



## ABAC Adjudication Panel Determination No. 69/20

**Product:** Quickie Sauvignon Blanc  
**Company:** Some Young Punks  
**Media:** Packaging  
**Date of decision:** 16 June 2020  
**Panelists:** Professor The Hon Michael Lavarch (Chief Adjudicator)  
Me Jeanne Strachan  
Professor Louisa Jorm

### Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns the packaging for Quickie Sauvignon Blanc by Some Young Punks (“the Company”) and arises from a complaint received 29 May 2020.
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 the other codes as well as meeting the standards contained in the ABAC.
4. For ease of public access, Ad Standards (AS) provides a common entry point for alcohol marketing complaints. Upon a complaint being received by AS, 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 AS 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 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 29 May 2020.
8. The Panel endeavours 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 was completed in 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 the marketing communication.

## Marketing Communication

10. The following product packaging is referred to in the complaint.



## The Complaint

11. The complainant is concerned the product:

- depicts pornography and sexual exploitation/denigration of women; and
- infers that using this wine to get sex in the form of a “Quickie” can inhibit a female’s capacity to consent and result in sexual assault.

## The ABAC Code

12. Part 2(b)(iii) of the ABAC provides that the Code does not apply to the name or packaging of an Alcohol Beverage product, including the use of a trademark on a product which a supplier can demonstrate, to the satisfaction of the Adjudication panel, had been supplied for bona fide retail sale in the ordinary course of business in Australia prior to 31 October 2009.

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;
- (c)(ii) show (visibly, audibly or by direct implication) the consumption or presence of an Alcohol Beverage as a cause of or contributing to the achievement of personal, business, social, sporting, sexual or other success;

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

14. The Company responded to the complaint by email dated 5 June 2020. The principal points made by the Company were:
- Some Young Punks is a small independent wine producer based in Clare, South Australia. As of January 2020, the winemakers/directors are Jennie Gardner and Colin McBryde. Whilst not a signatory to the Alcohol Beverages Advertising Code (ABAC) Scheme, we believe, since production of wines under this brand began in 2005, we have been vigilant regarding the nature of our packaging and would never intentionally breach the code.
  - It is prudent to note, this wine, is marketed heavily toward women, not only would it be remiss of us, but foolhardy as a producer to use a label that was considered offensive or promoted unwanted lewd acts to our directed market.
  - We have been producing and selling Quickie! since 2006, the package in it's entirety has had one minor change in the past 14 years. To which end we would draw your attention to ABAC Adjudication Panel Determination 112/17 which concerned the package of the wine produced by First Drop, A Mother's Milk. The complaint concerned breach of codes 3(a)(ii) and 3(c)(iv), with regard to breastfeeding mothers and implied derogatory nature and/or effects of alcohol during breastfeeding/pregnancy. The panel dismissed this case, aligning with part 2b(ii) of the code, which does not apply to the name or packaging of an Alcohol Beverage product, including the use of a trademark on a product which a supplier can demonstrate, to the satisfaction of the Adjudication Panel, had been supplied for bona fide retail sale in the ordinary course of business in Australia prior to 31 October 2009. I have attached an invoice dated 30/07/2007, as proof that we have been selling Quickie! under this brand name and associated label well before the 2009 extension of the scheme to allow such products that were already in market.
  - Notwithstanding, we feel we should address the breaches suggested, our response is based on compliance with the code around "the probable understanding of [the Advertisement] by a reasonable person to whom the material is likely to be communicated, and taking its content as a whole", and that the test of the reasonable person is intended as "a reflection of the standards and attitudes of contemporary Australian society".
  - The package for Quickie is a modified iteration of the 1950 novel Quickie! An illustrated novel by Gerald Foster. It depicts a woman, dressed in a negligee (well covered) and a man, dressed in a suit, they are dressed period true of

these, what could be classified as "retro" pulp fiction type images/times. Again, notably it is an illustration. We would draw your attention to ABAC Adjudication Panel Determination 129/17 & 1/18, where complaints regarded the compromising positions of women and associated objectification. Along with promotion of stereotypes where the package name 'Kiss the Girls' was described as being demeaning to women and the provocative nature of the poses of the women on the labels inferred they were 'asking for sex'. In this scenario, the complaint was dismissed, in a similar direction, where Section 3(a)(ii) of the Code prohibits advertising which "show[s] (visibly, or audibly or by direct implication) or encourage[s] irresponsible or offensive behaviour that is related to the consumption of an alcoholic beverage."

- The wine label Quickie is associated with pulp imagery of the 50s and is depicted in a light-hearted way. The verbiage Quickie and associated quips on the label along with the depiction of a smiling man and women, in an illustrated form, could not be reasonably described as offensive, nor is it in any way encouraging irresponsible behaviour associated with the consumption of alcohol. We refute that the name Quickie could be understood as encouraging irresponsible or offensive behaviour toward women. There is no implied link between "When there's no time to think. There's more time for love" and sexual intercourse, no reasonable person would align the factions of love and untoward attention.
- With regard to the question of breach of Part 3(c)(ii) we draw you again to ABAC Adjudication Panel Determination 129/17 & 1/18. We would suggest that the name Quickie! or associated verbiage would not be reasonably taken to suggest it appropriate to make unwanted sexual advantages, not only in line with the colloquial expression, but also the fact that the women's name depicted is Quickie!, as per the statement. Along with the line "When there's no time to think. There's more time for love." could not be reasonably considered to promote sexual success, it is a light-hearted quip which is relevant to the likes of these novel illustrations of the period. There is nothing that shows that consumption of the wine leads to sexual success, this pulp novel illustration, as per ABAC Adjudication Panel Determination 7/20 where sexual prowess was inferred from an advertisement labelled Date Night were dismissed.
- Reasonable consumers would not view Quickie! as "encouraging irresponsible or offensive behaviour". The imagery that is that of the man in a suit and the women fastening or unfastening her stocking, is not an actual picture, instead an illustration and does not lend to represent actual behaviour. Although the illustration depicts the possibility of a romantic situation, there is in no way the assertion that this situation would be contributed to or heightened by alcohol, given the imagery itself is devoid of the inclusion of alcohol, reasonable consumers would not draw a parallel between sexual prowess and the consumption of this wine.

## The Panel's View

### Introduction

15. This determination concerns the branding (name and packaging) of an Adelaide Hills Sauvignon Blanc brand named 'Quickie'. The wine is one of a number of wines which the Company describes as the 'Pulp Series'. The wines in this series all have branding which the Company's website explains has been taken from 'low brow' literature extending from the 1920's to 1950's. The branding for Quickie is drawn from the cover of a 1950 crime novel of that title by a Gerald Foster. The cover art for the novel is by and large faithfully replicated on the front label of the Company's wine and has apparently been used by the Company since its launch in 2006.
16. The complainant came across the wine in Melbourne on 26 May 2020 and believed the branding to be both offensive and highly irresponsible. It was argued that the front label on the wine bottle depicted 'pornography and sexual exploitation of women'. The complainant went on to contend that the branding infers the wine can be used to get sex in the form of a 'quickie'. It was pointed out that alcohol can inhibit a women's capacity to consent and alcohol misuse can be a factor in sexual assault. The Company refutes that the branding would be understood in the way interpreted by the complainant and it is argued the branding is consistent with ABAC standards.
17. The complaint puts before the Panel certainly one, and potentially two, issues. Firstly, there is a threshold issue of whether the branding (the product name and labelling) is afforded the benefit of Part 2(b)(iii) of the Code. This is the 'grandfathering' provision which in effect allowed branding already in the Australian market, prior to the commencement of the ABAC's application to names and packaging, to continue in the market even if the branding was inconsistent with an ABAC standard. Then, depending on the answer to this issue, a substantive assessment might be required as to whether the branding is consistent with the standards contained in Part 3(a)(ii) and (c)(ii).

### The Grandfathering Provision

18. While the ABAC Scheme commenced operations in 1998, the standards in the Code initially only applied to the advertising of alcohol beverages by producers and distributors. This meant that enduring branding such as the actual name of a product and its packaging (i.e. the design on bottles and cans etc) was not captured by the Code. This changed from 1 November 2009 when the Scheme was extended to include product names and packages. This extension, however, permitted brand names and product packaging that was developed and on sale prior to the application of standards to remain in the market. Obviously over time the proportion of alcohol products to which the exclusion is relevant has diminished as new products and brands come onto the market and need to comply with the post 1 November 2009 requirements.
19. The grandfathering provision is contained in Part 2(b)(iii) of the Code and provides that the Code does not apply to the name or packaging of an alcohol beverage which a supplier can demonstrate to the satisfaction of the Panel had been supplied for bona fide retail sale in the ordinary course of business in Australia prior to 31

October 2009. This means, in order to rely on the exclusion, that the Company carries the onus to establish:

- the product name was being used prior to 31 October 2009;
  - the packaging (the labelling design) was being used prior to 31 October 2009; and
  - the product with the name or packaging was on retail sale (i.e. able to be purchased) by an Australian consumer prior to 31 October 2009
20. As mentioned, the Company states that its Quickie branded wine came onto the Australian market in 2006 and it supplied sales documents to support this claim. Based on this material, the Panel is satisfied that a product from the Company branded 'Quickie' was on bona fide retail sale as at and prior to 31 October 2009. The Company also supplied copies of the branding used on pre 1 November 2009 'Quickie' wine. This material shows that the current labelling of the product is substantially the same when compared to its pre 2009 predecessor, but it is not identical.
21. To fall within the Part 2(b)(iii) exclusion, it would not be enough for the current product to share the same name as an earlier product if its packaging was substantially different. The question is what degree of change amounts to a material difference between the current and earlier packaging so as to conclude that the packaging is not the same. In assessing this question, the Panel is to adopt the viewpoint of the probable understanding of the packaging by a reasonable person taking the content of the packaging as a whole.
22. A reasonable consumer will generally gain an impression about a product's packaging from its key features such as the design and illustrations on the front of the package, the larger font messaging and its overall colour scheme. It can't be expected that a reasonable consumer in a bottle shop, for instance, will pick up a bottle and turn it around the full 360 degrees and study in fine detail all of the small print information on the back and side of the bottle. It will be the front of the product and its overall appearance that will be most influential in forming the consumer's opinion.
23. The differences between the current Quickie labelling and the labelling in the market prior to November 2009 can be summarised as follows:
- the current front of the label has the words 'Oh what a gal was Quickie' immediately underneath the large font name Quickie and this was not present in the earlier version;
  - the current front of the label has '25c Quarter Books' whereas the earlier version used in this space '15%ALC/VOL';
  - the current front of the label uses a larger font for the words 'by Some Young Punks' compared to the earlier version;
  - the earlier version included the Company's address on the front of the label and this is missing from the current front of the label; and
  - the current back of the label mentions other wines in the series whereas the earlier version showed small thumbnail pictures of the labels of the other

wines.

24. While acknowledging these differences, it would be fair to say that the essential features of the branding have remained consistent between the current and earlier versions namely:
- the prominent image of the woman on the seat wearing a petticoat and adjusting her stockings;
  - the man standing at the rear of the image next to the window;
  - the same colour scheme;
  - the same depiction of the name 'Quickie!"; and
  - the same wording 'When there's no time to think, there's more time for love..!'
25. The Panel believes that the current product packaging and the packaging used on products on retail sale at 31 October 2009 are not materially different. Put in another way, if the complainant had seen an October 2009 bottle of Quickie, branded as it was at that time, then there is no reason to think that the complainant would not have been equally concerned about the 2009 branding as the complainant is about the 2020 branding. On that basis the conclusion is that the branding falls within the scope of the Part 2(b)(iii) exclusion from the Code.

#### Conclusion

26. Given that the product branding falls within the exclusion, the Code standards do not apply to the product and the complaint must be dismissed as a result. The Panel is not required, therefore, to make a substantive assessment of the consistency of the branding with the Code standards. It is appreciated that both the complainant and the Company might find this outcome somewhat dissatisfying. While Quickie continues to be marketed it is possible a future complaint may be made about marketing of the product e.g. a TV ad or social media posts and the Panel would be required to assess such a complaint on its merits at that time as the 'grandfathering exclusion' does not extend to the marketing of an excluded product. To give a non-binding opinion at this point would be prejudicial to a subsequent consideration of issues if raised in a later complaint.
27. The complaint is dismissed.