



## ABAC Adjudication Panel Determination No. 100/20

**Product:** SubRosa Wine  
**Company:** SubRosa Winery  
**Media:** Packaging  
**Date of decision:** 30 July 2020  
**Panelists:** Professor The Hon Michael Lavarch (Chief Adjudicator)  
Ms Debra Richards  
Professor Richard Mattick

### Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns the packaging for SubRosa Winery (“the Company”) and arises from a complaint received 16 July 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 16 July 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 that the packaging:
- features a cartoon character that is a mouse which would be very attractive to children;
  - includes a cartoon character drinking, smoking and shooting in the one image which is inappropriate on numerous levels; and
  - these bottles are likely to be lying around people's homes and visible to children.

## The ABAC Code

12. 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
  - (b)(i) have Strong or Evident Appeal to Minors
  - (d) show (visibly, audibly or by direct implication) the consumption of an Alcohol Beverage before or during any activity that, for safety reasons, requires a high degree of alertness or physical co-ordination, such as the control of a motor vehicle, boat or machinery or swimming

13. Definition in Part 6 of the ABAC provides:

**Strong or Evident Appeal to Minors** means:

- (i) likely to appeal strongly to Minors;
- (ii) specifically targeted at Minors;
- (iii) having a particular attractiveness for a Minor beyond the general attractiveness it has for an Adult;
- (iv) using imagery, designs, motifs, animations or cartoon characters that are likely to appeal strongly to Minors or that create confusion with confectionary or soft drinks; or
- (v) using brand identification, including logos, on clothing, toys or other merchandise for use primarily by Minors.

A **Minor** means a person who is under 18 years of age and therefore not legally permitted to purchase an alcohol beverage in Australia.

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

14. The Company responded to the complaint by letter dated 23 July 2020. The principal points made by the Company were:

- We were very shocked and disappointed to receive your letter on 16 July 2020. We are a small family run business producing a small quantity (less than 400 cases/year) of premium handmade wines that are made to cellar. Our target market is over 35 years of age. We mostly sell direct to consumer via our mailing list. James Halliday rated our small winery one of the best new wineries in Australia in his 2019 Wine Companion and our wines regularly are rated as some of the best wine in Australia.
- We started our winery so we could share Adam Louder's extraordinary winemaking. He is 39 years of age and has completed 34 harvests – often working two vintages a year to gain experience. We aim to produce, and be known for, Australia's best Viognier, Nebbiolo and Shiraz. This year, Huon Hooke rated our 2018 Viognier #1 in Australia.
- Our label is a lead pencil drawing reflecting experiences in Adam's winemaking journey. It was drawn by a professional artist Janette Lucas who is known for her paintings and drawings. Her work features in the collections of MAGNT (Museum & Art Galleries of the Northern Territory), Parliament House Darwin, and the Supreme Court & Government House, Darwin Northern Territory, along with numerous private collections in Australia and overseas.
- Adam is from Ararat and started working in a wine cellar at the age of 15, often cellar hands are referred to as "cellar rats". Adam wears a blue singlet every day. When he was 18, he was hired to shoot birds in the vineyard

during growing season. Adam has spent many years in Bordeaux making wine, the throne, pipe, glass of wine and monocle refer to experiences of his time there. SubRosa means “under the rose” in Latin. In ancient times, a rose was hung over a table and what happened under the rose, stayed under the rose. There is a rose on top of the throne.

- We started producing wine in 2013 and selling wine in 2015.
- Our label features a drawing which was created to reflect the experiences of the winemaker. It is not designed to appeal to minors. Our target market is over 35 years of age with a desire to enjoy today, and cellar for tomorrow, Australia’s best wine. The drawing does include a gun (that is used for agricultural reasons), but the Rat is not using it. The drawing also includes a glass of wine, but the rat is not drinking it.

### **The Panel’s View**

15. SubRosa is a small premium winery located in Victoria's Grampian Mountains. Founded in 2015 by Adam Louder and Nancy Panter the winery produces a small annual vintage of wines in the varieties of Viognier, Nebbiolo and Shiraz. The product packaging (bottle label) features an ink drawing of a stylised rat sitting in stately chair holding a glass of wine and a pipe. The rat is wearing a singlet and monocle and there is an old style rifle or musket leaning on the chair. It is this label design which has attracted the concern of the complainant.
16. The complainant believes the label to be inappropriate 'on numerous levels'. It is argued the label 'cartoon' image would be very attractive to children as well as the references to smoking and shooting being irresponsible on alcohol packaging. For its part, the Company explains the label reflects important aspects of Mr Louder's life journey and evolution as a winemaker and is a commissioned work of the Australian artist Janette Lucas. It is refuted that the packaging is inconsistent with ABAC standards.
17. The nature of the complaint brings into consideration several ABAC standards namely:
  - does the packaging have strong or evident appeal to minors (Part 3(b));
  - does the packaging encourage irresponsible or offensive behaviour that is related to the consumption or presence of alcohol (Part 3(a)(ii)); and
  - does the packaging show the consumption of alcohol before or during an activity that for safety reasons requires a high degree of alertness or physical co-ordination (Part 3(d)).
18. In assessing the consistency of a marketing communication (which includes a product label) with an ABAC standard, the Panel is to adopt the probable understanding of the marketing material by a reasonable person taking its content as a whole. This means that the life experiences, opinions and values found commonly in a majority of the community is to be the benchmark. A person who interprets a marketing item in a different way is not 'unreasonable' but possibly their understanding of the item would not be shared by a majority of the community.

19. The Panel does not believe the label to be in breach of the ABAC standards. In reaching this conclusion the Panel noted:
- the label depicts a drawing and not a 'cartoon' as such;
  - the imagery is mature, stylised and quirky and does not resemble popular children characters;
  - the principal 'rat' character is presented in a passive way and is not active and engaging;
  - the label uses black and white colours and not bright contrasting colours more likely to be strongly appealing to minors;
  - there is no likelihood the product packaging could be confused with a non-alcoholic drink or other product used extensively by minors;
  - the image cannot be reasonably interpreted that the rifle is going to be used for shooting, and the depiction of the old-fashioned firearm would be understood as being stylistic as opposed to creating a scene where it seems the gun will be used; and
  - taken as a whole the packaging would appeal more to an older demographic and cannot be fairly believed to be advocating offensive or unsafe behaviours.
20. The complaint is dismissed.