

## “SOCIAL-MEDIASTER”!: THIS TIME A DODGY LIPSTICK OFFER LEAVES PROMOTER, OUTLETS AND CUSTOMERS RED-FACED

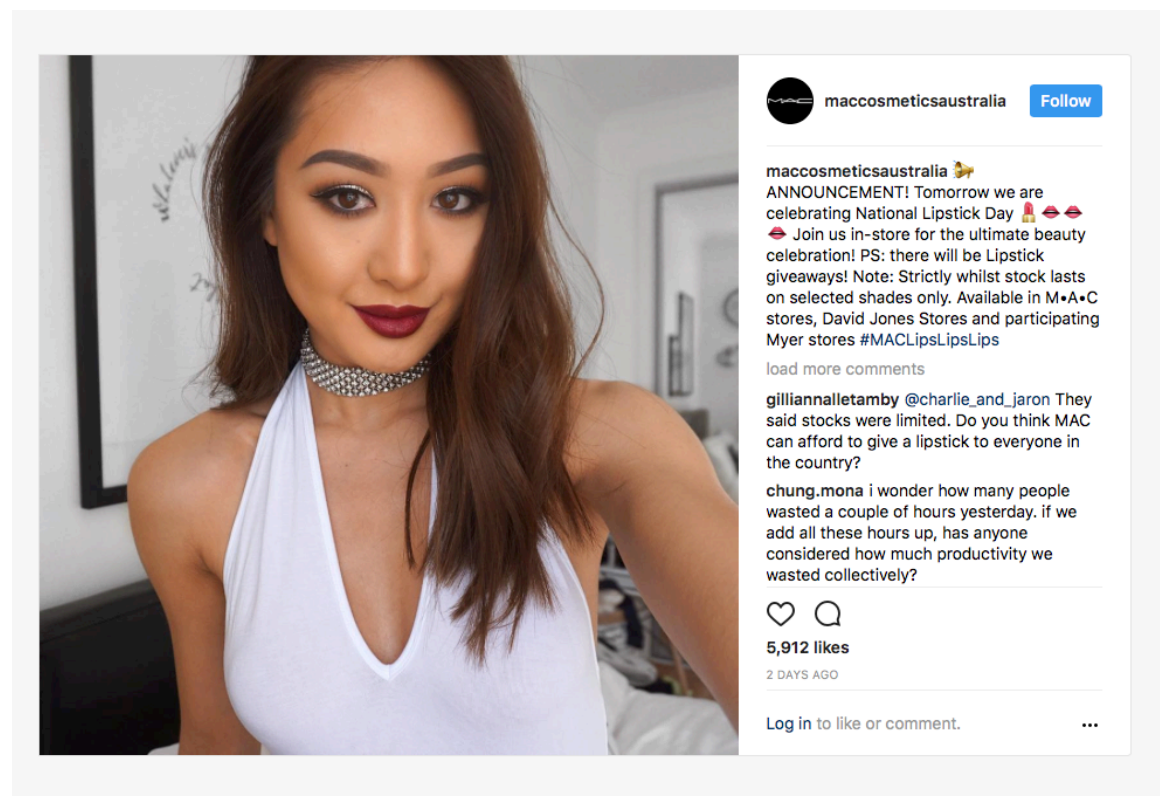
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Recently we updated you on the perils of trade promotions conducted on social-media ([Swimsuit Offer Exposes Dangers Of Over Redemption](#)). This time, a giveaway to promote “National Lipstick Day” from MAC on its Instagram account has resulted in thousands of disappointed customers when supplies failed to meet demand. This serves as another reminder to take care with consumer offers on social media, where such offers can quickly go viral and have unintended consequences.

### So, MAC – What Happened?

MAC Cosmetics Australia promoted a free lipstick offer on its Instagram account over the weekend, announcing that it was celebrating “National Lipstick Day”, and noted that there would be “Lipstick giveaways”.



The offer was very popular and thousands of people queued up at MAC outlets, David Jones and Myer to take advantage of the offer. However, although the post did say that the offer was available “strictly whilst stocks last on selected shades only”, this expression gave no indication that the stocks in each store were very limited, with some stores having as little as 40 free lipsticks to give away. When customers turned up to redeem the offer, most were turned away once the limited stocks were quickly exhausted. MAC has now experienced a wave of negative PR after customers flooded its Instagram account and their own social media complaining in many cases if

having wasted time travelling to a store and queuing up only to learn the stock was already exhausted.

### **What does this mean for you?**

It is important to bear in mind that advertising an offer and failing to disclose that it is limited or has other very pertinent limitations is technically misleading and deceptive conduct. If a company knowingly makes an offer that it cannot fulfill, that is an offence known as “bait advertising”. In this case, it is very concerning that MAC failed to disclose the limited nature of the offer with more direct and clear language. Had it done so, it would likely have been in the clear.

In order to insulate yourself from this risk, you should ensure the limitations of your offer are clearly communicated, regardless of your media of choice. Social media is no excuse. Brands must also avoid relying on ambiguous language such as the expression “while stocks last”, or “Conditions apply” as these are not a panacea to all forms of limitation, nor do they absolve you from all risk. Any significant limitations should be disclosed, as it was clear in the case of MAC that simply stating “whilst stocks last” was not helpful as the expression did not clearly communicate that stocks were severely limited in each store. Given the demand that should have been anticipated for the offer, it should have been made much clearer that stocks of the lipsticks themselves were very limited, to give consumers a clearer idea of how fast the offer may be redeemed.

This also raises another pertinent point – how good are you at forecasting demand, and what is the expectation in this regard? Generally speaking, if your offer goes extremely well, and is much more effective than your wildest dreams (congratulations by the way!), what does that mean for you legally? In short, you need to do your best to base your expectations on previous offers you may have run, general demand for the relevant sort of product, price, and other such factors. If you do all of that, and do it reasonably, and the demand for your offer far exceeds what you reasonably expected, this will be a much more defensible position than if you do not properly and reasonably forecast demand.

What other pointers should you follow when putting together a giveaway style offer? We would at least recommend that you ask yourself these questions:

- (i) Do you have a maximum number of claims you can honour?
- (ii) Do you believe there is a chance this limit could be reached or exceeded?
- (iii) Will you be unable to fulfill excess claims?

If you answer “yes” to all three questions then you should ensure that you prominently disclose the limitation on claims in your advertising material. Any other limitations on claims, including any age restriction or limits on claim frequency (i.e. one per day, one per person etc.) should also be disclosed.

Please also note that in certain circumstances a limited offer can be regarded as a game of chance and require trade promotion lottery permits in certain jurisdictions in Australia. As the rules stand currently, a lottery permit will be required (i) in SA, if the total number of claims to be awarded nationally will exceed \$5000 in value, (ii) in ACT if the total number of claims to be awarded to ACT residents will exceed \$3000 in value and there is no way of determining the exact order of the claims being received, and (iii) in NSW if it will not be known at the time the participant submits the claim whether or not they will receive the offer, and there is a chance they will not.

Lastly, in addition to the promotional considerations, it should also be noted that social media platforms normally contain anti-spam provisions in their terms of use, which discourage or outright prohibit the encouragement of users to spam their friends or followers, by constantly reposting the same image. Whether or not such activity would ever fall foul of Australia’s own Spam legislation is yet to be considered, but companies should always take care in this regard, and ensure reasonable limits are in place for their social media promotions.

If you would like further information on the above and how it impacts on your next marketing campaign, please contact one of our experts below.

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