



## ABAC Adjudication Panel Final Determination No. 129/18

**Product:** Leon B Cabernet Sauvignon  
**Company:** Jimmy Brings  
**Media:** Packaging  
**Date of decision:** 26 November 2018  
**Panelists:** Professor The Hon Michael Lavarch (Chief Adjudicator)  
Ms Debra Richards  
Professor Richard Mattick

### Introduction

1. This provisional determination by the ABAC Adjudication Panel (“the Panel”) concerns packaging for Leon B Cabernet Sauvignon by Jimmy Brings (“the Company”) and arises from a complaint received 30 October 2018.
2. Alcohol marketing in Australia is subject to an amalgam of laws and codes of practice, that regulate and guide the content and, to some extent, the placement of marketing. Given the mix of government and industry influences and requirements in place, it is accurate to describe the regime applying to alcohol marketing as quasi-regulation. The most important provisions applying to alcohol marketing are found in:
  - (a) Commonwealth and State laws:
    - Australian Consumer Law – which applies to the marketing of all products or services, and lays down baseline requirements, such as that marketing must not be deceptive or misleading;
    - legislation administered by the Australian Communications and Media Authority – which goes to the endorsement of industry codes that place restrictions on alcohol advertising on free to air television;
    - State liquor licensing laws – which regulate retail and wholesale sale of alcohol, and contain some provisions dealing with alcohol marketing;

(b) Industry codes of practice:

- AANA Code of Ethics – which provides a generic code of good marketing practice for most products and services, including alcohol;
  - ABAC Responsible Alcohol Marketing Code (“ABAC”) – which is an alcohol specific code of good marketing practice;
  - certain broadcast codes, notably the Commercial Television Industry Code of Practice – which restricts when advertisements for alcohol beverages may be broadcast;
  - Outdoor Media Association Code of Ethics – which places restrictions on the location of alcohol advertisements on outdoor sites such as billboards.
3. The codes go either to the issue of the placement of alcohol marketing, the content of alcohol marketing or deal with both matters. The ABAC deals with both the placement of marketing i.e. where the marketing was located or the medium by which it was accessed and the content of the marketing irrespective of where the marketing was placed. The ABAC scheme requires alcohol beverage marketers to comply with placement requirements in other codes as well as meeting the standards contained in the ABAC.
4. For ease of public access, Ad Standards provides a common entry point for alcohol marketing complaints. Upon a complaint being received by Ad Standards, a copy of the complaint is supplied to the Chief Adjudicator of the ABAC.
5. The complaint is independently assessed by the Chief Adjudicator and Ad Standards and streamed into the complaint process that matches the nature of the issues raised in the complaint. On some occasions, a single complaint may lead to decisions by both the Ad Standards Community Panel under the AANA Code of Ethics and the ABAC Panel under the ABAC if issues under both Codes are raised.
6. The complaint raises concerns under the ABAC Code and accordingly is within the Panel’s jurisdiction.

### **The Complaint Timeline**

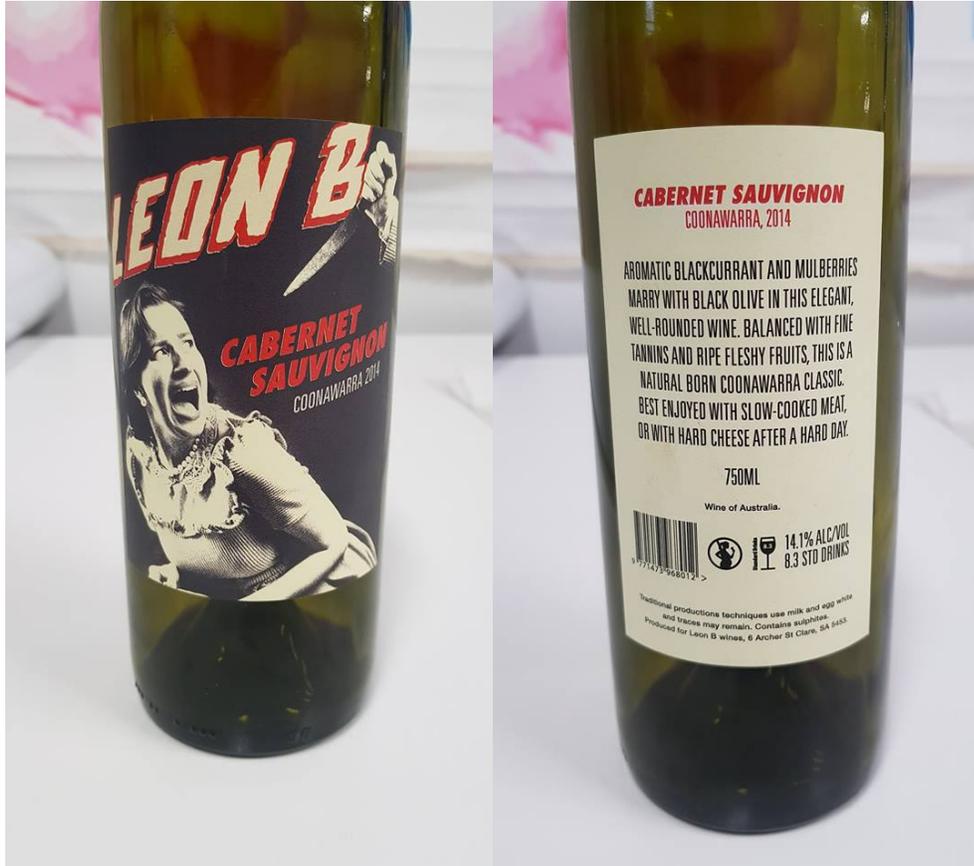
7. The complaint was received on 30 October 2018.
8. The Panel endeavour to determine complaints within 30 business days of receipt of the complaint, but this timeline depends on the timely receipt of materials and advice and the availability of Panel members to convene and decide the issue. The complaint has been determined within this timeframe.

## Pre-vetting Clearance

9. The quasi-regulatory system for alcohol beverage marketing features independent examination of most proposed alcohol beverage marketing communications against the ABAC prior to publication or broadcast. Pre-vetting approval was not obtained for this marketing communication.

## The Marketing Communication

10. The complaint refers to the label of Leon B Cabernet Sauvignon pictured here.



## The Complaint

11. The complainant is concerned that the wine label shows a woman screaming while looking backwards at a male holding a long kitchen knife and about to stab her. No one should have to see this.

## The ABAC Code

12. Part 2(a) of the ABAC Code provides that The Code APPLIES to all Marketing Communications in Australia generated by or within the reasonable control of a Marketer, except as set out in Section 2(b). This includes, but is not limited to:

....

(d) product names and packaging

....

13. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
- (a)(ii) show (visibly, audibly or by direct implication) or encourage irresponsible or offensive behaviour that is related to the consumption or presence of an Alcohol Beverage;

### **The Company's Response**

14. The Company responded to the complaint by emails on 2 and 5 November 2018 advising:
- This label was produced together with Jimmy Brings.
  - This label was produced as a reference to the Hollywood movement Grindhouse, which commenced in the 30s. The image on the bottle was intended as a historical reference to this movement. The scene, to our eyes and the eyes of our designer, was very clearly a scene from such a "grindhouse" or "horror" movie and in no way an endorsement of violence to women. Imagery that is controversial, striking or evocative is often the subject of design or artwork. This label has been in circulation for almost five years and this is the first complaint we have received about its contents.
  - I don't believe this label endorses or encourages violence.
  - If ABAC or a poll of our customers found it offensive we would happily consider its removal.
15. By email dated 23 November 2018, the Company responded to the Panel's Provisional Determination. The principal points made by the company were:
- We have run this packaging for approximately five years without a complaint, including wide promotions on social media. Since the ABAC complaint we have also sought the opinions of several customers and staff and received no negative feedback. It is our view that the imagery is clearly and overtly referential and would not be *reasonably or consistently* associated with alcohol fuelled violence.
  - However in the spirit of compliance and respect of the panel's opinion we will discontinue using this packaging.

### **The Panel's View**

16. Jimmy Brings is an alcohol retailer which provides home delivery services. It seems the Company has partnered with a wine producer to distribute a Coonawarra district Cabernet Sauvignon under the brand name of Leon B.

17. The complaint goes to the packaging of the product specifically its label. The label features a women screaming and apparently fleeing an assailant who is brandishing a large knife. As the Company explains the style of the label resembles a poster for a B grade horror movie. This particular style is reminiscent of the 'Grindhouse' genre of movies.
18. Grindhouse draws its name from the practice of some American movie theatres in the period extending from the 1930's up to the late 1970's to screen in succession multiple 'exploitation' style movies. Typically the movies would feature copious quantities of sex, violence or other bizarre subject matter. This type of movie has its own cult following and has been influential in the style adopted by some popular and highly successful directors notably Quentin Tarantino.
19. The complainant found the label offensive and irresponsible. The Company argues that the branding does not endorse violence towards women, would be seen as a nod of the head to this genre of movie and in five years of distribution, this is the first complaint to be received.
20. The ABAC is a code of practice for responsible alcohol marketing. The standards in the ABAC apply to product packaging such as labels. Standard 3(a)(ii) states that alcohol marketing items must not show or encourage irresponsible or offensive behaviour that is related to the consumption or presence of an alcohol beverage.
21. As explained in paragraph 2, alcohol marketing is subject to a range of requirements including the AANA Code of Ethics. The Code of Ethics is where obligations to meet community standards on matters such as the portrayal of or references to violence in marketing are contained. These standards apply to all marketing irrespective of the product or service being promoted. The ABAC goes specifically to standards about alcohol as product. The 3(a)(ii) standard therefore isn't about good taste, but rather it means alcohol marketing can't promote, for instance, drunkenness or loutish behaviour contributed to by the use of alcohol.
22. In making an assessment about the consistency of a marketing item and an ABAC standard the Panel is to adopt the standpoint of the probable understanding of the marketing by a reasonable person. This means the life experiences, values and opinions common in a majority of the community is to be benchmark.
23. The ABAC doesn't endeavour to restrict creative intent in marketing. It is open to devise a branding style which reflects B grade horror movies provided this is done consistently with the ABAC standards. On balance however the Panel believes the packaging is inconsistent with the 3(a)(ii) standard. In reaching this conclusion it has been noted:
  - the label depicts a violent attack upon a woman
  - violence against women is a major problem in Australia with on average one woman per week being murdered as a result of domestic violence
  - alcohol misuse is a contributing factor in some incidences of violence
  - the resemblance of the label to a horror film poster will be noted by some but not necessarily a majority of potential consumers

- taken as a whole a reasonable person might take the label as showing offensive behaviour related to the presence of alcohol

#### Provisional Determination

24. The Panel made a provisional decision to uphold the complaint on 17 November 2018 on the basis that the product packaging shows offensive behaviour related to the presence of alcohol in breach of Part 3(a)(ii) of the Code.
25. On 23 November 2018, the Company advised that while it disagrees with the Panel's reasoning it accepts the Panel's decision. Accordingly a rehearing of the complaint is not required.

#### Final Determination and Next Steps

26. In light of the Company's decision not to seek a rehearing, the Provisional Determination of 17 November is now made final and the complaint is upheld in relation to the breach of Part 3(a)(ii) of the Code.
27. The Company has advised that the product packaging will be discontinued. The Company can seek to have replacement packaging reviewed by the Scheme pre-vetting process in accordance with Rule 4.17 of the ABAC Scheme Rules and Procedures.