

<b>COMPLAINT NUMBER</b>	19/089
<b>COMPLAINANT</b>	J Ng
<b>ADVERTISER</b>	Noel Leeming Group Ltd
<b>ADVERTISEMENT</b>	Noel Leeming Group Ltd, Digital Marketing
<b>DATE OF MEETING</b>	9 April 2019
<b>OUTCOME</b>	Not Upheld

## SUMMARY

The Noel Leeming website, <https://www.noelleeming.co.nz/>, advertisement for the Samsung Galaxy Note 9 Smartphone 128GB shows an image of the phone, price, details about the model, Fly By points. The advertisement includes the words “Price Offer Ends” and lists the end date of the offer.

The Complainant is concerned the advertisement is misleading because the words ‘price offer’ imply the product was on sale when it is not.

The Advertiser said ‘price offer’ is the standard wording used on every product they promote or wish to highlight to customers. It said the generic term describes the price that they are offering for a product on that particular day.

The Complaints Board said the use of the wording ‘price offer’ in the dynamic pricing environment of a website advertisement would generally be understood to mean the current price rather than implying any special sale offer.

The Complaints Board noted that the advertisement does not make any claim about savings being made. The Complaints Board said this pricing strategy was unlikely to mislead, deceive or confuse consumers.

The Complaints Board said the advertisement was not in breach of Principle 2 or Rule 2(b) of the Advertising Standards Code and 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 complaint with reference to Principle 2 and Rule 2(b) of the Advertising Standards Code.

Principle 2 requires the Complaints Board to consider whether the advertisement is truthful, balanced and not misleading.

Rule 2(b) requires the Board to consider whether the advertisement was misleading or likely to mislead, deceive or confuse consumers, abuse their trust or exploit their lack of knowledge. This includes by implication, inaccuracy, ambiguity, exaggeration, unrealistic claim, omission, false representation or otherwise. Obvious hyperbole identifiable as such is not considered to be misleading.

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

#### **The Complaint**

The Complainant is concerned the advertisement for the Samsung Galaxy Note 9 is misleading because it implied a special offer was available, when in fact the price continued to be reduced. The Complainant clarified that their concern was that the words 'price offer' implied the product was on sale when it is not.

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

The Advertiser said 'price offer' is the standard wording used on every product they promote or wish to highlight to customers. It said the generic term describes the price that they are offering for a product on that particular day.

The Advertiser maintains that most consumers interested in such a product will be aware of the standard retail price and would assess this price offer against the competition on the day.

### **Complaints Board Discussion**

#### *Consumer Takeout*

The Complaints Board began by considering the likely consumer takeout of the advertisement. It said it was that the Samsung Galaxy Note 9 smartphone was available at the quoted price on that particular day.

The Complaints Board noted the comments from the Advertiser disputing the dates of the screen shots provided by the Complainant, but said this point was not material to the issue it was deliberating.

#### *Is the advertisement misleading?*

The Complaints Board said the use of the wording 'price offer' in the dynamic pricing environment of a website advertisement would generally be understood to mean the current price rather than implying any special sale offer.

The Complaints Board noted that the advertisement does not make any claim about savings being made. It said that presenting the price in this format allows the price to be adjusted to reflect the market after the stated end date of the offer. The Complaints Board said this pricing strategy was unlikely to mislead, deceive or confuse consumers.

The Complaints Board said the advertisement was not in breach of Principle 2 or Rule 2(b) of the Advertising Standards Code and ruled the complaint was Not Upheld.

### **DESCRIPTION OF ADVERTISEMENT**

The Noel Leeming website, <https://www.noelleeming.co.nz/>, advertisement for the Samsung Galaxy Note 9 Smartphone 128GB shows an image of the phone, price, details about the model, Fly By points. The advertisement says "Price Offer Ends" and lists the end date of the offer.

**COMPLAINT FROM J NG**

I would like to make an official complain about Noel Leeming misleading advertising on their Samsung note 9 cell phone. I have taken screenshot as proof.

It's the principle behind the words which Noel Leeming have used to mislead and deceive and misrepresent their customer to believe this is a "special offer". It implied this is a special offer.

The words "special offer" is use in 6 different occasion with varies pricing.

The most expensive is \$1399 and the cheapest is \$1149

It is a gross breach the code of ethics

**Principle 2: Truthful Presentation**

Advertisements must not mislead or be likely to mislead, deceive or confuse consumers, abuse their trust or exploit their lack of knowledge. This includes by implication, inaccuracy, ambiguity, exaggeration, unrealistic claim, omission, false representation or otherwise.

I feel this warrant a through investigating to ensure that the Noel Leeming is held accountable for this action.

I'm concern about the wording (Price Offer) use to imply the cell phone is on special even though its isn't.

E.g

\$1399 (Price offer Ends 11 Dec 2018)

\$1299 (Price offer Ends 24 Dec 2018)

\$1149 (Price offer Ends 31 Dec 2018)

The wording and the price is both inconsistent and deceiving.

It traps consumer into thinking the cell phone is on sale, in reality it is not until you compare the \$1399 and \$1149 pricing difference.

**CODES OF PRACTICE****ADVERTISING STANDARDS CODE**

**Principle 2: Truthful Presentation:** Advertisements must be truthful, balanced and not misleading.

**Rule 2(b): Truthful Presentation:** Advertisements must not mislead or be likely to mislead, deceive or confuse consumers, abuse their trust or exploit their lack of knowledge. This includes by implication, inaccuracy, ambiguity, exaggeration, unrealistic claim, omission false representation or otherwise. Obvious hyperbole identifiable as such is not considered to be misleading.

**RESPONSE FROM ADVERTISER, NOEL LEEMING GROUP LTD**

We refer to your letter of 19 March 2019 and enclosures including a copy of the complaint received from Mr Ng.

We have reviewed J Ng's complaint in regards to the Noel Leeming Online/Digital Marketing ("NL Online") promotions and pricing of our Samsung Note 9 mobile phone over the December 2018 period across our network of stores, online on our website and mobile device viewable site.

J Ng's complaint is in relation to the pricing offered on this product through the busiest and most competitive period in the retail market for devices and products such as this. J Ng notes that the product is on 'Special Offer' and that this is misleading due to the words 'Special Offer' implying that the offer is special in some way.

We note that you have reverted to J Ng for clarification on this point as you may have noted that Noel Leeming has not actually used the words "Special Offer" in any of the advertising to which J Ng is objecting. They have clarified that they meant the words "Price Offer".

Firstly we would like to address the dates on which J Ng asserts they took the screenshots of the product. We note that on every screenshot J Ng has stated the date they took the screenshot – in several of the cases they claim they took the screenshot on a date after the price offer had ended. We note that this is not possible as our website automatically changes the offer on the set end date that the promotion is noted as being valid until. This is a system feature and there were no issues with this feature during this period. Specifically:

- Screenshot noted as taken on 4 December 2018, bonus offer ended 3 December 2018. Price offer ended 4 December 2018.
- Screenshot noted as taken on 12 December 2018, offer ended 11 December 2018.
- Screenshot taken 15 January 2019, offer ended 31 December 2018.
- Screenshot taken 15 January 2019, offer ended 31 December 2018.

All noted screenshots above could only have been taken prior to or on the end dates noted on the website.

J Ng amended their complaint to be with regards to the use of the words "price offer". We note that these words are the standard wording we use on every product we promote or wish to highlight to customers to let them know when there is a promotion on a product. The words price offer are generic and, we think, describe exactly what they imply – the price that we are offering on that product on that date. Where we may be offering a product as part of our promotions, the words price offer are used to show that the current price offered is temporary and the product will revert to a different price at the end of that price offer. We note that the standard retail price for this product during this period was \$1699.

In the examples supplied by J Ng, you will note that when the price of this product was dropped further or came with extra items/bonus products, that a further "Hot Price" descriptor was added. As you will see:

- Promotion valid until 3 Dec - \$1399 plus bonus Galaxy watch and Duo charger value at over \$650. Hot price offer.
- o Bonus offer ended 3 Dec, price offer of \$1399 ended 4 Dec.
- Promotion valid until 11 Dec -\$1399. No hot price or bonus product offered, product still less than standard retail price.
- Promotion valid until 24 Dec at \$1399. The price on this product was assessed and then dropped to \$1299 on 12 December through to the valid date of 24 Dec to remain competitive in the market.
- \$1299 price retained for Boxing Day offers which start 25 Dec which were to be valid through to 31 Dec. Note: screenshot must have been taken by J Ng early on 25 December as the price was amended by us on 25 Dec as per below.
- 25 December – price dropped manually by our team to remain competitive in the market, this price to continue through Boxing Day promotion period and ending on 31 Dec.

The standard retail price of this product during this December period was \$1699. At no time during this period did we claim an incorrect save, or in fact any save, on the advertised price.

The price of this product only dropped over the period and/or had a great bonus product offer included.

Based on our assessment of the product and the price offers made over this period, we do not believe there is any breach of Principle 2: Truthful Presentation.

We believe that all our price offers on this product have been truthful and clear to customers. At no time did we claim that this was our 'lowest ever price' or display an incorrect 'save' that could potentially mislead or deceive. It could be that, as we didn't specify a 'save' amount on the product advertisements that the customer was not aware of the 'standard retail price' for this product. However, we believe most customers interested in this product would know the general pricing of the product in the marketplace and be able to assess the offer on its merits against what other offers are available in the market.

In conclusion, we don't believe that there has been any breach of Principle 2: Truthful Presentation in this instance. Noel Leeming has at all times been clear on the price that we are offering the product for and, as with any retail promotional rhythm, we must state a promotion end date. Every retailer has the option to change pricing in order to remain competitive in the market. We do not believe customers were misled or deceived over the price drops that occurred on this product over this competitive period in the retail calendar.

#### **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.