

2 November 2022

Evolution Cycles Limited
c/o BME Ltd
58B Butcher Road, Rd 4
Hamilton 3284
New Zealand

By email: [REDACTED]

cc: [REDACTED]

Attention: [REDACTED]

Copy to: [REDACTED]

Fair Trading Act 1986: Warning for failure to comply with the Product Safety Standard for Pedal Bicycles

1. The Commerce Commission (**Commission**) has been investigating Evolution Cycles Limited (**Evo Cycles**) under the Fair Trading Act 1986 (**the FT Act**) regarding product safety concerns. We have now completed our investigation and are writing to inform you about our views.
2. The Commission considers that Evo Cycles is likely to have committed an offence under section 40(1) of the FT Act in that, contrary to section 30(1) of that FT Act, it supplied 10 'Silverback Skid 16" Kids Bikes' (the **Bikes**) to New Zealand consumers that did not comply with a mandatory product safety standard for pedal bicycles (**safety standard**).¹
3. The Commission has decided in this instance to issue Evo Cycles with this warning in respect of the conduct. A warning reflects the Commission's views of Evo Cycles' conduct. Only the courts can conclusively decide whether a breach of the law has occurred, and we have determined that at this time we will not be bringing legal action.

How this conduct can break the Law

4. Section 30(1) of the FT Act states:

¹ 'The Australian/New Zealand Standards for Pedal Bicycles – Safety Requirements' (AS/NZS 1927:1998), as adopted under the Product Safety Standard (Pedal Bicycle) Regulations 2000 (**Regulations**).

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 person complies with that product safety standard.

Relevant mandatory safety standard requirements

5. Under the safety standard, pedal bicycles must be fitted with not less than two brakes and on a child's pedal bicycle (**child's bicycle**), one brake shall be a back pedal brake.² A child's bicycle is defined as a bicycle having a wheelbase of between 640mm and 765mm.

The Bikes supplied by Evo Cycles

6. The Bikes supplied by Evo Cycles failed to meet the requirements of the safety standard because they had the incorrect brake fitted for a child's pedal bicycle; they were not equipped with a back pedal brake.
7. Supplying Bikes that failed to meet the requirements of the safety standard is likely to breach the FT Act.

The investigation

8. The Commission initially identified a recall for the Bike described as a "Silverback' Skid 16" Kids Bike', which was posted on the Australian Competition and Consumer Commission website on 10 December 2020.³ The child's bicycle was being recalled due to the absence of a back pedal brake, as required for a child's bicycle under the same safety standard in Australia.
9. Two coloured variants of the Bike were offered for supply on www.evocycles.co.nz (**Evo Cycles website**). The geometry for the Bikes on Evo Cycles website, indicated that the Bikes offered for supply had a wheelbase size of 731.8mm and the specification indicated the brakes were hand lever operated.
 - 9.1 Screen captures of the Bikes offered for supply and their geometry are at **Attachment A**.
10. We subsequently commenced an investigation and sought information as to how the Bikes came to be supplied in New Zealand.

Communication with Evo Cycles and Interview

11. Evo Cycles has confirmed that it:
 - 11.1 imported 10 units of the Bikes in July 2020 in a total consignment of 342 pedal bicycles from the manufacturer, the Tianjin Fuj-Ta Bicycle Industrial Co. Ltd, in China;

² Clause 2.14.1.

³ www.productsafety.gov.au/recall/99-Bikess-australia-pty-ltd-silverback-skid-16-kids-Bikes-my2020

- 11.2 sold all 10 units between 4 August 2020 and 2 September 2020; and
 - 11.3 has contacted all 10 customers supplied with the Bikes, to undertake a recall; eight of the 10 customers have taken up the offer to replace the Bikes (or the parts on the Bikes), or be given a refund. The two remaining customers have declined to take up the offer.
12. At interview Evo Cycles confirmed that, prior to the investigation, the checks performed on pedal bicycles before being supplied to consumers were carried out using an Assembly Checklist. The Assembly Checklist included an assessment that pedal bicycles had two brakes but no specific check to ensure that children's bicycles were fitted with a back/rear pedal brake. Evo Cycles also noted that the Assembly Checklist did not include checks for other requirements of the safety standard including handle-bar caps, pedal tread or to ensure no sharp points on the bicycle.
 13. Evo Cycles has confirmed the steps it has taken to improve compliance with the safety standard since the Commission's investigation commenced. It has:
 - 13.1 Updated and reformatted the Assembly Checklist, to include that back/rear pedal brakes are fitted if required and the other safety requirements referred to;
 - 13.2 Taken steps to ensure overseas suppliers complete a supplier import form, to indicate if a pedal bicycle being supplied complies with the safety standard and if not, what needs to be done to rectify the pedal bicycle to ensure it complies. This includes an additional checklist upon the receipt of consignments from overseas suppliers to assess their compliance and what steps may need to be taken to remedy any non-compliance; and
 - 13.3 Added a safety standard training course for all staff to complete as well as appointing a dedicated compliance manager to oversee compliance with the safety standard.
 14. Evo Cycles has also provided information, based on a conservative estimate, indicating it has imported and supplied a total of 194 Silverback branded children's bicycles over the last 5 years. No information is available as to what type of brakes were fitted on them.

The Commission's view

15. Having fully considered the relevant information received, the Commission's view is that Evo Cycles is likely to have breached section 30(1) of the FT Act by supplying the Bikes without a back/rear pedal brake.
16. When supplying pedal bicycles in future, Evo Cycles must ensure that it complies with all the requirements of the safety standard to prevent any further possible breach of the FT Act. Although no injuries have been reported regarding the Bikes which are the subject of this investigation, there is a risk of harm to consumers from

pedal bicycles that do not comply with the safety standard, particularly to young children.

17. As a precaution, we recommend that you seek advice from Consumer Protection at the Ministry of Business, Innovation and Employment (MBIE) about undertaking a voluntary product recall for the 194 children's bicycles supplied, for which Evo has been unable to confirm the type of rear brake fitted.

Warning and enforceable undertakings

18. 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 and accepting enforceable undertakings provided by Evo Cycles to the Commission.
19. We have taken into account the steps Evo Cycles has taken to improve compliance, in particular ensuring more detailed checks are carried out to prevent breaching the safety standard; additional training for staff; the appointment of a dedicated compliance manager; and the corrective action it has taken to contact all 10 customers to undertake a recall.
20. This warning represents our opinion that the conduct Evo Cycles has engaged in 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.
21. Any repeated likely breach of the FT Act may be treated as an aggravating factor when determining the appropriate enforcement outcome relating to any future conduct.
22. We may also draw this warning to the attention of a court in any subsequent proceedings brought by the Commission against Evo Cycles.
23. This warning letter and the signed enforceable undertakings are public information and will be published on our website. We may also make public comment about our investigation and conclusions, including issuing a media release or making comment to media.

The Commission's role

24. 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.

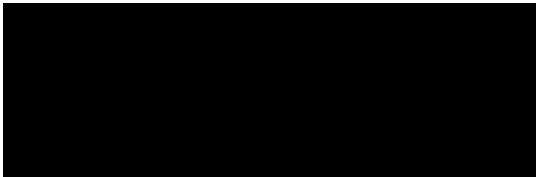
Penalties for breaching the FT Act

25. As indicated above only the courts can conclusively decide if the FT Act has been breached. 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 and to seek enforceable undertakings does not prevent any other person or entity from taking private action through the courts.

Further information

27. We recommend that you seek legal advice if you are unsure about your obligations under the FT Act and we encourage you to regularly review your compliance procedures and policies, in particular with regards to products where safety standards apply. We expect Evo Cycles to have comprehensive compliance procedures, to follow the changes outlined in the Undertakings and to proactively update these procedures regularly.
28. We have published a series of fact sheets and other resources to help businesses comply with the FT Act and the other legislation we enforce. These are available on our website at www.comcom.govt.nz, including a fact sheet on pedal bicycles, which is enclosed.
29. Thank you for your assistance with this investigation. Please contact [REDACTED] on [REDACTED] or by email at [REDACTED] if you have any questions in relation to this letter.



Grant McIntosh
Product Safety & Consumer Information Standards Manager

Attachment A

EVO LET'S RIDE NZ!

Search Q

BIKES ELECTRIC BIKES PARTS ACCESSORIES CLOTHING SCOOTERS NUTRITION BLOG
NEW ARRIVALS HOT DEALS CLEARANCE

BOOK A SERVICE
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12 MONTHS INTEREST FREE
EVO HOME DELIVERY

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LATEST UPDATE ON ORDER DELIVERY TIMES >

Bikes > Kids Bikes > 16" Kids Bikes

SHOP KIDS BIKES

LIMITED STOCK AVAILABLE!

*The weight is approximate for terms and conditions

SILVERBACK

2020 Silverback Kids' Skid 16" Bike Green/Blue

Confidence Builder | Product Code: 363038

OUT OF STOCK

EVO PRICE

\$309.00

Frame	Silverback 16" 6061 aluminium, tapered T headtube
Brake Set	Steel V-brakes
Weight	9.35kg (medium frame, with tubes, without pedals)

*All specifications listed are subject to change without notice.

SHOP KIDS BIKES

DESCRIPTION
SIZE GUIDE
GEOMETRY

Map	Type	S
A	SEAT TUBE C/T	210
B	HEAD TUBE ANGLE	70
C	SEAT TUBE ANGLE	71
D	TOP TUBE	387.1
E	REACH	272
F	CHAINSTAY LENGTH	310
G	BB HEIGHT	200
H	WHEELBASE	731.8
I	HEAD TUBE LENGTH	80
J	STACK	335
K	STANDOVER	405.7