

<b>COMPLAINT NUMBER</b>	18/279
<b>COMPLAINANT</b>	T Bashford
<b>ADVERTISER</b>	Woolworths New Zealand
<b>ADVERTISEMENT</b>	Countdown In-Store
<b>DATE OF MEETING</b>	27 November 2018
<b>OUTCOME</b>	Upheld

## SUMMARY

The In-Store advertisement for Tasti Raw Snacking Multipacks was a brightly coloured notice (referred to as an Image Ticket). On the left-hand corner of the notice was the word “New” in big white letters, with a pink background. Next to this was a colour photo of the product and the price of \$4.99. Across the bottom of the notice was the text “While stock last. Price valid Monday 15 October to Sunday 21 October 2018.”

The Complainant was concerned the advertisement was misleading because the product looked like it was on sale when it wasn't.

The Advertiser said in error, they had agreed to use the Image Ticket for four weeks (instead of the usual three weeks). As the Advertiser had agreed to use the Image Ticket for four weeks, the stated price for the product changed back to \$4.99 after three weeks, while the use of the Image Ticket continued. The Advertiser acknowledged the operator neglected to remove the statement at the bottom of the ticket regarding the period of availability of the introductory offer price.

The Complaints Board said even though the price listed on the ticket (\$4.99) was the correct price, the use of the Image Ticket with the word “New” on the top left corner and the text: “While stock last. Price valid Monday 15 October to Sunday 21 October 2018.” helped create the impression the product was on special when it wasn't.

The Complaints Board ruled the advertisement was misleading and had not been prepared with the required standard of social responsibility.

The Complaints Board ruled the advertisement was in breach of Basic Principle 4 and Rule 2 of the Code of Ethics.

The Complaints Board ruled the complaint was Upheld.

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.

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 creates 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.**

### **The Complaint**

The Complainant was concerned the advertisement was misleading because the product looked like it was on sale when it wasn't.

### **The Advertiser's response**

The Advertiser said under the original promotional programme for the Tasti Raw Snacking 150g Multipack, the product was to be sold for its usual shelf price of \$4.99 for the first two weeks (from 10 to 23 September 2018), then for the "introductory offer" of \$4.00 for the next three weeks (from 24 September to 14 October 2018), and then return to the usual shelf price of \$4.99.

The Advertiser said an error was made, and they agreed to use the Image Ticket for four weeks (instead of the usual three weeks). As the Advertiser had agreed to use the Image Ticket for four weeks, the stated price for the product changed back to \$4.99 after three weeks, while the use of the Image Ticket continued. The Advertiser acknowledged the operator neglected to remove the statement at the bottom of the ticket regarding the period of availability of the introductory offer price.

The Advertiser said although an Image Ticket is only supposed to be used when the product is the subject of an introductory offer, the price listed on the ticket (\$4.99) was the correct price.

### **Precedent**

In considering the issues raised by the Complainant, the Complaints Board referred to a precedent decision, Decision 16/060.

In this case the Domino's Pizza brochure promoted a number of pizza deals. One of the promotions stated: "Save. Cheaper Everyday Value Pizza Range Pizzas from \$4.99. Quote Code 56784. Valid until 17/4/16." The Complainant was concerned the advertisement was misleading because the price advertised as a sale price was in fact the same as the price on the regular menu.

The Advertiser agreed the word 'save' would be removed from future marketing collateral and the complaint was ruled Settled by the Complaints Board.

## Complaints Board Discussion

### *Consumer Takeout*

The Complaints Board considered the consumer takeout of the advertisement and agreed the advertisement suggests the new product is for sale under a special offer, with a special price, and for a limited period of time.

The Complaints Board said the expectation of a special deal is reinforced by the use of an Image Ticket, which has the word “New” on the top left corner and the text: “While stock last. Price valid Monday 15 October to Sunday 21 October 2018.” The special design and colour of the Image Ticket creates an expectation in the mind of the customer that the price listed is a discounted price.

The Complaints Board noted the advertisement was located immediately below the product on sale on the supermarket shelf, and it was also on top of, and obscuring, the white sticker price for the product. The text for the original product and pricing information underneath read: “Tasti Raw Snacking Trail Mix 5pk - \$3.33 per 100g - \$4.99.

The Complaints Board noted the Advertiser acknowledged an error had been made with the ticketing and Image Tickets are only supposed to be used when a product is the subject of an introductory offer, not when the product is on sale for the usual shelf price.

The Complaints Board said even though the price listed on the ticket (\$4.99) was the correct price, the use of the Image Ticket and the reference to limited stock, and a time period, helped create the impression the product was on special when it wasn't.

The Complaints Board ruled the advertisement was misleading and had not been prepared with the required standard of social responsibility.

The Complaints Board ruled the advertisement was in breach of Basic Principle 4 and Rule 2 of the Code of Ethics.

Accordingly, the Complaints Board ruled the complaint was Upheld.

## DESCRIPTION OF ADVERTISEMENT

The In-Store advertisement for Tasti Raw Snacking Multipacks was a brightly coloured notice (known in the trade as an Image Ticket). On the left-hand corner of the notice was the word “New” in big white letters, with a pink background. Next to this was a colour photo of the product and the price of \$4.99. Across the bottom of the notice was the text “While stock last. Price valid Monday 15 October to Sunday 21 October 2018.”

## COMPLAINT FROM T BASHFORD

Standard price of the multipack is \$4.99, but they are advertising the same price of \$4.99 being valid 15-27 October. It is misleading and looks like the product is on sale when in fact it is not.

## CODES OF PRACTICE

**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, WOOLWORTHS NEW ZEALAND**

Thank you for your letter dated 30 October 2018 and for providing us with a copy of the complaint (the Complaint) filed by Tamara Bashford (the Complainant).

Woolworths New Zealand Limited (Woolworths) welcomes the opportunity to respond to the Complaint.

The Tasti Raw Snacking 150g Multipack (the Product) was introduced as a new product in our stores on 10 September 2018, at a usual shelf price of \$4.99.

The promotional programme for the Product was planned to be:  
*the Product would be advertised at its usual shelf price of \$4.99 for the first two weeks (i.e., from 10 September 2018 to 23 September 2018);*  
*the Product would then be the subject of an "Introductory Offer" at \$4.00 for a period of three weeks (i.e., from 24 September 2018 to 14 October 2018), to encourage customers to try the Product (this was shorter than our normal introductory offer period of four weeks); and*  
*the Product would then revert to its usual shelf price of \$4.99.*

It was agreed with the supplier that our standard New Product Introductory Offer shelf ticket including an image of the Product (an Image Ticket) would be used in-store to promote the Product. A copy of the Image Ticket is set out below for the Complaints Board's reference. In error, we agreed with the supplier that we would use the Image Ticket for four weeks (which was consistent with our normal practice).

Because an Introductory Offer is a promotional price, and is lower than the usual shelf price, the period that the price is applicable appears at the bottom of the Image Ticket. It was then noticed that the Introductory Offer would only run for three weeks. This meant that the price of the product reverted to the usual shelf price of \$4.99 from 15 October 2018. Because it had been agreed with the supplier that the Product would be promoted in-store with the Image Ticket for four weeks (from 24 September 2018 to 21 October 2018), the decision was taken to amend the Image Ticket to remove the reference to the Introductory Offer and to replace it with the usual shelf price. This amended ticket is the one attached to the Complaints Board's letter of 30 October 2018, set out below.

An Image Ticket is only supposed to be used when a new product is the subject of an Introductory Offer, not when a new product is on sale at its usual shelf price. When altering the Image Ticket to remove the Introductory Offer price and replace it with the usual shelf price, the operator neglected to also remove the statement at the bottom regarding the period of availability of the price.

However, we do note that the amended ticket was factually correct. It did not make a “save” claim or imply a special. It stated that the Product was new (which was correct) and that the price was \$4.99 (which was also correct). Even the statement at the bottom of the ticket was correct (as the price of \$4.99 was valid from 15 October 2018 to 21 October 2018).

In any event, we note that:

*we have reminded operators of the need to use the correct templates for all in-store ticketing;*

*we have reminded our buying team of the need to carefully check all proposed ticketing when they approve it;*

*the ticket that is the subject of the Complaint was only used from 15 October 2018 to 21 October 2018, so no longer appears in our stores.*

#### **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.