

Complaint Summary

1. The Complainant, David Dickson, made a human rights complaint, which was accepted on November 17, 2020. Dickson stated that Costco Wholesale Canada Ltd., discriminated against him in the area of **goods, services, accommodation and facilities** on the grounds of physical disability, contrary to section 4 of the *Alberta Human Rights Act* (the Act).
 - a. The Complaint was accepted, and much time and effort has been given to this ACCEPTED complaint.
2. Dickson stated that on November 16, 2020, he was refused entry to the Costco location on Winterburn Rd in Edmonton. A manager whose first name was Ken, stopped Dickson at the door and told him he would be required to wear a mask. Dickson stated he was exempt from wearing a mask and provided a copy of his exemption letter to staff but was ignored. A second manager named Dave was called over and who repeated that Dickson would be required to wear a mask. He was presented the option of wearing a shield but felt that as AHS and the City of Edmonton bylaw clearly stated that a shield is not a replacement for a mask he should not have to wear one. He also explained that he was unable to wear one.
 - a. These FACTS are not in question and are explained in the original response and complaint. How can the AHRC consider an accommodation being the offer of something that was **against the law**? Would they support a suggestion by the manager that I break into Costco overnight when no-one is present as a reasonable accommodation? At least there would be no-one there!
 - b. I would refer again to page 9 of the document "Recommendation Memo Attachments.pdf"
 - c. A face shield is illegal to be used in the alternate of wearing a mask. Costco was, and if they still provide this option, are breaking the City bylaw. To suggest I, or any other person, specifically break the law to 'accommodate' Costco whilst discriminating against the disabled is literally criminal.
3. One of the managers told Dickson that he could use "instacart" instead but Dickson stated that it wasn't an equivalent service as he can't get his eyes examined or select his own produce. He also could not take advantage of in-store pricing, product samples etc.
 - a. This has been explained in the response as it is a 'Frustrated' offer that was re-iterated by Costco legal counsel despite NOT BEING AVAILABLE TO ME DUE TO MY ADDRESS.
 - b. I would refer again to pages 2, 3, 4, 6 of the document "Recommendation Memo Attachments.pdf" at a minimum.
 - c. See also Appendix A enclosed here.
4. Dickson stated that two other people came in without a mask or shield to cancel their membership while he was there, and were allowed to enter the store.
 - a. I didn't just state it, THIS IS SHOWN ON THE VIDEO PROVIDED, but excluded in this recommendation. Why is that?
5. Dickson said he was concerned about this interaction being misrepresented and asked for someone to record the interaction. He provided this recording to the Commission.
 - a. Yet this is not included in the recommendation. Why? And considering the misrepresentations made by both Costco and the AHRC in the complaint process, it appears that the concern was completely justified.
6. Dickson provided a medical note dated May 6, 2020 which states that he "has prior health conditions whose symptoms are exacerbated by wearing a mask."
 - a. This was the reason the Complaint was ACCEPTED.

There is a significant amount of relevant detail missing from this complaint summary that would cover the 'response summary' specifically. Why is this clearly biased view being presented here? It is almost as if the AHRC is acting for the benefit of Costco, not the disabled. The additional stress I am feeling with this ongoing and discriminatory saga is beyond belief. I thought better of the Human Rights Commission up to this point. However, this document and my experience make me question the ethical, moral and legal behaviour of this organisation. I only hope the commissioner can restore faith in an organisation whose mandate is to protect against discrimination and any other human rights issues.

Response Summary

7. Justin Turc, Legal Counsel for Costco, provided a response on its behalf of the Respondent on February 8, 2021. He stated that throughout the COVID 19 pandemic, Costco has taken great care to protect its employees, members and guests. It has required use of masks among the safety measures it has adopted.
 - a. This statement is patently FALSE. Why did COSTCO implement the change on the day they did? The Provincial Mandate had not been brought into effect and the city Bylaw had been in full effect for over 2 months without any issues with my attendance at COSTCO.
 - b. On August 1st, 2020, the City of Edmonton brought in a Mask Mandate with exemptions, that COSTCO Canada honoured until November 16th, 2020.
 - c. On November 12th, 2020, COSTCO Canada announced facemasks as of November 16th, 2020. At that time, there were 8,305 active cases in Alberta, no State of Emergency and no Provincial Mandate for masking.
 - d. On November 16th, 2020, with no Provincial Mandate and the same unchanged City mandate in place, COSTCO refused me entry to the store for the first time ever. Offers made were against the Bylaw's, AHS guidance, Human Rights legislation and were also frustrated. Therefore, these were not accommodations by any definition. This was clearly explained at the time. Yet in their response to this complaint, Costco's legal team doubled down on this false premise and added to it with a significant ad hominin attack on a disabled police officer.
8. Between May and November of 2020, Costco's face covering policy included an exemption for individuals who could not wear a face covering for medical reasons. In response to the increasing number of cases, the efficacy of face coverings becoming more apparent, and direction from public health officials, Costco revised its policy to remove the exemption in November 2020.
 - a. Actually, the statement on the Costco website said Costco would abide by local masking laws. Until November 16th, 2020, Costco did just that. After that date and until July 1st 2021, they no longer followed that direction. Instead, Costco implemented a blanket discrimination that prevented my access to services available up to November 16th, 2020 and since July, 2021.
9. For those who do not wear masks, Costco has provided alternatives, including online shopping, grocery delivery and pickup services and curbside pick-up for prescriptions. As well, Costco allows immediate family members who can wear a face covering to use a member's membership card to shop on their behalf.
 - a. This was addressed in the previous response. Instacart is not an option and Costco knows this.
 - b. My Costco Card is a CREDIT CARD so to have someone else use the card would be a breach of the terms and conditions of the card and potentially a crime. Again, this is outlined in my response. How can someone at AHRC consider that taking part in a crime is a 'reasonable accommodation'?
 - c. This has been explained in the response as a 'Frustrated' offer that was re-iterated by Costco legal counsel despite NOT BEING AVAILABLE TO ME DUE TO MY ADDRESS.

- d. I would refer again to pages 2, 3, 4, 6 of the document "Recommendation Memo Attachments.pdf" at a minimum.
- e. See also Appendix A enclosed here.

10. Costco stated that it is required to provide a safe environment for its workers and members. As well, pursuant to the Public Health Order it must implement practices to minimize the risk of transmission of infection. As a result, Costco has installed plexiglass barriers, set up physical distancing requirements, implemented cleaning and disinfecting practices, promoted hygiene with its staff and members, and required personal protective equipment.

- a. Yet I was welcomed in without a mask on August 23rd, 2021, on September 2nd, 2021 and lastly on September 17th, 2021 despite a provincial mandate, local city bylaw and a State of Emergency. A face shield was not offered as an alternative and I spoke to many staff including managers during these visits WITHOUT A MASK or other face covering.
- b. I also observed others in the store not wearing a face covering at the time I was there.
- c. I have spoken to many people since who have had no issues shopping in Costco since July 1st, 2021, without a face covering, despite the current provincial mandate, local city bylaw and a State of Emergency.
- d. During my visits since July 1st, 2021, I have not seen the same level of adherence to cleaning that was present before. Costco was then in clear breach of many of the Provincial Orders and expectations as regards their lax cleaning policies such as not cleaning the conveyor belt and pin pads between customer use. Other smaller businesses have been brutally penalised and targeted by AHS and even shut down for less. This two-tier approach to enforcement against Costco along with the allowance of discrimination against the disabled is extremely troubling.
- e. COVID 19 has been present throughout this pandemic and yet up until November 16th, 2020, I was invited in and treated very well by Costco. I have also been treated well since July 1st, 2021, including the three specific visits on August 23rd, 2021, September 2nd, 2021 and September 17th, 2021. See Appendix B for the receipt from the September 17th visit where I purchased an item I regularly have purchased at Costco for almost 26 years, that is not available through Instacart or for pickup. Note that at the time of the September 17th, visit the reported active case count in the Province was 19,201, a State of Emergency declared and provincial and municipal bylaws in effect. Yet unlike November 16th, I was welcomed by all staff without issue.

11. Costco stated that face coverings are highly effective and an essential component of their response to COVID-19, which poses a serious, and potentially fatal, threat to health and safety. Costco's implementation of stringent standards, including requiring everyone who enters Costco's warehouses to wear a face covering, without exception, is both a reasonably justified and necessary measure to prevent the spread of COVID-19 in Costco's warehouses and protect the health and safety of Costco's employees, members, and guests.

- a. Yet from July 1st to no later than September 17th, 2021, I have been able to go to Costco without a facemask or face shield.

12. Costco stated that on the day in question, the incident was pre-meditated as a media stunt, as it was recorded and then posted on Facebook and YouTube. Further, the respondent outlines the complainant's comments in a podcast and in several publications where he states personal opinions against covid-19 controls and safe guards including masks. The respondent alleges a violation of section 10 of the Act and requested that due to the reasons mentioned above the complaint should be dismissed as frivolous and vexatious.

- a. This is only based on the matter being recorded by a third party, which actually ensured there was no confusion or misrepresentation. As a retired Police Officer, I can say there is no best evidence than this video at the time. The reality is that Costco refused me access to go

shopping and continued to do so until July 1st, 2021, despite not offering any reasonable accommodation. And from July 1st to no later than September 17th, 2021, I have been able to go to Costco without a facemask or face shield. This accusation is ridiculous as can be seen by the video and the responses from Costco. In a world where it is almost impossible to do anything without being on camera and it being uploaded to the internet, are we to now throw out human rights complaints based on this response? If so, what is the point of a Human Rights office?

- b. Also, Costco's 'safeguards' included the use of a face shield specifically against the bylaw in place, making it a crime. It is getting disturbing to see Costco's lawyers and AHRC considering this a reasonable accommodation over and over.

Additional Information

13. Costco confirmed that while the face covering policy was in effect, Costco required any individuals entering the warehouse to wear a face covering, whether they were coming to the warehouse to shop or access membership services, including cancellation of membership. As alternatives to entering the warehouse, members could cancel their membership by: calling Costco's call center; or requesting curbside assistance outside the warehouse.

- a. This is clearly false from the video. I now have to question the ethics of the person writing this document. On top of excessive and unreasonable delays in dealing with my complaint, these are quite clearly flagrantly false statements. In addition, there are clearly times when personal attendance is required as in the case of a my cash back received, in person, on September 17th, 2021, at the suggestion of a Costco manager who assisted me at the checkout.

Recommendation

It is recommended that the complaint be dismissed.

Reasons for Recommendation

1. Under human rights law, a complainant must show that they have a characteristic protected from discrimination under the *Act*, must have experienced a negative or adverse impact, and the protected characteristic must have been a factor in the negative or adverse treatment.
 - a. I am unclear as to how this has not been proven beyond a reasonable doubt in the material in the possession of the AHRC.
2. Under human rights law, service providers are obligated to provide reasonable accommodation to service recipients who require it because of a mental or physical disability, to the point of undue hardship.
 - a. Yet Costco did not. Costco suffered no hardship; they still took my membership fees despite not letting me in the store. However, I have suffered significant hardship as has been demonstrated.
3. Dickson's medical note states that wearing a mask exacerbates adverse symptoms due to Dickson's previous health conditions and the Respondent did not accommodate his request to shop in its store without wearing a mask.
 - a. This is the point. How is this a reason to recommend dismissal?
4. However, even if that is the case, there is still the question of whether denying the requested accommodation would have created an undue hardship. Assessing whether there is an undue hardship requires considering whether an accommodation would have created onerous conditions for Costco, including whether accommodating Dickson creates a risk to health and safety, and who bears that risk.
 - a. Costco were requesting the use of a face shield in lieu of a facemask which was explicitly barred by the City bylaw and AHS recommendations due to a face shield allegedly protecting the

wearer and a mask allegedly protecting others. However, since Costco mandated the covering, they had multiple outbreaks at their warehouses (but were never shut down, unlike smaller businesses). Recommending a face shield went against all health and safety guidance at the time and was technically illegal under the bylaw due to it being offered used as a replacement for those even without a viable accepted exemption under the bylaw. I also note that this is no longer offered by Costco as an option at the door. Also, Costco refused me access to go shopping and continued to do so until July 1st, 2021 despite not offering any reasonable accommodation. Yet from July 1st to no later than September 2nd, 2021 I have been able to go to Costco without a facemask or face shield despite higher active cases, a provincial mandate and a state of emergency. This access to Costco without facemasks is happening at every store and by many people. Did Costco suddenly not care about their staff and customers as of July 1st, 2021?

5. In this case, the information supports that accommodating Dickson would have created a safety risk for the Respondent's staff and other customers. Costco created and followed a mask policy that was consistent with public health recommendations aimed at preventing the spread of Covid-19. To not require someone to wear a mask places others at risk, and the requirement that all customers wear a mask was reasonable and justifiable.
 - a. See above. If this had been the case the safety risk existed prior to November 16th, 2020 and since July 1st, 2021, yet Costco had no issues with my attendance at that time. In fact up until November 16th, 2021 Costco had not just welcomed me in they had allowed me to 'jump the queue' and not have to wait outside due to my disabilities.
6. In addition, Costco met their obligations under the duty to accommodate, because they offer alternatives to in-store shopping. This is reasonable accommodation for people who cannot wear a mask, as human rights law does not require that perfect or preferred accommodation be provided. Requiring customers to wear a mask for in-store shopping is reasonable and justifiable, both because the policy and practice of requiring a mask follows public health guidelines, and the policy is in place to protect the health and safety of others.
 - a. No they were not, as has been explained in detail in the response. The fact that the person writing this continues to ignore that clear fact is very disturbing as suggests some sort of bias to my disability or me personally.
7. Costco requested that this complaint be dismissed on the basis that it has been brought forward by the complainant for reasons that are frivolous and vexatious.
 - a. This has been covered over and over and the recommendation here does not support it, but rather just mentions Costco said it was. It is interesting though that the clear and outlandish ad hominem attack by Costco is not mentioned in this summary.
8. In this case, while the complaint was not dismissed as a contravention of section 10(2) of the Act, it is important to note that process provided for in the Act is not provided to use as a part of personal disputes, or as part of a campaign of hurtful behavior directed toward the Respondent.
 - a. Then why does the recommendation repeatedly push the position of Costco as if it was supporting them?
 - b. Costco's responses were almost totally focused on ad hominem attacks rather than addressing the concerns of a long-time disabled member. So, why mention this only in relation to Costco's accusation and not Costco's behaviour? This write up and action after such a long investigative process (that exceeded the mandated 60 day requirement by some significant factor) is deeply disturbing and now could be seen as a matter of public interest. In fact, all benefit to a fault has

been provided to Costco throughout this process. However, many facts that support my complaint are ignored repeatedly to the point of undue distress to myself.

9. Finally, Dickson raises the issue of the City of Edmonton mask bylaw, which allows for exemptions without proof of a disability. The Commission has jurisdiction with Respondent only under the *Act*; the Commission has no jurisdiction with respect to whether the Respondent's actions were consistent with a municipal bylaw.
 - a. However, Costco used the existence of the bylaw in their online position to support mandatory masking! This is outlined in the response again. Costco relies on this to support their position of discrimination. As such, Costco made it relevant to the complaint.
 - b. In addition, the bylaw made the alleged 'accommodation' of a face shield illegal so therefore not a true accommodation. Why does this fact keep getting avoided to the detriment of a just investigation and management of a clear Human Rights complaint?

Appendix A.

As is seen in the following screen shots (and in the original response to Costco), Instacart is not an accommodation because I am UNABLE TO USE IT! In addition, this 'service' even if available comes with significant restrictions and additional costs. Again, this has been covered in detail in the document included with the recommendation "Recommendation Memo Attachments.pdf".

This service is limited to specific Postal Codes. Costco has my full postal code which has not changed in 26 years. I cannot use this service, therefore it is legally 'frustrated' as an offer. This was clearly explained, but apparently ignored by the AHRC to this point. Why?

The screenshot shows the Costco website interface. At the top, there is a navigation bar with links for Warehouse Savings, Find a Warehouse, Get Email Offers, Customer Service, and regional dropdowns for CA, AB, and EN. Below this is the Costco logo and a search bar. A secondary navigation bar lists various departments like Shop All Departments, Grocery, Business Centre, Pharmacy, Services, Photo, Travel, Optical, Membership, and Locations. A status bar indicates the delivery postal code (V3J), current order total (\$0.00), and a surcharge warning: "Add \$75.00 More to Avoid Costco Grocery Surcharge".

The main content area is titled "Grocery & Household" and features a sidebar with category links: Pantry & Dry Goods, Snacks, Candy & Nuts, Household, Cleaning & Paper Products, Meat & Seafood, Coffee & Tea, Gluten-Free, International Foods, Organic, Water & Beverages, and View More Categories. Two main promotional cards are displayed:

- Costco Grocery:** Non-perishable food and household supplies. No Costco Grocery Surcharge with orders of \$75 or more before taxes and additional shipping and handling. An additional shipping and handling fee per unit will apply to shipments going to certain areas. The additional fee will be quoted at checkout. Delivery is expected within 2 to 10 business days. Includes a "SHOP NOW" button and a "Learn more" link.
- Same-day Delivery:** Powered by Instacart. Available for all groceries including fresh food and household supplies. The order minimum is \$35 before taxes. You must be present for delivery. Item prices are marked up higher than your local warehouse. Instacart uses the markup to pay for their delivery service. Includes a "SHOP NOW" button and a "Learn more" link.

At the bottom of the page, there is a promotional banner for Halloween featuring Cadbury Favourites, Maynards, and a "150" anniversary logo, with the text "Make your Halloween".

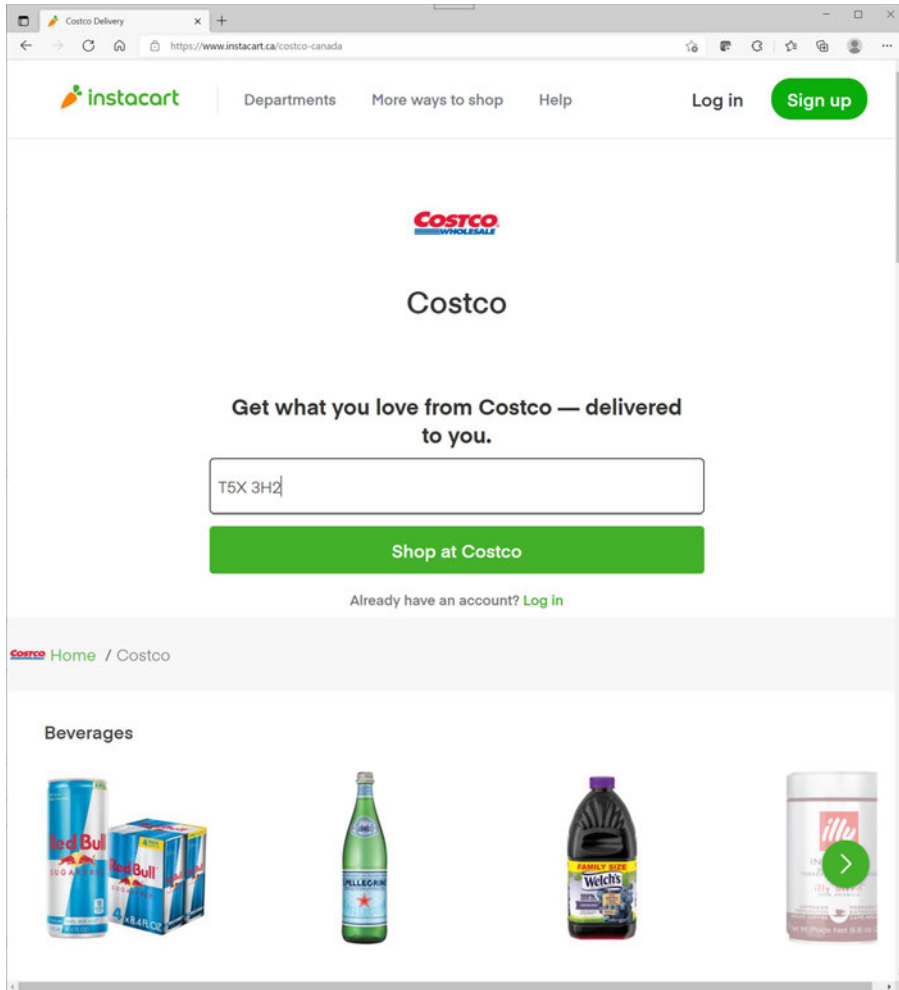


Figure 1: Instacart with Edmonton Postal Code T5X 3H2 – October 6th, 2021

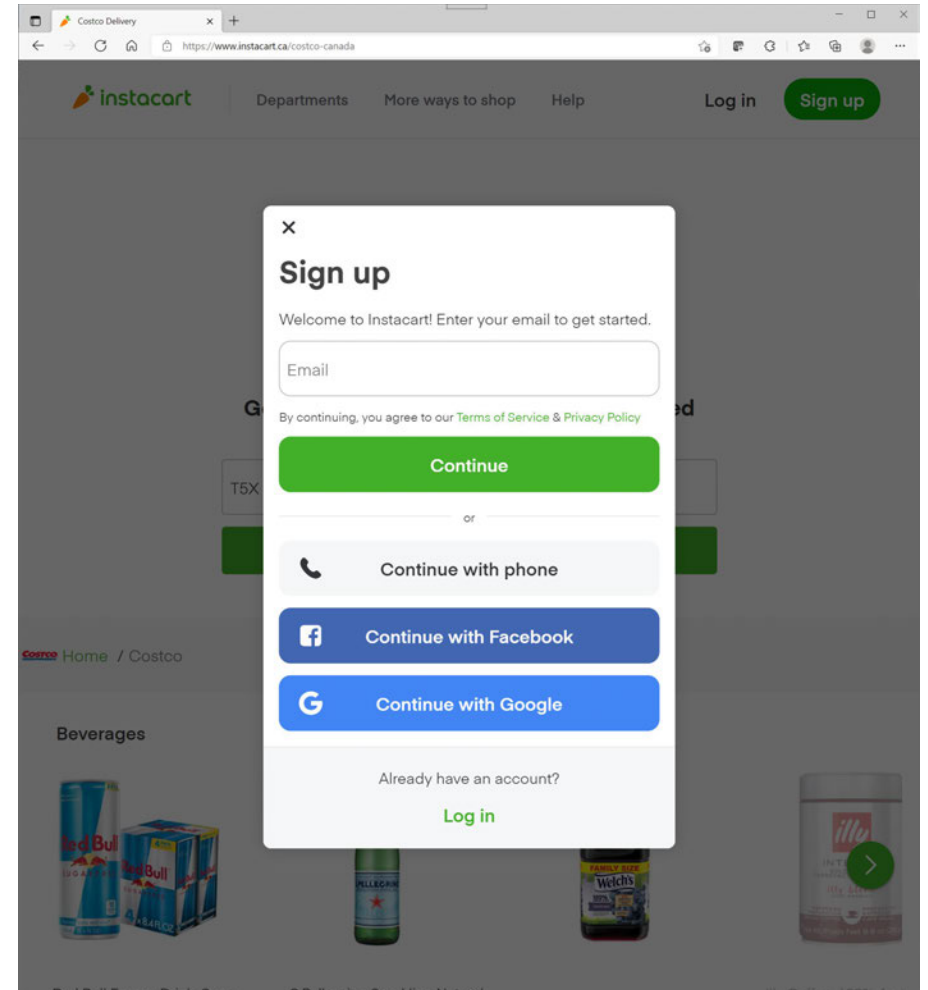


Figure 2: Instacart response to Edmonton Postal Code T5X 3H2 – October 6th, 2021

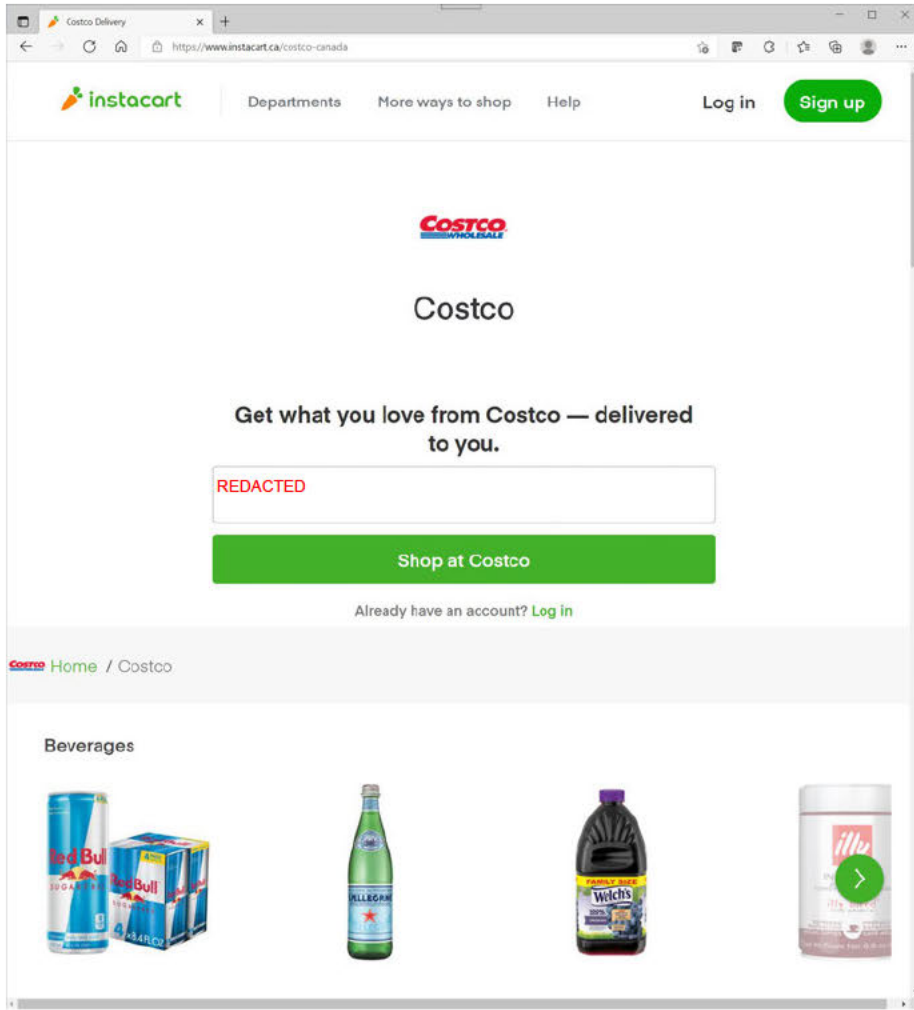


Figure 3: Instacart with MY Postal Code REDACTED – October 6th – October 6th, 2021

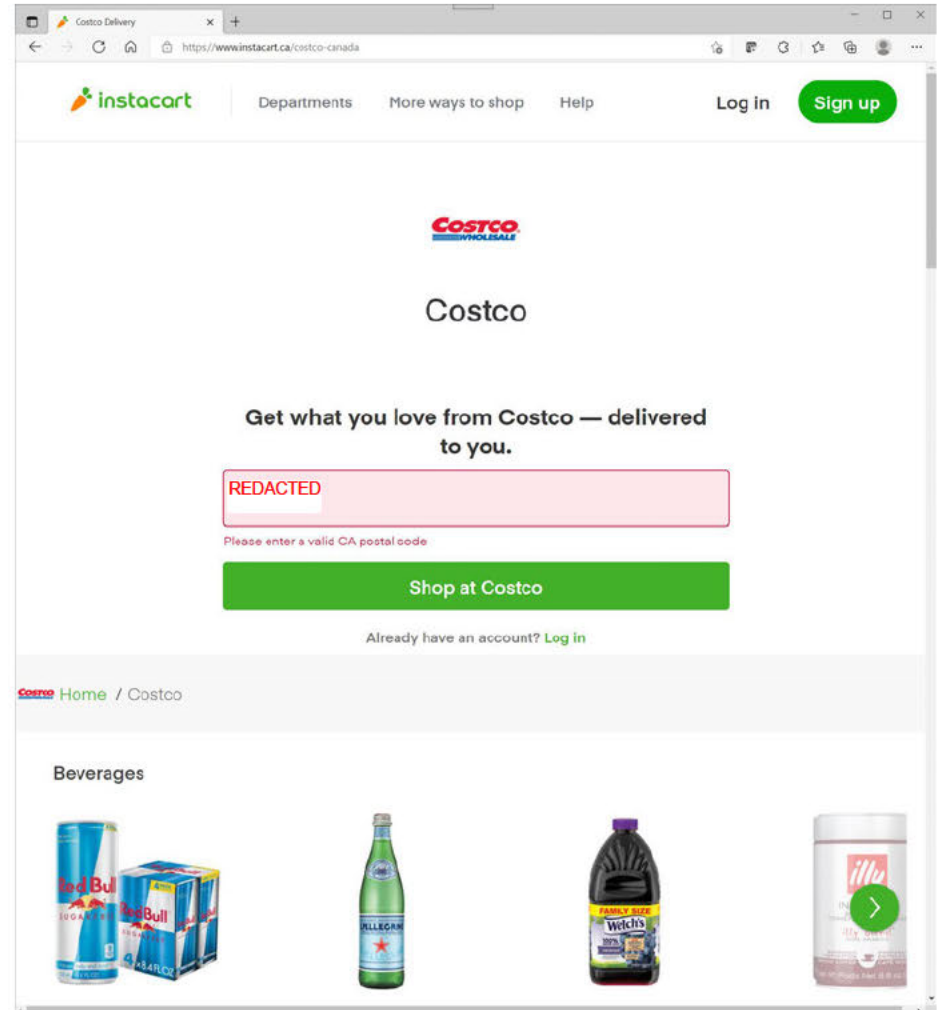


Figure 4: Instacart response to MY Postal Code REDACTED – October 6th, 2021

COSTCO WHOLESALE

N Edmonton #154
12450 149th St NW
Edmonton, AB T5V 1G9

2E Member REDACTED
938492 KS KETTLE 5.99 G
57661 CORNMEAL BCN 18.48
SUBTOTAL 24.47
TAX 0.30
*** TOTAL 24.77

REDACTED

ACCT: MASTERCARD
REFERENCE #: REDACTED
AUTH #: REDACTED 2021/09/17 13:41:06
Invoice Number: REDACTED
Purchase - MasterCard

REDACTED

01 APPROVE - THANK YOU 027
AMOUNT: \$24.77

IMPORTANT - retain this copy
for your records
CUSTOMER COPY

MasterCard 24.77
CHANGE 0.00

G GST 5% 0.30
TOTAL NUMBER OF ITEMS SOLD = 2
2021/09/17 13:41:08 REDACTED

REDACTED

OP#: REDACTED

Thank You!
Please Come Again

G = GST P=PST
GST #121476329RT

Whse: REDACTED

Items Sold: 2
2E 2021/09/17 13:41