

14 June 2021

New World Market Limited  
98 Hillsborough Road  
Hillsborough  
Auckland 1042

By email: [REDACTED]

Attention: [REDACTED]

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

1. The Commerce Commission (**Commission**) has been investigating New World Market Limited (**New World Market**) 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 New World Market 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 the following toys (collectively the **Toys**) that did not comply with the mandatory product safety standard for children's toys (**safety standard**):<sup>1</sup>
  - 2.1 Toy train;
  - 2.2 Animal piano;
  - 2.3 Keyboard toy; and
  - 2.4 Guitar toy.
3. Photographs of the Toys are at **Attachment A**.
4. The Commission has decided in this instance to issue New World Market 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

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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.

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 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 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.

8. The Toys when subjected to reasonably foreseeable abuse testing, liberated small components that fitted entirely into the small parts cylinder and the battery compartment was easily accessible on three of the toys, therefore the Toys do not comply with the safety standard.

### **The investigation**

9. Commission staff purchased units of the Toys from four separate retailer stores between 5 and 23 November 2020. The retail store operators confirmed to the Commission that the Toys had been supplied by New World Market.

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

<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.

10. 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 safety standard. Under reasonably foreseeable abuse testing, small parts were liberated from each of the toys, which fit entirely into the small parts cylinder. Also the battery compartment was accessible on the toy train, animal piano and keyboard toy without the use of a tool or two independent movements and after the drop test.

*New World Market's response*

11. You confirmed that New World Market had imported 132 units of the Toys in August 2020 and had supplied 123 units to eight different retail stores.
12. During the investigation, you confirmed:
- 12.1 you relied upon its overseas agent to ensure the toys supplied are safe and complaint; and
- 12.2 had carried out limited checks on consignments of goods to check for damage, but not to assess the safety of the products.
13. You also advised that you contacted Trading Standards at the Ministry of Business, Innovation and Employment to post a recall for the Toys, and contacted all your retailers to recall the Toys. You have confirmed that you have managed to recall 56 units of the Toys as a result of this action.

**The Commission's view**

14. The Commission is of the view that New World Market is likely to have breached the FT Act by supplying Toys, that do 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 the prompt action taken by New World Market to recall the Toys and the high number of the Toys recalled as a result, the low quantity of the Toys supplied, and that New World Market has not come to the attention of the Commission before.
16. We advise and encourage New World Market 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**

17. This warning represents our opinion that the conduct in which New World Market 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 New World Market.
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 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](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 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

A handwritten signature in black ink, appearing to read "Kirsten Mannix". The signature is written in a cursive style with a large initial 'K'.

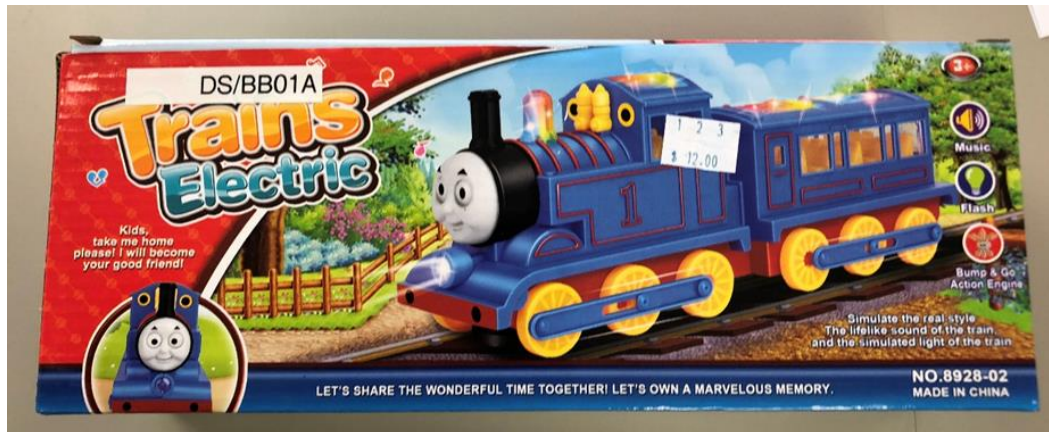
Kirsten Mannix  
Fair Trading Investigations and Compliance Manager

## Attachment A

### Animal Piano



### Toy Train



Keyboard Toy



Toy Guitar

