed an offence under section 40(1) of the FT Act in that, contrary to section 30(1) of that FT Act, it supplied 65 'Royal Baby' branded children's bikes (**children's bikes**), and 33 'Royal Baby' branded bikes (**adult bikes**) (collectively the **bikes**) to New Zealand consumers that did not comply with a mandatory product safety standard for pedal bicycles (**safety standard**).<sup>1</sup>
3. The Commission has decided in this instance to issue Mighty Ape 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.

### **How this conduct can break the Law**

4. 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.

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<sup>1</sup> 'The Australian/New Zealand Standards for Pedal Bicycles – Safety Requirements' (AS/NZS 1927:1998), as adopted under the Product Safety Standard (Pedal Bicycle) Regulations 2000 (**Regulations**).

*Mandatory safety standard requirements*

5. Pedal bicycles are required to be permanently and legibly marked with the name and address of the New Zealand importer.
6. They must be fitted with not less than two brakes and on a child's pedal bicycle, one brake shall be a back pedal brake (also referred to as coaster brakes).
  - 6.1 A child's pedal bicycle is defined as a bicycle having a wheelbase of between 640mm and 765mm.
7. The handbrake lever for the front brake is to be positioned on the right hand side of the handlebar, and the rear brake lever on the left hand side.

*The bikes supplied by Mighty Ape*

8. The bikes Mighty Ape supplied failed to meet the requirements of the safety standard because:
  - 8.1 The children's bikes were not equipped with a back pedal brake (although they had a hand-operated back brake); and
  - 8.2 The adult bikes brake levers were incorrectly configured, and the bikes were not permanently marked with the name and address of the importer.
9. Supplying bikes that failed to meet the requirements of the safety standard is likely to be a breach of the FT Act.

**The investigation**

10. The Commission was alerted to the issues following a recall posted by Mighty Ape on the New Zealand Product Recalls website, ([www.recalls.govt.nz](http://www.recalls.govt.nz)) for the children's bikes in January 2020, as they did not have the required back pedal brake mechanism (see **Attachment A**).
11. We subsequently commenced an investigation and sought information as to the circumstances of the recall and how the children's bikes came to be supplied in New Zealand.
12. Mighty Ape stated it sold 65 units of the non-compliant children's bikes in New Zealand between September 2018 and December 2019.
13. During the investigation, a further recall was posted on the Product Recalls website for the adult bikes in September 2020, as the brake levers were incorrectly configured on the handlebars and the bikes were not marked with the importer's details (see **Attachment B**). Further information was sought on the circumstances of this second recall.

14. Mighty Ape stated it sold 33 units of the adult bikes in New Zealand, which were supplied during the same period as the children's bikes.

#### **Mighty Ape's response**

15. You confirmed that Mighty Ape became aware of the non-compliant children's bikes following a complaint from an Australian customer on 29 November 2019 that the children's bikes she had received from Mighty Ape were not compliant with the safety standard.
16. The children's bikes along with the adult bikes were then removed from sale pending further investigations by Mighty Ape. These investigations subsequently revealed issues with the way in which the adult bikes' brake levers were positioned on the handlebars and also that the bikes lacked the required importer markings.
17. In arranging to supply the bikes, Mighty Ape confirmed that it relied on the expertise of its suppliers to confirm that the bikes were compliant with the safety standard. You believed that as the same suppliers were already supplying pedal bicycles to the Australian market, that the bikes should be compliant with the safety standard in New Zealand.
18. Mighty Ape obtained test reports for the bikes from the supplier, to show that the bikes met the safety requirements applicable in the US and Europe, and these test reports were reviewed to check the reports matched the models on order. However, you acknowledged that there was a failure to identify that some of the bikes supplied did not have back pedal brakes as required. You also conceded that you did not have test reports for some of the models of the bikes.
19. Mighty Ape checked the consignments of the bikes on arrival to ensure they matched the order however no further assessment was made to check the bikes for compliance with the New Zealand safety standard. In particular Mighty Ape staff did not identify the lack of back pedal brakes on the children's brakes, or the incorrect configuration of the brake levers and the lack of the required importer labelling on the adult bikes.
20. All Royal Baby branded pedal bicycles subject to the recalls were removed from supply by 10 December 2019.
21. In addition to notifying the product recalls on the MBIE recalls website, Mighty Ape contacted all purchasers directly by email to advise them of the issues identified with the bikes.
22. Mighty Ape holds a copy of the safety standard but recognizes its failings in not making its staff fully aware of the compliance requirements within the safety standard. You have undertaken to improve Mighty Ape's procedures in relation to the safety standard and now engaged a consultant to help develop a new

compliance regime for all products it supplies that are subject to the mandatory product safety standards under the FT Act.

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

23. In this case, and having fully considered the relevant information received, the Commission's view is that Mighty Ape is likely to have breached section 30(1) of the FT Act by supplying the children's bikes without a rear back pedal brake and supplying the adult bikes with incorrectly configured handbrake levers, and necessary importer markings.
24. When supplying pedal bicycles in future, Mighty Ape must ensure that it complies with all the requirements of the safety standard to prevent any further possible breach of the FT Act. Although no injuries have been reported regarding the bicycles which are the subject of this investigation, the potential for harm to consumers from pedal bicycles that do not comply with the safety standard is significant, particularly to young children.

### **Warning**

25. After weighing up the factors set out in our Enforcement Response Guidelines, we have decided it is appropriate to conclude our investigation by issuing this warning letter rather than by issuing legal proceedings on this occasion.
26. We have taken into account the steps Mighty Ape has taken to improve compliance in employing an external compliance consultant to overhaul its compliance procedures; that it self-reported the issues with the bikes to MBIE Trading Standards, and the corrective action it has taken to directly inform the affected customers and rectify the compliance issues.
27. This warning represents our opinion that the conduct Mighty Ape has engaged in 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.
28. Any repeat occurrence of a likely breach of the FT Act would not be taken lightly by the Commission. It views repeat and/or continued offending as an aggravating factor when establishing the enforcement outcome.
29. We may draw this warning to the attention of a court in any subsequent proceedings brought by the Commission against Mighty Ape.
30. This warning letter is public information and will be published 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**

31. 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**

32. 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.
33. 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**

34. We recommend that you seek legal advice and encourage you to regularly review your compliance procedures and policies, in particular with regards to products where safety standards apply. We expect Mighty Ape to have good internal quality control checks when new products are introduced for sale to customers and maintain those checks through the lifetime of the product. These checks may include product testing and screening checks on receipt of new consignments of products, to ensure that new batches of products received from suppliers meet the original product specification and the safety standard requirements. Such checks should enable Mighty Ape to quickly identify any issues that may arise and require further investigation, before new batches of the product are made available for supply.
35. 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](http://www.comcom.govt.nz), including a fact sheet on pedal bicycles, which is enclosed.
36. 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



Kirsten Mannix  
Consumer Manager Wellington

# Attachment A

yment [NZ] <https://www.recalls.govt.nz/recalls/mighty-ape-royal-baby-childrens-bicycles/>

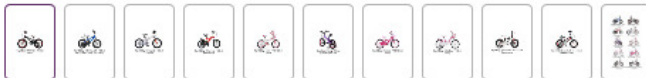
27 January 2020

## Mighty Ape - Royal Baby childrens bicycles

[Toys / Novelties](#) [Sports / Recreation / Hobbies](#)



**Royal Baby: Bull Dozer - 16 inch  
(Black)**



### The Hazard!

The product does not comply with the requirements of the Product Safety Standards (Pedal Bicycle) Regulations 2000 as the Bicycles do not have a rear pedal brake mechanism. Without a rear back-pedal brake children may not be able to brake sufficiently using the front/rear brakes controlled by the handlebars, which could result in an accident and injury of the rider.

### What to do...

Stop using the bicycle and contact Mighty Ape to arrange a return and refund. Mighty Ape is also contacting all identified customers that were originally sold an affected bicycle.

### Product Identifiers

Sold through Mighty Ape from September 2018 to 29 November 2019 • Royal Baby: BMX Freestyle - 16 inch Bike (Blue, Green, Orange, Pink & Red) • Royal Baby: Bull Dozer - 16 inch Bike (Black) • Royal Baby: Flying Bear - 16 inch Bike (Red & Yellow) • Royal Baby: H2 Royalite - 16 inch Bike (Orange) • Royal Baby: Honey - 14 inch Bike (Black, Purple & Red) • Royal Baby: Jenny - 14 & 16 inch Bike (White) • Royal Baby: Little Swan - 14 inch Bike (Pink) • Royal Baby: Mermaid - 14 & 16 inch Bike (Pink) • Royal Baby: Space No. 1 - 14 & 16 inch Bike (Black & Orange) • Royal Baby: Space shuttle - 14 & 16 inch Bike (Black & Purple)

### Supplier Contact

**Might Ape Ltd**



[www.mightyape.co.nz/blog/7052/product-safety-recall-royalbaby-childrens-bikes](http://www.mightyape.co.nz/blog/7052/product-safety-recall-royalbaby-childrens-bikes)

[orders@mightyape.co.nz](mailto:orders@mightyape.co.nz)

### Responsible Agency

**MBIE**

## Attachment B

 **PRODUCT SAFETY ALERT** The recalls website has been refreshed 

## Product Recalls

New Zealand Government

Search by product or keyword...



[Home](#) > [Search results](#) > [Mighty Ape - RoyalBaby Childrens Bicycles](#)

10 September 2020

### Mighty Ape - RoyalBaby Childrens Bicycles

[Sports / Recreation / Hobbies](#) [Toys / Novelties](#)



#### The Hazard!

Some bicycles have the handlebar brakes installed the wrong way around.

There is an increased risk of an injury to the rider.

The product does not comply with the requirements of the Product Safety Standards (Pedal Bicycle) Regulations 2000, if the handlebar brakes are installed the wrong way around and also, because the bicycles are not marked with a New Zealand or Australian importer address.

#### What to do...

Mighty Ape will be in contact with all customers that were originally sold an affected bicycle via email to arrange a kit to be sent via courier:

- An address label and instructions for fitting it.
- Instructions to check the brake levers.

If your handlebar brake levers are the wrong way around, contact Mighty Ape to organise a qualified technician to swap them to the correct side.

#### Product Identifiers

Potentially affected bicycles sold at Mighty Ape from September 2018 to December 2019

Royal Baby 18-20 inch bicycles:

- RoyalBaby: BMX Freestyle 18 and 20 inch Bike (Blue, Green, Orange, Pink & Red)
- RoyalBaby: BMX Freestyle 18 and 20 inch Bike (Blue, Green, Orange, Pink & Red)
- RoyalBaby: Bull Dozer 18 inch Bike (Black & Yellow)
- RoyalBaby: Jenny G-4 18 and 20 inch Bike (White)
- RoyalBaby: Mermaid G-3 18 inch Bike (Pink)
- RoyalBaby: Space No.1 18 inch Alloy Bike (Black & Orange)

#### Supplier Contact

Mighty Ape Ltd

[help.mightyape.co.nz/hc/en-us/requests/new](https://help.mightyape.co.nz/hc/en-us/requests/new)

[orders@mightyape.co.nz](mailto:orders@mightyape.co.nz)

#### Responsible Agency

MBIE