

19 April 2017

North Pacific Limited
1/57 Kerwyn Avenue
East Tamaki
Auckland

Dear Mr Wu

Fair Trading Act 1986: Warning

The Commerce Commission has been investigating North Pacific Limited (**North Pacific**) under the Fair Trading Act. We have now completed our investigation and are writing to you to alert you to our concerns.

In summary, the Commission considers that North Pacific has supplied baby walkers that do not comply with the mandatory product safety standard for baby walkers (**safety standard**).¹ In the Commission's view, North Pacific's conduct is likely to have breached section 30(1) of the Fair Trading Act 1986 (**FTA**).

Section 30(1) of the Fair Trading Act states, a person must not supply, or offer to supply, or advertise to supply those goods unless that person complies with that product safety standard.

If this behaviour is continuing at the present time, we recommend that you take immediate action to address our concerns and seek legal advice about complying with the Fair Trading Act.

The investigation

During our investigation, the Commission considered whether the baby walkers supplied by North Pacific complied with the safety standard. We found two issues. The first was that the warning labels required to be on the baby walkers, which are designed to ensure safe use of the baby walkers were not present or not in the prescribed wording. The second issue was that the baby walkers did not have an adequate braking or other system in place to prevent the baby walker tipping on stairs.

Clause 8.3 of Standard ASTM F 997 – 03 forms part of the Safety Standard and it states:

8.3.2 The warnings shall include the following exactly as stated below

¹ The relevant mandatory product safety standard is ASTM F977-03 (with variations) as adopted under the Product Safety Standards (Baby Walkers) Regulations 2001, which are issued pursuant to section 29 of the Fair Trading Act 1986

Warning – Never leave child unattended. Always keep child in view while in walker.

8.3.4.2 The stairs warning shall be stated exactly as follows

Warning – Stair Hazard

Avoid serious injury or death

Block stairs/steps securely before using walker

The following additional warnings must also be on the baby walker.

8.3.3.1 Use only on flat surfaces free of objects that could cause the walker to trip over

8.3.3.2 To avoid burns, keep the child away from hot liquids, ranges, radiators, space heaters, fireplaces, etc.

8.3.4.1 Each walker shall be labelled with a separate stairs warning visible to the consumer when placing the child in the walker

8.3.4.2 The stairs warning shall be stated exactly as follows:

Warning – Stair Hazard

Avoid serious injury or death

Block stairs/steps securely before using walker

The warning label on the baby walkers supplied by North Pacific stated only:

Warning

1. Age about 6-18 months, the maximum load 15 KGS
2. Please check every fixed part before use
3. The baby walker should be used under adult guardianship
4. The baby walker shouldn't use in the street, slope and other rough place
5. The standard of execute is GB14749-2006

No other warning labels were on the baby walkers.

To prevent falls downstairs the baby walker must have a braking system. On this occasion the baby walkers did not have any mechanism to prevent the walker falling down stairs.

North Pacific responded to the Commission's enquiries by stating it had recalled all 7 of the baby walkers it had supplied to one retailer and disposed of them. The Commission understands that North Pacific does not import baby walkers and received these baby walkers from a friend who had a store that had closed down. North Pacific has stated that it does not intend to supply baby walkers again.

The Commission's view

In this case, the Commission's view is that North Pacific's conduct is likely to have breached section 30(1) of the FTA. We have reached this view because the warning label on the baby walkers supplied by North Pacific were not in the prescribed format as required under the mandatory product standard for baby walkers.

We recommend that you seek legal advice and encourage you to regularly review your compliance procedures and policies.

While we will not be taking any further action against North Pacific 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 North Pacific.

This warning letter is public information. We may make public comment about our investigations and conclusions, including issuing a media release or making comment to media.

The Commission's role

The Commission is responsible for enforcing and promoting compliance with a number of laws that promote competition in New Zealand, including the Fair Trading Act. The FTA prohibits false and misleading behaviour by businesses in the promotion and sale of goods and services.

We enforce product safety standards that are set by regulation under the FTA and unsafe product notices that are declared by the Ministry of Consumer Affairs. It is a breach of the Act to offer or supply products that fail to comply with all requirements of a product safety standard or to import, supply or advertise goods declared to be unsafe.

There are currently six product safety standard regulations. They are for;

- Baby walkers
- Children's toys
- Children's nightwear
- Pedal bikes
- Household cots
- Cigarette lighters.

Penalties for breaching the Fair Trading Act

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

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

We have published a series of fact sheets and other resources to help businesses comply with the Fair Trading 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.

You can also view the Fair Trading Act and other legislation at www.legislation.co.nz.

Thank you for your assistance with this investigation. Please contact me on 09 919 4441 or by email at John.Lyall@comcom.govt.nz if you have any questions about this letter.

Yours sincerely



John Lyall
Manager – Consumer
Auckland