

<b>COMPLAINT NUMBER</b>	21/180
<b>ADVERTISER</b>	Woolworths New Zealand Limited
<b>ADVERTISEMENT</b>	Countdown, Website
<b>DATE OF MEETING</b>	11 May 2021
<b>OUTCOME</b>	Not Upheld No Further Action Required

### **Summary of the Complaints Board Decision**

The Complaints Board did not uphold a complaint about a website advertisement for Countdown's Delivery Saver subscription offer of unlimited deliveries free for 30 days. The Complaints Board said the use of the word 'free' was not misleading as consumers did not pay anything during the 30 day offer period. The Complaints Board said the terms and conditions for the offer were readily available for consumers.

#### **Advertisement**

The Countdown website advertisement, [www.countdown.co.nz](http://www.countdown.co.nz), promotes its Delivery Saver subscription option. The website banner says, "Get unlimited deliveries FREE\* for 30 days." The small print on the banner says "For orders over \$80, when you sign up to a new Delivery Saver. Bag charge excluded. Ts&Cs apply." The website explains how the Delivery Saver works and includes a Frequently Asked Questions section.

#### **Summary of the Complaint**

The Complainant was concerned the advertisement was misleading to use the word 'Free' when you have to sign up to the subscription and pay for a month's deliveries in advance.

#### **Issues Raised:**

- Truthful Presentation

#### **Summary of the Advertiser's Response**

The Advertiser defended the advertisement and said it was not correct that consumers taking up the Delivery Saver 30-day free trial had to pay up front. It said the free trial required the consumer to sign up for the subscription service, however they would not be charged for the first 30 days of delivery and their credit card would not be charged for the subscription, until the expiry of the 30-day free trial. The Advertiser noted the word 'Free" contained an asterisk, alerting consumers to the terms and conditions of the offer. The Advertiser noted it had increased the size of the disclaimer on the website in order to make it easier to read.

## 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.

### 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:
  - Context: Website offer of a 30-day free delivery trial for consumers who do not have a delivery subscription.
  - Medium: Advertiser website.
  - Audience: Household shoppers.
  - Product: Delivery service.

#### *Consumer Takeout*

The Complaints Board had different opinions about the likely consumer takeout of the advertisement. For the majority of the Complaints Board the takeout was the advertisement was an offer of 30 days free delivery, subject to terms and conditions. The majority said the terms and conditions confirmed the offer was for subscription service where consumers register for a one-month or six-month delivery period and receive the first 30 days of the Delivery Saver service free.

For a minority of the Complaints Board, the consumer takeout was the offer was for free delivery for 30 days without any commitment. For the minority of the Board, the small print did not initially alert them to the terms and conditions connected with the offer. The minority said that indicating it was a "free trial" rather than saying "free delivery" could have made the advertisement clearer for some consumers.

#### *Is the use of the word 'Free' in the context in the advertisement misleading?*

The Complaints Board agreed the word 'free' was not misleading given that consumers had the opportunity to cancel the subscription before the end of the 30-day trial and still benefit from the free deliveries on purchases over \$80. The Board noted the word 'free' included an asterisk and this indicated to consumers there were qualifiers associated with the offer.

The Board agreed the use of the word 'free' in the advertisement did not meet the threshold to breach Principle 2 or Rule 2(b) of the Advertising Standards Code.

*Is the disclaimer noting the existence of terms and conditions in the advertisement sufficiently clear?*

The Complaints Board said the disclaimer, albeit small, alerted consumers to the terms and conditions of the Delivery Saver subscription scheme and the 30-day free delivery offer. The Complaints Board said the website advertisement enabled consumers to easily access the terms and conditions and Frequently Asked Questions section for more information.

The Board agreed the amendment made by the Advertiser increasing the font size of the disclaimer would be helpful for some consumers, such as those viewing the advertisement on their phones.

The Complaints Board unanimously ruled the advertisement was not misleading and was not in breach of Principle 2 or 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](http://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

I think that the headline on this ad is completely misleading. It says that you can get your shopping delivered free for 30 days. However, when you click on the ad, you start to realise that it isn't actually free: you have to pay for a month's deliveries upfront - then you aren't charged a delivery fee at checkout for the period that you've chosen to buy deliveries for. The delivery fee is lower than if you pay each time at the checkout. But it's twisting the truth and no way is it 'free'. They could use the words 'cheaper' or 'lower' to make it more accurate. And the small print is so small on a mobile phone, it is barely readable.

### Appendix 2

#### RESPONSE FROM ADVERTISER, WOOLWORTHS NZ - COUNTDOWN

##### Countdown – Delivery Saver 30 Day Free Trial Website Banner - Complaint 21/180

Thank you for your email dated 20 April regarding the above complaint, relating to the Delivery Saver 30 day free trial displayed on our website.

Our Delivery Saver subscription service enables customers to sign up for unlimited monthly deliveries on a subscription basis (either monthly or six monthly subscriptions). For new customers signing up to Delivery Saver, we are offering a 30 day free trial. This means that they will get unlimited free deliveries (subject to bag charges and a minimum spend of \$80) for 30 days. The target audience for Delivery Saver are adult (18+) supermarket shoppers.

In order to access the 30 day free trial, customers have to provide their credit card details when signing up for Delivery Saver. Their credit card does not get charged until the expiry of the 30 day free trial. For example, if a customer signed up to a monthly Delivery Saver subscription on 30 April, they will be informed in the sign up process that their credit card will not be charged until 30 May. They have the ability to cancel their subscription prior to the expiry of the free trial at no charge, if they wish.

In addition to appearing on our website, the banner has appeared, and is appearing on, the following paid content:

- Facebook and Instagram (5th April and ongoing)
- Programmatic display (5th April and ongoing)
- MetService (6th April)
- TradeMe (5th April)
- Stuff mobile splash (6th and 10th April)

A digital copy of the banner has been included with this response.

The banner on our website was, in our opinion, sufficiently clear that in order to obtain the unlimited free deliveries for 30 days, the customer needed to sign up to the Delivery Saver subscription service. We placed the asterisk immediately after the word "Free" and the disclaimer that states they needed to subscribe to the service was immediately underneath. We apologise if the complainant misunderstood the message. However, please note that the explanation the complainant gave about needing to pay for a months' deliveries upfront, is not

correct. We are unsure from the facts provided whether this has actually occurred or whether this is just the complainant's misunderstanding.

The complainant also complained about the size of the small print on their mobile phone. From the image provided, it appears that that complainant was looking at a mobile view of our website. We have updated the size of the disclaimer on the website assets to make the disclaimer larger and easier to read to address this concern. We have included a copy of the updated asset for your reference. This larger font will be visible when the banner is next used on our website. When a customer clicks on the banner they will be taken to our Delivery Saver landing page, which contains all the details about the service and the terms and conditions.

We trust this answers your query, however I am happy to discuss this with you further.