

COMPLAINT NUMBER	18/273
COMPLAINANT	D Anton
ADVERTISER	Foodstuffs (NZ) Ltd
ADVERTISEMENT	New World, Television, Digital Marketing, Print, Instore
DATE OF MEETING	25 September 2018
OUTCOME	Not Upheld

SUMMARY

The advertisements for New World's competition to promote its Clubcard anniversary featured on television, the New World website, www.newworld.co.nz, a printed mailer and in-store. The advertisements said in part: "...Be in to Win \$50,000. Every \$50 you spend gives you a chance to win one of 3 x \$50,000 cash prizes with Clubcard Anniversary..."

The Complainant is concerned the advertising is misleading as there is only one chance to win for South Islanders and only two chances to win for North Islanders, meaning there are not three chances to win for all shoppers.

The Advertiser said there were 3 x \$50,000 cash prizes to be won, split between the North Island (2 prizes) and the South Island (1 prize) based on population size. The terms and conditions made the split clear and confirmed a Clubcard holder could only win one of the prizes.

The Complaints Board noted the advertisement said "one of 3 prizes" rather than the one in three chances.

The Board agreed the terms and conditions clearly referenced in the advertisements meant consumers were unlikely to be misled as to the nature of the competition. The Complaints Board ruled the advertising had been prepared with a due sense of social responsibility to consumers and society and was not in breach of Basic Principle 4 or Rule 2 of the Code of Ethics.

The Complaints Board ruled the complaint was Not Upheld.

[No further action required]

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 Not Upheld.

The Complaint

The Complainant is concerned the advertising is misleading as there is only one chance to win for South Islanders and only two chances to win for North Islanders, meaning there are not three chances to win for all shoppers.

The Advertiser's Response

The Advertiser said there were 3 x \$50,000 cash prizes to be won, split between the North Island (2 prizes) and the South Island (1 prize) based on population size. The split between North Island and South Island was made clear in clause 8 of the terms and conditions. The terms and conditions were noted in the fine print on the advertisements and were hosted on www.newworld.co.nz.

The Advertiser clarified that each customer could only win once as noted in clause 13 of the terms and conditions. Given the number of entries received, the Advertiser said there was no disadvantage to South Island shoppers.

The Media's Response

The Commercial Approvals Bureau said there were three cash prizes on offer and clear graphics at the close of the advertisement contain contact details should any viewer wish to check on the full terms and conditions.

The Complaints Board Discussion

The Complaints Board began by discussing the likely consumer takeout of the advertisement was that for every \$50 spent, consumers receive a chance to win a \$50,000 prize and that there are three prizes to be won.

The Complaints Board said the advertisements referred consumers to the terms and conditions hosted on the Advertiser's website and noted that Clauses 8 and 13 of the terms and conditions make it clear it is only possible to win once and the split of prizes between islands was based on population.

The Complaints Board said it was important to note the advertisement said "one of three prizes" rather than one in three chances.

The Board agreed the terms and conditions clearly referenced in the advertisements meant consumers were unlikely to be misled as to the nature of the competition. The Complaints Board ruled the advertising had been prepared with a due sense of social responsibility to consumers and society and was not in breach of Basic Principle 4 or Rule 2 of the Code of Ethics.

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

DESCRIPTION OF ADVERTISEMENT

The advertisements for New World's competition to promote its Clubcard anniversary featured on television, the New World website, www.newworld.co.nz, a printed mailer as well as instore. The website advertisement says in part..."Be in to Win \$50,000. Every \$50 you spend gives you a chance to win one of 3x \$50,000 cash prizes with Clubcard Anniversary..."

The poster states "win one of three \$50,000 cash prizes"

The TV advertisement states "there are three \$50,000 cash prizes up for grabs" and "every \$50 gives you a chance to win".

The email direct mail says "win one of three \$50,000 cash prizes"

COMPLAINT FROM D ANTON

New World are advertising on their website, tv, mailer and instore, that there are one of three prizes of \$50,000 to be won and this is extremely misleading to all their customers and I believe it should be honest in the huge advertising that this is not the case. There is only one chance to win for South Islanders and only two chances to win for North Islanders, so in no way are there three chances to win for all shoppers, in fact, as stated, South Islanders only have one chance to win. I asked them to clarify is main promo info and they know its an issue, but have made excuses, but the truth is the claim of three prize chances is for everyone, a complete lie. I know there are three prizes and if they stated the facts of the terms in advertising, that would be fine, but they are choosing to deliberately mislead everyone of the truth of the terms, by constantly claiming that there is a one and three chance to win, when in all cases, it is not true unless anyone could win any prize and that is not the case.

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, FOODSTUFFS (NZ) LIMITED

Background

1. I refer to your letter to Foodstuffs (N.Z.) Limited (Foodstuffs NZ) dated 28 August 2018 regarding Foodstuffs Clubcard Anniversary campaign (Competition).
2. By way of background, Foodstuffs North Island Limited and Foodstuffs South Island Limited are two separate co-operatives. Foodstuffs NZ is owned by the two co-operatives and is the promoter of most national promotions (including this Competition).

3. During the promotional period for the Competition, customers who spent over \$50 in any New World store and swiped their Clubcard were automatically entered in the draw to win \$50,000 cash.
4. There were 3x \$50,000 cash prizes to be won, split between the North Island (2 prizes) and the South Island (1 prize). The split between North Island and South Island split was made clear in clause 8 of the attached terms and conditions. The terms and conditions were noted in the fine print on the advertisements and were hosted on www.newworld.co.nz.
5. Foodstuffs NZ chose to split the prizes because there are a greater number of shoppers and stores in the North Island than the South Island. For this competition in particular 62% of the total entries were from the North Island and 38% were from the South Island.
6. The draws were determined by a customer's shopping location and not the address their Clubcard is registered to. For example, customers making a purchase at a North Island store will be entered into the North Island Draw.
7. While there were three prizes to be won each customer could only win once (see clause 13 of the attached terms and conditions). Therefore, any customer who happened to be drawn twice would only be able to win one prize.
8. The complainant alleges "in no way are there three chances to win for all shoppers". In our view, the marketing collateral is clear that there are there were three prizes to be won. As shown in the attached copies of the marketing material:
 - The poster states "win one of three \$50,000 cash prizes"
 - The TV advertisement states "there are three \$50,000 cash prizes up for grabs" and "every \$50 gives you a chance to win".
 - The email direct mail says "win one of three \$50,000 cash prizes"
9. Three prizes of \$50,000 were, in fact, won by three different people. The terms and conditions made it clear that no person could win more than one prize. In addition, the complainant was not disadvantaged by shopping in the South Island as her chance of winning was roughly the same given the number of entries in both regions. For these reasons we do not feel that the advertisement breaches the Code of Ethics – Basic Principle 4; Rule 2.

RESPONSE FROM MEDIA, COMMERCIAL APPROVALS BUREAU

COMPLAINT: 18/273

KEY: NWN 015 04135

RATING: GXC

We have been asked to respond to this complaint under Code of Ethics, Basic Principle 4, Rule 2.

This New World commercial played Nationwide as part of their clubcard anniversary celebrations. Every \$50 spent gained shoppers an entry into the draw. Three \$50,000 cash prizes were up for grabs plus thousands of flybuys points and airpoints dollars.

Clear graphics at the close of the advertisement contain contact details should any viewer wish to check on the full terms and conditions.

There appears no dispute that three \$50,000 cash prizes were available to any New World clubcard shoppers in the country and CAB does not believe this complaint should be upheld.

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.