

26 July 2022

Farmers Trading Company Ltd  
21 Laidlaw Way  
East Tamaki  
Auckland

By email: [REDACTED]

CC: [REDACTED]

Attention: [REDACTED]

Copy to: [REDACTED]

## **Fair Trading Act 1986: Warning for supplying children's nightwear that does not comply with the mandatory product safety standard**

1. The Commerce Commission (**Commission**) has been investigating Farmers Trading Company Limited (**Farmers**) 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. In summary, the Commission considers that Farmers 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 six different styles of the 'Teeny Weeny Sleepsuit' range (the **Nightwear**) that did not comply with the mandatory product safety standard for children's nightwear (**safety standard**).<sup>1</sup>
3. Images of the Nightwear are at **Attachment A**.
4. The Commission has decided in this instance to issue Farmers 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.<sup>2</sup>

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<sup>1</sup> AS/NZS 1249:2014 is the standard adopted under the Product Safety Standards (Children's Nightwear and Limited Daywear Having Reduced Fire Hazard) Regulations 2016 (the **Regulations**) for the purposes of compliance with the FT Act.

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

### 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.*

6. The nightwear safety standard applies to items of children’s nightwear and limited daywear sized between 00 – 14, including “*predominantly knitted all-in-one garments in sizes 00–2 made from fabrics that have a pile or nap, or include fabrics with a pile or nap*”.
7. All nightwear covered by the nightwear safety standard must be permanently labelled with the correct fire hazard information label.
8. The Nightwear supplied by Farmers are knitted all-in-one garments, in the size range 00-2, made from fabric with a pile or nap. The Nightwear did not comply with the safety standard as they had no fire hazard information labels attached.

### The investigation

9. A recall posted by Farmers on MBIE’s Product Recalls website on 31 May 2021 was viewed by the Commission as part of our product safety monitoring work. The recall stated the supplied Nightwear did not have the required low fire hazard label sewn into the garments.<sup>3</sup>
10. We subsequently commenced an investigation.

### Communication with Farmers

11. We contacted Farmers to determine the cause of the recall and you advised that the recall was initiated as a result of a customer bringing the error to your attention, querying why the Nightwear had no fire hazard labels on them.
12. The Commission then requested information from Farmers as to why the Nightwear was not labelled in accordance with the requirements of the safety standard. In summary you advised:
- 12.1 The Nightwear was part of a larger consignment of 27,000 units, all of similar styles received in March 2021;
- 12.2 9,000 of the units had a pile / nap on the internal surface of the garment;
- 12.3 5,850 units of the 9,000 were required to be labelled with the low fire hazard warning label as they were in the size category 00-2; and

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<sup>3</sup> [www.recalls.govt.nz/recalls/farmers-teeny-weeny-sleepsuits/](http://www.recalls.govt.nz/recalls/farmers-teeny-weeny-sleepsuits/)

- 12.4 804 units of the Nightwear (out of the 5,850 units imported that required a warning label) had been supplied to the public;
  - 12.5 Prior to the consignment being produced by your overseas supplier, samples had been received by Farmers for assessment, which were of similar styles that had been received before from the same overseas supplier;
  - 12.6 During the process to assess them for compliance with the safety standard, procedures were not fully followed;
  - 12.7 There was a failure to identify (on some of the samples received) that they had a pile or nap on their internal surface, and so the Nightwear was incorrectly assessed as not requiring low fire hazard information labels;
  - 12.8 As part of your process of assessing nightwear, a 'label assessment sheet' is required to be completed and in this case it was not.
  - 12.9 There was a divergence from Farmer's policy, which required all children's nightwear fabric to be tested regardless of legal obligations; and
  - 12.10 reliance was placed on the overseas supplier, who was a long term supplier and familiar with the requirements. Subsequently a decision was made to ship the consignment due to time constraints.
13. Finally, you have advised the Commission that in addition to posting the recall on the MBIE Product Recalls website, you have posted recall notices in all your stores, contacted customers directly, and as at 18 July 2022, 335 units of the Nightwear have been returned following the recall.

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

14. In this case, and having fully considered the information received, the Commission is of the view that Farmers is likely to have breached section 30(1) of the FT Act by supplying the Nightwear without having the low fire hazard information labels attached.
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.
16. In making our decision, we have given particular consideration to:
- 16.1 The positive action taken by Farmers to recall the Nightwear;
  - 16.2 The fact of the Nightwear having a pile or nap only on the internal surface, may have been overlooked in a visual assessment due to human error;
  - 16.3 The actions that occurred causing the non compliance was down to a breach of your own policies;

- 16.4 The fire safety risk associated with the Nightwear is low; and
- 16.5 This is the first instance of Farmers supplying non-compliant nightwear that the Commission is aware of.
17. We advise Farmers to continually review its compliance procedures and policies, and ensure all staff are adhering to them. You should also ensure any changes in procedures and policy are communicated to all responsible staff, and if required appropriate training is provided.

### **Warning**

18. This warning represents our opinion that the conduct in which Farmers 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.
19. We may draw this warning letter to the attention of a court in any subsequent proceedings brought by the Commission against Farmers.
20. 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**

21. 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.
22. 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 standard for children's nightwear, which are all available on our website.<sup>4</sup>
23. We encourage you to visit our website to better understand your obligations and the Commission's role in enforcing the FT Act.
24. 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**

25. 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.
26. 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.

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<sup>4</sup> [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)

27. 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](mailto:simon.foster@comcom.govt.nz) if you have any questions in relation to this letter.

Yours sincerely



Grant Barrott  
Manager Screening and Analysis

Attachment A

