

PRJ0027427

11 September 2017

[REDACTED]  
Seymour Distributing Ltd  
7 Peterkin Street  
Taita  
Lower Hutt 5019

By email: [REDACTED]

Dear [REDACTED]

### Fair Trading Act 1986: Warning

1. The Commerce Commission (**Commission**) has been investigating Seymour Distributing Ltd (**Seymour**) 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 Seymour 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>.

<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.."

### **The investigation**

6. The Commission received a referral from Trading Standards in June of this year, alleging non-compliant HWB's were being sold in Pak N Save and New World (Foodstuffs NZ Ltd affiliated stores), as they were missing safety instructions as prescribed by the Standard.
7. The Commission purchased a HWB from New World, at New Lynn, Auckland on 17 June 2017. You later confirmed that Seymour supplied the HWB under the 'Snazzee' brand to Foodstuffs NZ Ltd affiliated stores.
8. The HWB did not have the prescribed safety instructions as detailed within clause 8.2 of the Standard.
9. The Commission has established that Seymour imported over 12,000 of the HWB's from a supplier based in China since April of last year. These were supplied to 106 stores across New Zealand which includes Foodstuffs NZ Ltd affiliated stores (Pak N Save, New World, 4 Square), Mitre 10, SuperValue, Fresh Choice and a number of other stores. You produced a test certificate to demonstrate the HWB meets the requirements of BS1970:2012.
10. At interview you stated:
  - 10.1 Seymour has been importing HWB's since 2013 when you acquired an import business that imported the HWB's.
  - 10.2 The HWBs were packaged up and ready for supply before they left China and the decision on the design of the packaging, including warnings, was made by Seymour in New Zealand.
  - 10.3 You were not fully aware of the 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.
11. 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, and to notify consumers already in possession of the affected HWBs' as to how they can obtain the safety instructions.

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

12. In this case, the Commission's view is that Seymour 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.

13. While we have reached a view that its conduct is likely to have breached the Fair Trading Act, in this instance, we have after considering our Enforcement Response Guidelines<sup>2</sup> decided to finalise our investigation by issuing Seymour a warning rather than file court proceedings.
14. Our decision has taken into account the corrective action taken by Seymour; enacting a public recall without delay; and your cooperation with the investigation. We also recognise the time and cost incurred by Seymour in undertaking the corrective action and the reputational damage it may have caused with its clients.
15. We advise and encourage Seymour to familiarise itself with New Zealand's Product safety legislation (regulations and notices) and the associated safety standards. You should ensure you have good systems in place to ensure you maintain compliance with the legislation and regularly undertake reviews of these systems. We also recommend Seymour considers carrying out basic screening checks upon receipt of consignments of regulated goods, to ensure they remain compliant.
16. While we will not be taking any further action against you at this time, we will take this warning into account if this conduct continues or if Seymour 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 Seymour.
17. 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**

18. 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**

19. 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.
20. 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.

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

21. 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

A handwritten signature in black ink, appearing to read "P.P. S. Lyall". The signature is written in a cursive style with a long, sweeping tail on the final letter.

John Lyall  
Manager - Consumer  
Competition Branch