

<b>COMPLAINT NUMBER</b>	18/243
<b>COMPLAINANT</b>	A Molloy
<b>ADVERTISER</b>	Foodstuffs North Island Limited
<b>ADVERTISEMENT</b>	New World, Television
<b>DATE OF MEETING</b>	21 August 2018
<b>OUTCOME</b>	Not Upheld

## **SUMMARY**

The television advertisement for New World showed two bottles of wine, one white, one rosé, with the text: “The Ned, 750ml, excludes Pinot Noir and Chardonnay”. Across the bottom of the screen were the words “...Prices valid Monday 23 – Sunday 29 July ... some limits and exclusions may apply...” The voiceover accompanying this image said “Save every day on New World shelves with selected wine from The Ned range, now just a low \$13.99 bottle”.

The Complainant said the advertisement was misleading because they were advised by the New World store in Milford that they didn’t have any The Ned Pinot Gris in stock. The Complainant said it was reasonable for them to expect the store would have sufficient stock in place, during the time the advertisement was being run.

The Advertiser said the advertisement was not misleading but acknowledged it is possible for stock to run out during a promotional period. The Advertiser said in this instance the Milford New World was out of stock for The Ned Pinot Gris on 25 July 2018, when the Complainant made their order, but the product was available the following day.

The Complaints Board agreed the main issue in this case was a service and supply issue at a particular supermarket, not an issue with the advertisement itself being misleading.

Accordingly, the Complaints Board ruled the complaint was Not Upheld.

### **[No further action required]**

Please note this headnote does not form part of the Decision.

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## **COMPLAINTS BOARD DECISION**

The Chair directed the Complaints Board to consider the advertisement with reference to Basic Principle 4 and Rule 2 of the Code of Ethics. This required the Complaints Board to consider whether the advertisement contained anything which, either directly or by implication, was likely to deceive or mislead the consumer and if it had been prepared with a due sense of social responsibility to consumers and to society.

**The Complaints Board ruled the complaint was Not Upheld.**

**The Complaint**

The Complainant said the advertisement was misleading because they were advised (via text) by the New World store in Milford that they didn't have any The Ned Pinot Gris in stock. The Complainant said it was reasonable for them to expect the store would have sufficient stock in place during the time the advertisement was being run.

**The Advertiser's Response**

The Advertiser said the advertisement was not misleading and in this instance the Milford New World was out of stock of The Ned Pinot Gris on 25 July, when the Complainant placed their order. The Advertiser said The Ned Pinot Gris was available the following day.

The Advertiser said while they work with their suppliers to anticipate demand during promotional periods, it is possible for stock to run out.

**The Complaints Board Discussion**

The Complaints Board noted the advertisement showed a selection of The Ned range for sale, not just the Pinot Gris.

The Complaints Board said in this case one store, New World Milford, was unable to supply The Ned Pinot Gris to the Complainant on 25 July, but the two other varieties were available. The Complaints Board noted the Advertiser said they were able to supply the Pinot Gris the following day, 26 July 2018.

The Complaints Board noted they did not have a copy of the text message sent by New World Milford to the Complainant, so they could not comment on it.

The Complaints Board noted the advertisement said "Stock limits and exclusions may apply" and agreed it was important that advertisers ensure qualifiers to sale offers are clear.

The Complaints Board agreed the main issue in this case was a service and supply issue as the wine the Complainant wished to buy was temporarily unavailable. The Complaints Board took into account the wine was re-stocked the following day, within the sale period.

In the Complaints Board view, a temporary availability issue did not make the advertisement misleading.

The Complaints Board agreed the advertisement was unlikely to deceive or mislead the consumer and had been prepared with a due sense of social responsibility to consumers and to society.

Accordingly, the Complaints Board ruled the complaint was Not Upheld.

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**DESCRIPTION OF ADVERTISEMENT**

The television advertisement for New World showed two bottles of wine, one white, one rose, with the text: "The Ned, 750ml, excludes Pinot Noir and Chardonnay". Across the bottom of the screen were the words "...Prices valid Monday 23 – Sunday 29 July ... some limits and exclusions may apply..." The voiceover accompanying this image read "Save every day on New World shelves with selected wine from The Ned range, now just a low \$13.99 bottle".

## COMPLAINT FROM A MOLLOY

Weekly specials advertisement from New World states that The Ned Pinot Gris is now \$13.99 in store while stocks last and until Sunday July 29th. However the New World store in Milford, Auckland has stated in text message (responding to an online order request) that they have not been able to source The Ned Pinot Gris from their supplier for several weeks and do not have any in stock. Suppliers for New World are centralised so they will be struggling to stock this in many stores in the upper north island at the very least. This advertisement was misleading, a consumer should reasonably be able to expect the store has sufficient stock in place prior to the advertisement being run and that stock should be replaced during the advertisement window.

## CODES OF PRACTICE

### CODE OF ETHICS

**Basic Principle 4:** All advertisements should be prepared with a due sense of social responsibility to consumers and to society.

**Rule 2: Truthful Presentation** - Advertisements should not contain any statement or visual presentation or create an overall impression which directly or by implication, omission, ambiguity or exaggerated claim is misleading or deceptive, is likely to deceive or mislead the consumer, makes false and misleading representation, abuses the trust of the consumer or exploits his/her lack of experience or knowledge. (Obvious hyperbole, identifiable as such, is not considered to be misleading).

## RESPONSE FROM ADVERTISER,

New World Television Advertisement – Complaint 18/243

1. I refer to your letter to Foodstuffs North Island Limited (Foodstuffs) dated 31 July 2018 regarding the New World Television advertisement which advertised 'The Ned' range of wine on special for \$13.99 during the period 23rd July 2018 to 29th July 2018.
2. Foodstuffs is aware of its obligations to ensure that stores have sufficient stock in store to meet added demand during promotion periods. Unfortunately, in this instance the store was out of stock of 'The Ned' Pinot Gris on 25th July 2018 when the customer made her order. The store was back in stock of 'The Ned' Pinot Gris on 26th July 2018.
3. Across our stores, we had roughly 2,000 products on special during this week and 'The Ned' Pinot Gris was just one of these products on special during that week. 'The Ned' Pinot Gris was only one variant of products in 'The Ned' range that was promoted in the advertisement (the other variants included Rosé and Sauvignon Blanc). Milford New World held stock of both Sauvignon Blanc and Rosé during the promotion period.
4. We work with our suppliers to anticipate demand. However, it is possible that stock may run out during promotional periods. We often have many products in a category on special so that customers can choose another special offer if a store runs out of stock of a product.
5. The representation made in the advertisement, being that the product was on special for \$13.99 during the period 23 July 2018 to 29 July 2018, was not false. The product was in fact for sale during that period for that price. What has occurred is that a store ran out of

stock during the promotion, and when this occurred, Foodstuffs and the store brought stock levels back up to ensure the product was back in stock during the promotion period.

6. Foodstuffs did not mislead or deceive customers as to the extent of the saving or the promotion period and, as such, we do not consider that the advertisement itself breached the Advertising Code for Ethics, Basic Principle 4, Rule 2.

7. We will continue to work with suppliers to ensure sufficient stock is on hand to meet demand during promotional periods.

#### **RESPONSE FROM MEDIA, COMMERCIAL APPROVALS BUREAU**

On review, we won't table a response as this is principally a service complaint rather than an issue of presentation.

#### **APPEAL INFORMATION**

According to the procedures of the Advertising Standards Complaints Board, all decisions are able to be appealed by any party to the complaint. Information on our Appeal process is on our website [www.asa.co.nz](http://www.asa.co.nz). Appeals must be made in writing via email or letter within 14 days of receipt of this decision.