

5 December 2016

www.comcom.govt.nz

Mr Rhys Bugden and Ms Pam Greenhalgh
Bear Cottage
56a Henderson Street
Whakatane 3120

Dear Mr Bugden and Ms Greenhalgh

Fair Trading Act 1986: Warning

1. The Commerce Commission (**Commission**) has been investigating Bear Cottage under the Fair Trading Act 1986 (**Act**). We have now completed our investigation and are writing to you to alert you to our concerns.
2. In summary, the Commission considers that Bear Cottage is likely to have committed an offence against section 40(1) of the Act in that, contrary to section 30(1) of the Act, it supplied toy possum fur teddy bears that did not comply with a mandatory product safety standard.¹

Legal framework

3. Under section 30(1) of the Act, if a mandatory product safety standard applies, a person must not supply goods unless that person complies with that product safety standard.
4. 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.²
5. Toys do not comply with the safety standard if they have small components or small components come off the toy during testing, because these components create a choking hazard for young children.³

¹ 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.

² Section 4(1) of the Regulations

³ Sub-clause 4.4.1 of the Safety Standard 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 test).

The investigation

6. During the investigation, the Commission considered whether Bear Cottage supplied teddy bears that did not comply with the safety standard.
7. The Commission established that Bear Cottage has been selling the teddy bears for approximately 15 years online and at its retail premises in Whakatane. The teddy bears Bear Cottage sells have not been tested for compliance with the safety standard.
8. On 8 July 2016 the Commission purchased five teddy bears from Karu retail store in Auckland.
9. Materials & Testing Laboratories Limited (**MTL**) was engaged by the Commission to test three of the teddy bears purchased. MTL's report concluded that all three teddy bears failed to comply with the safety standard because "fuzz"⁴ came detached from the teddy bears during testing.
10. Bear Cottage was advised of the investigation and given a copy of the independent testing result on 10 August 2016. Bear Cottage was also provided with a copy of a report from a registered child psychologist concluding that the teddy bears were toys to which the safety standard applied.
11. Bear Cottage removed the teddy bears from sale once advised of the investigation and has not resumed selling the teddy bears.

The Commission's view

12. In this case, the Commission's view is that Bear Cottage's conduct is likely to have breached the Act namely, that contrary to section 30(1) of the Act, it supplied goods (namely toy possum fur teddy bears, in respect of which, a product safety standard has been declared) that did not comply with that product safety standard.
13. We have reached this view because:
 - 13.1 The report prepared by the registered child psychologist engaged by the Commission concluded that the teddy bears were manufactured, designed, labelled, or marketed for use by children up to and including 36 months of age because in her view:
 - 13.1.1 "The bears would appeal to this age group as a sensory object - to mouth, feel, stroke and move (the parts), as a toy bear or object for imitative or imaginative play, as an attachment (comforter) object and as something to carry around."

⁴ "fuzz" is defined in AS/NZS ISO 8124.1:2002 as "bits of fibrous-type material that can be readily removed from toys with a pile surface"

- 13.2 The MTL testing established that the teddy bears failed to comply with the standard because as a result of tension testing fur detached from all the teddy bears tested. The clumps of fur fitted completely into the small parts cylinder and consequently, were smaller than the minimum size required by the safety standard for small parts.
14. It is noted that the safety standard does not prescribe a specific method for testing whether fuzz becomes detached from toys. MTL employs the following two tests in the absence of a defined method:
- 14.1 A “thumb and forefinger pinch”, where the tester grips the fur between the thumb and forefinger to see whether fur detaches.
- 14.2 The general tension test prescribed under clause 5.24.6.1 of the NZ children’s toys safety standard, where the tester grips the fur with a clamp and applies $70\text{ N} \pm 2\text{ N}$ of force, which results in a loading of 7.135.4 kg.
15. While we have reached a view that Bear Cottage’s conduct is likely to have breached the Act, in this instance, we consider it appropriate to finalise our investigation by issuing this warning letter rather than file court proceedings.
16. We advise and encourage Bear Cottage to ensure the products it makes and sells comply with the appropriate product safety standards. We recommend Bear Cottage considers testing its products.
17. While we will not be taking any further action against you at this time, we will take this warning into account if this conduct continues or if you engage in similar conduct in the future. We may also draw this warning to the attention of a court in any subsequent proceedings brought by the Commission against you.
18. 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

19. The Commission is responsible for enforcing and promoting compliance with a number of laws that promote competition in New Zealand, including the Act. Regulations setting mandatory safety standards for certain products are enforced by the Commission under the Act.

Penalties for breaching the Fair Trading Act

20. Only the courts can decide if there has actually been a breach of the Act. The court can impose penalties where it finds the law has been broken. A company that breaches the Act can be fined up to \$600,000 and an individual up to \$200,000 per offence.

21. 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

22. We have published a series of fact sheets and other resources to help businesses comply with the Act and the other legislation we enforce. These are available on our website at www.comcom.govt.nz. We encourage you to visit our website to better understand your obligations and the Commission's role in enforcing the Act.
23. You can also view the Act and other legislation at www.legislation.co.nz.
24. Please contact Richard Morgan on 09 9203493 or by email at richard.morgan@comcom.govt.nz if you have any questions about this letter.

Yours sincerely



John Lyall
Auckland Manager