

COMPLAINT NUMBER	21/008
ADVERTISER	Chemist Warehouse
ADVERTISEMENT	Chemist Warehouse, Digital Marketing
DATE OF MEETING	10 February 2021
OUTCOME	Upheld Advertisement to be removed

Summary of the Complaints Board Decision

The Complaints Board upheld a complaint about an advertisement for the Chemist Warehouse on www.stuff.co.nz because the Advertiser had not substantiated the claim it was “New Zealand’s #1 online pharmacy”.

Advertisement

The Chemist Warehouse digital marketing advertisement on www.stuff.co.nz states they are “New Zealand’s #1 online pharmacy.” The advertisement also promotes “Free shipping over \$50.”

Summary of the Complaint

The Complainant was concerned the claim Chemist Warehouse is New Zealand’s number one online pharmacy was misleading.

Issues Raised:

- Truthful Presentation

Summary of the Advertiser’s Response

The Advertiser defended the advertisement stating that the guidelines for Rule 2(b) of the Advertising Standards Code state that “obvious untruths, exaggeration, puffery or deliberate hyperbole that are unlikely to mislead may be acceptable.” The Advertiser said the advertisement fell within this categorisation. It said no claim has been made therefore the advertisement cannot be misleading. The Advertiser said the advertisement was served to consumers via a remarketing tool.

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 these 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.

Consumer Takeout

The Complaints Board agreed the likely consumer takeout of the advertisement was the Chemist Warehouse is ranked as the number one online pharmacy in New Zealand.

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 an absolute factual claim.

The Complaints Board did not agree with the Advertiser’s assessment that its statement “New Zealand’s #1 online pharmacy” fell within the category of obvious untruths, puffery, or deliberate hyperbole. The Board said the advertisement did not contain humour or any other indicators which might suggest to consumers the claim of being “New Zealand’s #1 online pharmacy” was anything other than a factual statement.

The Board said the reference to number one signalled to consumers the Chemist Website was ahead of other similar businesses and this claim required substantiation.

Is the advertisement misleading?

The Complaints Board referred to the Advertising Standards Code guidelines under Rule 2(b) Truthful Presentation, which required Advertisers to hold evidence to substantiate claims made in an advertisement.

The Complaints Board unanimously agreed the advertisement was misleading because it made an absolute claim about the Advertiser’s ranking in comparison to other New Zealand online pharmacy businesses which had not been substantiated.

The Complaints Board ruled the advertisement was in breach of Principle 2 and Rule 2(b) of the Advertising Standards Code.

Outcome

The Complaints Board ruled the complaint was **Upheld**.

Advertisement to be removed.

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 calendar days of receipt of this decision.

APPENDICES

1. Complaint
 2. Response from Advertiser
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Appendix 1

COMPLAINT

Whilst browsing the internet I have been served the attached ad from Chemist Warehouse NZ. In it it claims that it is NZ's #1 Online Pharmacy yet provides no evidence to back it up. What regulations are there around this claim and proving proof vs its competitors? What is it #1 in?

Appendix 2

RESPONSE FROM ADVERTISER, CHEMIST WAREHOUSE

Thank you for your email dated 18 January 2021, and attachments contained therein.

In regards to the Complaint, Chemist Warehouse respectfully responds as follows:

1. The Guidelines for Rule 2(b) of the Code states that “obvious untruths, exaggeration, puffery or deliberate hyperbole that are unlikely to mislead may be acceptable”. The advertisement in question is clearly within this categorisation. No claim of any kind has been made so it cannot be interpreted to be misleading, deceptive or confusing.

Regarding your other queries:

1. The advertisement does not appear on the website link provided by the complainant, namely: <https://www.chemistwarehouse.co.nz/>
2. These advertisements are displayed on a remarketing tool called Criteo. For customers who have visited <https://www.chemistwarehouse.co.nz/>, the business markets to them when they browse on other platforms. There isn't any guaranteed way to be delivered these ads as it's automatically customised on a per-customer basis.
3. These ads are still accessible, and at this stage the plan is to have them running on an ongoing basis.