Complainant: Rod Kovel

Commercial: “Rock, Paper, Scissors”

Product Advertised: Bud Light

Advertiser: Anheuser-Busch

Nature of Complaint: Mr. Kovel alleges that Anheuser-Bush’s 2007 Super Bowl television advertisement, “Rock, Paper, Scissors” is “gruesome, tasteless, deplorable” and violates the Beer Institute Advertising and Marketing Code in that “one drunken maniac feloniously crowns a chum with a 5 lb. chunk of concrete to get the last beer in pail.”

The attached emails dated August 1, 2007 and February 6, 2007 (marked as Exhibit 1) outline Mr. Kovel’s concerns in greater detail.

Relevant Ad Code Provisions:

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 of Ad Code Section 2.d.: Mr. Kovel alleges that “‘Rock, Paper, Scissors’” violates Ad Code Section 2.d. in that it shows an “illegal activity” of someone throwing a rock at someone.
Dear Ms. Smith:

I filed a complaint some months ago about "Rock, paper, scissors" a Bud (as I recall) ad in which one drunken maniac feloniously crowns a chum with a 5 lb. chunk of concrete to get the last beer in the pail.

I never got a decision.

Would you be kind enough to follow up?

Thanks.

Rod Kovel
(voice) 516.735.6300
(fax) 516.735.6304

Get Juno DSL - the easier, safer broadband!
From: rodkovel@juno.com  
Sent: 2/6/2007 11:35:43 AM  
To: Dial BUD  
CC: adecelle@beerinstitute.org  
Subject: Customer Comment on Super Bowl ads

Dear Ms. Clark:

I found two Bud Light commercials aired during Super Bowl XL1 to be gruesome, tasteless, deplorable and -- more importantly -- clearly against the advertising code AB subscribes to on this subject, even despite the weakness of the code as it is.

"Slapping" depicts several pairs of men (and one pair of women) viciously bitch slapping each other as a form of greeting or as congratulation. The introductory sequence shows the men holding open beer in a poolhall as the beatings begin. One man slaps his boss -- possibly a senior citizen. Fortunately, the creative team stopped short of depicting a man bitch slapping his own grandmama as part of the entertainment.

(I am sending along a link to an article discussing a $240,000 fine imposed on a New York City radio station for holding a bitch slapping contest in 2004 -- one that includes a comment by now Governor Spitzer as follows: "This agreement should be a wake-up call to all those in the entertainment industry who think outrageousness is a clever marketing strategy.")
http://www.theregister.co.uk/2005/08/10/slaps_wins_prizes/  

"Rock, Paper, Scissors" depicts a man stealing a beer from another by braining him with what appears to be a 5 pound chunk of concrete, and another man passing by indifferently to the prone figure.

I don't think I need to send a link to the penal assault and homicide laws of my state to demonstrate my point.

In response to my complaint about an Ultra Amber commercial showing the gruesome consequences of a woman horrifically poisoned by a psychopathic ex-boyfriend, you maintained that was an example of "venerable" comedy, and you suggested that poisoning a woman did not even qualify as a crime. I suppose you may say again this time that the beatings were comical -- the New York Times described them as cartoon violence.

I think in these cases, you will have to agree that what is shown is against the law wherever one lives.

But even if I agreed with the doubtful proposition that the beatings were comical, it is not enough to sustain the ads.

Section 2d of the Beer Institute Advertising and Marketing Code provides, "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."

So it does not matter if a joke is funny or old school. The only thing that counts is whether it comports with the rule that prohibits the showing of "illegal activity" in conjunction with beer drinking unless it is a "readily identifiable" "parody" or "spoof."

The bitch slapping and the assault with a deadly weapon would seem rather easily to qualify as "illegal activity." The only remaining issues are whether this stuff occurred as "parody or spoof" and whether it is "readily identifiable as such."
The dictionary.com definition of "parody" is "a humorous or satirical imitation of a serious piece of literature or writing." Its definition of "spoof" is "a mocking imitation of someone or something, usually light and good-humored; lampoon or parody."

So unless there is some "readily identifiable" underlying serious work that your ads relate to, they do not slip past the limitations of 2d.

I have no clue what "serious work" might remotely have anything to do with what was shown during the Super Bowl.

I fully expect none of the millions of children watching the game have any idea either.

Would you be kind enough to point out exactly what "readily identifiable serious work" you had in mind
ANHEUSER-BUSCH, INC.'S RESPONSE TO ROD KOVEL'S
"ROCK, PAPER, SCISSORS" SUPERBOWL TV AD COMPLAINT

On February 6, 2007, Anheuser-Busch, Inc. ("Anheuser-Busch") received a complaint (See Ex. 1) from Rod Kovel, a lawyer who lives and practices law on New York’s Long Island. See http://www.rodkovel.com. Mr. Kovel is no stranger to this Board; he was the author of three other complaints that have been dismissed by this Board.¹ Anheuser-Busch responded to Mr. Kovel’s complaint on February 21, 2007. (See Ex. 2) Six months later, on August 15, 2007, Mr. Kovel submitted his complaint to the CCRB. This Response addresses his untimely complaint about the “Rock, Paper, Scissors” television advertisement, which Mr. Kovel viewed during the broadcast of SuperBowl 2007.

The “Rock, Paper, Scissors” Television Advertisement

The ad opens at a backyard party. Two guys stroll up to the ice-filled tub and each takes hold of the last Bud Light. After a bit of tugging, one asks the other, “Okay, now what?”

“Rock, paper, scissors for it?,” the other inquires.

“Okay, that’s fair,” responds the first man.

They agree to go on the count of three. At the count of three, the first man makes the symbol for paper. The second man actually throws a rock, hitting the first man and causing him fall backwards, stunned. “I threw paper,” he groans. “And I threw a rock,” the second man chirps as he walks away with the Bud Light.

The ad cuts to a clip of a Bud Light being poured, with the voice over declaring: “Refreshingly smooth Bud Light. Always worth it.”

The ad cuts back to the first man, lying on his back on the ground, holding his head with one hand and reaching upwards with the other hand. One of the partygoers walks past him, slapping the upstretched hand and saying “low five.”

¹ Mr. Kovel has previously filed three complaints with the CCRB that were denied. One addressed Anheuser-Busch’s “Hidden Bud Lights” television ad. Another addressed our “Touch Football” advertisement. The third addressed our “Poison Ivy” ad. In all three complaints, Mr. Kovel unsuccessfully contended that the ads violated Guideline 2(d) of the Code. He again makes that argument here.
Analysis of Mr. Kovel’s Complaint

Mr. Kovel complains that the ad purportedly violates Section 2(d) of the Beer Institute’s Advertising and Marketing Code by portraying the “illicit activity” of throwing a rock at someone. Guideline 2(d), which Mr. Kovel cites, provides:

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 such illegal activity is a basic element or feature of a parody or spoof and readily identifiable as such.

The “Rock, Paper, Scissors” advertisement is obviously a parody or spoof, which is expressly allowed under Guideline 2(d), and the rock throwing is the basic element of that parody or spoof.

The creativity and humor of beer advertising is celebrated in the Code. See Code at p. 1. Throughout the last century, advertising professionals have understood that humor can attract attention to a product:

The findings reveal that professional thought in favor of humor evolved along with (1) the more frequent use of emotional appeals of all kinds; (2) changing perspectives of audiences and their characteristics; (3) the recognition that advertising might help achieve marketing objectives other than selling products directly; (4) the rediscovery that advertising should, in certain situations, entertain; (5) changes in the content and tone of the entertainment media; (6) the emergence of the broadcast media, first radio and then television; and (7) the slowly evolving belief that humor and novelty need not necessarily be distracting if they are relevant.

Fred K. Beard, One Hundred Years of Humor in American Advertising, vol. 25, no. 1 JOURNAL OF MACROMARKETING 54-65, 64 (June 2005). Here, Anheuser-Busch is using slapstick humor to draw attention to its product.

In evaluating complaints under the Code, “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. Thus, the applicable standard that the CCRB must apply is not whether a complaining individual – or even the CCRB itself – is offended by the humor, but whether, under the objective “reasonable adult” standard, the humorous devices are readily identifiable as such.

The key to humor, of course, is surprising the audience. Slapstick humor has a long and venerable tradition in entertainment and advertising. It works best where the
gag is unexpected and clearly not in accordance with reality. As one commentator has explained:

Slapstick is a type of comedy involving exaggerated physical violence or activities (e.g., a character being hit in the face with a frying pan or running full speed into a wall). The style is common to those genres of entertainment in which the audience is supposed to understand the very hyperbolic nature of such violence to exceed the boundaries of common sense and thus license non-cruel laughter.


The hyperbolic, humorous nature of the content of the “Rock, Paper, Scissors” ad is obvious to of-age adults. The ad ranked as the third most popular Super Bowl ad in *USA Today*’s Super Bowl Ad Meter, the fourth favorite ad in the *Wall Street Journal*’s poll, and the sixth Best Liked ad by IAG Research. It also was the second place Super Bowl commercial in TiVo’s survey of 10,000 of its subscribers.

The ad also tested well in pre-Super Bowl focus group testing, garnering an 8.4 rating from women and 8.3 rating from men (on a ten-point scale). The focus group report noted that: “Almost all consumers stated they could identify with idea of using the rock, paper, scissors game to settle a dispute. This gives the spot a relatability that engages the consumer and helps set up the punch-line.” The focus group report also noted that: “Consumers said the rock throwing was clearly over the top humor and none were seriously concerned that the ad was promoting or making light of violence.” This ad is classic slapstick humor.

Mr. Kovel seeks to avoid the fact that the “Rock, Paper, Scissors” ad is an obvious spoof by seeking to impose on the Code an overly narrow definition of “parody,” claiming that parody may only involve a “serious piece of literature or writing.” But it should be obvious to the Board that the terms “parody” and “spoof” are not so narrowly defined. Indeed, the very source that Mr. Kovel cites – Dictionary.com – includes the following definition of parody: “any humorous, satirical or burlesque imitation, as of a person, event, etc.” Moreover, WordNet defines parody as “humorous or satirical mimicry,” and the American Heritage New Dictionary of Cultural Literacy (3d Ed.) defines it as: “In art, music, or literature, a satire that mimics the style of its object.” Both of these definitions also appear on Dictionary.com. Clearly, the terms “parody” and “spoof” are broad enough to encompass an ad satirizing the use of the Rock, Paper, Scissors game to resolve disputes over limited resources.
CONCLUSION

The "Rock, Paper, Scissors" ad employs a commonly-used comedic device that is clearly recognizable by adults of legal drinking age. As such, the ad complies with Guideline 2(d) of the Advertising and Marketing Code. Mr. Kovel's complaint that he finds the humor personally offensive does not state a proper code violation. Anheuser-Busch respectfully requests that the Code Compliance Review Board dismiss this Complaint and enter a finding that Anheuser-Busch's "Rock, Paper, Scissors" advertisement complies with the Code.
From: rodkovel@juno.com
Sent: 2/6/2007 11:35:43 AM
To: Dial BUD
CC: adecelle@beerinstitute.org
Subject: Customer Comment on Super Bowl ads

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Dear Mr. Kovel:

Thank you for once again taking the time to contact us regarding our commercials. We always appreciate hearing from our customers, even when it comes in the form of constructive criticism.

We sincerely regret that you found our “Rock, Paper, Scissors” and “Fist Bump” ads, which aired during the Super Bowl, to be “gruesome,” “tasteless,” and “deplorable.” And we are somewhat surprised at your reaction, too, since both of these ads proved extremely popular in a variety of post-game polls. For example, “Rock, Paper, Scissors” was ranked the third most popular ad in USA Today’s Super Bowl Ad Meter, the fourth favorite ad in the Wall Street Journal’s poll, and the sixth Best Liked ad by IAG Research. It also was the second place commercial in TiVo’s survey of 10,000 of its subscribers.

Similarly, “Fist Bump” was ranked the ninth favorite ad in the Wall Street Journal’s poll and the third most recalled ad by IAG research. Bob Garfield, the advertising critic at Advertising Age, gave it three-and-a-half stars (out of four), explaining: "And one slapstick Bud Light spot hilariously imagines the next step in the handshake/high-five/fist-punch continuum. The gag is funny. The underlying observation about staying caught up with the bonding state-of-the-art is brilliant."

In the end, we fundamentally disagree with your conclusion that Section 2(d) of the Beer Institute’s Advertising and Marketing Code effectively precludes the use of slapstick humor in beer advertising. As the Code Compliance Review Board's decisions on your prior complaints about our "Hidden Bud Lights” and “Touch Football” ads made clear, where the depictions are readily identifiable as humorous by reasonable adults or are "farcical" and "intended to suspend reality for the viewer," they comply with Section 2(d). Given the poll results and reviews described above, we believe it is abundantly clear that the depictions in "Rock, Paper, Scissors" and "Fist Bump" are exaggerations that are intended to be funny, and thus they comply with Section 2(d). We are sorry that you personally did not enjoy the slapstick humor and were, instead, offended.

Thank you for writing to us. If you care to pursue this issue further, you may file a formal complaint with the Beer Institute’s Code Compliance Review Board by filling out the appropriate form located on the Beer Institute’s website, by submitting your complaint via e-mail to: adcode@beerinstitute.org, or by mailing the complaint to: The Beer Institute, 122 C Street N.W., Suite 350, Washington, DC 20001.

Sincerely,

Carol Clark
Senior Group Director
Consumer Awareness & Education
Anheuser-Busch Companies, Inc.
BEER INSTITUTE
CODE COMPLIANCE REVIEW BOARD

August 27, 2007

Mr. Rod Kovel
1368 Meadowbrook Road
Merrick, NY 11566

RE: "Rock, Paper, Scissors," violation of sec. 2 (d) of the Beer Institute Member Guidelines

Dear Mr. Kovel:

Thank you for using the Code Compliance Review process. The Board Panel consisted of the following individuals: Rory Davies, Paul Summers, Gloria Rodriguez, and William H. Cunningham. Prior to the meeting, I made a decision that Ms. Davies would be shown as present, but not voting. This procedure was followed to avoid the possibility of having a tie vote.

You complain that the "Rock, Paper, Scissors" television ad violates section 2 (d) of the Beer Institute Member Guidelines. The Board carefully considered your entire complaint while reviewing the ad itself. Our process allows us ample time and access to evaluate the impact of this ad on the viewer and discuss our individual reactions in the context of your complaint.

In your complaint concerning the advertisement "Rock, Paper, Scissors" you state that "Rock, Paper, Scissors depicts a man stealing a beer from another by braining him with what appears to be a 5 pound chunk of concrete, and another man passing by indifferently to the prone figure." Section 1 of the Beer Institute Advertising and Marketing Code states that "Humor, parody, satire, and all other advertising themes and devices should be readily identifiable as such by reasonable adults of legal drinking age." Section 2(d) states that "Beer advertising and marketing materials should not portray or imply illegal activity of any kind...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." It is our opinion that the advertisement "Rock, Paper, Scissors" does represent humor, parody or satire that is readily identifiable by reasonable adults of reasonable drinking age and that the portrayal or implication of an illegal activity in the advertisement is a basic element or feature of the parody. Therefore, it is the unanimous position of the Code Compliance Review Board that the "Rock, Paper, Scissors" ad does not violate the guidance set out in section 2 (d) of the Beer Institute's Advertising and Marketing Code.

The findings of the Board are final. They will be communicated to the company responsible for the advertisement cited in the complaint. 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.

The Board did not share your position on a violation of the guidelines. However, we want to take this opportunity to communicate to you that we are sensitive to the questions of violence that you have raised in your complaint and we appreciate your informed use of the review process to express your concerns and objections.

Sincerely,

[Signature]
William H. Cunningham
Acting Chairman

xc: Ms. Rory Davies
Ms. Gloria Rodriguez
Mr. Paul Summers