

COMPLAINT NUMBER	21/296
ADVERTISER	Decjuba
ADVERTISEMENT	Decjuba, Website
DATE OF MEETING	6 July 2021
OUTCOME	Upheld Advertisement not to be used again

Summary of the Complaints Board Decision

The Complaints Board upheld a complaint about a website advertisement for a sale at Decjuba clothing store. The Board said the advertisement was misleading.

Advertisement

The Decjuba website advertisement said “Insider Exclusive - 30% off when you spend \$200*. 20% off when you spend \$120*. [Shop Now](#). Shop online or show in store.”

Summary of the Complaint

The Complainant was concerned the asterisks in the advertisement did not link to anything, and it was not clear what the terms and conditions for the promotion were.

Issues Raised:

- Truthful presentation

Summary of the Advertiser’s Response

The Advertiser said the advertisement was no longer being used. The Advertiser defended the advertisement however, and said the asterisks referred to the relevant terms of this promotion, including the exclusion of gifts cards. The Advertiser said this was explained in an EDM (Electronic Data Mail) which was sent to all database members. The Advertiser said the advertisement was visible to all customers, not just Decjuba “Insider” members.

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 13/576, which was Upheld and 19/089 which was Not Upheld.

The full versions of these decisions can be found on the ASA website:

<https://www.asa.co.nz/decisions/>

Decision 13/576 concerned a website advertisement for Holden vehicles which promoted a “\$2000 cash back sale.” The advertisement stated: “\$2000 cashback across the entire Holden range ... Terms and conditions apply.” The Complainant said upon visiting the dealership they learned that the advertised vehicle prices already included the \$2000 cash back.

The Complaints Board said the advertisement was likely to mislead consumers because there was a high level of ambiguity with the promotion. The Board said the likely consumer takeout of the banner offer would be a cash back deal would be \$2000 off the advertised prices of the vehicles, rather than included in the prices shown in the advertisement.

Decision 19/089 concerned an advertisement for the Samsung Galaxy Note 9 Smartphone 128GB which was on the Noel Leeming website. It included the text “Price Offer Ends” and listed the end date of the offer.

The Complaints Board said the advertisement was unlikely to mislead, deceive or confuse consumers. The Board said the use of the text ‘price offer’ in the dynamic pricing environment of a website advertisement, would generally be understood to mean the current price rather than implying any special sale offer.

The Complaints Board noted that the advertisement does not make any claim about savings being made. The Complaints Board said this pricing strategy

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, which in this case is:
 - Context: Decjuba clothing sale
 - Medium: Decjuba website
 - Audience: Visitors to Decjuba website
 - Product: Women's clothing

Consumer Takeout

The Complaints Board agreed the likely consumer takeout of the advertisement was a discount was available if you spent a certain amount of money making a purchase at Decjuba. The asterisks implied that certain terms and conditions would apply.

Was the advertisement likely to mislead or confuse consumers?

The Complaints Board agreed the advertisement was likely to mislead or confuse consumers.

The Complaints Board said there was no explanation in the advertisement about what the asterisks meant, as they did not link directly to any terms and conditions for this particular offer.

The Complaints Board noted the comment from the Advertiser that gift cards were excluded from this sales promotion. The advertisement itself however did not make it clear that gift cards could not be used to make purchases in this sale.

The Complaints Board said the advertisement was misleading, taking into account context, medium, audience and product and 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 not to be used again.

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

Decjuba are promoting/advertising a promotion on their website. A asterisk indicates that there are Terms and Conditions associated with the promotion but its extremely difficult to locate them, nor could I find a link to it. Do organizations not have to display their disclosures / exclusions up front? Should it be hidden and/or buried so far within their website that consumers are unable to locate it? Am I able to make a informed decision? Is this misleading without the full disclosure associated with a promotion?

Appendix 2

RESPONSE FROM ADVERTISER, DEJCUBA

The promotion in question is no longer running or accessible on DECJUBA's New Zealand website, <https://www.decjuba.co.nz/>.

This promotion was highlighting DECJUBA's Spend & Save program in which customers received an automatic savings when making a purchase over a specific amount, as clearly stated in the graphic on the homepage. This promotion was displayed on DECJUBA's website, EDM materials and social media channels (Instagram - @decjubaofficial).

This Spend & Save promotion did not include any product exclusion conditions and the applicable discount was automatically added to cart at checkout for all customers spending the required amounts, both of which were clearly stated on the homepage graphic in question. All other relevant terms of this promotion (including when the offer was due to end) were outlined in supporting marketing materials (EDM's sent to database members).

The DECJUBA NZ website (<https://www.decjuba.co.nz/>) has a Terms and Conditions landing page that clearly states all company policies, terms and conditions and links to any relevant current competition and promotional terms and conditions. If consumers are unable to easily locate information they are looking for they are encouraged to contact our customer service team for further information/assistance and to help them make an informed decision, as is clearly stated on our terms and conditions webpage (see below for reference).

NEW IN WOMEN D-LUXE ACCESSORIES **INSIDER** DENIM ONLINE EXCLUSIVES GIFT CARDS SALE

You agree to indemnify and hold DECJUBA harmless against any loss, damage, cost, expense, liability, action, claim, judgment or penalty suffered by DECJUBA arising directly or indirectly as a result of or in connection with:

- a breach of these Terms and Conditions by you;
- your access to or use of the Website; or
- a breach of Australian and/or International intellectual property laws by you.

SEVERANCE

If any part of these Terms and Conditions is found to be invalid or unenforceable, the remainder of the Terms and Conditions will continue to apply.

QUERIES

If you have any queries or would like more information about these Terms and Conditions please contact our customer service team via email at customerservice@decjuba.com.au.

<p>Help & Support</p> <ul style="list-style-type: none"> FAQs & Contact Size Guides Affiliates 	<p>About DECJUBA</p> <ul style="list-style-type: none"> Blog Sustainability The Hunger Project Careers Our Story 	<p>Stores</p> <ul style="list-style-type: none"> Find a Store 	<p>NEWSLETTER SIGN UP</p> <p>Enter your email address & press enter</p>
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DECJUBA values its customers greatly and strives to ensure an easy, informed and clear shopping experience across all channels so that they can always shop with peace of mind when purchasing from our website. We will continue to work towards ensuring all communications are as clear as possible and all promotions, along with any related terms and conditions, are clearly stated and easily accessible for these consumers moving forward.

Secretariat asked for a copy of the EDM (in drop box) and the purpose of the asterix

FURTHER COMMENT FROM ADVERTISER

I have attached a copy of the EDM that database members received regarding the promotion. The terms and conditions are at the bottom of the email.

The purpose of the Asterix were to reference the gift card exclusion in the promo. All discounts etc. were automatically generated at cart and clearly visible.

FURTHER COMMENT FROM ADVERTISER

It doesn't necessarily mean that everybody viewing the homepage/landing page is already a DECJUBA Insider.

The term "Insider Exclusive" refers to the fact that all insiders that are already a database members will have received the promo info first because it was sent as an EDM – these get sent prior to the new landing page going live so for them it is an "exclusive".

If somebody who wasn't already an insider views the page, they can still see the promo banner but in saying that, given the way our platform works in order for anybody to add to cart and checkout successfully they are signed up as an insider (they can although opt out of receiving marketing materials if they wish).