

FEDERAL COURT OF AUSTRALIA

Australian Competition and Consumer Commission v Coles Supermarkets Australia Pty Ltd [2026] FCA 598

JUDGMENT SUMMARY

In accordance with the practice of the Federal Court in some cases of public interest, importance or complexity, the following summary has been prepared to accompany the reasons for judgment and orders made today. This summary is intended to assist in understanding the outcome of this proceeding and is not a complete statement of the conclusions reached by the Court. The only authoritative statement of the Court's reasons is that contained in the published reasons for judgment, which will be available on the Court's website. This summary will also be made available there.

The Australian Competition and Consumer Commission (ACCC) has alleged that Coles Supermarkets Pty Ltd (Coles) engaged in misleading and deceptive conduct, and made false or misleading representations, between February 2022 and May 2023 (the **relevant period**), when Coles temporarily increased the retail prices of 245 products (**affected products**) before placing those products on 'Down Down' promotions. The Down Down pricing tickets stated the price at which the product was available for sale during the Down Down promotion (the **Down Down price**) and, in most cases, a 'Was' price for the product which was the temporarily increased price. The Down Down prices were lower than the temporarily increased prices, but were higher than, or the same as, the price at which each product had ordinarily been offered for sale prior to the temporary increase. The ACCC has alleged that the Down Down tickets represented to consumers that the product's Down Down price was a genuine reduction to, or discount from, the product's previous regular price. The ACCC says that the representation was false or misleading because the 'Was' price shown on the ticket was the temporarily increased price, not the product's previous regular price.

A class action has also been commenced against Coles advancing materially the same allegations as made by the ACCC.

An initial trial on all issues of liability in the ACCC proceeding and the class action (**joint liability trial**) was conducted with respect to a sample of affected products, comprising twelve products and fourteen Down Down tickets.

I have concluded that the Down Down tickets for the twelve sample products conveyed a representation to ordinary consumers that Coles had reduced the price of the product from the ‘Was’ price and, implicitly, that the reduction in price involved a real or genuine discount. The vast majority of ordinary consumers, when shopping, would not have formed any conscious belief about the period for which the product had been offered for sale by Coles at the ‘Was’ price, beyond an intuitive sense that the discount being promoted was genuine and not artificial. Nevertheless, incorporated within the notion of a genuine discount from an identified previous price is the notion that the identified previous price was a price at which the product had been ordinarily offered for sale by Coles for a reasonable period.

In assessing whether each of the Down Down tickets for the sample products was misleading, it is necessary to evaluate all of the factors that bear upon the question whether the ‘Was’ price shown on the ticket was a price at which the product had been ordinarily offered for sale for a reasonable period, such that the discount shown on the ticket can be regarded as a genuine discount. Those factors include the commercial circumstances in which the price of the product had been increased, the level at which the ‘Was’ price was set, the period for which the product was sold at the ‘Was’ price, and the volume of products sold at that price.

Having evaluated the circumstances in which Coles increased the retail prices of the sample products before placing those products on the impugned Down Down tickets, I have concluded that the price increases all resulted from supplier cost price increases, and that Coles increased the prices in a commercially justifiable manner. Coles did not select an artificially high ‘Was’ price for the sample products in order to increase the perceived discount on the Down Down ticket. The sample products were offered for sale at the ‘Was’ price in the ordinary course of Coles’ business and the sample products were sold in commercial volumes at the ‘Was’ price.

The remaining factor that must be considered is the period for which the sample products were offered at the ‘Was’ price. The question that must be answered is whether the discount stated on the Down Down tickets was not a genuine discount because the sample products were only offered for sale at the ‘Was’ price for a short period, typically four weeks and sometimes less. In this industry context, involving manufactured and packaged grocery products sold in a large supermarket, what is the minimum period that the product must have been offered for sale at

the ‘Was’ price in order to conclude that the product had been offered for sale at that price for a reasonable period and the discount stated on the Down Down ticket was genuine? The answer to that question is necessarily an evaluative judgment on which reasonable minds may differ.

In answering that question, I have taken into account a number of matters. Coles’ supermarkets are open for extended trading hours every day of the week and each store is visited by thousands of consumers every day. Nevertheless, the evidence indicates that, aside from products sold on Special or other short-term promotions, the prices that Coles charged for manufactured and packaged products (with which this proceeding is concerned) were relatively stable from month to month, with relatively infrequent changes. The Down Down and Every Day Value promotional mechanics required prices to remain stable for twelve weeks and six months respectively. The evidence indicates that Down Down prices were typically stable for much lengthier periods. The evidence with respect to ordinary shelf or white ticket prices also suggests that those prices were relatively stable. I have also taken into account Coles’ own assessment, as reflected in its internal policies as at January 2022, that a product could not be sold on a Down Down promotion, showing a discount from a previous price, unless the product had been offered for sale at the previous price for a minimum period of twelve weeks. Although Coles subsequently relaxed that internal policy in March 2022, it did so in response to perceived competitive pressure from its closest competitor.

Taking those matters into account, I have concluded that the Down Down tickets for the sample products would not have been misleading if the products had been sold at the ‘Was’ price for a minimum period of twelve weeks immediately preceding the Down Down promotion. This reflects a conclusion that, if an ordinary consumer were told that the product had been ordinarily sold by Coles at the ‘Was’ price for a period of twelve weeks immediately prior to the Down Down promotion, the consumer would believe that the Down Down price was a genuine discount to the ‘Was’ price. Conversely, if the ordinary consumer were told that the product had been ordinarily sold by Coles at the ‘Was’ price for a period that was materially shorter than twelve weeks, the consumer would not believe that the Down Down price was a genuine discount to the ‘Was’ price.

On that basis, I have concluded that thirteen of the fourteen Down Down tickets that were the subject of consideration in the joint liability trial were misleading because the relevant products were not sold at the ‘Was’ price stated on the ticket for a reasonable period and, as a

consequence, the discount represented on the ticket was not genuine. It follows that, in offering the sample products on those Down Down tickets, Coles:

- (a) engaged in conduct in trade or commerce that was misleading, in contravention of s 18(1) of the Australian Consumer Law (**ACL**); and
- (b) made a misleading representation with respect to the price of the sample products in connection with the promotion of the supply of the sample products in trade or commerce, in contravention of s 29(1)(i) of the ACL.

I have concluded that the Down Down ticket for the Nature's Gift Dog Food product, which offered the product at a price of \$4.50, was not misleading because it did not include a 'Was' price on the Down Down ticket.

JUSTICE O'BRYAN

14 May 2026