

15 May 2024

iBees Limited
Suite 17a, 211 Ferry Road
Waltham
Christchurch, 8011

Attention: Director – [REDACTED]
Copy to: Legal counsel – [REDACTED]

Email: [REDACTED]

Cc: [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 iBees Limited, t/a iBees (**iBees**) 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 iBees is likely to have committed an offence against section 40(1) of the FT Act by supplying an 'Urban Rescue' Fire Engine (the **Toy**) that did not comply with the mandatory product safety standard for children's toys (**Safety Standard**).¹
 - 2.1 Photographs of the Toy are at **Attachment A**.
3. The Commission has decided in this instance to issue iBees 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

4. Section 30(1) of the FT Act states:

¹ The Australian/New Zealand Standards for children's toys (AS/NZS ISO 8124.1.2002), as partly adopted with variations under the Product Safety Standards (Children's Toys) Regulations 2005.

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

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

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.

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 were manufactured, designed, labelled, or marketed for use by children over that age.
6. Toys do not comply with the Safety Standard if:
 - 6.1 they have small parts or small parts come off the toy during reasonably foreseeable abuse testing, because these parts create a choking hazard for young children;⁴ and/or
 - 6.2 their size and shape mean that they risk becoming lodged in a child's airway; and/or
 - 6.3 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.

The Toy

7. An accredited testing laboratory tested a unit 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:
 - 7.1 small parts (the wheels, axle and water canon handle) were liberated during reasonably foreseeable abuse testing; and
 - 7.2 each of these pieces that were liberated could all individually fit in the small parts cylinder.
8. **Attachment B** contains a photograph of the parts liberated from the Toy following testing.
9. Supplying toys that fail to meet the requirements of the Safety Standard is a breach of the FT Act.

The investigation

10. Commission staff purchased four units of the Toy from Moksh Corporation Limited, trading as 2 Fantastic (**2Fantastic**) in Blenheim on 28 June 2023.
11. Despite the retail display box indicating an age recommendation of '3+' the Commission are of the view, the Toy is appropriate for children under the age of three and needs to meet the requirements of the Safety Standard. The age appropriateness of a toy takes into account its physical characteristics, the cognitive ability of a child to handle and play with

⁴ 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).

the toy, and other factors. Technical guidance on age determination considers simple vehicle miniatures as being appropriate for children aged '18 months+'.⁵

12. A unit of the Toy was sent for testing at Choice Test Research, and they concluded it did not comply with the Safety Standard. Small parts were liberated during the reasonably foreseeable abuse tests, presenting a choking risk.

iBees response

13. During the investigation you confirmed:
- 13.1 iBees had no knowledge of any product safety standard or legislation about the safety of children's toys;
 - 13.2 iBees had never sought any advice on compliance with the Safety Standards or requested any test reports to check that the toys were safe prior to this investigation;
 - 13.3 iBees imported 432 units of the Toy from a supplier based in China and supplied 312 units to 12 retail stores across New Zealand; and
 - 13.4 iBees have destroyed the remaining 120 units of the Toy that it held in stock.
14. You have also confirmed that iBees undertook a voluntary product recall with the Ministry of Business, Innovation and Employment.

The Commission's view

15. The Commission is of the view that iBees has likely breached the FT Act by supplying Toy, that does not comply with the Safety Standard.
16. 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 filing legal proceedings. There are several factors that influenced our decision to warn iBees on this occasion, which includes the action taken to recall the Toy, the moderate quantity supplied and you have previously not received advice from the Commission on the requirements of the Safety Standard.
17. We advise and encourage iBees to regularly review its compliance procedures and policies. We recommend you keep up to date with New Zealand's product safety standards, unsafe goods notices (in conjunction with the relevant regulations) and check any regulated products you supply to ensure they still meet the requirements of the applicable product safety standard or unsafe goods notice. In particular, we strongly advise that iBees obtains guidance on age determination to ensure toys it supplies, that are likely to be caught by the Safety Standard, have had the correct safety assessment carried out against them.⁶

⁵ Age determination guidelines' published by the Joint Standards Australia/Standards New Zealand Committee (SA/SNZ TR ISO 8124.8:2016) – Table A4 sub category 4.08.

⁶ For example 'SA/SNZ 8124.8.2016 Age Determination Guidelines' or the US 'CPSC Age determination guidelines'.

Warning

18. This warning represents our opinion that the conduct in which iBees has engaged in has breached the FT Act. It does not preclude the Commission commencing legal action in future if the conduct continues or is repeated.
19. We may draw this warning letter to the attention of a court in any subsequent proceedings brought by the Commission against iBees.
20. 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 media.

The Commission's role

21. 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.
22. We have published a series of fact sheets and other resources to help businesses comply with the FT Act, other legislation we enforce and in particular the product safety standards for children's toys, which are all available on our website.⁷
23. We encourage you to visit our website to better understand your obligations and the Commission's role in enforcing the FT Act.
24. You can also view the FT Act and other legislation at www.legislation.co.nz.

Penalties for breaching the Fair Trading Act

25. Only the courts can decide if there has actually been a breach of the FT Act. The court can impose penalties where it finds the law has been broken. A company that breaches the FT Act can be fined up to \$600,000 and an individual up to \$200,000 per offence.
26. 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.
27. Thank you for your assistance with this investigation. Please contact [REDACTED] by email at [REDACTED] if you have any questions in relation to this letter.

Yours sincerely

[REDACTED]

Product Safety and Consumer Information Standards Manager

⁷ www.comcom.govt.nz/business/your-obligations-as-a-business/product-safety-standards

Attachment A

Photographs of Toy



Attachment B

Photograph of the parts liberated from Toy

