

23 February 2018

Dollar Saver (2009) Limited
1D Bracken Avenue
Epsom
Auckland 1023

Attn: Wenkun Zhang, Director

Dear Mr Zhang

Fair Trading Act 1986: Warning

1. The Commerce Commission has been investigating Dollar Saver (2009) Limited (Dollar Saver) under the Fair Trading Act 1986 (Act). We have now completed our investigation and are writing to you to alert you to our concerns.
2. In summary, the Commission considers that Dollar Saver is likely to have committed an offence under section 30(1) of the Act in that it supplied goods, namely children's nightwear, that did not comply with the mandatory product safety standard for children's nightwear.

Legal framework

3. Under section 30(1) of the Act, if a mandatory product safety standard applies, a person must not supply goods unless they comply with the standard.
4. In this case, the joint Australian/ New Zealand Standard AS/NZS 1249:2014 Children's nightwear and limited daywear having reduced fire hazard (the Safety Standard) applies to new and used clothing suitable for children to wear as nightwear.
5. To comply with the Safety Standard, children's nightwear must bear a fire hazard information label stating either:
 - 5.1 "CAUTION KEEP AWAY FROM HEAT AND FLAME"; or
 - 5.2 "WARNING HIGH FIRE DANGER KEEP AWAY FROM HEAT AND FLAME".

Our investigation

6. As part of the Commission's product safety inspection programme, the Commission purchased three items of children's nightwear from Dollar Saver¹ to investigate whether Dollar Saver supplied children's nightwear that complied with the Safety Standard.
7. The items are:
 - 7.1 "Strawberry Shortcake" pyjamas;
 - 7.2 "Blue and Red" pyjamas; and
 - 7.3 a dressing gown.
8. Photos of the nightwear are in **Attachment A**.
9. On inspection, it was clear that the fire warning labelling on the pyjamas did not comply with the Safety Standard, and the dressing gown had no fire warning label at all. Dollar Saver confirmed it had sold 18 units of nightwear to consumers (including three units to Commission staff).
10. After being advised of the Commission's concerns, Dollar Saver removed the children's nightwear from its stores and we understand it is no longer selling children's nightwear.
11. We also understand that you have contacted the Ministry of Business, Innovation and Employment's Trading Standards Division and commenced the recall process, and placed a sign in all three Dollar Saver stores requesting that purchasers return the items in exchange for a full refund.

The Commission's view

12. As indicated, the Commission's view is that Dollar Saver's conduct is likely to have breached the Act in that, contrary to section 30(1) it supplied children's nightwear with incorrect fire hazard labelling. However, we will not be taking any further action against Dollar Saver relating to that conduct.
13. Please note that we will take this warning into account if this conduct continues or if Dollar Saver 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 Dollar Saver.
14. We recommend that you seek legal advice and encourage you to regularly review Dollar Saver's compliance procedures and policies.

¹ On 5 October 2017.

15. This warning letter is public information. We may make public comment about our investigations and conclusions, including issuing a media release or making comment to media.

The Commission's role

16. 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. The Act prohibits false and misleading behaviour by businesses in the promotion and sale of goods and services.

Penalties for breaching the Fair Trading Act

17. 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.
18. 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.

Further information

19. We have published a series of fact sheets and other resources to help businesses comply with the Fair Trading Act and the other legislation we enforce. These are available on our website at www.comcom.govt.nz. We encourage you to visit our website to better understand your obligations and the Commission's role in enforcing the Act.
20. You can also view the Fair Trading Act and other legislation at www.legislation.co.nz.
21. Please contact Richard Morgan on 09 9203493 or by email at richard.morgan@comcom.govt.nz if you have any questions about this letter.

Yours sincerely



John Lyall
Auckland Manager

Attachment A



