



23 September 2024

ACCC takes Woolworths and Coles to court over alleged misleading ‘Prices Dropped’ and ‘Down Down’ claims

The ACCC has commenced separate proceedings in the Federal Court against Woolworths Group Limited (Woolworths) (ASX: WOW) and Coles Supermarkets Australia Pty Ltd (Coles) (a subsidiary of Coles Group Limited - ASX: COL) for allegedly breaching the Australian Consumer Law by misleading consumers through discount pricing claims on hundreds of common supermarket products.

The ACCC’s allegations relate to products sold by each of Woolworths and Coles at regular long-term prices which remained the same, excluding short-term specials, for at least six months and in many cases for at least a year.

The products were then subject to price rises of at least 15 per cent for brief periods, before being placed in Woolworths’ ‘Prices Dropped’ promotion and Coles’ ‘Down Down’ promotion, at prices lower than during the price spike but higher than, or the same as, the regular price that applied before the price spike.

“Following many years of marketing campaigns by Woolworths and Coles, Australian consumers have come to understand that the ‘Prices Dropped’ and ‘Down Down’ promotions relate to a sustained reduction in the regular prices of supermarket products. However, in the case of these products, we allege the new ‘Prices Dropped’ and ‘Down Down’ promotional prices were actually higher than, or the same as, the previous regular price,” ACCC Chair Gina Cass-Gottlieb said.

“We allege that each of Woolworths and Coles breached the Australian Consumer Law by making misleading claims about discounts, when the discounts were, in fact, illusory.”

“We also allege that in many cases both Woolworths and Coles had already planned to later place the products on a ‘Prices Dropped’ or ‘Down Down’ promotion before the price spike, and implemented the temporary price spike for the purpose of establishing a higher ‘was’ price,” Ms Cass-Gottlieb said.

The ACCC alleges the conduct involved 266 products for Woolworths at different times across 20 months, and 245 products for Coles at different times across 15 months. The representations were made on pricing tickets displayed to consumers in-store on supermarket shelves and online, usually with a ‘was’ price displayed showing what the price was during the short-term price spike and the date of that price.

The ACCC identified this conduct through consumer contacts to the ACCC and social media monitoring, and then conducted an in-depth investigation using its compulsory powers.

“Many consumers rely on discounts to help their grocery budgets stretch further, particularly during this time of cost of living pressures. It is critical that Australian consumers are able to rely on the accuracy of pricing and discount claims,” Ms Cass-Gottlieb said.

“We allege these misleading claims about illusory discounts diminished the ability of consumers to make informed choices about what products to buy, and where.”

The ACCC estimates that Woolworths and Coles sold tens of millions of the affected products and derived significant revenue from those sales.

The ACCC is seeking declarations, penalties, costs and other orders. The ACCC is also seeking community service orders that Woolworths and Coles must each fund a registered charity to deliver meals to Australians in need, in addition to their pre-existing charitable meal delivery programs.

Alleged conduct

The ACCC alleges that the supermarkets offered certain products at a regular price for at least 180 days. They then increased the price of the product by at least 15 per cent for a relatively short period of time, and subsequently placed it onto their 'Prices Dropped' or 'Down Down' program.

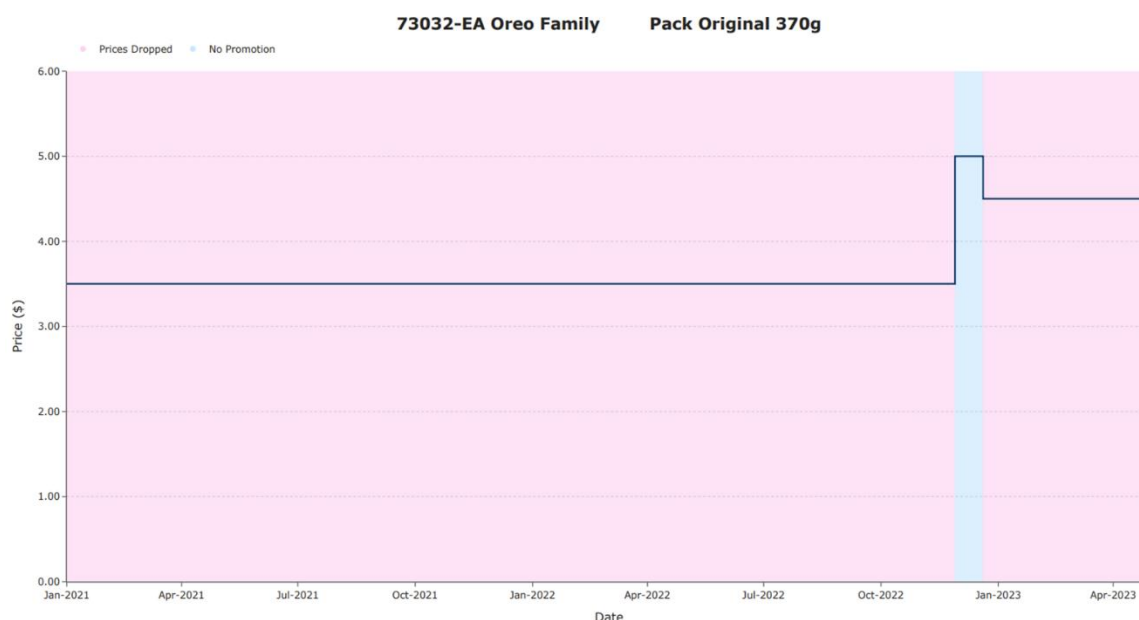
The ACCC alleges the display of the Prices Dropped and Down Down tickets was misleading, as the price of the products was in fact higher than or the same as the regular price at which the supermarket had previously offered the products for sale.

Alleged conduct by Woolworths

The ACCC alleges that Woolworths made false or misleading representations to consumers about the prices of 266 products during the period between September 2021 and May 2023.

Products affected include Arnott's Tim Tams biscuits, Dolmio sauces, Doritos salsa, Energizer batteries, Friskies cat food, Kellogg's cereal, President butter, Listerine mouthwash, Moccona coffee capsules, Mother energy drinks, Mr Chen's noodles, Nicorette patches, Ocean Blue smoked salmon, Oreo cookies, Palmolive dishwashing liquid, Raid insect spray, Sprite soft drink, Stayfree pads, Twisties, Uncle Tobys muesli bars, and Vicks VapoDrops.

Example - Oreo Family Pack Original 370g



From at least 1 January 2021 until 27 November 2022, Woolworths offered the Oreo Family Pack Original 370g product for sale at a regular price of \$3.50 on a pre-existing 'Prices Dropped' promotion for at least 696 days.

On 28 November 2022, the price was increased to \$5.00 for a period of 22 days. On 20 December 2022, the product was placed on a 'Prices Dropped' promotion with the tickets

showing a 'Prices Dropped' price of \$4.50 and a 'was' price of \$5.00. The 'Prices Dropped' price of \$4.50 was in fact 29 per cent higher than the product's previous regular price of \$3.50.

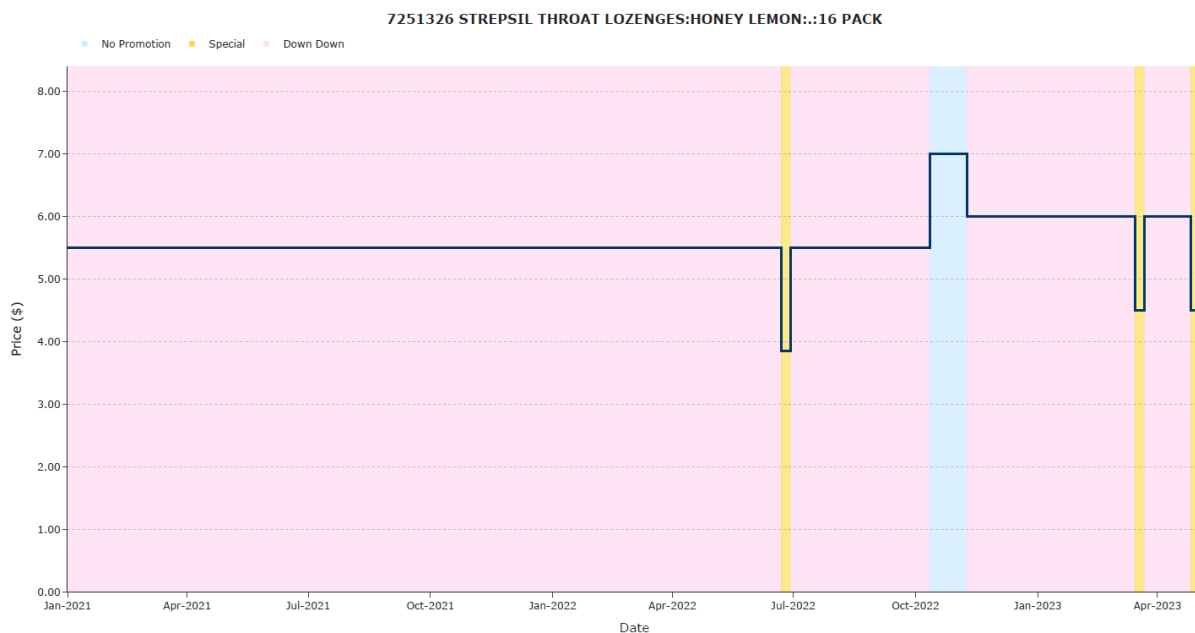
In this example, the ACCC alleges Woolworths had planned the temporary price spike to establish a new higher 'was' price for the subsequent 'promotion'. Woolworths had decided (after a request from the supplier for a price increase) on or around 18 November 2022 to take the product off 'Prices Dropped', increase the price, and then put the product back on to 'Prices Dropped' three weeks later.

Alleged conduct by Coles

The ACCC alleges that Coles made false or misleading representations to consumers about the prices of 245 products during the period between February 2022 and May 2023.

Products include Arnott's Shapes biscuits, Band-Aids, Bega cheese, Cadbury chocolates, Coca Cola soft drink, Colgate toothpaste, Danone yoghurt, Dettol multi-purpose wipes, Fab laundry liquid, Karicare formula, Kellogg's snack bars, Kleenex tissues, Libra tampons, Lurpak butter, Maggi two-minute noodles, Nature's Gift dog food, Nescafe instant coffee, Palmolive shampoo, Rexona deodorant, Sakata rice crackers, Sanitarium Weet-Bix cereal, Strepsils lozenges, Sunrice rice, Tena pads, Viva paper towels, Whiskas cat food, and Zafarelli pasta.

Example Strepsils Throat Lozenges Honey & Lemon 16 pack



From at least 1 January 2021 until 11 October 2022, Coles offered the Strepsils Throat Lozenges Honey & Lemon 16 pack product for sale at a regular price of \$5.50 (on a pre-existing 'Down Down' promotion) for at least 649 days, including one seven-day short-term special.

On 12 October 2022, the price was then increased to \$7.00 for a period of 28 days. On 9 November 2022, the product was placed on a 'Down Down' promotion with the tickets showing a 'Down Down' price of \$6.00 and a 'was' price of \$7.00. The 'Down Down' price of \$6.00 was in fact 9 per cent higher than the product's previous regular price of \$5.50.

In this example, the ACCC alleges Coles had planned the temporary price spike to establish a new higher 'was' price for the subsequent 'promotion'. Coles had decided (after a request

from the supplier for a price increase) on or around 7 October 2022 to take the product off 'Down Down', increase the price, and then put the product back on to 'Down Down' four weeks later.

ACCC Supermarkets inquiry

The ACCC was directed by the Treasurer in January 2024 to conduct an inquiry into the Australian supermarket sector, pricing practices and the relationship between wholesale, farmgate and retail prices.

The ACCC's investigation into the conduct which is the subject of these proceedings pre-dates this inquiry. The inquiry will not consider the issues in dispute in these proceedings.

Note to editors

The ACCC does not regulate supermarket prices.

The ACCC has taken proceedings in respect of alleged breaches of the Australian Consumer Law, which provides that businesses must not make false or misleading statements about prices.

Separate proceedings are brought against Woolworths and Coles, and the ACCC is not making any allegation of any collusion or anti-competitive conduct by Woolworths and Coles as part of these proceedings.

The ACCC is not alleging any contravention of the ACL by any of Woolworths' and Coles' suppliers in these proceedings.

The maximum penalty for each breach of the Australian Consumer Law increased on 10 November 2022, part way through the period of the alleged conduct. For contraventions from 10 November 2022, the maximum penalty is the greater of:

- \$50,000,000
- if the Court can determine the value of the 'reasonably attributable' benefit obtained, three times that value, or
- if the Court cannot determine the value of the 'reasonably attributable' benefit, 30 per cent of the corporation's adjusted turnover during the breach turnover period for the contravention.

Any penalty that might apply to this conduct is a matter for the Court to determine and would depend on the Court's findings. The ACCC will not comment on what penalties the Court may impose.

Background

Woolworths runs the largest supermarket chain in Australia, with about 1,140 Woolworths supermarket stores across the country.

The 'Prices Dropped' Program is promoted by Woolworths as a shelf price reduction program designed to offer Woolworths' customers consistently low prices over a prolonged period. The objective of the Prices Dropped Program was to lower the standard shelf price of a product from its previous standard (or regular) shelf price.

Example of a Prices Dropped ticket



Coles is the second-largest supermarket chain in Australia, operating more than 840 stores nationally.

Coles introduced the 'Down Down' Program in June 2010 and marketed it as a promotional campaign designed to reduce the regular shelf price of commonly purchased products — thereby offering customers predictable and reliable value on the items they purchased the most and reducing the cost of their shopping basket.

Example of a Down Down ticket



Separate to these proceedings, in December 2023, following a complaint by CHOICE and an investigation by the ACCC, Coles announced refunds for thousands of customers after it raised the price on 20 products that it had promised would remain 'locked' for a certain period of time as part of Coles' 'Dropped and Locked' promotion.

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Concise statements

These documents contain the ACCC's initiating court documents in relation to these matters. We will not be uploading further documents in the event these initial documents are subsequently amended.