

11 September 2017

██████████  
Melric International Limited  
26 Arrenway Drive  
Albany Heights  
Auckland 0632

[www.comcom.govt.nz](http://www.comcom.govt.nz)

By email: ██████████

Dear ██████████

### Fair Trading Act 1986: Warning

1. The Commerce Commission (**Commission**) has been investigating Melric International Ltd (**Melric**) under the Fair Trading Act 1986 (**the Act**). We have now completed our investigation and are writing to advise you of the outcome.
2. In summary, the Commission considers that Melric is likely to have committed an offence under section 40(1) of the Act in that, contrary to section 31(5) of the Act, it supplied goods that did not fully comply with the Unsafe Goods (Hot Water Bottles) Permanent Prohibition Notice 2016 (**Notice**).
3. The Notice is issued pursuant to section 31 of the Act, and declares hot water bottles as unsafe if they fail to comply with the requirements of BS1970:2012 *Hot water bottles manufactured from rubber and PVC – specification* (**the Standard**).

### Legal framework

4. Section 31 of the Act states:  

(5) No person shall supply, or offer to supply, or advertise to supply, goods—in respect of which there is in force a notice declaring the goods to be unsafe goods;
5. Hot Water Bottles (**HWB's**) do not comply with the requirements of the Notice if they do not conform to the Standard<sup>1</sup>.

### The investigation

6. The Commission received a referral from Trading Standards in June of this year, alleging that non-compliant HWB's were being sold in Pak N Save and New World

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<sup>1</sup> Except for clause 8.1 to which a variation is applied as detailed within schedule one of the Notice - Clause 8.1: omit "the identification of the European manufacturer, or the UK distributor for bottles manufactured outside the European Union, and.."

(Foodstuff NZ Ltd affiliated stores), as they were missing safety instructions (**Instructions**) as prescribed by the Standard.

7. The Commission visited the Melric business premises on 23 June 2017, where you confirmed that Melric had been supplying Foodstuffs NZ Ltd affiliated stores and other distributors, with HWBs which did not contain the required Instructions.
8. The Commission established that Melric imported over 17,500 of these HWB's from a supplier based in China in the last year. They were supplied to 539 stores across New Zealand which included Foodstuff NZ Ltd affiliated stores (Pak N Save & New World), Unichem Pharmacies and a number of other stores. You supplied a test certificate to demonstrate the HWB met the requirements of BS1970:2012, including the instruction requirement.
9. At interview you stated that:
  - 9.1 Melric have been importing HWB's for the last 35 years.
  - 9.2 You were familiar with the Standard, but did not understand that the HWB's are required to include the Instructions, in addition to the relevant safety information physically marked on the HWB's, which is also prescribed in the Standard.
  - 9.3 You were not fully aware of the detailed requirements of the Standard and believed the HWB's were compliant, as Customs had accepted them and you had a test certificate demonstrating they were compliant.
10. You cooperated with the Commission's investigation and have ensured all affected stock within the supply chain now have the required Instructions supplied with the HWB's. You also made contact with Trading Standards to initiate a recall to notify consumers already in possession of the affected HWB's as to how they could obtain the Instructions.

### **The Commission's view**

11. In this case, the Commission's view is that Melric is likely to have breached the Act namely, that contrary to section 31(5), it supplied goods (namely HWB's, in respect of which, a Notice is in force) that did not comply with the Standard.
12. While we have reached a view that its conduct is likely to have breached the Act, in this instance, we have after considering our Enforcement Response Guidelines<sup>2</sup> decided to finalise our investigation by issuing Melric a warning rather than file court proceedings.

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<sup>2</sup> <http://www.comcom.govt.nz/the-commission/commission-policies/enforcement-response-guidelines/>

13. Our decision has taken into account the corrective action taken by Melric; enacting a public recall without delay; and your cooperation with the investigation. We also recognise the time and cost incurred by Melric in undertaking the corrective action, and the financial penalty incurred with one of its clients.
14. We strongly advise and encourage Melric to ensure that it has good systems in place to maintain compliance with the legislation and regularly undertake reviews of these procedures. We also recommend Melric considers carrying out basic screening checks upon receipt of consignments of regulated goods, to ensure they are still compliant with the relevant legislation and associated standards.
15. While we will not be taking any further action against Melric at this time, we will take this warning into account if this conduct continues or if Melric engage 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 Melric.
16. 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 media.

#### **The Commission's role**

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

#### **Penalties for breaching the Fair Trading Act**

18. Only the courts can decide if there has actually been a breach of the Act. The court can impose penalties where it finds the law has been broken. A company that breaches the Act can be fined up to \$600,000 and an individual up to \$200,000 per offence.
19. 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.
20. 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



John Lyall  
 Manager - Consumer  
 Competition Branch