



**Ad Standards** Community Panel  
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Advertising Standards Bureau Limited  
ACN 084 452 666

## Case Report

<b>1</b>	<b>Case Number</b>	<b>0216/19</b>
<b>2</b>	<b>Advertiser</b>	<b>Woolworths Group</b>
<b>3</b>	<b>Product</b>	<b>Alcohol</b>
<b>4</b>	<b>Type of Advertisement / media</b>	<b>Email</b>
<b>5</b>	<b>Date of Determination</b>	<b>10/07/2019</b>
<b>6</b>	<b>DETERMINATION</b>	<b>Dismissed</b>

### ISSUES RAISED

2.6 - Health and Safety Depiction of smoking/drinking/gambling

### DESCRIPTION OF THE ADVERTISEMENT

The Advertisement was a personalised email sent to members of the Woolworths Rewards program who are over 18 years of age and have opted-in to receive BWS-related communications. The email contained various personalised offers and a few non-personalised banners. The non-personalised banners featured were:

- (the "Promotion Banner") the BWS longneck promotion which offers a 10th longneck beer for free if the member has purchased 9 longneck beers with BWS in-store and scanned their Rewards membership card for each transaction (the "Promotion"); the Promotion was only available for in-store purchases during the period of 24 April to 23 July 2019 (the "Promotion Period"), and was subject to a 3-per-day limit whereby a limit of 3 longneck purchases per day would be counted towards the Promotion; and

- (the "Dry July Banner") BWS' partnership with the Dry July Foundation for the 2019 'Dry July' fundraising event (Dry July Partnership) which includes a link to the Dry July Foundation's website via a link with the text 'SIGN UP'.

### THE COMPLAINT



A sample of comments which the complainant/s made regarding this advertisement included the following:

*Just like a coffee card loyalty scheme this drives consumers to drink more just to get a freebie. Plus the scheme encourages you to only shop at 1 store, again just to get a freebie. The Northern Beaches has a large proportion of tradies and young drinkers so this scheme promotes drinking more and then to offset that with a proud partner of Dry July banner directly below the offer is absolute hypocrisy.*

## **THE ADVERTISER'S RESPONSE**

Comments which the advertiser made in response to the complainant/s regarding this advertisement include the following:

*We set out below our comments in respect of the specific Codes.*

### *AANA Code of Ethics*

*We submit that the Advertisement does not breach this Code. Further, we believe the Advertisement to be aligned with the objectives of the Code - legal, decent, honest and truthful and prepared with a sense of obligation to the consumer and society and a sense of fairness and responsibility to competitors.*

#### *2.1 - Discrimination or vilification*

*We submit that the Advertisement does not breach this section of the Code.*

#### *2.2 - Exploitative or degrading*

*We submit that the Advertisement does not breach this section of the Code.*

#### *2.3 – Violence*

*We submit that the Advertisement does not breach this section of the Code.*

#### *2.4 - Sex, sexuality and nudity*

*We submit that the Advertisement does not breach this section of the Code.*

#### *2.5 – Language*

*We submit that the Advertisement does not breach this section of the Code.*

#### *2.6 - Health and Safety*

*We submit that the Advertisement does not breach this section of the Code on the basis that it does not depict material contrary to the Prevailing Community Standards on health and safety.*

*In response to this we submit the following:*



*Endeavour Drinks, which includes BWS, aims to be Australia's most responsible retailer of alcoholic drinks. Endeavour Drinks has been a signatory to the Alcohol Beverages Advertising Code ("ABAC") Scheme since 2013 and has had a long-standing commitment to supporting and adhering to ABAC. As part of its community charter, 'Our Community, Our Commitment', Endeavour Drinks has a strong culture of RSA practices and has in place a range of industry-leading initiatives to encourage responsible drinking practices. These include: our 'Intoxication Policy' (refusal of service to anyone who may be intoxicated); and, staff training that exceeds legal requirements, including "Don't Guess, Just Ask", team talkers, regular refresher and reminder courses".*

*BWS is an off-premises or takeaway retailer. As such, the alcohol purchased from BWS is purchased for consumption at a later time and at other locations (as permitted by law), at the discretion of the purchaser. Alcohol is a product with a relatively long shelf life and can be stored for months or in the case of wine and spirits, for years, prior to its consumption. We believe that consumers care about value and a common reason to buy a greater volume of alcohol in a single transaction is to realise that value. In light of the above, we submit that it does not follow that a greater volume of alcohol purchased results in excessive or unsafe consumption.*

*The Advertisement was only sent to Rewards members who are over the age of 18, who have opted-in to receive communications related to BWS and who have shopped with BWS previously. The primary purpose of the Advertisement was to inform the member of certain specials or promotions which had been generated for that member based on their previous purchases with BWS. We believe the communication of personalised offers based on customer preferences, identified from purchase history or otherwise, is a common retail practice in Australia.*

*As noted above, the Advertisement was personalised and sent only to the email of the selected Rewards member. Accordingly, the Advertisement would not be accessible to other members of the community unless the Rewards member chooses to share access.*

#### *Promotion Banner*

*At the time the Advertisement was sent, the Promotion had been available for nearly 2 months and the Promotion Banner is likely to have featured on previous similar emails sent to Rewards members. The Promotion Banner was only included on emails to members who have purchased beer previously with BWS. The purpose of the Promotion Banner on the Advertisement was simply a reminder for interested members to use the Promotion.*

*Endeavour Drinks is committed to ensuring that all its promotions are responsible, in line with community expectations, and have harm minimisation measures in place to*



*minimise the occurrence of irresponsible or excessive alcohol consumption. I am instructed that the Advertisement and Promotion had the following measures in place, which we submit were appropriate and sufficient given the nature, audience and extent of the Advertisement and Promotion:*

- the Promotion was subject to a 3-per-day limit so only 3 longneck purchases in any day would be counted towards the Promotion;*
- the Promotion Period is 3 months which allows for sufficient time for members to participate without encouraging excessive purchasing (again noting that there is a distinction between purchase and consumption of alcohol);*
- whilst the price of longneck beers may vary, on average, the discount available via the Promotion is equivalent to approximately 10% which we believe is not excessive, and would not encourage excessive purchasing (we note that the general guidance from applicable State and Territory liquor regulators is that discounts should not be excessive (and in some jurisdictions it is suggested that caution should be exercised when discounts exceed 50%)).*
- the Advertisement and Promotion was only sent to Rewards members who are over 18 years of age and had purchase beer previously;*
- the Promotion is not available in the Northern Territory or locations that are subject to liquor restrictions such as dry zones (for completeness, we also note that the Promotion does not require members to purchase from the same store as suggested in the Complaint);*
- if the Promotion was used and longneck beer purchased as a result, that purchase of beer in-store would be subject to Endeavour Drinks' strict RSA practices, which includes the refusal of service to intoxicated persons; and*
- the Advertisement included Endeavour Drinks' ID25 logo which also references the Endeavour Drinks' community charter 'Our Community, Our Commitment'.*

#### *Dry July Banner*

*The purpose of the Dry July Banner on the Advertisement was to raise awareness amongst Rewards members of the Dry July Foundation, the 2019 'Dry July' fundraising event and the Dry July Partnership, and to encourage members to support the 2019 'Dry July' fundraising event. The Dry July Partnership has the full support of the Dry July Foundation and it is hoped that the partnership will increase awareness of, and funding to, the Dry July Foundation both from BWS team members and Rewards members. BWS has a range of non-alcoholic products and the Dry July Banner encourages members to support the fundraising event, which involves abstaining from alcohol.*

*We also note that the Dry July Partnership marketing that is included the Dry July Banner was approved via ABAC's AAPS service (ref no 217/19).*

*It is important to note that neither the Promotion Banner nor the Dry July Banner depict or suggest any consumption of alcohol - the former only suggests the purchase*



*of alcohol. The Advertisement does include a background image of 4 glasses together which appear to be clinking in a toast or the 'cheers' tradition, however we submit that this image does not portray or encourage any irresponsible drinking and it is in line with community expectations.*

*On the whole, the Advertisement reflects a moderate and responsible approach to alcohol, which we submit is in line with Prevailing Community Standards.*

*For completeness, we submit that the Advertisement and Promotion do not breach any of Australia's applicable liquor-related laws and regulations, or the ABAC Code (which is addressed further below).*

#### *2.7 - Distinguishable as advertising*

*We submit that the Advertisement does not breach this section of the Code.*

#### *AANA Code for Advertising and Marketing Communications to Children*

*We submit that this Code is not applicable to the Advertisement as it was only sent to selected Rewards members who are over the age of 18.*

#### *AANA Food and Beverages Marketing and Communications Code*

*We submit that this Code is not applicable to the Advertisement as it does not apply to alcoholic beverages.*

#### *AANA Code of Ethics - other*

*We submit that the Advertisement does not breach any other sections of the Code.*

#### *Other Codes administered by Ad Standards*

*We submit that the Advertisement does not breach any other Codes administered by Ad Standards.*

#### *Related Codes - ABAC Responsible Alcohol Marketing Code*

*We submit that the Advertisement does not breach the ABAC Code including the Placement Rules of the ABAC Code. In particular, we submit that the Advertisement does not:*

- show or encourage the excessive or rapid consumption of alcohol, misuse or abuse of alcohol or consumption inconsistent with the Australian Alcohol Guidelines;*
- show or encourage irresponsible or offensive behaviour that is related to the consumption or presence of alcohol;*
- challenge or dare people to consume alcohol; or*
- encourage the choice of a particular alcohol product by emphasising its alcohol*



*strength or the intoxicating effect of alcohol.*

*In light of the above, we submit that the Complaint should be dismissed on the basis that it does not breach any of the applicable Codes.*

## **THE DETERMINATION**

The Ad Standards Community Panel (the Panel) considered whether this advertisement breaches Section 2 of the AANA Code of Ethics (the Code).

The Panel noted the complainant's concern that the advertisement contained material which went against prevailing community standards on health and safety.

The Panel viewed the advertisement and noted the advertiser's response.

The Panel noted that this email advertisement features an offer of "buy 9 longneck beers and get your 10th for free".

The Panel considered whether the advertisement was in breach of Section 2.6 of the Code. Section 2.6 of the Code states: "Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety".

The Panel noted the complainant's concern that the advertisement promotes consumers to drink more in order to get something for free.

The Panel noted the advertiser's response that the promotion was subject to a three beer a day limit and that the overall promotion lasted for three months and does not require members to purchase from the same store.

The Panel considered that long necks of beer are generally sold either separately or in packs of three and that most people would not be purchasing ten at a time. The Panel noted that the email included terms and conditions which detailed that there was a limit of three long neck beers a day that could count towards the promotion, and that the promotion was running for a period of three months.

The Panel considered that the advertisement did not encourage people to drink the beers as soon as they have been purchased, or encourage them to purchase more than three beers at a time.

The Panel considered that the advertisement was only sent to a restricted audience, and would not have been seen by children.



The Panel considered that most members of the community would not consider this advertisement offering one free beer after the purchase of nine beers to be promoting or encouraging excess consumption of alcohol.

The Panel considered that the advertisement did not depict material contrary to prevailing community standards on health and safety and did not breach Section 2.6 of the Code.

Finding that the advertisement did not breach any other section of the Code the Panel dismissed the complaint.

