

3 June 2021

ACY Company Limited, t/a Hot Dollar
Unit 9, 254 Lincoln Road
Henderson
Auckland 610

By email: [REDACTED]

Attention: [REDACTED]

Fair Trading Act 1986: Warning for supplying children's toys and nightwear that do not comply with mandatory product safety standards

1. The Commerce Commission (**Commission**) has been investigating ACY Company Ltd, T/A Hot Dollar (**Hot Dollar**) 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 Hot Dollar is likely to have committed an offence against section 40(1) of the FT Act in that, contrary to section 30(1) of the FT Act, it supplied:
 - 2.1 the following nightwear (collectively the **Nightwear** garments) that did not comply with the mandatory product safety standard for children's nightwear (**nightwear safety standard**):¹
 - 2.1.1 Pink monkey PJ set;
 - 2.1.2 My Little Pony PJ set;
 - 2.1.3 Two different Cars PJ sets;
 - 2.1.4 Bratz PJ set;
 - 2.1.5 Bratz nightie;
 - 2.1.6 Spiderman PJ set;
 - 2.1.7 Mickey mouse PJ set; and

¹ The Australian/New Zealand Standards for Children's nightwear and limited daywear having reduced fire hazard (AS/NZS ISO 1249:2014), as adopted under Product Safety Standards (Children's Nightwear and Limited Daywear Having Reduced Fire Hazard) Regulations 2016

- 2.2 A Guitar toy and Tortoise toy (collectively the **Toys**) that did not comply with the mandatory product safety standard for children's toys (**toy safety standard**).²
3. Photographs of the Toys and Nightwear are at **Attachment A**.
4. The Commission has decided in this instance to issue Hot Dollar 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. 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

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 product safety standard is complied with in respect of those goods.

Nightwear safety standard

6. The nightwear safety standard applies to items of children's nightwear and limited daywear sized between 00 - 14. All nightwear covered by the nightwear safety standard must be marked with the correct fire hazard information labels.⁴
7. The Nightwear supplied was required to be labelled. Three of the Nightwear garments supplied did not have the correct fire hazard information label attached. Four of the Nightwear garments had no fire hazard information label attached, despite being required to have such labelling under the nightwear safety standard. Therefore, the Nightwear does not comply with the nightwear safety standard.

Toy safety standard

8. 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.⁵
9. 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,

² 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.

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

⁴ Some garments will not meet the design or flammability requirements of the Safety Standard and these garments cannot be sold.

⁵ Section 4(1) of the Regulations.

because these components create a choking hazard for young children.⁶ Toys also do not comply with the toy safety standard if their size and shape mean that they risk becoming lodged in a child's airway.⁷

10. The Toys when subjected to reasonably foreseeable abuse testing, liberated small components that fitted entirely into the small parts cylinder and therefore the Toys do not comply with the toy safety standard.

The investigation

11. Commission staff purchased units of the Toys and Nightwear from Hot Dollar between 4 and 20 November 2020.
12. The Nightwear did not comply with the nightwear safety standard as they had either old versions of the fire hazard information labels or no fire hazard information labels.⁸
13. Units of each of the toys were sent for testing to Test Research in December 2020. Test Research tested all the units and concluded they did not comply with the toy safety standard. Under reasonably foreseeable abuse testing, small parts were liberated from each of the toys, which fit entirely into the small parts cylinder.

Hot Dollar's response

14. During the investigation, Hot Dollar confirmed:
 - 14.1 One unit of the guitar was purchased from New World Market Limited, and two units of the Tortoise toy from Goodview Wholesale Limited;
 - 14.2 it had only purchased three units in total for both Toys, and all the units of the Toys have been supplied to the Commission; and
 - 14.3 The Nightwear was purchased as closing down stock from Leisure Life Limited, but you have been unable to confirm how many units were purchased and how many were supplied to its customers.
15. Hot Dollar removed all the remaining non-compliant nightwear from supply (advised to be 100 sets) and does not intend to stock or supply Nightwear in the future.

⁶ 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).

⁷ Clause 4.5.1 of the safety standard states certain toys shall not be capable of penetrating past the test templates.

⁸ Product Safety Standards (Children's Nightwear and Limited Daywear Having Reduced Fire Hazard) Regulations 2008, were revoked in 2017 and replaced with the current mandatory safety standard.

The Commission's view

16. The Commission is of the view that Hot Dollar is likely to have breached the FT Act by supplying the Toys and Nightwear, that do not comply with the nightwear safety standard and toy safety standard.
17. 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 bearing in mind the remedial action taken by Hot Dollar to remove nightwear from sale and the low quantity of Toys supplied. We also understand that Hot Dollar has taken steps to recall the Nightwear.
18. Hot Dollar did not provide the Commission with detailed records to confirm the numbers of units that it held or supplied of the Nightwear. Where such records are not kept it is hard to ensure the traceability of the goods that have been supplied. This is desirable where any safety concerns arise around a product, such as in the case of the nightwear safety standard and toy safety standard, to assist in locating the importer and recalling the product. We recommend that you take steps to maintain accurate inventory and supply records for all stock that you purchase for supply to consumers. This should include accurate details of what you have been supplied by businesses.
19. We advise and encourage Hot Dollar to regularly review its compliance procedures and policies. In particular, we recommend you keep up to date with New Zealand's product safety standards (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.

Warning

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

23. 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.

24. 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 safety standards for children's nightwear and toys](#) . These are available on our website at: www.comcom.govt.nz/business/your-obligations-as-a-business/product-safety-standards
25. We encourage you to visit our website to better understand your obligations and the Commission's role in enforcing the FT Act.
26. You can also view the FT Act and other legislation at www.legislation.co.nz.

Penalties for breaching the Fair Trading Act

27. 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.
28. 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.
29. Thank you for your assistance with this investigation. Please contact Simon Foster on 09 951 1473 or by email at simon.foster@comcom.govt.nz if you have any questions in relation to this letter.

Yours sincerely



Kirsten Mannix
Fair Trading Investigations and Compliance Manager

Attachment A

Pink monkey PJ set



My Little Pony PJ set



Cars PJ set's



Bratz PJ set



Bratz Nightie



Spiderman PJ set



Mickey Mouse PJ set



Guitar toy



Tortoise toy

