

18 June 2021

Goodview Wholesale Limited  
168 Neilson Street  
Onehunga  
Auckland 1061

By email: [REDACTED]

Attention: [REDACTED]

## **Fair Trading Act 1986: Warning for supplying a child's toy that does not comply with mandatory product safety standard**

1. The Commerce Commission (**Commission**) has been investigating Goodview Wholesale Ltd (**Goodview Wholesale**) 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 Goodview Wholesale 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 a Tortoise toy (the **Toy**) that did not comply with the mandatory product safety standard for children's toys (**safety standard**).<sup>1</sup>
3. A photograph of the Toy is at **Attachment A**.
4. The Commission has decided in this instance to issue Goodview Wholesale 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.<sup>2</sup>

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

5. Section 30(1) of the Act states:

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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.

<sup>2</sup> Commission's published Enforcement Response Guidelines at [41]

*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.*

6. 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>3</sup>
7. Toys do not comply with the safety standard if:
  - 7.1 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>4</sup>
  - 7.2 their size and shape mean that they risk becoming lodged in a child's airway;<sup>5</sup> and/or
  - 7.3 on battery operated toys the battery compartment is easily accessible without the use of a tool or two independent movements, or the battery compartment opens after a drop test.<sup>6</sup>
8. The Toy, when subjected to reasonably foreseeable abuse testing, liberated small components that fitted entirely into the small parts cylinder and therefore the Toy does not comply with the safety standard.

### **The investigation**

9. Commission staff purchased units of the Toy from ACY Company Ltd, t/a Hot Dollar on 4 November 2020. Hot Dollar confirmed to the Commission that it had been supplied the Toy by Goodview Wholesale.
10. A unit of the Toy was sent for testing to Test Research in December 2020. Test Research tested the Toy and concluded it did not comply with the safety standard. Under reasonably foreseeable abuse testing, small parts were liberated from the Toy, which fitted entirely into the small parts cylinder.

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<sup>3</sup> Section 4(1) of the Regulations.

<sup>4</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>5</sup> Clause 4.5.1 of the safety standard states certain toys shall not be capable of penetrating past the test templates.

<sup>6</sup> Clause A2.3 states not batteries shall be accessible without the use of a tool or unless at least two independent movements have been applied simultaneously. And under clause 5.7 the drop test the battery compartment should not be accessible

11. You confirmed Goodview Wholesale had sourced the Toy and its supply as follows:
  - 11.1 The Toy was purchased as part of the purchase of the business in April 2017, along with other products from the previous owner of the business;
  - 11.2 A total of 14 units of the Toy formed part of the purchase of the business; and
  - 11.3 All 14 units were supplied to three customers, which included two units to Hot Dollar.
12. Goodview Wholesale has contacted all the customers it supplied the Toy to and have successfully recalled 6 units of the Toy so far.
13. You confirmed to the Commission that you were not aware of the safety standard although you were conscious that small parts could be hazardous to very young children.

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

14. The Commission is of the view that Goodview Wholesale is likely to have breached the FT Act by supplying the Toy, that does not comply with the safety standard.
15. 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 that Goodview Wholesale was not the importer of the Toy and the low quantity supplied. We also note that Goodview Wholesale took prompt action to recall the Toy.
16. We advise and encourage Goodview Wholesale 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 meet the requirements of the applicable safety standard.

#### **Warning**

17. This warning represents our opinion that the conduct in which Goodview Wholesale 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.
18. We may draw this warning letter to the attention of a court in any subsequent proceedings brought by the Commission against Goodview Wholesale.
19. 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.

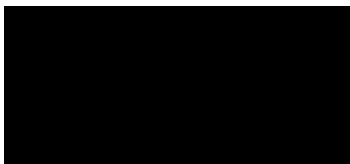
### **The Commission's role**

20. 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.
21. We have published a series of fact sheets and other resources to help businesses comply with the FT Act, other legislation we enforce, which includes the product safety standards and in particular children's toys. These are available on our website at:
  - 21.1 [www.comcom.govt.nz/business/your-obligations-as-a-business/product-safety-standards](http://www.comcom.govt.nz/business/your-obligations-as-a-business/product-safety-standards)
22. We encourage you to visit our website to better understand your obligations and the Commission's role in enforcing the FT Act.
23. You can also view the FT Act and other legislation at [www.legislation.co.nz](http://www.legislation.co.nz).

### **Penalties for breaching the Fair Trading Act**

24. 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.
25. 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.
26. 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  
Fair Trading Investigations and Compliance Manager

Attachment A

