

June 2016

Jiantao Niu
Director, Qualimax Limited
PO Box 302587
North Harbour
North Shore 0751

Dear Mr Niu

Fair Trading Act 1986: Warning

1. The Commerce Commission (**Commission**) has been investigating Qualimax Limited, trading as Crazy Sales (**Qualimax**) 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 Qualimax is likely to have breached section 30 of the Act by supplying a Perky Baby children's household cot which did not comply with the mandatory cot safety standard. The product safety standard for household cots is established in the Product Safety Standards (Household Cots) Regulations 2005 (**Regulations**). The Regulations provide that certain sections of Australian/New Zealand Standard 2172:2003¹ constitute the New Zealand product safety standard for cots designed or intended for use as a sleeping facility for an infant or a child in the home (the **Safety Standard**).

The investigation

3. During 2014, Qualimax imported 10 Perky Baby branded cots (**cots**) from China. The Commission purchased and arranged for one of these cots to be tested in order to determine whether it complied with the Safety Standard.
4. The test results showed that the cot did not comply with six of the Safety Standard requirements. The cot failed to comply with the Safety Standard in the following respects:
 - 4.1 The plastic cover on the top of the dropside rail came off easily. This did not comply with Clause 5.1 of the Safety Standard requiring all components of the cot to be permanently fixed.
 - 4.2 When the mattress base was in the lowest position there was a bolt hole that could have provided a toehold enabling a child to climb out of the cot. This did not comply with Clause 6.2 of the Safety Standard.

¹ Australian/New Zealand Standard 2172:2003 Cots for household use – Safety requirements

- 4.3 The cot did not comply with Clause 9.3 of the Safety Standard because it failed the impact test in that after 85 impacts there were fractures in the timber of the mattress base frame.
 - 4.4 The cot's plastic packaging did not comply with Clause 10 of the Safety Standard in that the packaging was neither perforated nor accompanied with the prescribed warning.
 - 4.5 The cot's information leaflet did not comply with Clause 11.1 of the Safety Standard because it was in Chinese.
 - 4.6 There was no labelling on the mattress base which is a failure to comply with Clause 12.1 of the Safety Standard.
5. Qualimax was supplied with a copy of the test report. In response Qualimax initiated a voluntary recall of the eight cots it had sold. It contacted all of the cot buyers and offered them a full refund and uplift of the cot.
 6. We understand that currently one buyer has returned their cot for a full refund and three buyers initially responded to the recall notice but have not responded to requests to supply details of where their cots can be uplifted from. We encourage Qualimax to continue pursuing these buyers.
 7. Qualimax advised the Commission that at the time of placing the order Qualimax was not aware that there was a mandatory standard for household cots supplied in New Zealand. This was the first time that Qualimax had imported and supplied household cots and it is unlikely that it will import or supply them again.

The Commission's view

8. It is our view that supplying a cot that did not comply with the Safety Standard gives rise to a likely breach of the Act by Qualimax.
9. Qualimax should take steps to ensure that all products it sells are safe. It needs to know what products sold in New Zealand are subject to a mandatory product safety standard or Unsafe Goods Notices. It should have processes in place to ensure that if it sells these products they meet the mandatory safety standard.
10. We recommend that Qualimax seek legal advice if it is unsure of its responsibilities under the Act and encourage Qualimax to regularly review its compliance procedures and policies.
11. While we will not be taking any further action against Qualimax at this time, we will take this warning into account if this conduct continues or if Qualimax engages in similar conduct in the future. We may draw this warning to the attention of a court in any subsequent proceedings brought by the Commission against Qualimax.

The Commission's role

12. 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 the advertising for supply, the offer to supply and the supplying of goods which do not comply with a mandatory product safety standard.

Penalties for breaching the Fair Trading Act

13. 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.
14. 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.

Public information

15. 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 the media.

Further information

16. We have published a series of fact sheets and other resources to help businesses comply with the 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.
17. You can also view the Act and other legislation at www.legislation.co.nz.
18. Thank you for your assistance with this investigation. Please contact Peter Simpson on 09 920 3484 or by email at peter.simpson@comcom.govt.nz if you have any questions about this letter.

Yours sincerely