

29 June 2022

Dollar King Limited  
92-94 Beachcroft Ave  
Onehunga,  
Auckland, 1061

Attention: [REDACTED]  
[REDACTED]

By email only: [REDACTED]

Copied: [REDACTED]

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

1. The Commerce Commission (**Commission**) has been investigating Dollar King Limited, (**Dollar King**) 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 Dollar King 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 raspberry teether and teething ring (collectively the **Teething Toys**) that did not comply with the mandatory product safety standard for children's toys (**safety standard**).<sup>1</sup>
3. Photographs of the Teething Toys are at **Attachment A**.
4. The Commission has decided in this instance to issue Dollar King 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>

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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].

### 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, and/or creating impaction hazards associated with teethers;<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 Teething Toys presented a risk of becoming lodged in a child's throat and blocking the airway creating a choking and/or suffocation hazard, and/or creating impaction hazards associated with teethers.
9. Supplying toys that fail to meet the requirements of the safety standard is likely to be a breach of the FT Act.

### The investigation

10. Commission staff purchased units of the Teething Toys from one of Dollar King's retail stores, t/a 2\$Things on 22 March 2021.

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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.

11. Two units of each of the Teething Toys were sent for testing to Choice Test Research in April 2021. Test Research tested all of the units and concluded they did not comply with the safety standard.
12. When assessed against the prescribed test template all units were capable of entering and penetrating past the full depth of the cavity of the test template. Therefore, the shape and size of all of the units of the Teething toys submitted for testing presented a risk of blocking a child's airway.

*Dollar King's response*

13. You confirmed that Dollar King had imported 4,272 units of the Teething Toys from China between December 2019 and January 2020; and supplied 2,328 units of the Teething Toys to customers of stores owned and operated by Dollar King.
14. During the investigation, you confirmed:
  - 14.1 you check new toy samples before ordering from overseas suppliers to check their quality and ensure no small parts are present, carrying out a visual assessment as well as dropping them to check if small parts break off for compliance with the safety standard;
  - 14.2 no shape and size assessments are carried out on toys (including teething toys) before stocking for supply; and
  - 14.3 you have read the safety standard following advice provide by the Commission in 2018, but you had not sought any legal or technical advice to ensure your understanding of the requirements was correct; and
  - 14.4 you advised that you contacted Consumer Protection at the Ministry of Business, Innovation and Employment to post a recall for the Teething Toys and posted recall notices within all your stores.

**The Commission's view**

15. The Commission is of the view that Dollar King is likely to have breached the FT Act by supplying the Teething Toys that do not comply with the safety standard.
16. After weighing up the factors set out in our Enforcement Response Guidelines, in particular extent of detriment and public interest, we have decided it is appropriate and sufficient to conclude our investigation by issuing this warning letter rather than by issuing legal proceedings. It is important that Dollar King is aware that the safety standard does not provide for a tolerance for a failure, whilst the failure in this case was marginal the safety standard is prescriptive and the Commission considered that the Teething Toys failed the requirements of the safety standard.
17. The Commission expects Dollar King to implement more focused compliance procedures and policies. 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. If there is repeated or continued non-compliance the Commission is likely to take a high-level enforcement response.

### **Warning**

18. This warning represents our opinion that the conduct in which Dollar King 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 Dollar King.
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 standards for children's toys, which are all available on our website.<sup>6</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>6</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

A handwritten signature in black ink, appearing to read "Grant McIntosh". The signature is written in a cursive, flowing style.

Grant McIntosh  
Product Safety and Consumer Information Standards Manager

Attachment A

