

25 October 2023

World Pop Trading Limited
237c East Coast Road
Mairangi Bay
Auckland 0630

Attention of: [REDACTED]

By email only: [REDACTED]

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

1. The Commerce Commission (**Commission**) has been investigating World Pop Trading Limited (**World Pop**) 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 World Pop is likely to have committed an offence against section 30(1) of the FT Act by supplying a wheeled wind up 'Telephone toy' (the **Toy**) that did not comply with the mandatory product safety standard for children's toys (**safety standard**).¹
3. A photograph of the Toy is at **Attachment A**.
4. The Commission has decided in this instance to issue World Pop 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.² 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 of our view that there has been a likely breach of the FT Act, to prompt changes in behaviour and to encourage future compliance.³

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.

¹ 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.

² Commission's published Enforcement Response Guidelines at [41]

³ Commission's published Enforcement Response Guidelines at [37]

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.⁴
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;⁵ and/or
 - 7.2 their size and shape mean that they risk becoming lodged in a child's airway;⁶ 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. An accredited testing laboratory tested two units of the Toy for compliance with the safety standard. The results of testing concluded that the Toy did not comply with the safety standard because:
 - 8.1 the left and right hands and two rear wheels on both units were liberated during reasonably foreseeable abuse testing;
 - 8.2 the wind-up knob on one unit was liberated during reasonably foreseeable abuse testing; and,
 - 8.3 each of these pieces that were liberated could all individually fit in the small parts cylinder.
9. **Attachment B** contains photographs of the Toy following testing.
10. Supplying toys that fail to meet the requirements of the safety standard is a breach of the FT Act.

The investigation

11. Commission staff purchased units of the Toy from Suyog Corporation Ltd, t/a Dollarama in Napier on 30 May 2022.
12. Two units of the Toy were sent for testing to Choice Test Research in June 2022. Choice Test Research tested both units and concluded that they did not comply with the safety

⁴ 'The Safety of Toys Part 8: Age determination guidelines' published by the Joint Standards Australia/Standards New Zealand Committee (SA/SNZ TR ISO 8124.8:2016) provides guidance on determining the age appropriateness of toys.

⁵ 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 test)".

⁶ Clause 4.5.1 of the safety standard states certain toys shall not be capable of penetrating past the test templates.

standard. Under reasonably foreseeable abuse testing, small parts were liberated from each of the toys, which fit entirely into the small parts cylinder.

World Pop's response

13. During the investigation, you confirmed that World Pop:
 - 13.1 had imported 120 units of the Toy from China, supplying a total of 108 units to five different retailers;
 - 13.2 had received a test report for a comparable toy manufactured in the same factory as the Toy but not for the Toy itself;
 - 13.3 believed the Toy was only suitable for children aged 4 and over because a younger child could not operate the 'wind up' motor; and
 - 13.4 other than instructing an agent to drop the Toy from a 2 or 3 metre height to check its strength, did not undertake any independent tests on the Toy, or other physical checks.
14. You have also confirmed that World Pop has initiated a recall directly with its customers and contacted Consumer Protection at the Ministry of Business, Innovation and Employment to post a recall for the Toy.

Age assessment

15. The Toy, although marketed as not being suitable for children aged under three, is likely to be subject to the safety standard because:
 - 15.1 it is brightly coloured in primary colours and has cartoon characteristics;
 - 15.2 it is chunky in design and shape;
 - 15.3 the 'wind up' mechanism is simple to use; and
 - 15.4 it is of a weight and size that would be attractive to and able to be used by children up to and including 36 months of age.

The Commission's view

16. The Commission is of the view that World Pop is likely to have breached the FT Act by supplying a Toy that does not comply with the safety standard.
17. 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 World Pop on this occasion, which included the limited distribution and, following our recommendation, your recall of the Toy. Against that, we note that while World Pop has not previously received information or advice for an alleged breach of a

safety standard, it has twice received advice regarding compliance with other parts of the FT Act.

18. We advise and encourage World Pop 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. In particular, we strongly advise that World Pop obtains guidance on age determination to ensure the toys it supplies, that are likely to be caught by the safety standard, have the correct safety assessment carried out against them.⁷

Warning

19. This warning represents our opinion that the conduct in which World Pop 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.
20. We may draw this warning letter to the attention of a court in any subsequent proceedings brought by the Commission against World Pop.
21. 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

22. 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.
23. 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 standards for children's toys. These are all available on our website at www.comcom.govt.nz.
24. We encourage you to visit our website to better understand your obligations and the Commission's role in enforcing the FT Act.
25. You can view the FT Act and other legislation at www.legislation.co.nz.

Penalties for breaching the Fair Trading Act

26. 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.
27. A company that breaches 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

⁷ For example 'SA/SNZ 8124.8.2016 Age Determination Guidelines' or the US 'CPSC Age determination guidelines'.

in the management of the company can be banned from involvement in the management of any company for a period of up to 10 years.

28. 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.
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.

Yours sincerely

[REDACTED]

[REDACTED]

Product Safety and Consumer Information Standards Manager

Attachment A

Photograph of the Toy



Attachment B

Photographs of the Toy following testing

