

COMPLAINT NUMBER	19/118
COMPLAINANT	B Hogg
ADVERTISER	Spark New Zealand Trading Limited
ADVERTISEMENT	Skinny, Addressed Mail
DATE OF MEETING	9 April 2019
OUTCOME	Not Upheld

SUMMARY

The Skinny email advertisement to existing Skinny direct mobile plan customers says in part: “Have you seen all the perks you could be getting if you were on a Skinny Mobile rollover plan?” The advertisement suggests making the switch from the Skinny Direct plan to the Skinny Mobile plan and compares the two. The advertisement includes a list of details about the plan under ‘Things to know’, including the Skinny Mobile plan lasts 4 weeks (28 days).

The Complainant said it was misleading to promote a Skinny Mobile plan that looks cheaper than their existing Skinny Direct plan but appeared to be more expensive because of the change in billing cycles.

The Advertiser said the advertisement was not misleading and provided supporting information that the Skinny Mobile plan was cheaper than Skinny Direct using a per day calculation. The Advertiser acknowledged it could have been clearer about the change to the billing cycle and other entitlements and will consider how to more clearly communicate offers in future advertising.

The Complaints Board agreed with the per day calculation breakdown provided by the Advertiser which showed the \$46 Skinny Mobile plan was in fact cheaper than the \$50 Skinny Direct plan. The Complaints Board agreed that more clarity around the billing cycle and benefits would be helpful for consumers, so the plan offers were more readily able to be compared.

The Complaints Board said taking into account context, medium, audience and product, the claims about the Skinny Mobile plan were not misleading.

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 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 said it was misleading to promote a Skinny Mobile plan that looks cheaper than their existing Skinny Direct plan but appeared to be more expensive because of the change in billing cycles from 30 days to 28 days.

The Advertiser's response

The Advertiser said the Skinny Direct plan is being phased out and the direct mail advertisement was to encourage Skinny Direct customers to move to the Skinny Mobile plan.

The Advertiser said the advertisement was not misleading and demonstrated that Skinny Mobile plan was cheaper than Skinny Direct by using a per day calculation: $\$46/28 \text{ days} = \1.64 per day ; $\$50/30 \text{ days} = \1.67 per day . In addition, it offered the first four weeks free along with other entitlements.

The Advertiser acknowledged it could have been clearer about the billing cycle and highlighting the four free weeks and other entitlements which come with the Skinny Mobile plan and says it will do so moving forward.

Complaints Board Discussion

Consumer Takeout

The Complaints Board began by discussing the likely consumer takeout of the advertisement which is that existing customers who received the email are incentivised to move to the new, cheaper Skinny Mobile plan.

Is the advertisement misleading?

The Complaints Board agreed with the per day calculation breakdown provided by the Advertiser which showed the \$46 Skinny Mobile plan equates to \$1.64 per day versus the \$50 Skinny Direct plan which comes out at \$1.67 per day, so the new plan is in fact cheaper.

The Complaints Board accepted that additional savings would be made from the initial four weeks for free offer and other benefits such as Buddy Rewards and Skinny Gifting.

The Complaints Board noted the Complainant had used a different calculation which caused confusion given that 28 days will not divide exactly into 4 week periods over a set year. Despite that the Complaints Board agreed the way the billing cycle and benefits were presented could have been clearer, so the plan offers were more readily able to be compared.

The Complaints Board noted the Advertiser was going through a process to transition customers away from a plan that is to become obsolete and acknowledged the Advertiser's commitment to be clearer in explaining billing cycles and benefits in future campaigns.

The Complaints Board said taking into account context, medium, audience and product, the claims about the Skinny Mobile plan were not misleading.

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 Skinny email advertisement to existing Skinny direct mobile plan customers says in part: "Have you seen all the perks you could be getting if you were on a Skinny Mobile rollover plan?" The advertisement suggests making the switch from the Skinny Direct plan to the Skinny Mobile plan and compares the two. The advertisement includes a list of details about the plan under 'Things to know', including the Skinny Mobile plan lasts 4 weeks (28 days).

COMPLAINT FROM B HOGG

I find this advertising misleading. The service advertised, when compared to the current plan that I'm on looks cheaper. But the fine print shows that the number of monthly payments I would make in a year are different, and actually make the 'Cheaper' plan more expensive than my current one.

I think they should be clarifying the renewal days next to each other, in like-terms. For example, 'Renews every 30 days' and 'Renews every 4 weeks' is deliberately misleading the customer - both seem like a month, but when you look further down you see that 'Skinny plans renew every 28 days (4 weeks)' which means you would be making 1 extra payment per-year.

As a low-cost service provider, Skinny is selling to a large number of people who genuinely couldn't afford an increase, and would most likely sign up to the new plan thinking that they were saving money.

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, SPARK NEW ZEALAND TRADING LIMITED

Introduction

1. Thank you for your email of 25 March 2019, and for the opportunity to respond to Ben Hogg's complaint about the email he received from Skinny.

2. We understand the complainant alleges that Skinny represents that its \$46 (4 week) Skinny mobile plan is cheaper than the \$50 (30 day) Skinny Direct plan, and that this breaches Principle 2, Rule 2(b) of the Advertising Standard Code.

Background to the EDM

3. As background, until last November Skinny promoted two different sets of plans: (a) its 'usual' Skinny Mobile prepaid plans, which have a 28 day billing cycle, and (b) Skinny Direct mobile plans, which are only available online. Last November, Skinny stopped offering Skinny Direct plans to new customers. Existing Skinny Direct customers can at this stage continue to use their plans, but it is intended that Skinny Direct services will be closed down at some stage in the coming months (the date for this has not been decided yet).

4. A key reason for discontinuing Skinny Direct is to simplify the mobile propositions available under the Skinny brand. One aspect of this is that Skinny mobile and Skinny Direct plans have different billing cycles.

5. Against this background, we have been encouraging Skinny Direct customers to move to Skinny mobile, and have offered customers who do so the first four weeks for free on their equivalent new plan. The EDM that is the subject of the complaint was sent as part of this campaign.

Response to substance of complaint

6. In response to the substance of the complaint, we wish to make two key points.

7. Firstly, it is incorrect that Skinny's \$46 (4 week) plan is more expensive than the \$50 (30 day) Skinny Direct plan. On a per day rate, the \$46 (4 week) plan is slightly cheaper than the \$50 (30 day) plan at \$1.64 compared to \$1.67 per day.¹ The plans have the same data, voice and SMS entitlements. This calculation also does not factor in the four weeks for free that the customer would get if they moved to the \$46 Skinny plan, nor other entitlements such as Buddy Rewards and Skinny Gifting, which are not available on Skinny Direct.

8. Second, Skinny considers that the EDM is already clear that the plans have different billing cycle lengths. The plan components, including billing cycle, are set out side-by-side within the EDM as shown in the extract in Attachment 1.

9. That said, Skinny acknowledges that the EDM could have been clearer about the billing cycle, for example by including reference to it within the pink circle for the \$46 plan. Skinny will take this learning into consideration for future campaigns. Similarly, the section shown in Attachment 1 could also have focused on the free 4 weeks on the \$46 plan and other entitlements such as Buddy Rewards and Skinny Gifting as the key points of difference.

¹ \$46 / 28 days = \$1.64 per day; \$50 / 30 days = \$1.67 per day.

For completeness we have also appended a complaint response form.

A basic, neutral description of the advertisement	EDM to Skinny Direct customers, encouraging them to move to another plan
Date advertisement began	The email was sent to Skinny Direct customers on 12/13 December 2018 and 8

	March 2019
Where the advertisement appeared (all locations e.g. TV, Billboard, Newspaper Website)	In emails to Skinny Direct customers
The response from the advertiser is included in the published decision. The ASA is not able to accept confidential or proprietary information. Please contact the Complaints Manager if this is an issue.	Noted
For Digital advertisements:	
What platform tools have you used to target your audience?	Database of existing Skinny Direct customers

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.