

COMPLAINT NUMBER	18/296
COMPLAINANT	D Feltham
ADVERTISER	Smith City
ADVERTISEMENT	Smith City, Digital Marketing
DATE OF MEETING	13 November 2018
OUTCOME	Upheld in Part/Not Upheld in Part

SUMMARY

The Smith City 'Sale of the Century' website, www.smithcity.co.nz, and mailer advertisements were for a promotion run over four weeks. The promotion had different products on sale for each of the four weeks and included a Bosch dishwasher, a Samsung washer/drier and a Fisher & Paykel Fridge Freezer.

The Complainant had concerns about the availability of the Bosch dishwasher and Samsung washer/drier given that the on-line advertisements did not indicate any stock level limits. The Complaint also questioned the claim made by the Advertiser that the Fisher & Paykel Fridge Freezer sale price offered a \$701 saving off the Recommended Retail Price.

In relation to the Bosch dishwasher and Samsung washer/drier, the Advertiser said it had acquired sufficient numbers of units to meet expected demand based on previous experience and sales history. The Advertiser said the promotion had exceeded these expectations for some products and on-line advertisements were updated to reflect this. The Advertiser agreed to include the statement that stock was "not unlimited" for future on-line advertisements.

The Advertiser said the price following sale for the Fisher & Paykel fridge/freezer was not tied to the price at sale and is determined by a range of factors.

The Complaints Board said the issue of pricing and availability in the advertisements for the Bosch Dishwasher and Samsung washer/ drier were not likely to mislead consumers and acknowledged future on-line sale advertisements would state stock was not unlimited. The Board ruled to Not Uphold these parts of the complaint.

The Complaints Board said the Advertiser had not provided substantiation to support the \$701 saving claim made in the Fisher & Paykel fridge/freezer advertisement. The Complaints Board ruled to Uphold this part of the complaint.

The Complaints Board ruled the complaint was Upheld in Part, Not Upheld in Part

[Advertisement Removed]

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

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.

Basic Principle 4 required the Complaints Board to consider whether the advertisement had been prepared with a due sense of social responsibility to consumers and to society.

Rule 2 required the Complaints Board to consider whether the advertisement contained 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.

The Complaints Board ruled the complaint was Upheld in Part, Not Upheld in Part.

The Complaint Board Discussion

The Complaints Board confirmed it could not adjudicate on the service issues raised by the Complainant and its focus was on the website advertisements.

The Complaints Board considered each of the Complainant's concerns in turn:

Issue 1: Bosch Dishwasher

The Complainant was concerned the product was unavailable at the sale price despite still being in the promotional period.

The Advertiser said the Bosch dishwasher was offered at an in-store price of \$878 during week 3 of the 4 week promotion. The Advertiser confirmed that by the last day of the relevant period the product had sold out, despite having believed it had acquired sufficient numbers to meet the expected demand. The Advertiser confirmed demand was higher than expected and amended the website and digital flyer to show the product had sold out. While it was standard practise to note there was limited stock available on print advertisements, the Advertiser said in future it will also explicitly state that stock is not unlimited in digital advertisements to avoid confusion.

The Complaints Board noted the Complainant could have taken advantage of stock sharing between stores meaning there were two dishwashers available at other stores and could have ordered one at that point to benefit from the sale price period.

The Complaints Board discussed the fact that online advertising is a dynamic environment which is often constantly changing. This offered challenges to an Advertiser in terms of matching information featured on a printed mailer and live on-line advertisement environment. The Board noted the Advertiser had updated the website with availability as stock sold out.

While the Board agreed that it was generally implicit that a sale would not have unlimited numbers of sale items, it noted that the Advertiser had agreed to include a 'Not unlimited' stock notification on future on-line advertisements, which the Board said should alert consumers that limits were in place.

The Complaints Board said the advertisement for the Bosch dishwasher was not likely to mislead the consumer and was not in breach of Basic Principle 4 or Rule 2 of the Code of Ethics

Therefore, the Complaints Board ruled this component of the complaint was Not Upheld.

Issue 2: Samsung Washer/Drier

The Complainant was also concerned the advertisement did not identify a product quantity limit on the Samsung washer/drier advertisement.

The Advertiser said it has acquired enough stock to meet expected demand and this proved to be the case for this product. As with the previous issue, the Advertiser gave a commitment to explicitly state that stock is not unlimited in future on-line advertising.

The Complaints Board agreed this was a similar issue to the Bosch dishwasher. It said the Advertiser was entitled to rely on past sales history when anticipating numbers and accepted the Advertiser did have sufficient numbers of units to cover its sales period.

The Complaints Board said the advertisement for the Samsung washer/drier was unlikely to mislead the consumer and was not in breach of Basic Principle 4 or Rule 2 of the Code of Ethics.

Therefore, the Complaints Board ruled this component of the complaint was Not Upheld.

Issue 3: Fisher & Paykel Fridge Freezer advertised sale savings claim.

The Complainant said the saving of \$701 for the Fisher & Paykel Fridge Freezer was overstated, based on the post-sale advertised price.

The Advertiser said its pricing post sale is not tied to the price at sale and will be determined by a range of factors.

The Complaints Board agreed the Complainant was questioning whether the advertised saving of \$701 in the sale was genuine. The Complaints Board said that when a claim is made in an advertisement, the onus is on the Advertiser to substantiate that claim if challenged. The Complaints Board said no substantiation was provided that the Fisher and Paykel Fridge Freezer was sold for \$1,699, making the advertised saving of \$701 not proven. Therefore, the Board ruled this advertisement was likely to mislead consumers and was in breach of Rule 2 of the Code of Ethics.

Therefore, the Complaints Board ruled this component of the complaint was Upheld.

Summary

The Complaints Board said the issue of pricing and availability in the advertisements for the Bosch dishwasher and Samsung washer/ drier were not likely to mislead consumers and acknowledged future on-line sale advertisements would state stock was not unlimited. The Board ruled to Not Uphold these parts of the complaint.

The Complaints Board said the Advertiser had not provided substantiation to support the \$701 saving claim made in the Fisher & Paykel fridge/freezer advertisement. The Complaints Board ruled to Uphold this part of the complaint.

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

DESCRIPTION OF ADVERTISEMENT

The Smith City 'Sale of the Century' website, www.smithcity.co.nz, and mailer advertisements were a promotion run over four weeks. The promotion had different

products on sale for each of the four weeks and included a Bosch dishwasher, a Samsung washer/drier and a Fisher & Paykel Fridge Freezer.

COMPLAINT FROM D FELTHAM

Smiths City had a Sale of the Century promotion running 18th July to 14th August 2018

1. They promoted a Bosch SMS46G101A dishwasher at \$878 on their website. (pic1a) I found this though PriceSpy for \$878 (pic1c) I rang the Lower Hutt store and was told I could order one at this price, before the promotion ended as they were out of stock, but Paraparaumu had them. Two days later I was planning to drive to Paraparaumu and checked the website. The price had risen to \$1299, 4 days before the promotion was even ending. (pic 1b) Someone on their 0800 number rang me back after I queried it, and stated there had been a limit to the number being offered at that price. I stated this wasn't the case on their website. There was no mention of limited numbers of the item. The guy was arrogant when I pointed this out. Two days later I saw the unit in the Porirua store for \$1299, so they had stock.
2. They also has a Samsung washer drier for \$999 with no mention of quantity limits on their website. (pic2b) But in the mailer that I collected from Porirua there was a 100 unit limit (pic 2a)
3. They also had Fisher and Paykel 373l Fridge Freezer RF372BRYW6 at \$998, with a claimed saving of \$701 (pic 3a) The day after the promotion finished, it was \$1199, (at the retail price with no discount advertised) (pic 3b) (The \$701 saving was rubbish)

I don't get mailers in my letter box, I shop online and rely on internet advertising. Their website advertising was grossly misleading with no quantity limits stated. (plus the phone call to the store was unhelpful, stating I could order it in the sale period and pay the promotional price) I had actually sold my modern existing dishwasher and was going to buy the Bosch. Their 0800 help desk was arrogant and didn't seem to believe they had advertising without a quantity limit. I emailed other departments and received no reply They didn't want "to put it right" either

I couldn't attach all my files but the Samsung washing machine shows the web ad with no quantity limit, but the printed mailer does. Increasing the dishwasher from 878 to 1299 during the sale was a joke

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, SMITH CITY

We write in response to the complaints you have received from D Feltham relating to our recent Sale of Our Century promotion.

We understand that D Feltham takes issues with three aspects of our advertising, but also expresses displeasure with his engagement with our call centre.

1. Call centre engagement complaints

We pride ourselves on the quality of our customer service, including the helpfulness of our call centre staff.

We regret that D Feltham has not been satisfied with the service he has received. We will continue to work on providing first class customer support and appreciate D Feltham bringing his concerns in that regard to our attention.

We understand that D Feltham's complaint about his engagement with our call centre is not a matter the Board will be considering.

Subject to any further comment you require from us on D Feltham's experience with our call centre, we have therefore focused our response below on the three advertisements to which D Feltham has taken issue.

2. The Sale of Our Century promotion generally

D Feltham's complaint relates to three advertisements run as part of our recent Sale of Our Century promotion.

The Sale of Our Century promotion ran for four weeks from 18 July to 14 August 2018. The structure of the promotion was as follows:

- Different products were on sale for each of the four weeks of the promotion. Those weeks were 18 to 24 July (first week), 25 to 31 July (second week), 1 to 7 August (third week), and 8 to 14 August (fourth week);
- There was a \$25,000 furniture and appliances package draw for each of the four weeks; and
- There was a grand prize draw for a \$100,000 mortgage repayment at the end of the promotion.

3. Code of Ethics

We understand that you have determined that the issue for deliberation is whether the advertisements comply with Code of Ethics Principle 4 and Rule 2.

We have focused on Principle 4 and Rule 2 in this response. If further Codes, Principles or Rules are found to also be applicable we ask that we been given an opportunity to respond on each.

4. First complaint (dishwasher advertisement)

D Feltham's complaint:

They promoted a Bosch SMS46G101A dishwasher at \$878 on their website (jpegla) I found this though PriceSpy for \$878 (jpeg 1c). I rang the Lower Hutt store and was told I could order one at this price, before the promotion ended as they were out of stock, but Paraparaumu had them. Two days later I was planning to drive to Paraparaumu and checked the website. The price had risen to \$1299, 4 days before

the promotion was even ending (jpeg 1b). Someone on their 0800 number rang me back after I queried it, and stated there had been a limit to the number being offered at that price. I stated this wasn't the case on their website. There was no mention of limited numbers of the item. The guy was arrogant when I pointed this out. Two days later I saw the unit in the Porirua store for \$1299, so they had stock.

Our response:

The Bosch SMS46G101 dishwasher was offered at an in-store sale price of \$878 for week 3 of the "Sale of Our Century" promotion (1 August to 7 August).

D Feltham has included with his complaint a print out from our website dated 5 August 2018 (jpeg 1 a). This advertisement does not list a price, but we accept that at that date the in-store sale price was \$878.

D Feltham then states that two days later he checked the website and the price had increased to \$1,299. He provides an undated printout from our website in support of this fact (jpeg 1 b).

D Feltham further states that the date he checked the website was four days before the end of the promotion period, which he states he believed to be 14 August.

The date D Feltham checked the website cannot be both 7 August (2 days after 5 August) and four days before the end of the promotion period being 10 August.

Be that as it may, we can confirm that on 7 August, being the last day of the relevant promotion period, the product had sold out. Consistent with that fact the original online advertisement for our instore only deal (jpeg 1 a) had been removed from our website and our digital flyer had been amended to show that the product had sold out (see attachment 3). At the same time a new advertisement had been placed on our website stating that orders could be placed for the product (jpeg 1b).

None of the above gives rise to a breach of Code of Ethics Principle 4 or Rule 2.

To breach Principle 4 we would have needed to have prepared the advertisement listing the product as on sale without a due sense of social responsibility. We did not do so. We advertised the product for sale having acquired a sufficient number of units to meet the expected demand for the product in our stores. The number of units secured was based on our previous experiences and sales history. We anticipated that we had enough units to meet demand in the one week promotion period.

As noted in D Feltham's complaint, we also provide for sharing of stock between stores in the same area, which ensures some flexibility of availability across our store network should demand be higher than expected in a particular store.

As it transpired, our Sale of Our Century promotion was successful beyond our expectations. As a result, we experienced higher demand for the product than we had reasonably expected.

As soon as the units had been sold we amended our website so that it no longer showed the product as being for sale in store. We also amended our digital flyer to show that the product was sold out. These are both appropriate behaviours.

As the product was no longer available in store we also amended our online advertising to show that the product remained available to order (i.e. wasn't immediately available) at a non-sale price. This is jpeg 1 b provided by D Feltham.

Nothing in the advertisement complained of, or the subsequent advertisement, breaches Rule 2. It is not misleading to state that a product is on sale without listing the number of units available when you have set aside reasonable supplies to meet expected demand (see for example ASA decision 770). It is also entirely appropriate to replace such advertising when it becomes apparent that due to unexpected demand you will no longer be able to provide the product for sale within the promotion period.

It is our standard practice to note limited stock in our print advertising (see attachment 2 as regards our print advertising for this particular product). That practice is intended to avoid this kind of complaint, regardless of the necessity for such a reference.

While we consider that our response above adequately addresses D Feltham's complaint, we are mindful that it would be useful practice in future for us to explicitly state that stock is not unlimited in our on-line advertising so as to avoid such issues arising again. We will incorporate that practice into our business going forward.

5.Second complaint (washer drier advertisement)

D Feltham's complaint:

They also have a Samsung washer drier for \$999 with no mention of quantity limits on their website (jpeg 2b). But in the mailer that I collected from Porirua there was a 100 unit limit (pic 2a).

Our response:

We confirm that our online advertising (jpeg 2b) of our in-store promotion for the Samsung Washer Dryer Combo (which was on sale as part of our week 4 promotion) did not state that the number of units available was limited whereas our physical mailer did (jpeg 2a).

Again, we advertised the product for sale having acquired a sufficient number of units to meet the expected demand for the product in our stores. The number of units secured was based on our previous experiences and sales history. We anticipated that we had enough units to meet demand in the one week promotion period. That proved to be the case.

To breach Principle 4 we would have needed to have prepared the website advertisement (jpeg 2b) for the product as on sale without a due sense of social responsibility. We did not do so. The product was on sale and all in-store purchases within the sale period were at the price offered.

It is our standard practice to note limited stock in our print advertising (see attachment 4 as regards our print advertising for this particular product). That practice is intended to avoid this kind of complaint, regardless of the necessity for such a reference.

While we consider that our response above adequately addresses D Feltham's complaint, we are mindful that it would be useful practice in future for us to explicitly state that stock is not unlimited in our on-line advertising so as to avoid such issues arising again. We will incorporate that practice into our business going forward.

6. Third complaint (fridge freezer price post sale)

D Feltham's complaint:

They also had Fisher and Paykel 3731 Fridge Freezer RF372BRYW6 at \$998, with a claimed saving of \$701 (jpeg 3a). The day after the promotion finished, it was \$1199, (at the retail price with no discount advertised) (jpeg 3b) (The \$701 saving was rubbish)

Our response:

D Feltham's complaint is that the price at which we offered the product once the sale promotion had ended was not \$701 more than the price during the sale period.

Our pricing post sale is not tied to the price at sale. The price post sale will be determined with reference to a range of factors, including the price at which we purchase the product in question and competitor pricing applicable at the time.

We therefore suggest that the fact the price of the product once the sale ended was not \$701 more than the sale price does not support a finding that there has been a breach of Principle 4 or Rule 2.

RESPONSE SOUGHT BY SECRETARIAT

The Complaints Board adjourned the complaint on the 9th October subject to seeking a response from the Advertiser on the issue of the Fridge Freezer's recommended retail price. \$1699 (sale price \$998 + advertised saving \$701).

FURTHER RESPONSE FROM ADVERTISER, SMITH CITY

Thank you for your email of 9 October inviting us to comment further on D Feltham's third complaint (Fisher & Paykel 373L fridge freezer price post sale complaint). It is clear to us that D Feltham's complaint is that the product price post sale was not \$1,699.

We have reviewed both D Feltham's initial complaint, and our response to this, and believe we have responded adequately to the complaint.

We ask that the Board also consider D Feltham's complaint as lodged.

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. Appeals must be made in writing via email or letter within 14 days of receipt of this decision.