

# NAD Decision Provides Guidance on Price Comparisons

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Ahold and Lidl are grocery retailers. In a recent challenge before the NAD, Ahold argued that Lidl ads claiming that consumers could save when shopping at Lidl's stores instead of Ahold's stores—including Food Lion, Stop & Shop, and Giant Food—were misleading. The decision provides some helpful guidance for companies making price comparisons. Here are some of the highlights.

## **How often should you check prices?**

Various Lidl ads stated that consumers could save money when they purchased specific items at its stores compared to Ahold stores. Ahold argued that many of the ads were misleading because they featured prices that were stale at the time the ads ran. When making price comparisons, how often should you check a competitor's prices?

NAD noted that there isn't a brightline rule and that "the exact cut-off period may change depending on the specific pricing practices of the parties and the expectations of consumers." In this case, because Ahold changed many prices weekly, NAD determined that Lidl should check prices within seven days of running an ad.

Lidl pointed to a disclosure that specified the date of the comparison. NAD didn't think that cured the issue, noting that the disclosure "was not always present and was sometimes in a small font and hard to read." NAD recommended that the disclosure be presented in a clear and conspicuous manner and include a date within seven days of the ad.

## **What prices should you use in comparisons?**

When making its comparisons, Lidl used Ahold's non-discounted prices, rather than the discounted prices offered through Ahold's free loyalty programs. The record showed that the majority of Ahold's customers receive discounted prices under these programs, and even non-members regularly obtain the discounted prices in stores.

NAD worried that "customers accustomed to the discounted price may reasonably understand comparative claims to be taking into account their loyalty discount." Accordingly, although Lidl could compare to non-discounted prices, NAD recommended that "Lidl disclose whether the comparison is to the base price or to the discounted loyalty price."

## **Can you compare apples to oranges?**

Lidl advertised that consumers could save when purchasing the "exact same basket" at Lidl compared to an Ahold store. Although the baskets contained similar items, they were not the same.

For example, Lidl sometimes compared private label items in its basket to national brand items in the Ahold's basket.

NAD noted that consumers generally expect apples-to-apples comparisons. If an advertiser compares apples to oranges, it must clearly explain the differences between the products. Not surprisingly, NAD found that the phrase "exact same basket" expressly communicates that the items are identical. Therefore, NAD recommended that Lidl stop making these comparisons.

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Advertisers need to be careful when comparing prices, especially in today's environment when retailers often change their prices much faster than they used to. It's important to get a sense quickly when your competitors change their prices and tailor your checks accordingly. You also need to make sure that you clearly disclose what you're comparing.