

21 May 2024

Davie Clothing Pty Ltd  
39 Orsmond Street  
Hindmarsh  
SA 5007  
Australia

Attention: [REDACTED]

Copy to: [REDACTED]

Email: [REDACTED]

Cc: [REDACTED]

## **Fair Trading Act 1986: Warning for supplying a children's wearable towel that does not comply with the mandatory product safety standard**

1. The Commerce Commission (**Commission**) has been investigating Davie Clothing Pty Ltd (**Davie Clothing**) under the Fair Trading Act 1986 (the **FT Act**). We have now completed our investigation and are writing to inform you about our views.
2. In summary, the Commission considers that Davie Clothing is likely to have committed offences under section 40(1) of the FT Act in that, contrary to section 30(1) of the FT Act:
  - 2.1 it supplied six different styles of 'Kids Beach Oodies' (the **Towels**) that did not comply with the mandatory product safety standard for children's nightwear and limited daywear (the **Safety Standard**);<sup>1</sup> and
  - 2.2 it failed to comply with the safety standard's requirements for online marketing.
3. Images of the Towels are provided in **Attachment A**.
4. The Commission has decided in this instance to issue Davie Clothing 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.<sup>2</sup> We have determined that at this time we will not be bringing legal action. The purpose of this warning letter is however to inform you

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<sup>1</sup> AS/NZS 1249:2014 is the standard adopted under the Product Safety Standards (Children's Nightwear and Limited Daywear Having Reduced Fire Hazard) Regulations 2016 for the purposes of compliance with the FT Act.

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

of our view that there has been a likely breach of the FT Act, to prompt changes in behaviour and to encourage future compliance.<sup>3</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 items of children’s nightwear and limited daywear sized between 00 – 14, including “*blankets and towels that incorporate a sleeve or arm opening.*”
7. All garments caught by the Safety Standard shall be permanently marked with the correct fire hazard information label.
8. The Towels supplied by Davie Clothing have arm openings and are sized between 00 - 14. The Towels did not comply with the Safety Standard as they had no fire hazard information labels attached.
9. Where a garment caught by the Safety Standard is offered for supply online, clear and legible fire hazard information shall be provided as part of the online image and product description.
10. Davie Clothing did not provide fire hazard information as part of the online image and product description when advertising to supply goods caught by the Safety Standard on [www.theoodie.co.nz](http://www.theoodie.co.nz) (the **website**).

### The investigation

11. A recall notice posted by the Australian Competition & Consumer Commission on 17 August 2023 was viewed by the Commission as part of our product safety monitoring work. The recall notice evidenced that the Towels were recalled for not having fire hazard information labels.

### Communications with Davie Clothing

12. On 21 August 2023, in response to an email received from the Commission, Davie Clothing confirmed it had supplied the Towels in New Zealand.
13. During the investigation, Davie Clothing confirmed it:
  - 13.1 purchased 300 units of the Towels from a Chinese supplier for its operation in New Zealand;
  - 13.2 supplied 174 units of the Towels in New Zealand; and

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<sup>3</sup> Commission’s published Enforcement Response Guidelines at [37]

- 13.3 did not have any formal compliance process in place throughout the time it ordered, supplied and offered to supply the Towels.
14. You also advised that, in addition to posting a recall on the Ministry of Business, Innovation and Employment Product Recalls website, you emailed your affected customers directly, and as of 8 January 2024, three units of the Towels had been returned.

### **The Commission's view**

15. In this case, having fully considered the information received, the Commission is of the view that Davie Clothing is likely to have breached section 30(1) of the FT Act, by advertising and supplying the Towels which did not comply with the Safety Standard because:
- 15.1 the Towels did not have fire hazard information labels attached; and
- 15.2 fire hazard information was not available as part of the online image and product description.
16. 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. There are several factors that influenced our decision to warn Davie Clothing on this occasion, which included you having no previous interactions with the Commission, your main product line<sup>4</sup> being within scope of and compliant with the Safety Standard and that you implemented a formal compliance process during our investigation. We do however note our concern that, for at least a period, you offered to supply the Towels knowing they did not comply with the Safety Standard.
17. We advise and encourage Davie Clothing to regularly review its 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.

### **Warning**

18. This warning represents our opinion that the conduct in which Davie Clothing 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 Davie Clothing.
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 the 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

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<sup>4</sup> 'Oodies' (hooded wearable blankets) sized between 00 and 14.

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 and the other legislation we enforce, including the product safety standard for children's nightwear and limited daywear. These are all available on our website at [www.comcom.govt.nz](http://www.comcom.govt.nz).
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 view the FT Act and other legislation at [www.legislation.co.nz](http://www.legislation.co.nz).

#### **Penalties for breaching the Fair Trading Act 1986**

25. Only the courts can decide if there has been a breach of the FT Act. The courts can impose severe penalties where it finds the law has been broken.
26. A company that breaches section 30(1) of the FT Act can be fined up to \$600,000 and an individual up to \$200,000 per offence. Where a company is a repeat offender, directors and those involved in the management of the company can be banned from involvement in the management of any company carrying on business in New Zealand for a period of up to 10 years.
27. 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.
28. 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.

Yours sincerely

[REDACTED]

[REDACTED]

[REDACTED]

**Attachment A**

*Images of the Towels*

*Blue Tie-Dye*



*Happy Flowers*



*Charcoal*



*Stripe*



*Fruit Faces*



*Avocado*

