

5 December 2019

LJL Enterprises Limited
Unit 1, Block 8, 22 Harris Road
East Tamaki
Auckland

Attention: [REDACTED]

By email:

Dear [REDACTED]

Fair Trading Act 1986: Warning

1. The Commerce Commission (**Commission**) has been investigating LJL Enterprises Limited (**LJL**) under the Fair Trading Act 1986 (**Fair Trading Act**). We have now completed our investigation and are writing to advise you of the outcome.
2. In summary, the Commission considers that LJL is likely to have breached section 30(1) of the Fair Trading Act and thereby committed an offence under section 40(1) because it supplied the following toy that did not comply with a mandatory product safety standard for children's toys (**Safety Standard**):¹
 - 2.1 'Happy Little Train' toy (the **Toy**).
3. The Commission has decided in this instance to issue LJL with a warning in respect of the conduct.

Legal framework

4. Section 30(1) of the Fair Trading 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 person complies with that product safety standard.
5. 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

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**).

were manufactured, designed, labelled, or marketed for use by children over that age.²

6. Toys do not comply with the Safety Standard if 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.³ Toys also do not comply with the Safety Standard if their size and shape mean that they risk becoming lodged in a child's airway.⁴
7. The intention of the reasonably foreseeable abuse tests is to simulate the exposure of a toy to structural damage as a result of dropping, pulling, twisting and other actions likely to be performed by a child interacting with the toy. The tests set out within the Safety Standard include a drop test, a torque test, and a tension test. The template test is intended to represent the dimensions of a young child's throat in order to assess the risk of the child putting a toy in his or her mouth, and it becoming lodged in their throat, causing a choking or suffocation hazard.

The investigation

8. On 14 March 2019, Commission staff purchased four units of the Toy from the FULSUN store on 999 Dominion Road in Mount Roskill, Auckland.
9. Two units of the Toy were sent for testing to Test Research on 26 March 2019. Test Research tested all the units and concluded they did not comply with the Safety Standard. Under reasonably foreseeable abuse testing, small parts were liberated from the Toy which fit entirely into the small parts cylinder.
10. The Commission established that LJI imported two cartons of 96 units each of the Toy in November 2017.
11. You also confirmed that subsequently LJI supplied 54 units of the Toy to seven retail customers in New Zealand between December 2017 and December 2018.

LJI's position

12. During the interview you advised that:
 - 12.1 LJI had no knowledge of the regulations or the Safety Standard relating to toys and did not take any steps to understand the rules.
 - 12.2 LJI's main business is clothes and home products. It started importing toys in October 2015 and stopped importing toys in November 2017.

² Section 4(1) of the Regulations.

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).

⁴ Clause 4.5.1 of the safety standard states certain toys shall not be capable of penetrating past the test templates.

- 12.3 LJL sourced the Toy from an import and export agent based in China. LJL did not ask for test certificates or written assurances from its agent that the Toy was safe, but did ask whether the products LJL was sourcing were safe.
- 12.4 LJL did not take any action on receipt of the Toy to establish if it was compliant. It relied on the warnings and instructions on the packaging and on common sense.
- 12.5 LJL acknowledged children safety is important.
- 13. LJL has indicated that it made considerable efforts to ensure that it complies with the Safety Standard in future, which include the following measures:
 - 13.1 It has stopped supplying toys completely from 4th June 2019;
 - 13.2 It initiated a direct recall with the seven retail customers who were supplied the Toy. This has resulted in 26 units of the Toy being returned so far;
 - 13.3 It initiated a recall with Trading Standards and provided recall notices to its retail customers for display in their shops.
- 14. In terms of this specific investigation, LJL has cooperated with the Commission. While it has contacted Trading Standards to undertake a public recall of the Toy only after the interview, LJL sent direct recalls by text message to all seven retail customers immediately after being advised of the Commission's investigation. LJL also visited its retail customers based in Auckland to let them know of the recall of the Toy.

The Commission's view

- 15. The Commission is of the view that LJL is likely to have breached the Fair Trading Act by supplying a Toy that did not comply with the Safety Standard. We also consider it unlikely that LJL would be able to rely successfully on any of the defences available under section 44 of the Fair Trading Act, including reasonable reliance on information supplied by another person. However, we are satisfied that in this instance issuing a warning is the most appropriate enforcement outcome.
- 16. We encourage LJL to continue to assess its compliance procedures to ensure that it complies with the Fair Trading Act.
- 17. While we will not be taking any further action against LJL at this time, we will take this warning into account if this conduct continues or if LJL engages in similar conduct in the future. We may also draw this warning to the attention of a court in any subsequent proceedings brought by the Commission against LJL. Please be aware that repeat offending will be taken seriously by the Commission.

18. This warning letter is 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

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

Penalties for breaching the Fair Trading Act

20. Only the courts can decide if there has actually been a breach of the Fair Trading Act. The court can impose penalties where it finds the law has been broken. A company that breaches the Fair Trading Act can be fined up to \$600,000 and an individual up to \$200,000 per offence.
21. 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.
22. 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]
John Lyall
Manager - Consumer
Competition and Consumer Branch