

# **Undertakings to the Commerce Commission under section 46A of the Fair Trading Act 1986**

**Evolution Cycles Limited**

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## 1 Persons giving Undertakings

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- 1.1 These Undertakings are given to the Commerce Commission (**Commission**) for the purposes of section 46A of the Fair Trading Act 1986 (**FT Act**) by Evolution Cycles Limited (Company Number 3403871), a company incorporated in New Zealand having its registered office at 58b Butcher Road, Hamilton (**Evo Cycles**).

## 2 Background

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- 2.1 Evo Cycles is a specialist retailer of bicycles, bicycle components/parts and accessories. It also offers mechanical services at workshops in each of its stores. Evo Cycles currently operates 26 stores across New Zealand and online through its website.
- 2.2 The product safety standard for pedal bicycles (**safety standard**) requires that pedal bicycles are fitted with two brakes; one acting on the front wheel and one on the rear wheel. For children's bicycles with a wheelbase of between 640mm and 765mm, one of the brakes must be a back-pedal brake.
- 2.3 The Commission was alerted to a recall for a bike described as a Silverback Skid 16" Kids bike (the **Bike**), which was posted on the Australian Competition and Consumer website on 10 December 2020. The Bike was being recalled due to the absence of a rear pedal brake (although it did have a rear handlebar lever brake).
- 2.4 The Commission identified the Bikes offered for supply on Evo Cycles website, which appeared to be the same model to the one posted on the recall. Evo Cycles was notified of our findings and confirmed that it had imported 10 units of the Bike in July 2020. It sold all 10 units between 4 August 2020 and 2 September 2020.
- 2.5 Evo Cycles contacted all 10 customers it supplied the Bikes to. Seven customers took up an offer to have the Bike retrofitted with a pedal brake, one customer was given a refund, and the two remaining customers declined to take up the offer.
- 2.6 The Commission considers that Evo Cycles is likely to have breached the FT Act by supplying bikes that did not comply with the safety standard.
- 2.7 In response to the Commission's investigation, Evo Cycles has:
- (a) admitted that its conduct likely contravened section 30(1) of the FT Act; and
  - (b) offered these Undertakings to the Commission.
- 2.8 The Commission has concluded, with reference to its Competition and Consumer Investigation Guidelines and Enforcement Response Guidelines, that it is in the public interest to resolve this investigation by way of these Undertakings provided by Evo Cycles and a warning.

### 3 Purpose of the Undertakings

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- 3.1 These Undertakings are given by Evo Cycles to:
- (a) record Evo Cycles commitment to ensuring compliance by making the changes outlined in clause 4.1 below; and
  - (b) resolve the Commission's concerns arising from the investigation into the Bike.

### 4 Undertakings

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#### *Compliance changes*

- 4.1 Evo Cycles undertakes to the Commission, to the extent it has not already, to:
- (a) Implement the following steps within 30 days of the commencement of the Undertakings:
    - (i) Create a Supplier "Import Checklist" for suppliers to complete at the time of supply to confirm bikes being provided comply with the Standard and, if not, what needs to be done to comply.
    - (ii) Create an "Import Checklist – Receiving Form" to be completed by Evo Cycles receivers for every new consignment of imported bikes, confirming that bikes comply to the Standard.
    - (iii) Update Evo Cycle's "Assembly Checklist", with all the relevant requirements of the Standard regrouped under a separate heading, to make it clearer for builders what needs to be checked to ensure compliance. Specific checkboxes to also be added to the Assembly Checklist for:
      - (A) back pedal brakes on 12"/16" bikes;
      - (B) handlebar ends capped;
      - (C) pedal tread on both top & bottom; and
      - (D) no sharp edges.
    - (iv) Keep a record of the completed Assembly Checklist for each bike.
    - (v) Add a section to Evo Cycles "Master Build Spreadsheet" to note that compliance with the Standard has been checked and confirmed.
    - (vi) Create and implement a NZ Safety Standards training module for all relevant staff to complete – this will cover all aspects of the requirements for bikes under the Standard.
    - (vii) Appoint a dedicated "Compliance Manager" whose role includes:
      - (A) Administering the training course outlined at 4.1(a)(vi) including by providing training to all new relevant staff upon commencement of

employment and a refresher for all existing relevant staff on at least an annual basis;

- (B) Administering and file managing the Supplier/Receiving/Assembly Checklists;
- (C) Conducting spot audits on at least an annual basis of Evo Cycles stores to ensure safety standards are being met.

#### *Acknowledgement of breach*

4.2 Evo Cycles makes the following acknowledgement:

- (a) The NZ Safety Standards for children’s bicycles require any bike with a wheelbase of between 640mm – 765mm to have at least two brakes, one of which must be a back-pedal brake. Section 30(i) of the FTA makes it an offence to supply goods that do not comply with such Safety Standards.
- (b) Between May and September 2020 Evo Cycles imported and sold 10 “Silverback Skid 16” Kids bikes” to consumers in New Zealand. While those bikes had two handlebar lever brakes, they did not have a back-pedal as required under the Standard. In supplying those bikes to consumers Evo Cycles therefore likely breached s 30(i) of the FTA.
- (c) Safety Standards are essential to protecting consumers and in this case to ensuring the safety of those most vulnerable users (children). The particular risk posed in this case is that a child may have difficulty using only the lever brakes to stop effectively, resulting in harm.
- (d) Evo Cycles takes its obligations to consumers seriously and unreservedly apologises for this breach. Upon being informed of the issue Evo Cycles immediately instituted a recall and the issue was remedied in the case of 8 bikes and 2 customers decided not to have their bikes remedied. Evo Cycles has since implemented various policy/process changes to ensure this type of breach is not repeated.

4.3 Following notification from the Commission of its publication of the Undertakings on its website, Evo Cycles undertakes to publish the above acknowledgement and apology on its own website for a period of 14 days.

#### *Contribution to investigation costs*

4.4 Within 10 Days of the Undertakings coming into effect in accordance with clause 6 below, Evo Cycles will pay into a bank account nominated by the Commission the sum of NZ\$9,582 towards the Commission’s costs in relation to the Investigation.

## **5 Effect of the Undertakings**

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5.1 The Undertakings are Court enforceable undertakings in terms of section 46A of the FT Act.

## **6 Commencement of Undertakings**

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- 6.1 The Undertakings come into effect when:
- (a) the Undertakings are executed by Evo Cycles; and
  - (b) the Commission confirms its acceptance of the Undertakings.

## **7 Duration of Undertakings**

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- 7.1 These Undertakings will continue to have effect until the earlier of:
- (a) the Commission for any reason discharging Evo Cycles from the Undertakings; or
  - (b) five years from the date the Commission confirms its acceptance of these Undertakings.

## **8 Compliance with the Undertakings**

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- 8.1 If Evo Cycles becomes aware of a breach of these Undertakings, whether advertent or inadvertent, it will notify the Commission within seven days of becoming aware, giving full particulars of the breach.
- 8.2 For the avoidance of doubt, nothing in clause 8.1 above prevents the Commission from directly seeking any information from Evo Cycles at any time for the purposes of checking compliance with these Undertakings.

## **9 Variation of the Undertakings**

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- 9.1 The Commission and Evo Cycles can agree at any time to vary these Undertakings.
- 9.2 No variation to these Undertakings will be effective unless it is in writing, executed by Evo Cycles, and signed as accepted by the Commission

## **10 Miscellaneous**

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- 10.1 These Undertakings are properly executed if each Undertaking Party signs the same copy, or separate identical copies. Where separate copies are signed by Evo Cycles or the Commission, the signed copy can be the original document, or an emailed copy.
- 10.2 Evo Cycles acknowledges that:
- (a) the Commission will make the Undertakings publicly available, including by publishing them on the Commission's enforcement response register on its website;
  - (b) the Commission will, from time to time, make public reference to these Undertakings, including in media statements and in the Commission's publications;

- (c) nothing in these Undertakings is intended to restrict the right of the Commission, or the right of any other person, to take action under the FT Act or under any other statute or law.

**Execution**

Signed by and on behalf of  
Evolution Cycles Limited

[Redacted Signature]

\_\_\_\_\_  
Director/authorised signatory

[Redacted Name]

\_\_\_\_\_  
Name

**Acceptance**

Signed by and on behalf of the  
Commerce Commission

[Redacted Signature]

\_\_\_\_\_  
Chair

[Redacted Name]

\_\_\_\_\_  
Commerce Commission

*In the presence of:*

[Redacted Presence]

\_\_\_\_\_  
28/10/2022

\_\_\_\_\_  
Date