**Complainant:** Jonathan Noel

**Commercial:** “Epic Night”

**Product Advertised:** Bud Light

**Advertiser:** Anheuser-Busch

**Nature of Complaint:** Mr. Noel alleges that by its “Epic Night” television commercial aired during the 2014 Super Bowl, Anheuser-Busch violated Sections 2(d), 3(a) and (d), and 4(d) of the BI Ad Code.

1. **Ad Code Section 2(d):** Beer advertising and marketing materials should not portray or imply illegal activity of any kind by an individual prior to, during, or after the individual consumes, purchases, or is served beer, unless the portrayal or implication of illegal activity is a basic element or feature of a parody or spoof and is readily identifiable as such.

   **Alleged violation regarding Section 2(d):** Mr. Noel alleges that the commercial shows open alcohol containers in a public space, implies excessive alcohol consumption in a moving vehicle, and depicts a live llama in a confined elevator, all of which he cites as violations of Section 2(d).

2. **Ad Code Section 3(a):** In considering whether beer advertising and marketing materials appeal primarily to persons under the legal drinking age, Brewers should take into account the following elements among others:
    - Symbols
    - Language
    - Music
    - Gestures
    - Entertainers or celebrities
    - Cartoon characters
    - Groups or organizations

   **Alleged violation regarding Section 3(a):** Mr. Noel alleges a violation of Section 3(a) because in his opinion, the brewer primarily intended the commercial to appeal to viewers under the age of 21. He cites as evidence the inclusion of a live llama, which he believes is likely to have primary appeal to individuals under the age of 21, especially children. Mr. Noel also claims that the music played and the celebrities shown in the advertisement are likely to appeal primarily to individuals under the age of 21.

3. **Ad Code Section 3(d):** Models and actors employed to appear in beer advertising and marketing materials should be a minimum of 25 years old, substantiated by proper identification, and should reasonably appear to be over 21 years of age.
Alleged violation regarding Section 3(d): Mr. Noel does not believe that the female actors reasonably appear to be over 21 years old.

4. **Ad Code Section 4(d):** Beer advertising and marketing materials may portray beer as a part of personal and social interactions and experiences, and a brand may be portrayed in appropriate surroundings, as a superior choice to compliment a particular occasion or activity. Beer advertising and marketing materials should not, however, claim or represent that individuals cannot obtain social, professional, educational, athletic, or financial success or status without beer consumption.

Alleged violation regarding Section 4(d): Mr. Noel alleges a violation of Section 4(d) based on his view that the advertisement portrays a male character achieving social success as a direct result of consuming the beverage alcohol product advertised.
ANHEUSER-BUSCH COMPANIES, LLC’S RESPONSE
TO MR. JONATHAN NOEL’S COMPLAINT RE: BUD LIGHT “EPIC NIGHT” AD

On March 18, 2014, Anheuser-Busch Companies, LLC ("A-B") received from the Beer Institute an e-mailed complaint from Jonathan Noel regarding A-B’s “Epic Night” ad that aired during this year’s Super Bowl.1 In his complaint, Mr. Noel raised a variety of different allegations about the Epic Night ad, claiming that it violates at least three different provisions of the Beer Institute’s Advertising and Marketing Code. A-B responded to Mr. Noel’s initial complaint on March 31, 2014. On April 7, 2014, A-B received Mr. Noel's formal complaint that he submitted to the Code Compliance Review Board. This response addresses Mr. Noel’s complaint.

THE EPIC NIGHT AD

The Epic Night ad that aired during the 2014 Super Bowl consisted of two parts. The first part opens with a man, Ian Rappaport, sitting by himself at a table in a bar. Text appears on the screen indicating that Ian is being filmed with hidden cameras, and the camera briefly cuts to the behind the scenes view, showing a crew of people who are running the operation.

At the crew’s direction, a woman approaches Ian, sits at his table, and introduces herself. She then holds up a bottle of Bud Light and asks, “If I give this to you, are you up for whatever happens next?” At that point, the camera pauses, and a voiceover informs the viewer of what is going on: “Three seconds ago, we gave Ian Rappaport a Bud Light and a choice. He has no idea what is going to happen next.” Images appear on the screen indicating that everyone in the ad, except for Ian, is an actor who is in on the whole plan. The ad resumes playing, and Ian responds: “Yeah, I think I can do that.” This scene makes it clear to the viewer that Ian has unknowingly become the star of a Bud Light commercial, but the viewer (much like Ian) does not know what to expect next.

Following the woman’s lead, Ian then walks out of the bar and steps into a bright red Hummer limousine. Once inside the limousine, Ian realizes that he is now accompanied by a group of women and comedian Reggie Watts, who is acting as a DJ and who proceeds to create a mix with Ian’s name. The camera pans out, watching the limousine drive away, and the voiceover returns: “Bud Light. The perfect beer for when you’re watching a Super Bowl ad about a guy who doesn’t know he’s in a Super Bowl ad, and we’re just getting started.”

The events only get stranger during the second part of Ian’s epic night. The limousine drops Ian and the woman off at what appears to be an apartment or commercial building. They then get into the elevator, and at the first stop the doors open to find Don Cheadle standing with a pet llama. Mr. Cheadle and a llama, Lilly, casually get into the elevator as if nothing is out of the ordinary and say hello to the doorman. At the next stop, the elevator doors open to find the

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1 A copy of the “Epic Night” ad that was run during the Super Bowl is enclosed as part of this submission, along with the history of correspondence between Mr. Noel, The Beer Institute, and A-B.
identical twin of the woman who has been accompanying Ian on his journey. She too steps into the elevator, and Ian aptly comments: “Twins?! Wow, this is a bizarre night.”

Ian and the twins exit the elevator (leaving Mr. Cheadle and Lilly behind), and walk to their next destination: a party inside the building that is made up entirely of identical twins. After a brief stay at this party, Ian opens the door to a room, and finds Arnold Schwarzenegger, who is dressed in a wig and short shorts and is challenging Ian to a game of table tennis. After Ian defeats Arnold at a little ping pong, one wall of the room folds down to reveal a live OneRepublic concert. Ian, Arnold, and the rest of the crew head off to the concert, and the voiceover returns to drive home the message: “Bud Light. The perfect beer for when Don Cheadle, a llama named Lilly, and the identical twin of the girl you just met take you to a party, where you defeat Arnold Schwarzenegger in a sudden-death ping pong match that puts you on stage with OneRepublic.”

**MR. NOEL’S COMPLAINT**

As noted at the outset of this response, Mr. Noel’s complaint contains a laundry list of alleged violations of the Beer Institute’s Advertising and Marketing Code. He specifically claims that the ad violates Guidelines 2(d), 3, and 4(c), and he also makes general allegations that could implicate other provisions of the Code. Although each of his specific allegations is meritless, it is worth initially noting that Mr. Noel’s complaint completely ignores the overall theme of the Epic Night ad and the context in which advertisements like this must be viewed.

Simply put, the Epic Night ad was meant to be funny. A-B believed that viewers would find it humorous to watch Ian go through a series of unexpected, random, and outlandish events, all on cameras that were hidden and unknown to Ian at the time that the events unfolded. In this way, the viewers were able to watch Ian genuinely react to circumstances that nobody would expect to encounter—i.e., being invited by a stranger to play ping pong with Arnold Schwarzenegger and then accompany Arnold to a OneRepublic concert, while bumping into identical twin girls, Don Cheadle, and Don’s pet llama along the way. The ad used these odd events to remind viewers that Bud Light is the perfect beer for any occasion—even the unexpected ones.

The Beer Institute’s Advertising and Marketing Code celebrates the long history that brewers have of using humorous themes. See Code at p. 1 (“In the United States, beer is a mature product category with broad cultural acceptance and a history of memorable and distinctive advertising that, because of its humor and creativity, has long been a favorite among American adult consumers.”) The Code specifically notes that “creative elements are to be considered in the overall context of the advertisement,” and humorous themes and devices “should be readily identifiable as such by reasonable adults of legal drinking age.” Guideline 1. One of the keys to humor, of course, is surprising the audience. The Epic Night ad was meant to use the comedic element of surprise (both for the audience and for Ian), and it must be viewed in this context, consistent with the Beer Institute’s guidelines.
Guideline 2(d)—Depicting An Open Container In A Public Place

Mr. Noel argues that the Epic Night ad violates Guideline 2(d) because it “portrayed open alcohol containers in a public space.” Specifically, Mr. Noel claims that “[t]he advertisement portrayed a female character opening a metallic container containing alcohol in a public elevator with no geographic location specified.” Mr. Noel is wrong for two main reasons.

First, the woman in the ad is not even depicted holding an open container in the elevator. Although the woman does move her hand over the beer she is holding in a manner that looks like she is about to open the bottle, the camera cuts away before she actually does so. She is never depicted actually holding an open container in the elevator.

Second, and more importantly, even if the ad showed the woman holding an open container of alcohol in an elevator, it would not violate Guideline 2(d) because an elevator is not a “public place” for purposes of the applicable open container law. Although open container laws vary by state, the relevant law to consider for this issue is the law of New York City, which is where the elevator is located and where the commercial was filmed. And contrary to Mr. Noel’s suggestion, the ad does indicate that the commercial is taking place in New York—where, not by mere coincidence, many of this year’s Super Bowl activities were held.²

New York City’s open container law is entitled “Consumption of alcohol on streets prohibited.” See N.Y.C. Admin. Code § 10-125. Similar to other state laws and municipal ordinances, this provision generally prohibits people from possessing open alcohol containers in a public place with intent to consume the alcohol. Id. § 10-125(2)(b). In part, the ordinance defines public place as:

A place to which the public or a substantial group of persons has access including, but not limited to, any highway, street, road, sidewalk, parking area, shopping area, place of amusement, playground, park or beach located within the city except that the definition of a public place shall not include those premises duly licensed for the sale and consumption of alcoholic beverages on the premises or within their own private property.

Id. § 10-125(2). A New York court recently addressed this definition and found that the legislative intent of the New York City open container law is to prohibit “consumption of alcoholic beverages on the public streets and similar locations traditionally considered the functional equivalent of public streets.” People v. Chavez, 972 N.Y.S.2d 858, 860 (N.Y. Crim. Ct. 2013). The court also specifically held that an elevator in an apartment building does not qualify as a “public place” for purposes of New York City’s open container law. Id.

² The ad portrays panoramic views of New York City on multiple occasions, including showing the Empire State Building and the new World Trade Center—which is where the elevator was located.
Guideline 2(b), (d)—Promoting Excessive Alcohol Consumption

Mr. Noel claims that the Epic Night ad violates the Beer Institute’s guidelines because it “implies excessive alcohol consumption in a moving vehicle.” According to Mr. Noel, the ad “promotes excessive consumption” because “multiple, open alcohol containers appear in back of a stretch limousine, where music is played and strobe lights are used to depict a night club or bar scene.” Although Mr. Noel specifically cites this as a violation of Guideline 2(d)—which prohibits depicting illegal activity—he might actually be relying on Guideline 2(b), which provides that “advertising and marketing materials should not depict situations where beer is being consumed rapidly, excessively, involuntarily, as part of a drinking game, or as a result of a dare.” In any event, the depicted conduct does not violate either of these provisions.

The ad does not depict any illegal activity because, under applicable New York law, open containers are permitted in passenger vehicles like the Hummer limousine that was used in the Epic Night ad. See N.Y. Veh. & Traf. Law. § 1227.

The ad also does not depict conduct that “promotes excessive consumption.” The ad does not even show a single person consuming an alcohol beverage. And although some of the passengers in the limousine are holding Bud Light bottles, none of them has more than one bottle at any point in time. The people in the ad do not appear to be intoxicated, they are not participating in any drinking games, and there is simply nothing about their conduct that implies that they are consuming alcohol in excess. The people in the limousine are basically talking and listening to music. Even if that depicts “a night club or bar scene” like Mr. Noel seems to believe, it takes a leap of logic to arrive at Mr. Noel’s conclusion that this promotes excessive alcohol consumption.

Guideline 2(d)—Portraying A Llama In A Confined Space

Mr. Noel also alleges that the depiction of a llama in an elevator violates Guideline 2(d), although it is unclear why Mr. Noel thinks that portrays or implies illegal activity. Unsurprisingly, Mr. Noel provides little to no explanation or support for this specious claim. He simply alleges that portraying a llama in an elevator is a “hazardous risk to the safety and welfare of the llama,” that the “llama is shown with its neck bent as the elevator was not large enough for the animal,” and that Mr. Cheadle states that the llama was not feeling well.

Even setting aside the fact that Mr. Noel is not identifying a portrayal of illegal activity that might violate Guideline 2(d), it is clear that his description of the ad is inaccurate. A simple review of the ad will show that there was no “hazardous risk” to the safety of the llama and that the elevator was plenty large enough for the llama—he was not crammed in with a bent neck. And Mr. Cheadle’s comment was obviously a joke and would be interpreted as such by any reasonable adult. Mr. Cheadle is making small talk with the doorman operating the elevator (as he did when he and the llama initially entered the elevator) and acting as if nothing is out of the ordinary. In the meantime, Ian (and likely the viewer) are puzzled as to what is going on—Why is Don Cheadle here? Why does he have a llama? And why is he acting so normal? Like many other parts of the ad, this scene was supposed to be funny.
Guideline 3—Appealing Primarily To Individuals Under Legal Drinking Age

Mr. Noel claims that the Epic Night ad violates Guideline 3 because it contains elements that appeal primarily to persons under the legal drinking age. Mr. Noel provides little to no explanation or support for these allegations. And before even addressing the specific elements of which he complains, it is important to note that the mere fact that the Epic Night ad aired during the Super Bowl indicates that it was not intended to appeal to persons under legal drinking age. More than 80% of the viewing audience for the Super Bowl historically has been comprised of adults of legal drinking age—a number that far exceeds the Beer Institute’s 71.6% guideline for ad placement.

Moreover, none of the specific elements noted in Mr. Noel’s complaint violate Guideline 3. That guideline explains that “[a]dvertising and marketing materials appeal primarily to persons under the legal drinking age if they have special attractiveness to such persons beyond their general attractiveness for persons above the legal drinking age.” The standard is not whether something has appeal to persons under legal drinking age. Rather, Guideline 3 is only violated if the ad contains something that has special appeal to under age persons that is greater than the appeal it has for of-age adults. Judged by this standard, Mr. Noel’s allegations fall well short of showing any violation.

Mr. Noel provides no explanation for why the llama depicted in the Epic Night ad would have special appeal to persons under legal drinking age. And there is no apparent reason why it would. Again, the llama in this ad was meant to be humorous and was part of the overall theme of watching fans react to unexpected and random events. In this context, the llama clearly had no special appeal to persons under the age of 21.

Mr. Noel’s claim that OneRepublic has special attractiveness to people under legal drinking age is similarly lacking in support. Mr. Noel simply states that OneRepublic is known to be popular with people under the age of 21. But again, that is not the standard for determining a violation. People of all ages like OneRepublic, as evidenced by its top ten Billboard albums and its multiple Grammy nominations. And in fact, market research indicates that the vast majority (82%) of OneRepublic’s fans are of legal drinking age. There is nothing about this band that has special attractiveness to people under the age of 21, and Mr. Noel does not even attempt to suggest otherwise.

Finally, Mr. Noel’s claim that Mr. Schwarzenegger and Mr. Cheadle have special appeal to people under the age of 21 is, frankly, ridiculous. Mr. Schwarzenegger is nearly 67 years old, and he starred in his first film more than 40 years ago. Of course, nearly everyone knows who Mr. Schwarzenegger is on account of his lengthy and successful film career (as well as his recent political career). But, as you would expect, market research indicates that his recognition rate is highest with people aged 25-54 and people over the age of 55—i.e., the people who have grown up during Mr. Schwarzenegger’s lengthy career. Even his most recent films were viewed by an audience that overwhelmingly consisted of adults of legal drinking age.

3 The of-age adult percentage for Mr. Schwarzenegger’s recent films were: 84% (“Sabotage”), 82% (“The Last Stand”), 76% (“The Escape Plan”), and 82% (“The Expendables 2”).
Similarly, Mr. Cheadle is almost 50 years old and starred in his first film in the early 1980s. Mr. Cheadle’s recognition rate is highest with people aged 25-54, and the viewing audiences for his recent films were overwhelmingly comprised of adults of legal drinking age. And for the last few years, Mr. Cheadle has been starring in a Showtime series called “House of Lies” that displays a mature audience rating before every episode.

Contrary to Mr. Noel’s unsupported allegations, none of these elements of the Epic Night ad have special attractiveness to persons under legal drinking age that is beyond the general appeal to off-age adults. As such, the ad does not violate Guideline 3.

**Guideline 3d—Models And Actors**

Mr. Noel claims that the Epic Night ad violates Guideline 3(d) because, in his view, the “two primary female actors do not reasonably appear to be over 21 years old” and “[a]dditional female actors in the limousine also do not reasonably appear to be over 21 years old.” Despite Mr. Noel’s claims, however, the Epic Night ad fully complies with Guideline 3(d). All of the actors and models employed for the ad were a minimum of 25 years old, and that was substantiated by proper identification. All of the actors and models in the ad, including those identified in Mr. Noel’s complaint, also reasonably appear to be over 21 years of age.

**Guideline 4(c)—Obtaining Social Success**

In his final allegation, Mr. Noel claims that the Epic Night ad violates Guideline 4(c) because it “implies that the male character in question could not have achieved such social success without the consumption of the product advertised.” According to Mr. Noel, “[i]f the character preferred water to alcohol, the character would not have been in a position to participate in the activities in the advertisement.” Based on this confusing allegation, it seems that Mr. Noel does not understand Guideline 4(c) or the Epic Night ad in general.

Guideline 4(c) provides that:

Beer advertising and marketing materials may portray beer as a part of personal and social interaction and experiences, and a brand may be portrayed in appropriate surroundings, as a superior choice to compliment a particular occasion or activity. Beer advertising and marketing materials should not, however, claim or represent that individuals cannot obtain social, professional, educational, athletic, or financial success without beer consumption.

The Epic Night ad is squarely within the parameters of Guideline 4(c). In fact, the ultimate message of the ad—that Bud Light is a “superior choice to compliment any occasion”—is exactly the type of message that is permitted by the first sentence of Guideline 4(c). To get to that ultimate message, the ad properly used hyperbole and comedy—it depicted examples of even the most unexpected events for which Bud Light is still the perfect beer of choice.

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4 The of-age adult percentage for Mr. Cheadle’s recent films were both 89% (“Brooklyn’s Finest” and “Flight”).
The Epic Night ad in no way violates, or even implicates, the second sentence of Guideline 4(c). That provision is intended to prevent brewers from claiming that you cannot obtain success without consuming beer. The Epic Night ad makes no such claim. The fact that Ian was offered a Bud Light at the outset of the Epic Night ad does not mean that the ad violated this guideline. This ad is not even really about beer. You could replace the Bud Light in this ad with any type of consumer product and then maintain the same basic message: that the consumer product is the perfect one for all occasions.

In short, the Epic Night Ad did not suggest that Ian had obtained some sense of social success that could not be achieved without consuming Bud Light. Ian was the subject of a hidden camera commercial—in essence, a prank. He did not know he was being filmed, and he was only depicted going through a series of outlandish events for the comedic value and to support the overall theme—which had nothing to do with obtaining social success. The ad in no way “claimed or represented that individuals cannot obtain social ... success without beer consumption.”

CONCLUSION

Epic Night is a humorous ad that used the comedic element of surprise to portray a basic advertising message: Bud Light is the perfect beer of choice. The ad fully complied with all of the Guidelines and principles of the Beer Institute’s Advertising and Marketing Code. Mr. Noel’s complaint does not state a proper code violation. As such, A-B respectfully requests that this Board dismiss his complaint and find that the Epic Night ad complies with the Code.
April 29, 2014

Mr. Jonathan Noel
80 Spring Street
Quincy, MA 02169

Dear Mr. Noel:

I write in response to your complaint to the Beer Institute concerning the Anheuser-Busch Bud Light commercial “Epic Night.” It is my understanding that you believe that the “Epic Night” commercial violated Sections 2.d, 3.a, 3.d, and 4.d of the Beer Institute’s Marketing Code. The Code Compliance Review Board (CCRB) reviews complaints from the perspective of a “reasonable adult consumer of legal drinking age.” The CCRB met in person in executive session without any staff from the Beer Institute in the room to review your complaint.

The Beer Institute Guidelines state (section 1) that “In applying these guidelines, creative elements are to be considered in the overall context of the advertisement or marketing materials. Humor, parody, satire, and all other advertising themes and devices should be readily identifiable as such by reasonable adults of legal drinking age.” I will address each of your complaints below.

Section 2.d states that “Beer advertising and marketing materials should not portray or imply illegal activity of any kind by an individual prior to, during, or after the individual consumes, purchases, or is served beer, unless the portrayal or implication of illegal activities is a basic element or feature of a parody or spoof and is readily identifiable as such.” The CCRB believes that the “portrayal of open alcohol containers in public space,” the implication of “excessive alcohol consumption in a moving vehicle,” and the “portrayal of a llama within the confines of a full elevator” are not legal issues with respect to the Advertising and Marketing Code because they clearly are a parody or spoof and are readily identifiable as such. With respect to the llama, we did review the commercial carefully and we did not believe the llama was in any danger or was in any way abused. Therefore, we disagree with your conclusion that the commercial represented a “hazardous risk to the safety and welfare of the llama.” The CCRB finds that Epic Night did not violate section 2.d of the Code.

Section 3.a states “In considering whether beer advertising and marketing materials appeal primarily to persons under the legal drinking age, brewers should take into account the following elements: symbols, language, music, gestures, entertainers or celebrities, cartoon characters, or groups or organizations.” We found no evidence that supports your belief that the use of a live llama would “have primary appeal to individuals under the age of 21” or that the music in the advertisement was “likely to primarily appeal to individuals under the age of 21.” In addition, CCRB felt that there was no evidence that supports your belief that “the use of celebrities Arnold
Schwarzenegger and Don Cheadle seem to appeal primarily to individuals under 21 years old.” The CCRB finds that there is no violation of section 3.a.

Section 3.d states that “Models and actors employed to appear in beer advertising and marketing materials should be a minimum of 25 years old, substantiated by proper identification, and should reasonably appear to be over 21 years of age.” Anheuser-Busch stated that it did check all of the actors and actresses identifications to make sure they were all 25 years of age or older and we have no evidence to believe that Anheuser-Busch has not been forthright with respect to this issue. In addition, while it clearly is a judgment call, the members of the CCRB all felt that the individuals in the advertisement appeared to be over 21 years of age. The CCRB finds that there is no violation of section 3.d.

Section 4.d states that “Beer advertising or marketing materials should not claim or represent that individuals cannot solve social, personal, or physical problems without beer consumption.” The CCRB reviewed the commercial carefully and did not find that Ian Rappaport was drinking beer. In addition, the CCRB found there was no evidence to support the idea that Mr. Rappaport needed beer to “solve social, personal, or physical problems.” He appeared to the members of the CCRB to be a very socially outgoing and extraverted individual. The CCRB finds there was no violation of Section 4.d.

It is the CCRB’s job to examine your complaint from the perspective of whether or not the advertisements in question violate the Beer Institute’s Advertising and Marketing Code. We unanimously found that the Epic Night commercial did not violate Sections 2.d., 3.a, 3.d, and 4.d of the Code. In summary, we felt Epic Night was meant to represent “humor, parody, and satire” and that the advertising themes and devices were “readily identifiable as such by reasonable adults of legal drinking age.”

The CCRB spent a considerable amount of time reviewing the advertisement; studying the code sections in question; and debating the allegations of your complaint against the response of the brewer. The findings of the Board are final. They will be communicated to Anheuser-Busch and the findings will be publicly available on the Beer Institute’s web site and published in an annual report. This correspondence will conclude the complaint and review process.

Though the Board did not share your position on a violation of the Guidelines, we appreciate your informed use of the review process.

Sincerely,

[Signature]
William H. Cunningham
Chairman

xc: CCRB Board Members:
Ms. Rory Davies
Mr. Paul Summers