

COMPLAINT NUMBER	21/437
ADVERTISER	Chemist Warehouse
ADVERTISEMENT	Chemist Warehouse, Website
DATE OF MEETING	7 September 2021
OUTCOME	Not Upheld No Further Action Required

Summary of the Complaints Board Decision

The Complaints Board did not uphold a complaint about an advertisement for the Chemist Warehouse on its website www.chemistwarehouse.co.nz because the Advertiser had provided adequate substantiation to support the claim it was “New Zealand’s #1 online pharmacy” in the relevant metric of searches for online pharmacies.

Advertisement

The Chemist Warehouse website advertisement has a banner which states “Chemist Warehouse - Stop paying too much! The advertisement says, “New Zealand’s #1 online pharmacy.”

Summary of the Complaint

The Complainant was concerned the advertisement is misleading to claim to be New Zealand’s #1 online pharmacy without any apparent substantiation for this claim.

Issues Raised:

- Truthful Presentation

Summary of the Advertiser’s Response

The Advertiser defended the advertisement and provided substantiation it says supports the #1 online pharmacy claim. This evidence includes Google trends analysis which shows that Chemist Warehouse is the most searched for on-line pharmacy by New Zealand users. The Advertiser included data from the SimilarWeb site ranking tool which shows website traffic volumes and also has Chemist Warehouse as the highest ranked pharmacy. The Advertiser also provided statements from two major independent suppliers which confirm Chemist Warehouse is their largest customer by sales volume.

Relevant ASA Codes of Practice

The Chair directed the Complaints Board to consider the complaint with reference to the following codes:

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.

Relevant precedent decisions

In considering this complaint the Complaints Board referred to two precedent decisions, Decision 16/372 AWAP16/002 which was Upheld and Decision 11/184 AWAP 11/003 which was Not Upheld.

The full versions of decisions from 2015 can be found on the ASA website:

<https://www.asa.co.nz/decisions/>

Decision 16/372 AWAP16/002 concerned a radio advertisement for OneNet Limited which made the claim “Still number 1 in cloud computing.”

The Complaints Board Panel was of the view that the Advertiser had not provided sufficient evidence to support the absolute claim made. The Panel said the target audience on a commercial radio station may not have up-to-date knowledge of the computing industry and there was a higher expectation for such claims to be well-founded and substantiated.

Decision 11/184 AWAP 11/003 concerned a series of advertisements for John West which featured the wording “John West. The Best.”

The Complaints Board Panel said the use of the term “the best” in the context of the advertisements was subjective and therefore difficult to substantiate. The Panel said there were a myriad of factors affecting consumers views on what constituted the best canned tuna or salmon available on the market. The Panel said the claim fell into the category of puffery.

Complaints Board Discussion

The Chair noted that the Complaints Board’s role was to consider whether there had been a breach of the Advertising Standards Code. In deciding whether the Code has been breached the Complaints Board has regard to all relevant matters including:

- Generally prevailing community standards
- Previous decisions
- The consumer takeout of the advertisement, and
- The context, medium, audience and the product or service being advertised, which in this case is:
 - Context: Online retail environment
 - Medium: Advertiser’s website banner
 - Audience: Visitors to the website
 - Product: All products sold by the Advertiser pharmacy online

Consumer Takeout

The Complaints Board agreed the likely consumer takeout of the advertisement was the Chemist Warehouse is the market leading online pharmacy in New Zealand. The Board said the claim did not specify what metric was being used, but consumers would expect they were the number one online pharmacy in some respect.

Does the advertisement make a claim?

The Complaints Board said the statement in the advertisement that the Chemist Warehouse is “New Zealand’s #1 online pharmacy” was presented as a factual claim which required substantiation. The Complaints Board said the advertisement was making a fairly general claim and as such the Board required evidence from the Advertiser that it was ahead of other online pharmacy businesses in some meaningful metric.

Has the Advertiser substantiated the claim made in the advertisement?

The Complaints Board agreed the Advertiser had provided adequate substantiation to support the claim of “No.1 online pharmacy”. The Board said evidence that the Advertiser was the most searched of all online pharmacies was a relevant metric. The Google trends analysis provided shows that Chemist Warehouse is the most searched for on-line pharmacy by New Zealand users. The Advertiser also provided data from the SimilarWeb site ranking tool which shows website traffic volumes which lists the Chemist Warehouse as the highest ranked pharmacy.

The Complaints Board noted the Advertiser had also provided testimonials from two independent suppliers who confirm the Chemist Warehouse are their largest customer by sales volume. While the Board noted this testimonial information, it said this was not clear evidence the Advertiser was the market leader in all sales.

The Complaints Board said the advertisement was unlikely to mislead or deceive consumers and ruled the advertisement was not in breach of Principle 2 and Rule 2(b) of the Advertising Standards Code.

Outcome

The Complaints Board ruled the complaint was Not Upheld.

No further action required.

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 with notification of the intent to appeal lodged within 14 calendar days of receipt of the written decision. The substantive appeal application must be lodged with the ASA within 21 calendar days of receipt of the written decision.

APPENDICES

1. Complaint
 2. Response from Advertiser
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Appendix 1

COMPLAINT

I know earlier on this year as per this ruling <https://www.asa.co.nz/backend/documents/2021/02/10/21008.pdf> the wording of "New Zealands #1 Online Pharmacy" is still showing with no further information or changes that can be found. Although the first ruling from ASA was for an advertisement on Stuff this is still showing on the advertisers website everyday which we thought would still be a breach considering the ruling only a few months ago. I apologise if it is not because its on their website I tried to read through documents etc to see it was only when someone mentioned it to me that I went to have a look and again it can still be quite misleading even on their own website. Please find screenshot attached.

Appendix 2

RESPONSE FROM ADVERTISER, CHEMIST WAREHOUSE

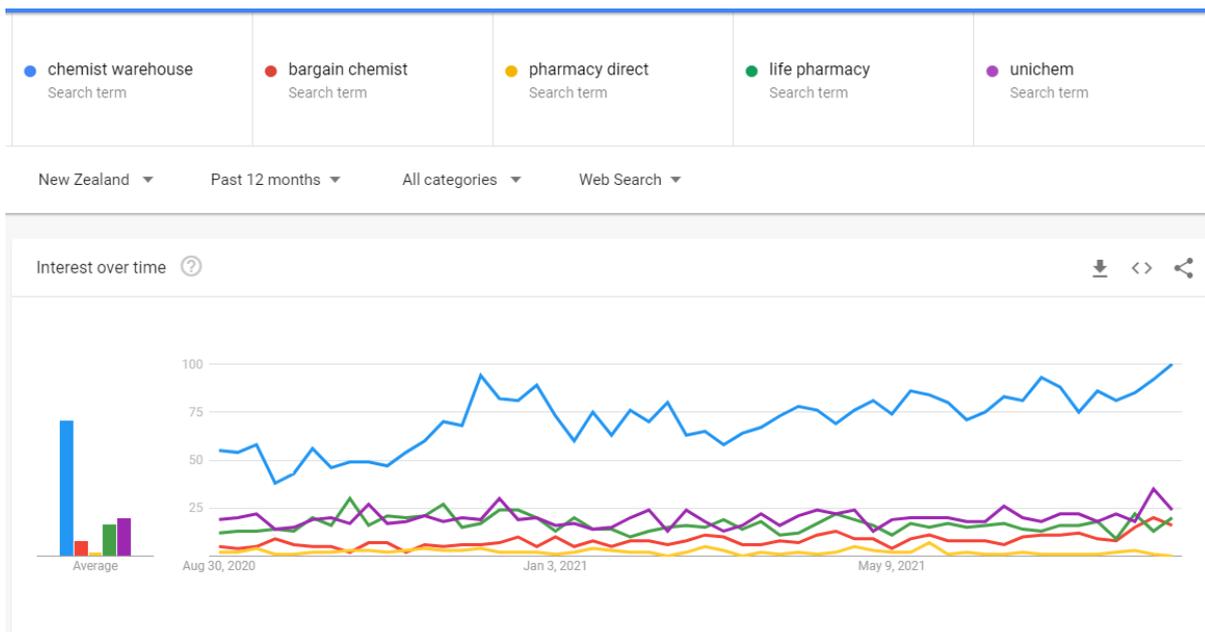
We refer to your letter dated 26 August 2021 and complaint 21/437 - Chemist Warehouse Digital Marketing referenced therein (**Complaint**).

We would like to defend the Complaint on the grounds that we can substantiate the claims made in the advertisement.

- We have attached a copy of the advertisement;
- We can confirm that the advertisement is still accessible on our website at www.chemistwarehouse.co.nz and we have no intention of removing this advertisement at this time; and
- The target audience for this advertisement is all of our website users

We provide the following evidence, which clearly substantiates the claim that chemistwarehouse.co.nz is in fact New Zealand's #1 online pharmacy:

1. Google Trends



Google Trends, comparative data August 2020-August 2021. Google Trends is a website by Google that analyses the popularity of top search queries in Google Search across various regions and languages.

- Above is evidence that 'chemist warehouse' is by far the most Google searched for online pharmacy by New Zealand users, when compared to its popular competitors.

2. SimilarWeb – Site Ranking

Global Rank Worldwide	Country Rank New Zealand	Category Rank Health > Health
chemistwarehouse.co.nz ▲ 47,694	chemistwarehouse.co.nz ▼ 136	chemistwarehouse.co.nz 3
bargainchemist.co.nz ▲ 335,935	bargainchemist.co.nz ▲ 1,247	bargainchemist.co.nz ▲ 26
lifepharmacy.co.nz ▼ 230,610	lifepharmacy.co.nz ▲ 776	lifepharmacy.co.nz ▼ 20
pharmacydirect.co.nz ▼ 374,018	pharmacydirect.co.nz ▼ 1,588	pharmacydirect.co.nz ▼ 31

SimilarWeb, site ranking tool. SimilarWeb is a website that provides web analytics services for businesses. The company offers its customers information on their clients' and competitors' website traffic volumes

- This is evidence that Chemist Warehouse's online pharmacy in NZ (chemistwarehouse.co.nz) is ranked highest when comparing to its popular competitors.

3. Supplier Statements

We have included statements from two major independent suppliers which confirm that we are the largest online pharmacy by sales volume.

The above is evidence that chemistwarehouse.co.nz is in fact New Zealand's #1 online pharmacy. We look forward to the Board's decision.