

COMPLAINT NUMBER	19/058
COMPLAINANT	J Mason
ADVERTISER	Chemist Warehouse
ADVERTISEMENT	Chemist Warehouse, Billboard
DATE OF MEETING	26 March 2019
OUTCOME	Not Upheld

SUMMARY

The Chemist Warehouse billboard advertisement in Mt Albert, Auckland states the Chemist Warehouse has free prescriptions. An asterisk qualifies this statement saying there is \$5 off the standard subsidised prescription charge. The billboard provides a website address and the opening hours of stores.

The Complainant is concerned the advertisement is dishonest to quote free prescriptions when they are actually offering \$5 off the standard subsidised prescription charge.

The Advertiser said the advertisement was clear in its message that it does not charge the Government standard subsidised prescription charge of \$5 per item. It says that by not charging this \$5 fee, the prescription can be classed as free.

The majority of the Complaints Board agreed it was not misleading to use the word 'free' as the vast majority of prescriptions are subsidised and waiving the \$5 surcharge does make the prescription free of charge to consumers.

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

A minority of the Complaints Board said the advertisement could mislead some consumers that have little experience with prescription charges or an awareness that not all medicines are subsidised. The minority said the advertisement had breached Principle 2 and Rule 2(b) of the Advertising Standards Code.

In accordance with the majority, 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 complaint with reference to Principle 2 and Rule 2(b) of the Advertising Standards Code.

Principle 2 required the Board to consider whether the advertisement was truthful, balanced and not misleading.

Rule 2(b) required 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 is dishonest to quote free prescriptions when they are actually offering \$5 off the standard subsidised prescription charge.

The Advertiser's response

The Advertiser said the advertisement was clear in its message that it does not charge the Government standard subsidised prescription charge of \$5 per item. It says that by not charging this \$5 fee, the prescription can be classed as free.

Complaints Board Discussion

Consumer Takeout

The majority of the Complaints Board said the likely consumer takeout of the advertisement was that filling a prescription at the Chemist Warehouse would mean there was no standard \$5 prescription fee per item.

A minority of the Complaints Board disagreed and said consumers glancing at the billboard in passing may only register the large 'Free Prescription' wording and their takeout could be all prescriptions would be free. The minority said the qualifying statement may not be seen and understood as the advertisement contained a lot of information.

Is the advertisement misleading?

The Complaints Board said the majority of consumers will be aware that many medicines in New Zealand are subsidised by the Government and only require the consumer to pay a fee of \$5 per item.

The majority of the Complaints Board considered doctors and pharmacists would alert consumers if their particular prescription fell outside the subsidised scheme. The Board said it was not misleading to use the word 'free' in the advertisement given that the vast majority of prescriptions are subsidised and waiving the \$5 surcharge does make the prescription free of charge to consumers.

The majority of the Complaints Board considered that the Advertiser had adhered to the guidelines for Principle 2, that disclaimers and other qualifying statements must be clearly visible and easily understood. The Board said the asterisk disclaimer was presented in an easy to read form.

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

A minority of the Complaints Board said the advertisement could mislead some consumers that have little experience with prescription charges or an awareness that not all medicines

are subsidised. The minority said the advertisement had breached Principle 2 and Rule 2(b) of the Advertising Standards Code.

In accordance with the majority, the Complaints Board ruled the complaint was Not Upheld.

DESCRIPTION OF ADVERTISEMENT

The Chemist Warehouse billboard advertisement in Mt Albert, Auckland states that the Chemist Warehouse has free prescriptions. The asterix qualifies this statement saying \$5 off the standard subsidised prescription charge. The billboard provides a website address and the opening hours of stores.

COMPLAINT FROM J MASON

Billboard claims Free Prescriptions but qualifies this as \$5 off the standard subsidised prescription charge. This does not make it a free prescription. Dishonest advert under code 2(b). See attached image taken on 6/2/19.

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,

I thank you for your letter dated 19 February 2019 directed to Lia Helm of Chemist Warehouse and furthermore your email to the Chemist Warehouse St Lukes store on 27 February 2019. Broadly the concerns of Mr Jim Mason relate to the billboard advertising on the corner of Maioro St and Richardson Rd, Mt Albert Auckland ('Billboard').

The Billboard advertises that:

- Free prescriptions are available from Chemist Warehouse pharmacies
- Chemist Warehouse is offering to discount the standard \$5 subsidised prescription charge by \$5
- Stores are open 8am to 9pm 7 days a week.

For your reference, the New Zealand Government provides that a standard subsidised prescription charge for a new prescription is \$5 per item.

The relevant section in the Advertising Codes of Practice that is referred to in the complaint is *Advertising Standards Code 2018* Principle 2, Rule 2(b) 'Truthful Presentation' ('Rule'). This Rule provides that:

'Disclaimers, asterisked, footnoted or "small print" information must not contradict the claims that they qualify. The information must be obvious

and located and presented in such a way as to be clearly and easily read and / or heard. Where appropriate, the information must be linked to the relevant part of the main message.'

And that:

'Pricing information in an advertisement must be clear, accurate, unambiguous and must not mislead.'

Chemist Warehouse is not in breach of this Rule. The billboard advertises that the 'Free Prescriptions' applies to standard subsidised prescription charges. This is clear, accurate, unambiguous and does not mislead in accordance with the requirements of the Rule.

The secondary text is merely additional explanatory information because taking \$5.00 off the standard subsidized prescription charge of \$5.00 makes the prescription in fact 'free'. The secondary text is located directly under the claim it explains, making it easy to read and clearly links the information to the relevant part of the main message – 'Free Prescriptions'. Again in accordance with the Rule.

The position is clear. Chemist Warehouse does **NOT** charge for standard subsidised prescriptions dispensed at their stores. The Billboard is an accurate and truthful representation and cannot be in breach of the Rule. Chemist Warehouse does provide FREE subsidised prescriptions.

Chemist Warehouse has a responsible attitude in relation to both consumer and pharmacy regulations and at all times endeavors to act in accordance with all relevant Laws, Guidelines and Regulations governing retail pharmacy and more broadly the entire retail sector. It has never been, nor shall it ever be its intention to deliberately or even inadvertently breach any Act, Regulation or Guideline, or mislead any consumers, through its commercial endeavours.

I hope this correspondence fully addresses all your concerns though should you require any clarification or further information please contact me.

RESPONSE FROM MEDIA, QMS

Thanks for sending this through,

We will leave this for the client to respond as we don't feel we can add much to the case.

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.