

**IN THE DISTRICT COURT
AT MANUKAU**

**CRI-2017-092-014214
[2018] NZDC 7913**

COMMERCE COMMISSION
Prosecutor

v

MANUFACTURERS-MARKETING LIMITED
Defendant

Hearing: 23 April 2018
Appearances: A Luck for the Prosecutor
R Connell for the Defendant Company
Judgment: 23 April 2018

NOTES OF JUDGE P G MABEY QC ON SENTENCING

[1] On 27 February I presided at a hearing where the defendant, Manufacturers-Marketing Limited, sought a sentence indication on two charges brought under the Fair Trading Act 1986 and which allege that a certain imported toy failed to comply with applicable safety standards.

[2] On 10 April 2018 I issued a sentence indication decision. Mr Connell has advised that his client accepts the indication and this morning guilty pleas to both charges have been entered. I am thus in a position to sentence. Neither counsel sought to make further submissions today. I direct that my sentence indication decision be appended to these brief sentencing notes.

[3] In addressing matters raised at the sentence indication hearing I had to consider, among other things, the relevance of sentencing decisions brought down

prior to the increase in penalties under the Fair Trading Act, the relevance of Australian decisions under equivalent legislation and most significantly the tension between the primary purpose of deterrent sentencing and, as applies in this case, the ability of a defendant to pay a fine. For the reasons set out in my sentence indication I resolved that tension in favour of the consideration of ability to pay a fine.

[4] I adopted a start point consistent with other sentencing decisions delivered after the increase in penalties by application of the same principles and considerations to the particular facts of this case.

[5] However, a significant reduction to the start point was allowed for the defendant's limited financial means. As is evident from the sentence indication that reduction was in the range of 30 percent. The end result was that I determined a total fine of \$35,000 should be imposed upon the defendant, divided equally between both charges at \$17,500.

[6] Accordingly, the defendant, Manufacturers-Marketing Limited, is fined \$17,500 on each of the charges in CRNs 1709504718 and 4719.

A handwritten signature in blue ink, appearing to read 'P G Mabey', is written above the typed name.

P G Mabey QC
District Court Judge