



Ad Standards Community Panel
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AdStandards.com.au

Ad Standards Limited
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Case Report

1. Case Number :	0106-21
2. Advertiser :	Monte Carlo Pizzeria
3. Product :	Food/Bev Venue
4. Type of Advertisement/Media :	Mail
5. Date of Determination	28-Apr-2021
6. DETERMINATION :	Dismissed

ISSUES RAISED

AANA Food and Beverages Code\2.1 Truthful Honest Not Misleading or deceptive

DESCRIPTION OF ADVERTISEMENT

This flyer and Facebook advertisement depicts a pizza and states that a one metre long pizza is \$35 each, normal price \$60.

THE COMPLAINT

Comments which the complainant/s made regarding this advertisement included the following:

The flyer provided states clearly that the pizza is \$35 however upon calling to pickup a pizza they said that the price has gone up to \$40. The Flyer does not state any information around any terms and conditions or valid dates. The manager said that someone had called up a week earlier (Approximately 1st of April) and they were also asked to receive the \$35 price however were informed they would be charged \$40. The advertisement is also on the facebook page. The advertisement does not mention any terms and conditions and did not honor the price.

THE ADVERTISER'S RESPONSE



Comments which the advertiser made in response to the complainant/s regarding this advertisement include the following:

We attach, the promotional flyer was letter boxed dropped to the complainant with a copy of the restaurant's menu.

We note the flyer was two sided, the complainant failed to mention the following:

- 1. The flyer provides that the offer is for a limited time only and applicable to pick up deals only on the other side of the flyer;*
- 2. The flyer was provide between 6-8 weeks prior to the complainant attempting to order which at that time the promotion was ended;*
- 3. The menu which was provided with the flyer provides prices subject to change without notice; and*
- 4. The website also provides that all prices are subject to change without notice.*

This is provided on the attached link

<https://www.montecarlopizza.com.au/menu>

We are of the view that a new promotion was advertised for the metre pizza and the complainant was attempting to get a cheaper price. We are extremely disappointed that the complainant has resorted to lodging a baseless complaint. We are considering potential avenues in order to protect our brand and reputation.

THE DETERMINATION

The Ad Standards Community Panel (the Panel) considered whether this advertisement breaches the AANA Food and Beverages Advertising and Marketing Communications Code (the Food Code).

The Panel noted the complainant's concern that the advertisement is misleading as the advertised price was not honoured when they attempted to order the product.

The Panel viewed the advertisement and noted the advertiser did not respond.

Food Code 2.1 Advertising or Marketing Communication for Food or Beverage Products shall be truthful and honest, shall not be or be designed to be misleading or deceptive or otherwise contravene Prevailing Community Standards, and shall be communicated in a manner appropriate to the level of understanding of the target audience of the Advertising or Marketing Communication with an accurate presentation of all information including any references to nutritional values or health benefits.

The Panel noted the Practice Note to this section of the Code which states:

"The Panel will not attempt to apply legal tests in its determination of whether advertisements are truthful and honest, designed to mislead or deceive, or otherwise contravene prevailing community standards in the areas of concern to this Code.



“In testing the requirement that an advertising or marketing communication should not be designed to be misleading or deceptive, or otherwise contravene prevailing community standards, the Panel will consider the advertiser’s stated intention, but may also consider, regardless of stated intent, that an advertisement is by design misleading or deceptive, or otherwise contravenes prevailing community standards in particular regard to stated health, nutrition and ingredient components of the food or beverage product.”

The Panel noted that the Facebook and the flyer had both become publicly available on or around 28th February 2021 and promoted a one metre long pizza for \$35. The Panel noted that the complainant had advised that they had attempted to order the product on or around 9th April 2021, approximately six weeks after publication of the flyer and the Facebook post being made.

The Panel noted that neither the flyer advertisement nor the Facebook post had a disclaimer that the price was for a limited time, or advising the promotion start and end dates. The Panel noted the advertiser’s response that the flyer did contain a reference to “Pickup only deal. Limited time only” however considered that this was placed next to another promotion and it was not clear that the reference applied to the deal on the reverse side of the flyer.

The Panel considered however that most members of the community would not expect that a listed price on an advertisement would be available indefinitely, and considered that in regards to the flyer advertisement most ‘junk mail’ is advertising sales or promotions with current prices.

The Panel noted that a Facebook post by the advertiser on 10th April 2021 advertising the current price of the product did have a disclaimer advising the price was for a limited time. The Panel noted that it would have been preferable for the advertiser to remove the 28th February post stating the \$35 price once that price was superseded.

The Panel considered that while advertisers should ensure that advertising lists all terms and conditions in relation to a price, their absence would not mean that most members of the community were materially misled.

The Panel noted that the advertised price was correct at the time of the promotion, and considered that such a price becoming unavailable approximately six weeks later did not make the advertisement misleading or deceptive.

Section 2.1 Conclusion

The Panel determined that the advertisement was not misleading or deceptive and did not otherwise contravene Prevailing Community Standards, and did not breach Section 2.1 of the Food Code.

Conclusion



Finding that the advertisement did not breach the Food Code the Panel dismissed the complaint.