

7 February 2024

**EziBuy Limited (*in liquidation*)**

c/o [REDACTED], Manager  
Damien Hodgkinson and Katherine Barnet, Liquidators  
Olvera Advisors

*By email only:* [REDACTED] *and* [REDACTED]  
*copy:* [REDACTED] *and* [ezibuyenquiries@olveraadvisors.com](mailto:ezibuyenquiries@olveraadvisors.com)

**EziBuy Limited (*in liquidation*) and Mosaic Brands Limited**

c/o [REDACTED], Solicitor  
Uther Webster & Evans

*By email only:* [REDACTED]  
*copy:* [REDACTED]

**Fair Trading Act 1986: Warning for misleading conduct and false and/or misleading representations during EziBuy promotions**

**Introduction and Summary**

1. The Commerce Commission (the **Commission**) has been investigating EziBuy Limited (*in liquidation*) (**EziBuy**) and Mosaic Brands Limited (**Mosaic Brands**) under the Fair Trading Act 1986 (**FT Act**). Our investigation primarily considered several promotions advertised on the EziBuy website<sup>1</sup>, and associated representations. Specifically, whether representations made during the relevant promotions gave rise to concerns under the FT Act. We have now completed our investigation and are writing to inform you of our views.
2. The Commission has decided to issue EziBuy and Mosaic Brands (together, **the Companies**) with a warning because in our view the Companies have likely breached the FT Act. Namely, the Companies likely engaged in conduct that was liable to mislead the public, and made false and/or misleading representations during the relevant promotions in likely breach of sections 10 and section 13(i) of the FT Act

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<sup>1</sup> [EziBuy.com/shop/nz](http://EziBuy.com/shop/nz)

respectively. In our view, consumers were likely and/or liable to be misled as to the availability of products at a purported discount. This conduct occurred when the Companies:

- a. Used inclusive language in the primary messaging of a promotion, such as “Everything”, “Almost Everything” and “Almost All”, when there were a number of significant exclusions to the promotion (s 10 FT Act);
  - b. Made statements that products included in promotions were available at particular prices or had a particular discount applied (monetary amount or percentage) when this was not the case (s 10 FT Act); and
  - c. Advertised promotions, without disclosing or making clear to consumers that there were significant exclusions and/or key terms and conditions regarding eligibility requirements for a promotion (ss 10 and 13(i) FT Act).
3. A warning is not a finding of non-compliance; only the courts can decide whether a breach of the law has occurred,<sup>2</sup> and we have determined that at this time we will not be bringing legal action.
  4. The purpose of this warning is to inform the Companies of our view that there has been likely breaches of the FT Act, to prompt changes in behaviour and to encourage future compliance.
  5. We note that although EziBuy is currently in liquidation, it continues to trade through the website [www.ezibuy.com/nz](http://www.ezibuy.com/nz). Furthermore, Mosaic Brands, an Australian registered entity, continues to have a relatively significant presence in New Zealand through various online websites and retail stores, including but not limited to, Millers, Crossroads, Rockmans, Rivers and Katies.<sup>3</sup>

*Other conduct considered*

6. Our investigation also considered whether EziBuy’s pricing practices gave rise to concerns under the FT Act. Separate compliance advice will be given to the Companies in due course regarding pricing practices. Specifically, immediate and extended discounting,<sup>4</sup> and use of strikethrough pricing.<sup>5</sup> The Commission issues compliance advice letters in circumstances where it has identified a possible risk and/or possible non-compliant conduct. The purpose of the letter is to be educative, explain the

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<sup>2</sup> Commission’s published *Enforcement Response Guidelines* at [41].

<sup>3</sup> Other brands include Noni B, Autograph, W.Lane, and Beme.

<sup>4</sup> Immediate discounting involves advertising by comparison to a claimed original or ticket price that in fact had never been previously charged. Extended discounting involves offering a product for lengthy periods at discounted prices and comparatively short periods in which products are offered at their original (or non-discounted) ticket price. This has the effect of advertising a discount by reference to a ticket price which was not the usual price. *Commerce Commission v Strandbags Proprietary Limited* [2022] NZDC 23352.

<sup>5</sup> Strikethrough pricing can occur where a current price is given adjacent to a different (usually higher) price, with a line through it. This can suggest that the strikethrough price was the former price of the product and this may be misleading if that price had never been charged, or was not recently charged for the product.

general principles that should guide the Companies' future conduct, and how to avoid a potential breach of the FT Act.

### **Background: the Companies**

7. EziBuy is a fashion apparel and homeware retailer. EziBuy was originally established in 1978 as a mail order business based in Palmerston North. It used catalogues, from which customers could order their product selection by mail, telephone or online. Orders were delivered to consumers directly, or New Zealand customers could also click and collect or shop at six retail stores.
8. EziBuy sells its own clothing 'brands'<sup>6</sup> but also offers 'Brand Partner' products. Brand Partner products are supplied to consumers through EziBuy by third party suppliers, as part of a dropship agreement. EziBuy stated that they were not responsible for the marketing, pricing, shipping or supply of the dropship products. The Brand Partner is the importer, wholesaler and supplier of these goods.
9. EziBuy continues to have a presence in both the Australian and New Zealand markets, although the Australian part of the business has no retail stores, and the Australian e-commerce business is operated by a different company entity, EziBuy Pty. Limited.
10. In June 2017, EziBuy was acquired by Alceon Group, a major shareholder of Mosaic Brands (then known as Noni B). In November 2019, Mosaic Brands purchased a 50.1% stake of EziBuy for \$1. Mosaic Brands subsequently exercised an option to buy the remaining 49.9% for \$11 million. Mosaic Brands executed the purchase in April 2022.
11. On 3 April 2023, EziBuy Limited and six related companies<sup>7</sup> went into voluntary administration. The administrators, Damien Hodgkinson and Katherine Barnet, of Olvera Advisors, closed the six New Zealand retail stores, but licensed the continued operation of the EziBuy website to Noni B Holdings NZ Limited, another subsidiary of Mosaic Brands.
12. On 19 July 2023, EziBuy Limited and the related companies went into liquidation. The then administrators were appointed as liquidators.
13. Based on information gathered during the investigation, the Commission also understands that:
  - a. For the period 1 January 2020 to May 2022, the EziBuy website was operated by EziBuy's e-commerce management team based in Auckland and Palmerston North. However, EziBuy commenced a redundancy programme of head office staff, including the e-commerce team, between February and May 2022.

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<sup>6</sup> These include Capture, Capture European, Emerge, Grace Hill, Sara, European Collection, Euro Edit, Together, Heine, Urban and Kaleidoscope.

<sup>7</sup> These were New EziBuy Limited, EziBuy Custodian Limited, EziBuy Holdings Limited, Last Stop Shop Limited, EziBuy Operations Limited and Sara Apparel Limited.

- b. From May 2022 to April 2023, the EziBuy e-commerce site was managed by the centralised e-commerce team of Mosaic Brands based in Sydney, Australia with specific staff allocated to the EziBuy platform.

### The investigation

14. The Commission began its investigation into EziBuy following the receipt of seven complaints from consumers alleging that the primary messaging in an EziBuy promotion<sup>8</sup> was misleading. Following commencement of the investigation, the Commission extended the investigation to other similar promotions raised in complaints or from the Commission's monitoring of the EziBuy website. Of those assessed for compliance with the FT Act, five promotions are the subject of this warning, namely:
  - a. The "50% Off Everything" Promotion;
  - b. The "60% Off\* Almost All Knitwear, Jackets & Coats" Promotion;
  - c. The Gift Code Promotion;
  - d. The "40% Off\* Almost Everything" Promotion; and
  - e. The "Almost Everything 40% Off\* with Code" Promotion.

(together, **the Promotions**)
15. Based on the relevant periods that the Companies had respective control over the EziBuy website (set out at paragraph 13 above), we have determined that EziBuy is responsible for the conduct relating to the "50% Off Everything" Promotion. The remaining promotions occurred subsequent to Mosaic Brands assuming control of the website, and therefore the Commission considers that Mosaic Brands, together with EziBuy, is responsible for conduct and representations made during those promotions.
16. Details of the relevant promotions are set out in **Schedule 1** to this warning.

### Categories of conduct

17. During our investigation we obtained evidence relating to the Promotions which we assessed as giving rise to likely breaches of the FT Act. The relevant conduct can be considered as falling within the below three categories:

*Use of inclusive language in primary messaging: e.g. "Everything", "Almost Everything" and "Almost All" when there were a number of significant exclusions to the promotions*

18. During the Promotions, EziBuy made strong headline claims that suggested to consumers that all, or almost all products were included in a sales promotion. However, the promotions often had a large number of exclusions, which significantly restricted the extent of the sale. In many cases, terms and conditions applicable to the

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<sup>8</sup> This promotion is referred to in the warning as the "50% Off Everything" Promotion.

relevant promotion contradicted the headline message, but had not been made sufficiently informative, prominent or proximate enough to qualify it.<sup>9</sup>

19. This occurred in the following promotions:

a. The “50% Off Everything” Promotion;

Despite claiming that “everything” was discounted by 50%, the sale was restricted to certain brands of EziBuy clothing, and excluded whole categories of products, including shoes, jewellery, bags, lingerie, homeware and Brand Partner products. Only the term “T&C’s APPLY” accompanied the headline representation.

b. The “60% Off\* Almost All Knitwear, Jackets & Coats” Promotion;

This sale only included EziBuy branded knitwear, jackets and coats, with Brand Partner products excluded. EziBuy confirmed that only 33% of EziBuy’s knitwear, jackets and coats were discounted to 60% off or greater. Only the term “T&C’s APPLY” accompanied the headline representation.

c. The “40% Off\* Almost Everything” Promotion; and

Despite the representation that “almost everything” was included in the promotion, the Commission’s website searches revealed that a relatively small percentage of products on the website were discounted - being approximately 42% of Womenswear, 3% of Menswear and 21% of Home and Gift products.<sup>10</sup> No terms and conditions accompanied the headline representation.

d. The “Almost Everything 40% Off\* with Code” Promotion.

Despite the headline representation, only a subset (New Season styles) of the website were included in this promotion. A search of the website suggested that approximately 96% of other products were excluded. No terms and conditions accompanied the headline representation.

*Represented the availability of products at particular prices or with a particular discount when this was not the case*

20. By using inclusive language in the promotions above, EziBuy represented that a large proportion of products available on the EziBuy website were included in a promotion and would therefore receive the advertised discount. However, many products were not part of the promotion and so did not receive any discount, or received a lesser discount than that advertised.

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<sup>9</sup> The terms and conditions were usually set out in a separate ‘Promotional Terms and Conditions’ page on the EziBuy website. In direct emails to customers, EziBuy initially included a link to the terms and conditions, but from May 2022 started adding terms and conditions in a footer.

<sup>10</sup> Our searches identified the number of products in each category (Womenswear, Menswear and Home & Gift), from which we could filter by ‘full price’ products. This revealed the number of discounted products. Some of these may have been at 40% off, or at another discount level.

21. Specifically, in the “50% Off Everything” Promotion, the actual discount applied was either 30% or 50%. Additionally, in the “60% Off\* Almost All Knitwear, Jackets & Coats” Promotion, only 33% of EziBuy brand knitwear, jackets and coats were discounted to 60%. The remainder were discounted by at least 10%.

*Failed to disclose or make clear significant exclusions or key Terms and Conditions*

22. When using inclusive language to convey that most or all products were included in a sale, EziBuy would include the words “\*T&C’s APPLY”, or sometimes just a symbol (such as \* or ^), to indicate that terms and conditions applied.
23. In the promotions at paragraph 19 a. to c., there were no terms and conditions linked to the words “\*T&C’s APPLY” or to the asterisk on the EziBuy homepage, where the representation was made. Consumers would need to locate these on a separate Promotional Terms and Conditions page themselves, despite the terms and conditions setting out significant limitations to the sale.
24. In some cases, the terms and conditions themselves were, in our view, incorrect or inadequate, in that they did not correctly or fully explain the terms of sale. For example, in the “50% Off Everything” Promotion, the terms and conditions limited the sale to “fashion” and “selected styles”, but it was not clear to consumers that this meant only EziBuy brand clothing was included. Furthermore, although Brand Partner products were excluded, this was not stated with the headline or in the terms and conditions. Consumers would only discover these limitations when viewing product listings revealed that certain products were not discounted to 50%.
25. A further example of this conduct is:

a. The Gift Code Promotion:

“Our gift to you \$50 OFF\* WITH CODE 50GIFTSD” appeared over images of various clothing categories on the EziBuy homepage. Despite a \* symbol, there were no terms and conditions clearly associated with the representation and the Promotional Terms and Conditions page did not include any terms relevant to the promotion.

The Commission understands that this promotion was available on products advertised within the EziBuy July 2022 product catalogue only, and a \$200 minimum spend applied; and that the relevant terms and conditions were only included in the catalogue. However, this information was not clearly communicated to consumers shopping on the EziBuy website.

**The legislative context**

26. Section 10 of the FT Act prohibits those in trade from engaging in conduct that is liable to mislead the public as to the nature or characteristics of goods.
27. The opportunity that consumers have to purchase goods at a particular price or discounted in a particular way is, in our view, a characteristic of the good.

28. As such, representations that are not clear or accurate about which goods are included in a sale, or the actual discount available, may risk breaching s 10 of the FT Act because they may be liable to mislead the public as to the availability of products at a purported discount.
29. Furthermore, s 13(i) of the FT Act prohibits those in trade, in connection with the supply or possible supply of goods, from making a false or misleading representations concerning the existence, exclusion, or effect of any condition.
30. Regarding the Gift Code Promotion, we have considered whether there has been a false and/or misleading representation concerning the existence of any condition. Specifically, whether the silence or failure to disclose a relevant fact and key terms and conditions (here the eligibility requirements in order to obtain the discount) constitutes a misleading representation where there is a duty to disclose and/or the silence has the effect of making a positive representation untrue.

### **The Companies' response**

31. EziBuy responded to two voluntary requests for information. Some information was provided by Mosaic Brands on a voluntary basis, however they chose not to provide further information sought by the Commission. A request for information was also responded to by EziBuy's liquidators.
32. EziBuy advised that there was a significant restructure within EziBuy in August 2021, due to continued poor financial performance. This resulted in a number of staff being made redundant and key personnel resigning. A new team started in or about October 2021. EziBuy advised that this team were not informed of compliance advice previously issued by the Commission to EziBuy relating to earlier conduct of a similar nature (being inclusive type promotional representations, where there were a number of exclusions to the promotion).
33. EziBuy advised that from May 2022, it has gradually been adopting Mosaic Brands' policies and procedures. EziBuy provided Mosaic Brands' internal compliance guide for advertising and promotions, which emphasised the importance of promotional statements being factually accurate, and noted that disclaimers may not be sufficient to correct a misleading headline statement.
34. EziBuy also advised of changes they had made to their marketing workflow and promotion planning, including the implementation of secondary checks (before and after a promotion went 'live') and a sign off process.
35. In respect of the "50% Off Everything" Promotion, EziBuy explained that two errors had occurred. The first was human error, in that "50% Off Everything" imagery was used instead of "30-50% Off Everything". The second issue was an 'Internal system error' relating to the uploading of the promotion's price list. The usual checks were not completed as a new team had commenced at EziBuy, who were not yet familiar with the correct processes and procedures to follow when sending a promotion live. We note that in the days following the promotion's release, EziBuy did make changes to the promotional material to clarify the available discount and some limitations.

However, in the Commission’s view these changes did not go far enough to adequately qualify the headline representation.

36. EziBuy received 140 complaints about this promotion. All customers that contacted EziBuy in relation to the promotion were provided with a refund so that the amount customers paid for their items equated to the 50% discount detailed in the promotion – even for products that were specifically excluded from the promotion.
37. In respect of the “60% Off\* Almost All Knitwear, Jackets & Coats” Promotion, EziBuy claimed the discrepancy between the “Almost All” sales representation and the actual amount of knitwear, jackets and coats on sale was due to the exclusion of Brand Partner products.
38. However, information supplied by EziBuy suggests that Brand Partner products comprised only a very small percentage of the jackets and knitwear sold on the EziBuy website at that time.<sup>11</sup> In the Commission’s view, this was unlikely to account for the full discrepancy. Additionally, the Commission observed that the exclusion of Brand Partner products was not highlighted to customers in the promotion’s advertising or terms and conditions.

#### **The Commission’s view**

39. In this case, and having fully considered relevant information received, the Commission’s view is that the Companies’ conduct is likely to have breached the FT Act by:
  - a. engaging in conduct liable to mislead the public as to the nature and/or characteristics of goods (specifically the availability of products at a purported discount) (s 10 FT Act); and
  - b. making a false and/or misleading representation concerning the existence, exclusion, or effect of any condition (specifically by failing to include eligibility criteria and key terms and conditions) (s 13(i) FT Act).
40. Businesses need to ensure that the main message conveyed in any advertisement is accurate rather than relying on the fine print to correct a misleading impression. In our view, EziBuy’s use of a symbol and/or stating “T&C’s APPLY” was not sufficient to correct the misleading headline statement – particularly where bold inclusionary wording such as “Everything” is used.
41. The legal position on headline offers and fine print has been expressed in 2014 in *Godfrey Hirst v Cavalier Bremworth*. In this case, the Court of Appeal set out five key factors to be considered in determining whether qualifiers will prevent a headline representation from being misleading: the overall impression created; the effect of

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<sup>11</sup> On 10 October 2022, EziBuy supplied the Commission with a table setting out a list of EziBuy’s website stock at that time by product type, as well as the percentage of each product type that was Brand Partners. According to the table, Brand Partners supplied 1% of ‘Knitwear’ and 0.5% of ‘Jackets & Vests’.



the representations analysed together; whether qualifying information is sufficiently prominent, proximate and instructive; the extent of disparity between the headline impression and the qualifier; and the tendency of the advertisement as a whole to lure the consumer into erroneous belief.

42. These principles are reflected in a Commission fact-sheet available on our website.<sup>12</sup> Essentially, if the overall impression given by any advertisement is misleading it will breach the FT Act, no matter what information is provided in fine print.

### Warning

43. After weighing up the factors set out in our Enforcement Response Guidelines, we have decided it is appropriate and sufficient to conclude our investigation by issuing this warning letter rather than by issuing legal proceedings.
44. In our view, the Companies, which are substantial businesses, have a responsibility to apply appropriate legal knowledge (including knowledge of the FT Act) to their commercial activity. We consider that the conduct by the Companies is serious and at a minimum, highly careless noting:
- a. EziBuy had previously been issued compliance advice in 2020 and 2021 by the Commission for similar conduct. Although EziBuy advised that their new staff were unaware of that advice, that changed in early March 2022 when EziBuy was informed of the Commission’s new investigation and were supplied with further copies of the Commission’s previous guidance.
  - b. Throughout the investigation the Commission advised EziBuy of the promotions and representations of concern, including how representations like “Everything” may risk breaching the FT Act when that representation was false and/or misleading.<sup>13</sup> The Companies were also made aware that the Commission was monitoring the EziBuy website.
  - c. Despite the Commission’s engagement and the alleged internal changes made to EziBuy’s policies and procedures, the conduct continued. A number of the promotions that are the subject of this warning occurred subsequent to this.<sup>14</sup>
  - d. In our view, this suggests that staff were not following the Companies’ new processes and internal guidance; they were insufficient and/or ineffective to prevent potentially misleading conduct and representations; and/or there was a lack of understanding of compliance obligations under the FT Act.
45. Based on the above, we consider that there was, and may still be, serious compliance issues present. We strongly recommend that you seek legal advice if conduct similar

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<sup>12</sup> [https://comcom.govt.nz/\\_data/assets/pdf\\_file/0035/89846/Fine-print-Fact-sheet-July-2018.pdf](https://comcom.govt.nz/_data/assets/pdf_file/0035/89846/Fine-print-Fact-sheet-July-2018.pdf)

<sup>13</sup> Refer Commission letters dated 10 March 2022, 12 August 2022 and 22 March 2023.

<sup>14</sup> Four promotions occurred post March 2022 when EziBuy was first advised of the investigation, and two occurred post August 2022.

to that set out in this warning letter is continuing. We also encourage you to review your compliance procedures and policies, and levels of staff adherence with these.

46. This warning represents our opinion that the conduct in which the Companies have engaged is likely to have breached the FT Act and that legal action remains available to the Commission in future if the conduct continues or is repeated. We may draw this warning letter to the attention of a court in any subsequent proceedings brought by the Commission against either of the Companies.
47. This warning letter is public information and will be published on the case register on our website. We may also make public comment about our investigations and conclusions, such as issuing a media release or making comment to media.

### **The Commission's role**

48. The Commission is responsible for enforcing and promoting compliance with a number of laws that promote competition in New Zealand, including the FT Act. The FT Act prohibits false and misleading behaviour by businesses in the promotion and sale of goods and services.

### **Penalties for breaching the FT Act**

49. As indicated above only the courts can decide if there has been a breach of the FT Act. The court can impose penalties where it finds the law has been broken. A company that breaches the FT Act can be fined up to \$600,000 and an individual up to \$200,000 per offence.
50. You should be aware that our decision to issue this warning letter does not prevent any other person or entity from taking private action through the courts.

### **Further information**

51. We have published a series of fact sheets and other resources to help businesses comply with the FT Act and the other legislation we enforce. These are available on our website at [www.comcom.govt.nz](http://www.comcom.govt.nz).
52. You can also view the FT Act and other legislation at [www.legislation.co.nz](http://www.legislation.co.nz).
53. Thank you for your assistance with this investigation. Please contact [REDACTED] on [REDACTED] or by email at [REDACTED] if you have any questions about this letter.

Yours sincerely


[REDACTED]

[REDACTED]

Investigations and Compliance Manager (Acting)  
Fair Trading Branch  
Commerce Commission

## Schedule 1: Relevant Promotions


### The “50% Off Everything” Promotion (16 October 2021)

Representation	Why it’s a likely breach	The Commission’s view
	<p><b>Sale inclusions:</b></p> <ul style="list-style-type: none"> <li>- “Fashion” (being clothing) only; <i>but</i></li> <li>- Limited to selected EziBuy brands<sup>15</sup> of clothing in the online promotion sections.</li> </ul> <p><b>Sale exclusions:</b></p> <ul style="list-style-type: none"> <li>- Shoes, jewellery, accessories, bags, and lingerie and “new arrivals”.</li> <li>- Brand Partner products (which may have accounted for approximately 3 to 16% of the products on the EziBuy website).</li> <li>- Entire product types, including bedroom, bath, kitchen and dining products, electronics and appliances, musical instruments and pet products.</li> </ul> <p><b>Discount percentage:</b></p> <p>Of those products included in the sale, the discount available was either 30 or 50% (not 50% on all sale products).</p> <p><b>Initial Terms and Conditions:</b><sup>16</sup></p> <p><i>50% off fashion. 10% off full priced NEXT styles with promotion code NEXTSAVE10. Promotion code must be used at the time of purchase to activate the offer. Offers valid until midnight Sunday 17 October 2021, while stock lasts. The offer applies to selected styles featured in our online promotion sections only. All colours and sizes may not be available. Offer excludes new arrivals, gift cards and tops ups, and extra costs associated with delivery of gift cards, personalised gifts, large/oversized delivery items and international orders. Offer valid online, via call centre and excludes orders placed via fax, email or mail order. Offer cannot be used in conjunction with any other offer or promotion on a single item, nor applied to previously processed orders. Our standard returns policy applies. Outlet styles are not able to be returned or exchanged unless they are faulty (look for items with the yellow ‘outlet’ tag). Should you not wish to keep your Outlet purchase, we recommend you gift to a friend or donate to your favourite charity. If the garment is faulty, Ezibuy will meet its obligations under the Consumer Guarantees Act.</i></p>	<p>The promotion’s wording created the impression that “everything” on the EziBuy website was included in the sale and would be discounted by 50%. This was likely to mislead consumers as there were a significant number of exclusions.</p> <p>In the Commission’s view, the qualifier “*T&amp;C’s APPLY” was insufficient to correct the misleading wording in the advertisement. Limitations on a sale should be clearly advertised, and proximate to the main sales message. In this case, customers needed to navigate to a separate page of the website to locate the promotional terms and conditions. Even once this had occurred, the terms and conditions did not clearly explain the limitations to the sale. For example, the exclusion of Brand Partner products was omitted, and it was not clear to consumers that ‘fashion’ or ‘selected styles’ meant only EziBuy brand clothing.</p> <p>Furthermore, the promotional advertising was liable to mislead consumers about the extent of the discount available, as many products were only 30% off (rather than the advertised 50%).</p>

<sup>15</sup> These were: Capture, Capture European, Emerge, Grace Hill, Sara, European Collection, Euro Edit, Together, Heine, Urban and Kaleidoscope.

<sup>16</sup> The terms and conditions set out were provided as part of a complaint to the Commission. In response to the Commission’s Request for Information, EziBuy provided a different set of terms and conditions that were allegedly for this period that contained the following modification: 50% off Capture, Emerge, Grace Hill, European Labels & Sara excluding new arrivals.

## The “60% Off\* Almost All Knitwear, Jackets & Coats” Promotion (Approx. 31 July to 1 August 2022)

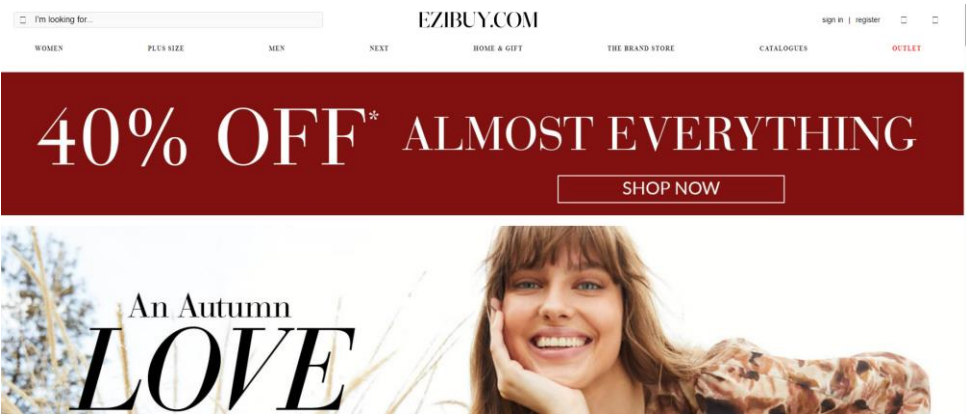
Representation	Why it’s a likely breach	The Commission’s view
 <p>The image shows a promotional banner for EziBuy. At the top, it says 'View Online' and 'EZIBUY.COM'. Below that are navigation links: 'FASHION', 'NEW', 'HOME', and 'SALE'. The main banner is red and white, featuring the text 'EZIBUY PRESENTS SUPER WEEKEND WINTER SALE' in a stylized font. Below this, it says '60% OFF* ALMOST ALL KNITWEAR, JACKETS &amp; COATS'. There is a 'SHOP NOW' button and a small note '*T&amp;C'S APPLY'. To the right of the text is an image of a woman wearing a dark, heavy coat.</p>	<p><b>Sale inclusions:</b></p> <ul style="list-style-type: none"> <li>- Knitwear, jackets and coats; <i>but</i></li> <li>- Limited to selected EziBuy brands in the online promotion sections (being 33%).</li> </ul> <p><b>Sale exclusions:</b></p> <ul style="list-style-type: none"> <li>- 67% of EziBuy brand Knitwear, jackets and coats; and</li> <li>- Brand Partner knitwear, jackets and coats.</li> </ul> <p><b>Discount percentage:</b></p> <p>Only 33% of EziBuy brand knitwear, jackets and coats were discounted to 60% or greater. The remainder was discounted by at least 10%.</p> <p><b>Terms and Conditions:</b><sup>17</sup></p> <p><i>Super Weekend. 60% off selected styles in our online promotion sections only. Offer valid from 29th July 2022 for a limited time only. Offer only valid for new online and call centre orders. Offer cannot be applied to previously placed orders. Offer cannot be used in conjunction with any other discount, offer or promotion. Subject to stock availability. Offer excludes, gift cards or top-ups, and cost of delivery. Our standard returns policy applies. Outlet styles with the red ‘outlet’ tag can only be returned or exchanged if they are faulty. Should you not wish to keep your outlet purchase, consider gifting it to a friend or donating it to your favourite charity.</i></p>	<p>In the Commission’s view, consumers reading the headline representation would understand that although there are some exclusions to the sale, those exclusions would be minimal given “almost all” coats and jackets are included. However, only 33% of EziBuy’s knitwear, jackets and coats were discounted to 60% off or greater.</p>

<sup>17</sup> Image and terms and conditions taken from an EziBuy promotional email of 31 July 2022. A subsequent sale extension on 1 August 2022 modified the T&C’s to “Super Weekend Extended”.

## The Gift Code Promotion (Observed 4 and 8 August 2022 on the EziBuy website)

Representation	Why it's a likely breach	The Commission's view
<p><b>Website representations:</b></p> <p>On the EziBuy homepage, the words “Our gift to you \$50 OFF* WITH CODE 50GIFTSD” were placed over images of various clothing categories, such as:</p>  <p>The image shows a woman wearing a white top. A promotional banner is overlaid on the top left of the image, reading: "Our gift to you \$50 OFF WITH CODE 50GIFTSD". Below the image, the word "Tops" is written, and a "SHOP NOW" button is visible.</p>	<p>This promotion gave the impression that consumers could use the gift code 50GIFTSD on a purchase to receive \$50 off. Although there was a * symbol, there were no visible qualifiers stating ‘T&amp;C’s apply’ and the Promotional Terms and Conditions section of the website did not include any relevant terms.</p> <p>When asked, EziBuy stated that the offer was a code from the EziBuy July 2022 catalogue and the * symbol denoted the terms and conditions, located in the <b>digital catalogue:</b></p>  <p>The image shows a promotional banner with the text: "Our gift to you \$50 OFF WITH CODE 50GIFTSD Valid on orders of \$200 or more before 14 August 2022." The \$50 OFF is written in large letters with a small ^ symbol above the F.</p> <p><i>^\$50 off when you spend \$200 or more in a single transaction, excluding the delivery fee. The promotional code 50GIFTSD must be used at the time of purchase to activate the offer. Offer valid till 14/08/2022. Offer valid for single use only by the original recipient. Offer only valid for new online and call centre orders. Offer cannot be used on previously placed orders. The offer cannot be used in conjunction with any other coupon or promotion code. Subject to stock availability. Our standard returns policy applies. Outlet styles with the red ‘outlet’ tag can only be returned or exchanged if they are faulty.</i></p> <p><i>Should you not wish to keep your outlet purchase, consider gifting it to a friend or donating it to your favourite charity. Offer excludes brand partners, gift cards or top-ups, and delivery cost.</i></p> <p>This specified the need to spend \$200 or more to use the gift code and advised that Brand Partner products were excluded. EziBuy also informed the Commission that the gift code was only valid on products included in the EziBuy catalogue.</p>	<p>In the Commission’s view, consumers seeing the representation (\$50 OFF* WITH CODE 50GIFTSD) on the EziBuy website, without qualification, would likely consider that if they applied that code to their purchase, they would receive \$50 off. However, this depended on their meeting the eligibility requirements necessary to qualify for the discount, which had not been made known to them.</p> <p>The promotion’s terms and conditions were not located in Promotional Terms and Conditions page of the EziBuy website and could only be found in the digital catalogue. However, this was not communicated to consumers seeing the promotion advertised on the website. As such, they would not be aware of the \$200 spend requirement or the exclusion of Brand Partner products. Even if they did locate the terms and conditions in the catalogue, this did not clearly explain that the sale only applied to items in the catalogue.</p>


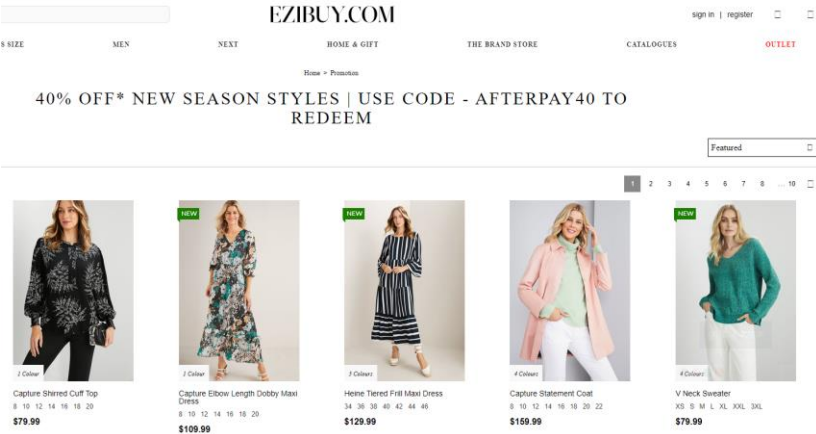
## The “40% Off\* Almost Everything” Promotion (Observed 23 February 2023 and 1-2 March 2023 on the EziBuy website)

Representation and Terms and Conditions	Why it’s a likely breach	The Commission’s view
 <p><b>Terms and conditions:</b>  <i>40% OFF ALMOST EVERYTHING. This Promotion applies in our online promotional sections in a single transaction excluding delivery fee. Offer valid until midnight Friday 24th February 2023. Offer only valid for new online and call centre orders. Offer cannot be used on previously placed orders. Offer cannot be used in conjunction with any other discount, offer or promotion. Subject to stock availability. Offer valid for single use only by the original recipient. Our standard returns policy applies. Outlet styles are not able to be returned or exchanged unless they are faulty (look for items with the red ‘outlet’ tag). Should you not wish to keep your Outlet purchase, we recommend you gift to a friend or donate to your favourite charity. If the garment is faulty, EziBuy will meet its obligations under the Consumer Guarantees Act." Offer excludes brand partners, gift cards or top-ups, and cost of delivery.</i></p>	<p><b>Sale inclusions:</b>            - Products in the online promotion sections.</p> <p><b>Sale exclusions:</b>            - Brand Partner products</p>	<p>In the Commission’s view, consumers reading the headline representation would understand that although there are some exclusions to the sale, those exclusions would be minimal given “Almost Everything” was represented to be included. This was not the case, as our searches of the website found approximately 42% of Womenswear, 3% of Menswear and 21% of Home &amp; Gift products were discounted,<sup>18</sup> and of those, it is likely that some were not priced at 40% off.</p> <p>The exclusion of Brand Partner products from the sale was mentioned on the Promotional Terms and Conditions page, in a separate part of the website. However, it was not made clear in the homepage advertising - even though it was a significant exclusion from the sale given the increased volume of Brand Partner products.<sup>19</sup></p>

<sup>18</sup> Figures taken from a website search on 23 February 2023.

<sup>19</sup> At the time of our search, 7,685 of the 13,491 womenswear products were Brand Partners, 1,172 of the 1,319 menswear products were Brand Partners and 1,610 of the 1,900 Home & Gift products were Brand Partners.

## The “Almost Everything 40% off\* with Code” Promotion (Observed 16 and 20 March 2023 on the EziBuy website)

Representation	Why it’s a likely breach	The Commission’s view
<p><b>Homepage of the EziBuy website:</b></p>  <p>When a customer clicked on the sales banner and was taken through to <b>the promotional page</b>, they saw this:</p> 	<p><b>Sales inclusions:</b></p> <ul style="list-style-type: none"> <li>- New Season EziBuy brand styles in the online promotional sections.</li> </ul> <p><b>Sale exclusions:</b></p> <ul style="list-style-type: none"> <li>- Brand Partner products.</li> <li>- All products that are not ‘New Season’, (including ‘new arrivals’).</li> </ul> <p>A search of the website on 20 March 2023 found 602 products included in the promotion. A search of all products in the Womenswear, Menswear and Home &amp; Gift categories, totalled 16,205 products.</p> <p><b>Terms and conditions:</b>  <i>40% Off* NEW SEASON STYLES. This Promotion applies in our online promotional sections in a single transaction excluding delivery fee. The promotional code AFTERPAY40 must be used at the time of purchase to activate the offer. Offer valid until midnight 20 March 2023. Offer only valid for new online and call centre orders. Offer cannot be used on previously placed orders. Offer cannot be used in conjunction with any other discount, offer or promotion. Subject to stock availability. Our standard returns policy applies. Outlet styles are not able to be returned or exchanged unless they are faulty (look for items with the red ‘outlet’ tag). Should you not wish to keep your Outlet purchase, we recommend you gift to a friend or donate to your favourite charity. If the garment is faulty, EziBuy will meet its obligations under the Consumer Guarantees Act." Offer excludes preorder, new arrivals, brand partners, gift cards or top-ups, and cost of delivery.</i></p>	<p>The wording of the promotion suggests that consumers would obtain 40% off most of the products on the website, by using the specified code. The reality was that only a subset (New Season styles) of the website was discounted to that level, and approximately 96% of other products may have been excluded.</p> <p>This type of advertising has the effect of enticing consumers to shop on the EziBuy website, before revealing that the advertised discounts are limited in scope. While a customer could discover the limitations to the sale by clicking through to the promotion, we consider this is insufficient to correct the misleading nature of the headline representation because:</p> <ul style="list-style-type: none"> <li>• The impression given by headline representation is plainly misleading; and</li> <li>• Customers should not be required to click through to discover significant limitations to a promotion.</li> </ul>