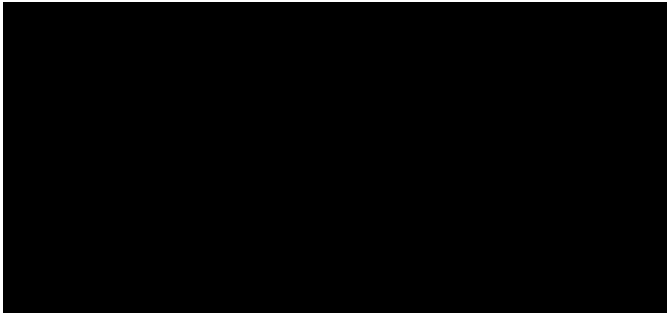


9 December 2022



**Official Information Act #22.059 – response**

1. We refer to your request received on 13 October 2022 for:
  - 1.1 The number of complaints received by the Commission regarding New World's Smeg knife promotion ("**Promotion**"), which ran from late 2020 to early 2021.
  - 1.2 Details of the enquiries made by the Commission into the Promotion, including copies of any correspondence sent to New World requesting information and copies of any responses from New World to such requests for information.
  - 1.3 Details in relation to the outcome of the Commission's enquiries into the Promotion, including (i) whether the matter is open or closed; (ii) copies of any correspondence sent to New World or any complainants regarding any decision by the Commission in relation to any enforcement response; and (iii) copies of any documents which show the Commission's reasoning in relation to which enforcement response option it would / would not take.
  - 1.4 Details of any other complaints made to or enquiries by the Commission in relation to supermarket promotions similar to the Promotion from 1 January 2021, and the outcome of those complaints and/or enquiries.
2. On 9 November 2022 the Commission extended the time limit by which we must make a decision on your request to 9 December 2022.

## Our response

3. We have decided to grant your request. As discussed, Commission staff phone numbers (DDI) are outside the scope of your request and have therefore been redacted in our response.

### *Number of complaints*

4. The Commission received **70** complaints about the Promotion in the period 3 November 2020 to 23 February 2021.

### *Enquiries/correspondence with Foodstuffs*

5. Copies of our correspondence and interactions with Foodstuffs, which are responsive to your request set out in [1.2] above, are listed in **Appendix A**.
6. In response to your request at [1.3] above, the Commission has concluded its inquiries and the matter is now closed. Please find enclosed at **Appendix B** a copy of the letter the Commission sent to Foodstuffs in June 2021, a chronology of the promotion and a copy of our investigation closure report.
7. As set out in the tables below, redactions have been made to a number of documents in Appendices A and B.
8. We consider good reasons exist to withhold this information under section 9(2)(b)(ii) of the OIA as release would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information.
9. We consider that good reasons exist for withholding this information and these are not outweighed by other considerations which would make it desirable, in the public interest, to make the information available (section 9(1) of the OIA).

### *Details of any other complaints in relation to supermarket promotions*

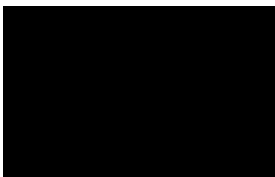
10. The Commission has received **19** similar complaints since 1 January 2021. The details of the complaints, the dates and the outcomes are set out in **Appendix C** below.
11. To identify similar complaints, we reviewed supermarket complaints received in the period 1 January 2021 to 14 October 2022. We identified 19 complaints that were about supermarket promotions where customers had to collect stickers/e-stamps to redeem products and considered these promotions similar to the Smeg knife promotion.
12. Some complaints listed in Appendix C are awaiting assessment.
13. When a consumer contacts the Commission with a complaint about a trader it is logged in the Commission's complaint database. The Commission receives thousands of complaints every year. Each complaint is initially assessed by the Screening and Enquiries Team on the basis of the information available at the time. When conducting this initial assessment, the Screening and Enquiries Team considers:

- 13.1 the likelihood of a breach of the relevant legislation (the Fair Trading Act 1986, Credit Contracts and Consumer Finance 2003, and the Commerce Act 1986);
  - 13.2 whether there are ongoing investigations into relevant parties;
  - 13.3 the Commission's Enforcement Response Guidelines;<sup>1</sup> and
  - 13.4 the Commission's strategic priorities and resourcing constraints.
- 14. The Commission has the power to act on complaints but is not required to take action in relation to all possible breaches of the legislation that we enforce.
  - 15. If a complaint is appropriate for further consideration, it is reviewed by a panel of managers and subject matter experts from within the Competition, Fair Trading and Credit Branches. The panel decides which complaints are to be prioritised for further assessment by the Branch with reference to our Enforcement Response Model.<sup>2</sup>
  - 16. This process enables us to identify complaints that best reflect our current enforcement priorities.<sup>3</sup> The outcomes of the process are not final and we may revisit any complaint at a later stage, should we wish to reconsider the issues it presents.

#### Further information

- 17. Please note the Commission will be publishing this letter responding to your request on its website. Your personal details will be redacted from the published response.
- 18. Please do not hesitate to contact us at [oya@comcom.govt.nz](mailto:oya@comcom.govt.nz) if you have any questions about this response.

Yours sincerely



OIA and Information Coordinator

<sup>1</sup> Available at: <http://www.comcom.govt.nz/the-commission/commission-policies/enforcement-response-guidelines/>

<sup>2</sup> Our Enforcement Response Model is discussed in more detail from page 3 of the Commission's Enforcement Response Guidelines, available here: [https://comcom.govt.nz/\\_data/assets/pdf\\_file/0030/62589/Enforcement-Response-Guidelines-October-2013.pdf](https://comcom.govt.nz/_data/assets/pdf_file/0030/62589/Enforcement-Response-Guidelines-October-2013.pdf).

<sup>3</sup> For further information, see: <http://www.comcom.govt.nz/the-commission/commission-policies/enforcement-criteria/>

Appendix A			
Document #	Date	Document	Reason for redactions
01	January 2021	New World "Store Informer"	s 9(2)(b)(ii)
02	8 March 2021	File note of phone call between the Commission (Amanda Kent-Johnston) and Mike Brooker (general counsel and company secretary for Foodstuffs)	No redactions
03	9 March 2021	Email from the Commission (Amanda Kent-Johnston) to Mike Brooker – request for meeting	No redactions
04	9 March 2021	Email from Mike Brooker to the Commission – receipt of previous email	No redactions
05	10 March 2021	Email from Jodie Gallagher (EA to Mike Brooker) to the Commission – arranging a meeting time	No redactions
06	10 March 2021	Email from the Commission to Jodie Gallagher – acceptance of meeting time	No redactions
07	10 March 2021	Email from Jodie Gallagher to the Commission – confirmation of meeting attendees	No redactions
08	10 March 2021	Email from the Commission to Jodie Gallagher – confirmation of meeting and sending meeting invite	No redactions
09	30 March 2021	Email from the Commission to Mike Brooker – confirmation of meeting	No redactions
10	30 March 2021	Email from Mike Brooker to the Commission – confirmation of meeting	No redactions

Appendix A			
Document #	Date	Document	Reason for redactions
11	31 March 2021	Email from the Commission to Mike Brooker – follow-up to meeting	Out of scope
12	9 April 2021	Email from Mike Brooker to the Commission – follow-up to meeting on 31 March 2021	Out of scope
13	Attached to 9 April 2021 email	Foodstuffs response to the Commission after 31 March 2021 meeting	s 9(2)(b)(ii)
14	13 April 2021	Meeting file note (from the meeting on 31 March 2021)	s 9(2)(b)(ii)
15	27 April 2021	Email from the Commission to Mike Brooker (clarification post-meeting)	s 9(2)(b)(ii) Out of scope
16	29 April 2021	Email from Mike Brooker to the Commission (answering questions)	s 9(2)(b)(ii) Out of scope
17	24 May 2021	Email from the Commission to Mike Brooker (further clarification)	s 9(2)(b)(ii) Out of scope
18	27 May 2021	Email from Mike Brooker to the Commission (in response)	s 9(2)(b)(ii) Out of scope
19	31 May 2021	Email from the Commission to Mike Brooker (further clarification)	s 9(2)(b)(ii) Out of scope
20	31 May 2021	Email from Mike Brooker to the Commission (in response)	s 9(2)(b)(ii) Out of scope
21	31 May 2021	Email from the Commission to Mike Brooker (further clarification) – second clarification from the same day	s 9(2)(b)(ii) Out of scope

Appendix A			
Document #	Date	Document	Reason for redactions
22	2 June 2021	Email from Mike Brooker to the Commission (in response)	s 9(2)(b)(ii) Out of scope

Appendix B			
Document #	Date	Document	Redactions
23	2 June 2021	Letter from the Commission to Foodstuffs	No redactions
24		Chronology of promotion	s 9(2)(b)(ii)
25	2 June 2021	Commission closure report	s 9(2)(b)(ii)

Appendix C <sup>4</sup>			
Enquiry #	Date	Details	Outcome
ENQ0550442	30 January 2021	Countdown have been doing a glass container promotion since 9 November, and apart from the first approximately month of the promotion they have been out of stock ever since. I signed up to an email notification weeks ago that was supposed to notify me of when they came back into stock. I got that notification email today and raced in to grab some, only to be told the stock (only one pellet) had come in on Thursday and sold out the same day.	NFA <sup>5</sup> – added to demand <sup>6</sup> for visibility of supermarket-related complaints
ENQ0550566	3 February 2021	I have my groceries delivered weekly from Countdown. The last time I was able to actually redeem any stickers was 19 December. Every week when I do my online order I check to see if I can redeem them and every week there are no containers at all available. I've just done an order today and yet again there isn't a single container available. They keep saying that more containers are coming. They have also extended the redemption period so it has a couple more weeks to run however the containers are still subject to availability.	NFA – added to demand for visibility of supermarket-related complaints
ENQ0550819	10 February 2021	I shop online 1-2 times per week and have been collecting e-stamps. I redeemed all my stamps for two large containers. They never arrived in my order, nor did I get any notification that there was a problem or	NFA – added to demand for visibility of supermarket-

<sup>4</sup> As at 14 October 2022.

<sup>5</sup> The Commission may decide not to take further action in relation to a complaint for a number of reasons. These reasons include, but are not limited to, circumstances where we consider the complaint is better suited to private action by the complainant, the complaint is subject to the jurisdiction of another agency, or where there is no clear breach of the law. However, each complaint and enquiry provides information that is valuable to the Commission. This contributes to future priorities, potential issues for us to watch closely or emerging issues to refer to our policy agency, MBIE. In this regard, we will monitor complaints or information we receive as we look to future prioritisation.

<sup>6</sup> A demand is the name the Commission gives a matter where we intend to complete further work. We place demands on a list and prioritise them based on our Enforcement Criteria and current strategic priorities. We review our demand lists on a regular basis and sometimes demands are removed from the list, this is called a resource review. We may remove a demand from our list of pending work for several reasons (e.g. the trader has amended its conduct, the trader is no longer operating, and/or other matters have come to our attention that have de-prioritised previous demands).



Appendix C <sup>4</sup>			
Enquiry #	Date	Details	Outcome
		have my e-stamps reinstated. I realised the containers were missing a week later and contacted Countdown customer service. They informed me that despite me redeeming my e-stamps online, it was likely my containers were given to someone shopping in-store.	related complaints
ENQ0551564	1 March 2021	<p>During the competition period the customer spent over \$2,000 shopping at Countdown to earn eStamps.</p> <p>Customer managed to redeem 40 eStamps during this period.</p> <p>During the "extended redemption" period, customer made further purchases worth over \$430 at Countdown only to find out the stores had no stock. Customer made two more attempts to redeem eStamps but still there was no stock in any store they visited.</p>	NFA – added to demand for visibility of supermarket-related complaints
ENQ0560920	10 December 2021	Countdown supermarket has been actively advertising their Bricks promotion where shoppers receive one brick for every \$30 plus additional bonus bricks when purchasing specified products. Countdown Waiwhakaiho has been unable to supply bricks due to a nationwide shortage on the last three occasions customer has shopped. Customer told to come back to fulfil the bricks when they have them in stock.	NFA – added to demand for visibility of supermarket-related complaints
ENQ0561066	15 December 2021	<p>I wish to formally complain about two aspects of the current promotion, in many ways a repeat of the Smeg promotion.</p> <p>The Terms and Conditions again say 'whilst stocks last'. It is already clear that this is 'bait advertising', and thus a breach of the Fair Trading Act.</p> <p>They have also given an RRP for each item yet it is apparent that this is an imagined figure, inflated to try to add value to their</p>	NFA – added to demand for visibility of supermarket-related complaints

Appendix C <sup>4</sup>			
Enquiry #	Date	Details	Outcome
		promotion. A search of the internet shows that none of these items are available for retail sale in New Zealand, or anywhere else in the world, so it is difficult to see how they can quote an RRP."	
ENQ0569257	12 September 2022	Customer concerns about the number of e-stamps needed for redeeming Wiltshire cutlery. Has been given contradicting information about the number required. Staff information different to advertised material.	Awaiting Assessment
ENQ0569621	22 September 2022	Complaint about Countdown Wiltshire cutlery promotion: cutlery sets out of stock, complainant alleges Countdown does not hold enough stock to fulfil promotion but continues to advertise it in order to encourage consumers to spend.	Awaiting Assessment
ENQ0569630	22 September 2022	Complaint about Countdown Wiltshire cutlery promotion: cutlery sets out of stock and complainant cannot redeem.	Awaiting Assessment
ENQ0569656	23 September 2022	Complaint about Countdown Wiltshire cutlery promotion. Customer received emails firstly informing them that the promotion was ending soon and then further emails contradicting redemption dates.	Awaiting Assessment
ENQ0569670	23 September 2022	Complaint about supermarket advertising a promotion but not having the stock available.	Awaiting Assessment
ENQ0569685	24 September 2022	Complaint about the Countdown Wiltshire Cutlery promotion. The promotion was due to end on 7 October but was changed to 1 October, and then abruptly changed to 23 September in an email sent on the evening of 22 September.	Awaiting Assessment

Appendix C <sup>4</sup>			
Enquiry #	Date	Details	Outcome
ENQ0569694	25 September 2022	Complaint about the time taken to transfer e-stamps from an old One Card to a new One Card. Countdown had run out of stock by the time the customer had got a new card and transferred the points over.	Awaiting Assessment
ENQ0569729	27 September 2022	Complaint about the Countdown Wiltshire cutlery promotion. Countdown heavily promoted the Wiltshire cutlery campaign only to cut the promotion short, and not fulfil their offer.	Awaiting Assessment
ENQ0569829	27 September 2022	Complaint about Countdown promotion. Countdown does not have enough merchandise available for redemption.	Awaiting Assessment
ENQ0569753	27 September 2022	Complaint about the Countdown Wiltshire Cutlery promotion. Allowed customers to continue to accumulate stamps when they didn't have enough stock.	Awaiting assessment
ENQ0570107	5 October 2022	Complaint about the Countdown Wiltshire Cutlery promotion. Not providing enough stock.	Awaiting Assessment
ENQ0570161	7 October 2022	Complaint about Countdown's handling of not having enough stock for the Wiltshire Cutlery promotion. This includes offering \$15 vouchers.	Awaiting Assessment