

10 April 2018

[REDACTED]
Trade Aid Importers Limited
174 Gayhurst Road
Dallington
Christchurch, 1061

Dear [REDACTED]

Fair Trading Act 1986: Warning

1. The Commerce Commission (**Commission**) has been investigating Trade Aid Importers Limited (**Trade Aid**) under the Fair Trading Act 1986 (the **Act**). We have now completed our investigation and are writing to advise you of the outcome.
2. In summary, the Commission considers that Trade Aid is likely to have committed an offence against section 40(1) of the Act in that, contrary to section 30(1) of the Act, it supplied a toy Clown Counting set (clown toy) that did not comply with a mandatory product safety standard for children's toys (**safety standard**).¹

Legal framework

3. Section 30(1) of the Act states:
 - 3.1 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.
4. 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 are manufactured, designed, labelled, or marketed for use by children over that age.²
5. Toys do not comply with the safety standard if they have small components or small components come off the toy during testing, because these components create a choking hazard for young children.³

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 (**Regulations**).

² Section 4(1) of the Regulations.

The investigation

6. The Commission purchased a clown toy from a Trade Aid store in Westgate, Auckland on 10 December 2017, as we had concerns it may not comply with the safety standard.
7. Upon initial assessment of the clown toy it was evident the top hoop of the set was a small part. This small part is smaller than the minimum size required by the safety standard and is a potential choking hazard.
8. Further purchases were made of a toy with the same description of 'Clown Counting set' from a Trade Aid store in Takapuna, Auckland. Although the toy was of a similar design and characteristics, the initial assessment of this version of the toy did not identify the same small parts risk.
9. In response to questions at interview and email communications, the Commission has established the following:
 - 9.1 Trade Aid has been importing the clown toy since 2009, of which a total of 2,968 have been sold.
 - 9.2 All new toys were sent for external testing by competent test laboratories, for small parts testing and lead paint; and random testing was carried out on all product shipments by the same laboratories. The clown toy was sent for testing in 2012 and was found to be compliant.
 - 9.3 The non-compliant version of the clown toy came from a 2015 shipment which contained 540 units, of which 338 have been sold. The clown toys contained in the 2015 shipment were notably different from the earlier shipments and included a small part.
 - 9.4 Trade Aid believes all shipments prior from 2016 onwards were compliant with the product safety standard, but unable to confirm this for the 2013 and 2014 shipments.
 - 9.5 It is not known whether the shipments for 2013 and 2014 were compliant for small parts
 - 9.6 All shipments were checked based on the risks identified during external testing. The risk identified for the clown toy was in respect of lead paint only and not small parts, therefore all checks performed on this toy were only for lead paint.

³ 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

- 9.7 Trade Aid removed all the non-compliant toys from sale as soon as it was made aware of our investigation on 11 December 2017; instigated a recall by posting notices in all Trade Aid stores and online; and made contact with Trading Standards who published information about the recall on their recall website, on the 22 December 2017.
- 9.8 Trade Aid has reviewed its process for assessing compliance of toys being imported and is making improvements to enhance its systems to prevent such an occurrence happening in the future. This will include checking all shipments of toys for small parts hazards.

The Commission's view

10. In this case, the Commission's view is that Trade Aid is likely to have breached the Act, in that contrary to section 30(1) of the Act, it supplied goods (namely the clown toy) in respect of which a product safety standard has been declared, that did not comply with that product safety standard.
11. While we have reached a view that your conduct is likely to have breached the Act, in this instance, after considering our Enforcement Response Guidelines⁴ we have decided it appropriate to finalise our investigation by issuing you with a warning to ensure you understand your obligations under the Act.
12. Our decision has been made bearing in mind the remedial action taken by Trade Aid to enact a public recall and remove the toy from sale without delay and your cooperation with the investigation.
13. We advise and encourage Trade Aid to regularly review its compliance procedures and policies, in particular with regards to keeping up to date with New Zealand's product safety standards (in conjunction with the relevant regulations). We also recommend Trade Aid continues carrying out basic screen checks on all consignments received and ensure all risks are assessed.
14. This warning letter is public information and will be published on our website. We may also make public comment about our investigations and conclusions, including issuing a media release or making comment to media.

The Commission's role

15. The Commission is responsible for enforcing and promoting compliance with a number of laws that promote competition in New Zealand, including the Act. Regulations setting mandatory safety standards for certain products are enforced by the Commission under the Act.

⁴ <http://www.comcom.govt.nz/the-commission/commission-policies/enforcement-response-guidelines/>

Penalties for breaching the Act

16. Only the courts can decide if there has actually been a breach of the Act. The court can impose penalties where it finds the law has been broken. A company that breaches the Act can be fined up to \$600,000 and an individual up to \$200,000 per offence.
17. 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.
18. 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



John Lyall
Manager - Consumer