

COMPLAINT NUMBER	22/118
ADVERTISER	Sky Network Television Ltd
ADVERTISEMENT	Sky Sport Now Digital Marketing
DATE OF MEETING	24 May 2022
OUTCOME	Not Upheld No further action required

Summary of the Complaints Board Decision

The Complaints Board did not uphold a complaint about a mobile phone advertisement for Sky Sport Now which offered a one week “Free Trial”. The Board said the advertisement was not misleading because it was clear, in the latter part of the advertisement, that the free trial only applied to the “Month Pass” and “Annual Pass” options and not to the “Week Pass” option.

Advertisement

The first screen shot of the mobile phone advertisement for Sky Sport Now has the text “Sky Sport Now ... Stream Sky Sport and ESPN LIVE and OnDemand – Highlights, Feature Content, Sports Documentaries and more! START FREE TRIAL”.

The next screen of the advertisement said “Choose your plan ...

WEEK PASS Every Live Game for a Week \$19.99 One off payment ... Buy now.

MONTH PASS Free 7 day trial - \$39.99 Per Month ... Start 7-Day Free Trial”

ANNUAL PASS Free 7 day trial - \$399.99 ... Start 7-Day Free Trial.

Summary of the Complaint

The Complainant was concerned the phone version of the advertisement was misleading because it was not initially clear the advertised “Free Trial” did not apply to those who chose to sign up to a weekly subscription, but only applied to those who signed up to a monthly or annual pass.

Issues Raised:

- Truthful presentation

Summary of the Advertiser’s Response

The Advertiser defended the advertisement and said the wording in the advertisement makes it clear that a free 7 day trial is only applicable for the Month and Annual Passes.

Relevant ASA Codes of Practice

The Acting 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 a precedent decision, Decision 18/030, which was Upheld.

The full version of this decision can be found on the ASA website:

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

Decision 18/030 concerned an advertisement on the Noel Leeming website promoting a Boxing Day sale. The Complainant was concerned the advertisement was misleading to consumers who were not aware that a specific Gem Visa card was required in order to capitalise on the 12-month interest free offer being promoted.

The Complaints Board agreed that without a clear disclaimer indicating terms and conditions applied, the interest free offer on the product page of the website advertisement could mislead consumers by not making it clear the offer was made in conjunction with a finance partner. Therefore, it said the advertisement was in breach of the Rule 2 requirement for truthful presentation and had not been prepared with the due sense of social responsibility required by Basic Principle 4 of the Code of Ethics.

Complaints Board Discussion

The Acting 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: Promotion of Sky Sport Now products
 - Medium: Mobile phone advertisement
 - Audience: Sports fans
 - Product: Sky Sport Now content passes and free trial

Consumer Takeout

The Complaints Board agreed the likely consumer takeout of the advertisement was you can get a free trial of Sky Sport Now to stream Sky Sport, ESPN and related content, and no Sky Box is required.

Was the advertisement misleading?

The Complaints Board said the advertisement was not misleading. This is because it was clear, in the latter part of the advertisement, that the free trial only applied to the “Month Pass” and “Annual Pass” options, and not the “Week Pass” option. The advertisement did not give the option of a free trial next to the “Week Pass” product and instead provided a “Buy Now” link for the one-off week-long subscription.

The Complaints Board said consumers generally expect that if something is offered for free certain terms and conditions are likely to apply. The Complaints Board agreed that providing the free trial option for two out of three of the pass options, in close proximity to the free offer on the first screen of the advertisement, meant the advertisement was not in breach of the Code.

The Complaints Board said the advertisement was not misleading, taking into account context, medium, audience and product 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. Appeals must be made in writing with notification of the intent to appeal lodged within 14 calendar days of receipt of the written decision. The substantive appeal application must be lodged with the ASA within 21 calendar days of receipt of the written decision.

APPENDICES

1. Complaint
 2. Response from Advertiser
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Appendix 1

COMPLAINT

Sky Sport Now are advertising free trial for a week, however this isn't eligible if you'd like to pay weekly. Only if you sign up for a monthly or annual trial. The way the trial reads on a phone is very deceptive in that it doesn't clearly indicate that if you choose to sign up to a weekly subscription, a free trial isn't included. It only reads clearly on their website on desktop.

Appendix 2

RESPONSE FROM ADVERTISER, SKY SPORT NOW

Please see the attached for materials in relation to the Complaint 22118. We would like to defend the complaint.

Here is a link to our Sky Sport Now web page for reference <https://www.skysportnow.co.nz/>

In relation to the information requested in Appendix 1:

- The advertisement is still accessible
- The advertisement is on our website and mobile app
- The target audience are sport fans who are interested in streaming sport both and casual and committed.

Thank you for the opportunity to provide our response in respect of complaint *Sky Television Digital Marketing - 22/118*.

We respectfully disagree that the advertisement is in breach of principle 2 rule 2(b) of the ASA code. We believe that the wording used by us regarding the various Pass options makes clear that a free 7 day trial is only applicable for the Month and Annual Passes for the following reasons:

- Firstly, the scroll function on the mobile app allows individuals to easily scroll up and down and compare the Pass options before selecting a Pass and indeed, it is usual behaviour for users to do so prior to a purchase.
- In the descriptive boxes, beneath the WEEK PASS title '**Every Live Game for a Week**' is in bold whereas under the MONTH/ ANNUAL PASS titles, '**Free 7 day trial then**' has been written in bold, drawing attention to the fact that a 7 day free trial option only relates to the Month/ Annual Pass options. As the screenshot attached also indicates, when looking at the Week Pass option, the Month Pass option and the wording relating to a '**free 7 day trial**' is visible beneath it, again allowing the user to make the comparison and highlighting the difference between the two Passes on the same screen.
- The call to action click button under the Week Pass states 'BUY NOW' with no mention of a free trial whereas the call to action click button for the Month and Annual

Pass clearly states 'START 7-DAY FREE TRIAL'. Further, the call to action buttons are different colours, again highlighting the difference in the Passes.

- The descriptions in respect of the Month Pass and the Annual Pass refer to the 'free 7 day trial' twice whereas there is no indication or mention of a free 7 day free trial applying in respect of the Week Pass that could cause any confusion.

Overall, we believe that the wording used together with the scrolling function on the mobile app and the app layout which allows for a comparison between the Week and Month Passes makes clear that a 7 day free trial is not included in the Week Pass.

We look forward to your response.