CCRB Complaint – Rod Kovel

Table of Contents:

1. Kovel Complaint re MillerCoors ads – August 4, 2019
2. Kovel Complaint re Anheuser-Busch sign placement – Aug 7, 2019
3. Kovel Complaint re Modelo Ads – August 13, 2019
4. MillerCoors Response to Kovel Complaint – Aug 22, 2019
5. Anheuser-Busch Response to Kovel – Aug 28, 2019
6. Constellation Brands Beer Division Response to Kovel – Aug 28, 2019
7. Kovel reply and additional complaint re: Steve Austin Show (non-member)
8. Kovel Request for CCRB Review and Submission
9. Advertisements mentioned in complaints (YouTube link provided)
10. Anheuser-Busch CCRB Submission
11. MillerCoors Supplemental Submission to CCRB
12. Constellation Brands Beer Division CCRB Submission
13. CCRB Decision
Kovel Complaint

MillerCoors ads

August 4, 2019
Multiple independent violations on the "The Official Beer of Drinking in the Shower": and "Break the Ice" (several videos) from Coors.

https://www.youtube.com/watch?v=o-FipnCufCk

I have not contacted the brewer; this is a waste of time. The ads will be gone before the protest is heard. This is about preventing the next round of violating ads.

"The Official Beer of Drinking in the Shower" involves 2e and 3c (ii) violations.

Drinking beer in the shower is EXTREMELY DANGEROUS. First, there's the fact that 1/3rd of the 235k annual slips and falls that lead to ER visits are falls from showers and tubs

And second, the fact that this so well known that your member actually cautions against it in the ad at 8 seconds. "Do not attempt" it says.
Third, this is the type of behavior that kind of thing brings out. https://www.youtube.com/watch?v=HmgKm7_e1GI

And fourth, how much of an alcoholic and how fucked up are you if you are drinking alone at 7AM? Or before breakfast on Saturday morning? https://www.youtube.com/watch?v=w3xo9roAdAI ("La Cerveza Oficial del Sábado por la Mañana") Maybe Coors should take another look at 14c.

Next, I found the ad in question; The Saturday morning drinking ad; "The Official Beer of Being Done Wearing a Bra" https://www.youtube.com/watch?v=R6kZAIClmvA ad; and "Break the Ice" https://www.youtube.com/watch?v=s8zEcv0WraY all on the Coors Youtube channel.

You are as much a witness as I am that Youtube does not check the ages of its users. It also has a nasty tendency to show whatever it likes to whomever is there when autoplay is turned on. This is a categorical violation of your rule requiring age checks.

"Break the Ice" violates 3c(ii), 3f, 3e, and 3d

I don’t need to restate the problem with "Break the Ice" being posted by your member to a website that does not require users to confirm they are 21.
Nor do I really need to explain how dangerous snowboarding is, with an accident rate of 4-16 injuries per 1000 snowboarding days. [https://www.premax.co/au/blog/recent-statistics-on-skiing-and-snowboarding-injuries](https://www.premax.co/au/blog/recent-statistics-on-skiing-and-snowboarding-injuries)

But here's the big picture, literally: Coors shows athletes drinking beer while taking a brief timeout from their activities, as revealed by a close sequence of screen grabs from the video. How dangerous is that?
Then there is illicit use of a Coors logo on sporting equipment, namely a snowboard, which is, obviously an Olympic event in several categories.
And here the Coors logo is on a pair of skies. This screen grab is from https://www.youtube.com/watch?v=casRzFB-xd0
And last but not least in this category, at least one of the performers in the video may not have been 25 years old. The International ski federation only provides the year of birth (1989) for Christian Connors, the snowboarder. [https://www.fis-ski.com/DB/general/athlete-biography.html?sector=SB&competitorid=134557&type=result](https://www.fis-ski.com/DB/general/athlete-biography.html?sector=SB&competitorid=134557&type=result) But the video was posted on March 21, 2014, [https://youtu.be/0F1rOCMCrtA?t=78](https://youtu.be/0F1rOCMCrtA?t=78) meaning there is only a 12 in 52 chance he reached his 25th birthday at the moment it went live, and a much greater chance that he was under 25 when it was recorded. Someone will have to check his exact DOB to see if there was a violation.

Finally, I am going to address the last protest again because it bears on this one. I do not want to see another occasion in which your panelists make up their own bogus excuses for the brewers or otherwise running interference for them after I have shown express violations of the exact language and intent of the code, such as the times braining an individual and tossing another out the window of an office building were not considered "felonious behavior" under the rules but just good fun.

As you all well know, the last protest over the illicit direct attack on other brewers' ingredients leading to Lanham Act litigation was given a pass by the panel on the grounds that it was "farce" and "parody." But later in court, AB defended its position as being entirely truthful, ie, the exact opposite of it being a parody.
Further efforts to mock the reality of an adjudicatory process -- such as by having the judges themselves defend a brewer on grounds contrary to its own interests -- clearly de-legitimates whatever it is you are trying to do there.

Rod Kovel
Kovela Complaint
Anheuser-Busch sign placement
Aug 7, 2019
If it is okay with you, I would like to begin the complaint process next Monday.

Sure. Enjoy the trip.

It would be lovely if you could order a suspension of the showing objectionable ads, but if you can't you can't.

Also when you get back we will deal with Modelo's ads that insinuate that active triathlete Melissa Stockwell and active UFC participant Brian Ortega get a training and social benefit from drinking beer https://www.ttb.gov/rulings/95-2.htm and are also illicitly posted to no-age-check youtube. https://www.youtube.com/watch?v=HcXttiTnWcM and https://www.youtube.com/watch?v=aCrkfyljYYI.

And with a Bud billboard that defies 3f and 12, having been placed at a high school and college baseball field in a municipal park in Geneva, NY called McDonough Park that is rented to a collegiate summer league team known as the Geneva Red Wings.
Red Wings Vs. Pionners PGCBL playoff
Perfect Game Collegiate Baseball League
https://www.youtube.com/watch?v=bK32KBUygaU

Rod Kovel

-------- Original Message --------

Subject: Re: More on "next complaint"
Date: Wed, 7 Aug 2019 16:32:07 +0000

Dear Mr. Kovel,

Thank you for reaching out and submitting your complaint. I am currently traveling. If it is okay with you, I would like to begin the complaint process next Monday. If you need faster consideration, I will begin the process from the road. Just let me know.

Mary Jane Saunders
Sent from my iPhone

On Aug 7, 2019, at 9:53 AM, [REDACTED] wrote:

Stephen Colbert took on the ludicrous Official Beer of Drinking in the Shower commercial.


Ordinarily I tell people to enjoy the videos I send them. But this one makes me furious and should make everyone furious.

Rod Kovel
Dear Mr. Kovel,

Thank you for reaching out with your latest complaint. I will send it along to the three affected companies, Anheuser-Busch, MillerCoors, and Constellation Brands. I want to let you know that when I sent your previous complaint to MC yesterday, I found out that the person with primary responsibility for responding is out of the country until the end of this month on urgent family business. I will let you know as soon as I know when you may expect a response from MC. Thank you for your understanding.

I, too, will be away from the office from August 19-28, traveling for business and personal reasons. I expect to have email access except for periods when I will be driving. Please do not hesitate to reach out if you have questions or comments.

Mary Jane Saunders  
Vice President and General Counsel  
Beer Institute

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[Redacted]
its ingredients, only to have AB reject the ostensibly winning defense here once Coors/Miller sued it under the Lanham Act by claiming the ad was truthful and thus lawfully disparaging under Federal law.

I don't see the point of getting a brewer's assessment first if the panel is going to ignore it anyway.

**Ads indiscriminately posted to Youtube**

That being said, I'm protesting specifically Modello's (AB) use of Youtube to post ads at [https://www.youtube.com/watch?v=HcXttiTnWCm](https://www.youtube.com/watch?v=HcXttiTnWCm) and [https://www.youtube.com/watch?v=aCrkfyJYYI](https://www.youtube.com/watch?v=aCrkfyJYYI), Coors/Miller for an ad at [https://www.youtube.com/watch?v=o-FipnCufCk](https://www.youtube.com/watch?v=o-FipnCufCk) and by extension, these companies and all other members for all their ads posted to their respective Youtube channels.

Section 3c of the Guidelines speaks to situations in which members post to digital media, ie websites, that do or do not have dialogs with their users.

In the case of digital media that do not have dialogs, a member may only place an ad there if it can "expect" based on "audience composition data reviewed prior to placement: that 71.6% of the users are of legal drinking age, which is 21 in the US.

In the case of websites that do have dialogs with users, the brewer must be able to confirm the specific viewer wanting to see the ad is above legal drinking age.

As for the former, it is clear that the brewers are not following the rules. This site discusses the ages of Youtube viewers [https://www.statista.com/statistics/296227/us-youtube-reach-age-gender/](https://www.statista.com/statistics/296227/us-youtube-reach-age-gender/) but notably omits mention of those users under 18, and those 18's are lumped into an 18-24 bracket. It seems that no one has good information about how many under 21's are seeing those ads, and it seems difficult if not impossible to assess who exactly is watching what amongst Youtube users not signed in. The result, it seems to me, is that it is impossible in the absence of firm "audience composition data" for a brewer to able to "expect" what percentage of viewership comes from over 21's. Yet, that is the express requirement of the Guidelines, for better or worse.

Moreover, youtube is a dialog service. Viewers are actually encouraged to log in so the Youtube algorithms can provide interesting content, but viewers are not obliged to log in. At the same time, content posters have the ability to mark uploads as inappropriate for children, and Youtube blocks user designated inappropriate videos to anyone not signed in and/or presently of suitable age per their account.

But the foregoing brewers have deliberately failed to take advantage of that scheme, allowing its ads to be seen by anyone whether or not signed in, and whether or not of appropriate age. Moreover, the algorithms used by Youtube for users not signed in allow videos not posted as inappropriate for children to go to users who have not specifically requested them regardless of age. A child watching other commercials on Youtube may well end up with a beer ad.

These results are inexcusable. The brewers can do the research necessary to see who is watching their ads, and they can control where their ads go with a tremendous degree of precision but choose to do nothing despite an ostensible commitment to responsible advertising.

**Billboard indiscriminately placed in a public park**

I am protesting a Bud billboard that defies 3f and 12 because it is placed at a high school and college baseball field in a municipal park in Geneva, NY called McDonough Park that is rented to a collegiate summer league team known as the Geneva Red Wings.
There's no excuse for indiscriminately putting up a beer ad in an open city park where kids are playing ball with and without supervision much of the year. Moreover, the team that uses the facility is a collegiate summer team; only a few of the players may be old enough to drink legally, and the team and the league cater to families bringing young children and Little Leaguers to the game and interact with team players.

*Ads with active pro athletes insinuating training and social benefits*

Next, I am protesting Modelo’s ads (illicitly posted to Youtube at [https://www.youtube.com/watch?v=HcXttiTnWcM](https://www.youtube.com/watch?v=HcXttiTnWcM) and [https://www.youtube.com/watch?v=aCrkfylYYI](https://www.youtube.com/watch?v=aCrkfylYYI)) that respectively insinuate that active triathlete Melissa Stockwell and active UFC participant Brian Ortega get a training and social benefit from drinking beer [https://www.ttb.gov/rulings/95-2.htm](https://www.ttb.gov/rulings/95-2.htm).

The ATF Ruling 95-2 indicates it evaluates the legality of ads on a case by case basis, looking for something misleading or deceptive. That is the case with each of these ads: they portray the athlete drinking beer with comrades as an extension of their personalities (their "fighting spirit") and their training regimes, thereby "enhanc[ing] athletic prowess, performance at athletic activities or events, health or conditioning ..."

As such, it comes within the rubric of advertising the ATF "considers to be unacceptable pursuant to sections 205(e) and (f) and implementing regulations..." and would therefore violate section 4c of the Guidelines too.

*The Official Beer of Drinking in the Shower and Breaking Ice*
I previously wrote to Ms. Saunders of the Institute regarding my objections to these particularly atrocious ads, also illicitly posted to Youtube without regard to who gets to see them. I respectfully repeat and reiterate them as if fully set forth here if that is necessary as a procedural formality to draw the panel's attention to them.

Rod Kovel
Dear Mr. Kovel:

Your August 4 and August 13 complaints to the Beer Institute regarding recent Coors Light television commercials, “The Official Beer of Drinking in the Shower,” “The Official Beer of Being Done Wearing a Bra” and "La Cerveza Oficial del Sábado por la Mañana" were referred to me for review. Your complaints also identified concerns with an old video series “Break the Ice.” We take your concerns seriously as MillerCoors is committed to ensuring that all of its advertising and marketing is responsible and directed primarily to adults of legal drinking age. To advance this commitment, MillerCoors has an internal advertising pre-clearance process called the Marketing Compliance Program (“MCP”). The MCP, among other things, is designed to ensure that MillerCoors advertising and marketing complies with the requirements of the Beer Institute Advertising and Marketing Code (“BI Code”). I will do my best to try to address all of your concerns; however, if upon receipt you feel that I missed something, please let me know and I will respond accordingly.

It appears that your first concern relates to the Coors Light television advertisement, “The Official Beer of Drinking in the Shower.” You question whether this advertisement complies with sections 2(e) and 3(c)(ii) of the BI Code. Those sections state the following:

2. Beer advertising and marketing materials should portray beer in a responsible manner:
   (e) Beer advertising and marketing materials should not portray beer drinking before or during activities, which for safety reasons, require a high degree of alertness or coordination.

3. Brewers are committed to a policy and practice of responsible advertising and marketing. As a part of this philosophy, beer advertising and marketing materials are intended for adult consumers of legal drinking age. Advertising or marketing materials should avoid elements that appeal primarily to persons below the legal drinking age. Advertising and marketing materials appeal primarily to person below the legal drinking age if they have special attractiveness to such persons beyond their general attractiveness for person of legal drinking age.
   (c) Beer advertising and marketing materials will meet the following criteria:
      (ii). Placements made by or under the control of the Brewer in digital media in which there is a dialogue between a user and a Brewer may only be made where a user confirms that he or she is of legal drinking age. Confirmation may vary depending upon available technology but includes either: 1) disclosure of a user’s full birth date or other method of active confirmation prior to viewing an advertisement by or communicating with a Brewer; or, 2) restriction of the site to users of legal drinking age through registration. The offer of downloadable content by a Brewer that can be permanent accessed by a user without viewing a Brewer’s owned or controlled compliant digital media site or a third-party compliant digital media site, will similarly meet the standard set forth in this Section 3(c)(ii).

First, per our MCP process, this television advertisement was reviewed and approved by our Marketing Compliance Committee (“MCC”). MCC thoroughly considered the same concerns that you raised and did not find any violation of the BI Code finding that showering was not deemed to require a high degree of alertness or coordination. Additionally, we were very deliberate in the portrayal of the responsible consumption given the overall context of the time and location of the shower and showering. The spot was also approved by all television network standards and practices departments. The disclaimer was added, similar to other advertising disclaimers, to remind people to use good judgment and to be responsible when consuming any alcohol beverage. As I reviewed the article that you included, it specifically provides that there is no data to support any connection between beer and slips and falls in bathrooms. However, we are always open to receiving additional information regarding any of our advertising and marketing and we will ensure that MCC considers this information and any additional research regarding such incidents.

Second, I am not clear how you are claiming a violation of 3(c)(ii) with respect to this advertisement. I will assume that you located it on YouTube; and therefore, it relates to your overall concerns with any placements on YouTube. You are incorrect regarding placements on YouTube. The media placement on YouTube complies with the BI Code’s Media Buying Guidelines as the audience
composition on the platform is 86%+ legal-drinking age consumers. Additionally, there is no interaction or dialogue between the consumer and the advertising. Therefore, Section 3(c)(ii) is inapplicable. Lastly, despite having no requirement under the BI Code to do so, MillerCoors uploads all of our content to an age-gated channel, working directly with YouTube to do so.

With reference to the YouTube video that you included in your complaint, claiming that the advertisement was encouraging a certain type of irresponsible behavior, not only do we vehemently disagree, but the video you provided was created and launched well in advance of our new advertising so it is simply incorrect and inappropriate to attempt to claim any such connection.

When you reference "La Cerveza Oficial del Sábado por la Mañana" you also reference 14(c). Below is 14 (c) and I am unclear how it applies to this advertisement. Can you please clarify so that we may properly respond?

14. Product Placement
   (c) Underage drinking: Brewers discourage underage drinking and do not intend for their products to be purchased or consumed illegally by people below the legal drinking age. Consistent with that philosophy, Brewers will not approve product placement which portrays purchase or consumption of their products by persons who are below the legal drinking age.

Next you reference the video vignette “Break the Ice” and allege violations of 3(c)(ii), 3(f), 3(e) and 3(d).

3. Brewers are committed to a policy and practice of responsible advertising and marketing. As a part of this philosophy, beer advertising and marketing materials are intended for adult consumers of legal drinking age. Advertising or marketing materials should avoid elements that appeal primarily to persons below the legal drinking age. Advertising and marketing materials appeal primarily to person below the legal drinking age if they have special attractiveness to such persons beyond their general attractiveness for person of legal drinking age.

   (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 of legal drinking age. For the avoidance of doubt, generally recognizable athletes, entertainers and other celebrities who are of legal drinking age are not models or actors under this provision, provided that such individuals reasonably appear to be of legal drinking age and do not appeal primarily to persons below the legal drinking age.

   (e) Beer should not be advertised or marketed at any event where most of the audience is reasonably expected to be below the legal drinking age. This guideline does not prevent Brewers from erecting advertising and marketing materials at or near facilities that are used primarily for adult-oriented events, but which occasionally may be used for an event where most attendees are below the legal drinking age.

   (f) No beer identification, including logos, trademarks, or names should be used or licensed for use on clothing, toys, games or game equipment, or other materials intended for use primarily by persons below the legal drinking age.

“Break the Ice” is a video vignette from 2013. Any depiction of the consumption of a Coors product occurs after the activity in question. It is not “while taking a brief timeout” as you allege, nor do we believe that is a reasonable interpretation. Furthermore, there is nothing in the video series that would appeal primarily to persons under the legal drinking age. Additionally, Mr. Connors, as an athlete (not an actor or model), was clearly over the age of 21 at the time of the video. Thus, there is no violation of the BI Code. Finally, snowboards and skis are most certainly NOT intended for use primarily for persons below the legal drinking age. There is neither a BI Code violation nor any other type of violation by including Coors logos on snowboards or skis or any other manner of sporting equipment.

We hope that this information appropriately addresses your concerns and please let me know if there were specific question that were not addressed. However, in the event you wish to pursue your complaint further, as you know, you may request a review by the Beer Institute Code Compliance Review Board by completing the Complaint Form at www.beerinstitute.org.

Very truly yours,

Kelly Grebe
Chief Legal Officer

Kelly H. Grebe-MillerCoors
Chief Legal Officer
Mary Jane,

Attached is the letter that we sent to Mr. Kovel today. Thanks.

Anheuser-Busch InBev Email Disclaimer http://www.ab-inbev.com/email-disclaimer.html
August 28, 2019

SENT VIA ELECTRONIC MAIL

Rod Kovel

Re: McDonough Park – Budweiser Sign

Dear Mr. Kovel:

We have received your complaint from the Beer Institute regarding a Budweiser sign at McDonough Park in Geneva, New York. As previously stated, we always appreciate hearing from our customers.

Please be advised that Anheuser-Busch did not place the identified sign; rather, our local wholesaler partner is responsible for the advertisement. Our wholesaler, Lake Beverage Corporation, can be reached at 585-427-0090. That said, we disagree with your contention that this sign violates the Beer Institute’s Advertising and Marketing Code.

First, you reference Guideline 3(f) of the Code. However, this rule applies to branded apparel and other goods – “clothing, toys, games or game equipment, or other materials intended for use primarily by persons below the legal drinking age.” It does not apply to signs like the one you identified in your complaint.

Similarly, you also reference Guideline 12, which is also inapplicable. Guideline 12 applies to billboards like those you may see adjacent to a highway, whereas your complaint refers to a permanent, stationary sign at a sports venue. In accordance with Guideline 3(e), alcohol is advertised at sporting venues all over the country, including for collegiate athletics, because these locations are used for adult-oriented events where a majority of the audience is above the legal drinking age. Even if Guideline 12 did apply, the wholesaler indicates that there are no schools, churches, or playgrounds within 500 feet of the sign.

We appreciate you bringing your concerns to our attention, and we hope that our response has answered those concerns. Please let us know if you have any further questions.

Sincerely,

David McKenzie
Dir., Corporate Social Responsibility
Constellation Brands Beer
Division Response to Kovel
Aug 28, 2019
MJ,

Please see attached response from CBI. Please let me know if you need anything else.

Regards,

Jessica

Sent from my iPhone

Begin forwarded message:

From: Amanda Yozze <censored>
Date: August 28, 2019 at 11:38:54 AM CDT
To: <censored>
Subject: Beer Institute Advertising & Marketing Code Complaint

Mr. Kovel,

Please see attached correspondence.

Amanda Yozze | Administrative Assistant III
Legal
Constellation Brands, Inc. | 131 S. Dearborn, Suite 1200 | Chicago, IL 60603 | www.cbrands.com
August 28, 2019

VIA ELECTRONIC EMAIL

Re: Beer Institute Advertising & Marketing Code Complaint

Dear Mr. Kovel:

Constellation Brands Beer Division is in receipt of your complaint alleging violations of the Beer Institute Advertising & Marketing Code (the “Code”) dated August 13, 2019. In your complaint, you assert that Constellation’s Modelo® TV commercials featuring Melissa Stockwell and Brian Ortega violate Section 4(c) of the Code, and that placement of these advertisements on YouTube violates Section 3(c)(ii) of the Code. For the reasons set forth below, Constellation respectfully asserts that the content and placement of its advertisements comply with the standards set forth in the Code.

Allegations regarding Section 4(c)

In your complaint, you correctly assert that the Melissa Stockwell and Brian Ortega commercials feature the principal talent’s “fighting spirit.” These advertisements are part of the Modelo® “Fighting Spirit” campaign, which was launched in 2016 and tells the stories of individuals who have an unwavering drive for progress and a better life, and who have fought to overcome adversity and obstacles to achieve success. While the commercials tell Melissa’s and Brian’s respective “fighting spirit” stories, there is nothing in the referenced advertisements that conveys that drinking Modelo beer is part of their athletic success or provides a “training or social benefit” to either individual.

In fact, the scenes that feature Modelo beer depict the principal talent in social settings among friends—not as part of the athletic competition scenes throughout the commercials. This change in scenery, and cut between the scenes, was intentional. Section 4(c) of the Code states that “beer advertising and marketing materials may portray beer as a part of personal and social interactions and experiences,” which is the case in each of these commercials. Constellation understands that beer advertising and marketing should not “claim or represent that individuals cannot obtain social, professional, educational, athletic or financial success or status without beer consumption”, which is why the scenes featuring Modelo beer are distinct from scenes which feature the athletes competing in their respective sports. As the commercials separate the occasions which feature beer from those which feature athletic competition—and make no reference to consumption of beer as part of achieving athletic success—the referenced commercials are compliant with the Code.

Allegations regarding Section 3(c)(ii)

You also allege that Constellation has violated Section 3(c)(ii) of the Code with certain placements
on the YouTube platform. Section 3(c)(ii) states that “placements made by or under the control of the Brewer in digital media in which there is a dialogue between a user and a Brewer may only be made where a user confirms that he or she is of legal drinking age.” In compliance with the Code, Constellation uses a variety of measures available on YouTube and Google to ensure that its ads are targeted and served to adults who are confirmed as 21 years of age or older.

On the YouTube platform, users can view Modelo branded content one of two ways: (i) either served as a paid placement between other content on the platform (analogous to a commercial viewed during a television broadcast); or (ii) via the Modelo brand page on the YouTube site. Both methods are restricted to users of legal drinking age, and age information is collected by the platform from users’ YouTube or Google accounts. The Modelo paid placements on the platform, pursuant to YouTube platform guidelines, are only served to users ages 21 or older who are logged in to YouTube or Google. Similarly, the Modelo brand page on YouTube is only accessible to logged-in users, who are 21 or older (based on the information provided in their YouTube or Google accounts). If a user is not logged in, under the legal drinking age, or has not provided a birth date in his or her account information, that user will not be served Modelo advertising via the YouTube platform, nor will that user be able to access the Modelo brand page on YouTube.

Constellation takes responsible advertising very seriously and we trust the information provided in this response addresses your concerns. If you remain dissatisfied, you may request review of your complaint by the Code Compliance Review Board.

Sincerely,

Matt Stanton
Senior Vice President, Public Affairs, Constellation Brands, Inc.
Kovel reply and additional complaint

Steve Austin Show (non-member)
Please tell the Modello company to withdraw and resubmit its opp.

Its statement has "the sky is green" kind of falsity in it with respect to its claim that its channel is blocked on youtube (it isn't), and its author would be looking at perjury charges about now if this was a regular court case, and it sure doesn't and you sure don't want that in court if I go for an Article 75 arbitration review.

Once it has reconsidered its position, I will reply to all three companies (not that their arguments are much better than out and out lies).

Rod Kovel

-------- Original Message --------
From: Mary Jane Saunders
To: [Redacted]
Subject: RE: Not a complaint, just something to worry about: Straight Up with Steve Austin
Date: Fri, 16 Aug 2019 19:38:54 +0000

Dear Mr. Kovel,

Thank you for reaching about the Steve Austin show. While neither Mr. Austin nor his brewery are BI members, and our Ad Code addresses advertising and marketing, not editorial content, you raise some interesting issues.

Mary Jane Saunders
Vice President and General Counsel
Beer Institute
CONFIDENTIALITY WARNING: This message and its contents may include confidential and proprietary information and/or be protected by an attorney-client privilege or work-product doctrine. If you have received it in error, please notify the sender, immediately, delete this message and any attachments, and destroy any printed copies. Thank you.

From: [Redacted]
Sent: Wednesday, August 14, 2019 5:02 PM
To: Mary Jane Saunders [Redacted]
Subject: Not a complaint, just something to worry about: Straight Up with Steve Austin

I couldn't find an online copy of the problem show in its entirety, but you can get this on Amazon Prime and can prolly can also get this in the "On Demand" service with your cable package to verify all of it.

"Stone Cold" Steve Austin, the retired pro wrestler, has a new half hour interview show on the USA Network that airs after WWE Raw on Monday nights. Only one episode aired, and it may not have a regular structured format, so I can't tell you if this situation recurs, but it might, and that is worrisome.

What I can tell you is that downing prodigious amounts of beer has long been a big part of the Steve Austin gimmick. [https://www.nbc.com/straight-up-steve-austin/video/s1-fortune-beer/3994754](https://www.nbc.com/straight-up-steve-austin/video/s1-fortune-beer/3994754) and [https://youtu.be/C5opWspIQC4?t=1033](https://youtu.be/C5opWspIQC4?t=1033)

His first guest was Rob Riggle, a comedian who now hosts the innocuous "Holey Moley." During the interview which was conducted outdoors and apparently on Austin's Broken Skull Ranch near Los Angeles, it was revealed that Riggle spent 9 years on active duty in the Marines and was in and out of dangerous Middle East deployments after moving to the Reserves. I was kind of blown away.

The show opens with the boys driving some kind of modified dune buggy, followed by them climbing on an M1 Abrams tank and crushing some clunker cars, [https://youtu.be/MjJRNMslj?t=166](https://youtu.be/MjJRNMslj?t=166) and then eating a lunch of fried chicken and Steve Austin's own label IPA, which they drink on camera and discuss at some length. They kibbitz some over lunch, but it is not readily observable how much beer they have had to wash down the fried
chicken. [https://www.youtube.com/watch?v=z7sMyLoqINQ](https://www.youtube.com/watch?v=z7sMyLoqINQ) I take it if Steve Austin was a BI member, this would probably be considered an ad or a placement and he would be violating the guidelines by drinking beer on camera, and it may violate TTB rules too, but that’s not really my issue for now.

What is my concern is that after lunch, Steve invites Rob out to the shooting range where they are introduced to a military grade M134 Mini Gun, which the expert said shoots 50 rounds per second and has a range of 900 yards, whereupon they shot up the cars crushed earlier. I didn’t time it, but my guess is they each shot 1000 rounds (at an approximate price of $.50 a bullet). This segment was not available on youtube, but I have taken this still of the weapon off my tv and checked wikipedia. [https://en.wikipedia.org/wiki/Minigun](https://en.wikipedia.org/wiki/Minigun) In case you were wondering what 50 rounds a second sounds like, I recorded a few seconds and have attached it.
Then in a sequence not aired on TV but used as a web exclusive, the boys take batting practice using a first-crushed-then-shot-up car door as home plate. [https://www.usanetwork.com/straight-up-steve-austin/videos/steve-and-robs-epic-batting-practice](https://www.usanetwork.com/straight-up-steve-austin/videos/steve-and-robs-epic-batting-practice)

Were they really drunk or impaired when shooting a military grade machine gun or taking batting practice? Hard to tell either way because Austin never seems to be out of character, but I'm reasonably confident that the Beer Institute membership and the general public would hardly want to encourage people to drink beer before shooting a war gun at 50 rounds a second or swinging a dangerous instrumentality, namely a baseball bat immediately after downing a few beers.

My understanding is that in the immediate future, Steve will interview WWE Superstar Becky Lynch, and they will have an axe throwing contest. I don't know if that will be before or after lunch.

This is way too close to too many problems to be just good ole American laffs and someone like the Beer Institute ought to be on board with the message that guns, axes, and beer don't mix.

Rod Kovel

**Drug Companies Are Furious About New Online ED Solution**

Med Journal

http://thirdpartyoffers.juno.com/TGL3132/5d6ebd368a3463d36738cst02vuc
Kovel Request for CCRB Review and Submission
Rod Kovel is asking for CCRB review of his complaint. He submitted this reply. You may file your own submissions on or before October 2. So you know, the CCRB will review this as a single, combined complaint, but recognizes that each brewer response may present slightly different arguments.

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Mary Jane Saunders  
Vice President and General Counsel  
Beer Institute  
440 First Street, NW, Suite 350  
Washington, DC 20001  

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See attached pdf.

Rod Kovel

Oncologists Are Freaking Out Over True Cause of Cancer  
healthresponses.org  
http://thirdpartyoffers.juno.com/TGL3132/5d8144bdeac5244bd1864st01vuc  
Sponsored Links 7
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From: rodkovel@juno.com <rodkovel@juno.com>  
Sent: Tuesday, September 17, 2019 4:39 PM  
To: Mary Jane Saunders <mjsaunders@beerinstitute.org>  
Subject: Reply supporting Complaint about uncontrolled ad placements and inappropriate content: multiple companies

See attached pdf.

Rod Kovel

Oncologists Are Freaking Out Over True Cause of Cancer  
healthresponses.org  
http://thirdpartyoffers.juno.com/TGL3132/5d8144bdeac5244bd1864stl01vuc

Sponsored Links (i)
The Compliance Code Review Board  
c/o The Beer Institute  
440 First Street NW, Suite 350  
Washington, DC 20001

Re: Coors, Modelo and Budweiser

Dear Members of the Board:

I am a repeat complainer about ads that violate code standards. I’m using this reply to complain about the responders as much more than about the ads. That I have omitted a response to some legal points made by the brewers is about me focusing attention on the out and out deceit that plagues the instant review. Silence does not mean I agree with any of their legal arguments, some of which are patently absurd.

I should note that I told Mary Jane Saunders that I would be calling out liars and anyone who accepts obvious lies at face value very directly unless she told the respondents to rethink and redo their responses. I did not hear back.

Discussion

In the past, brewers defended complaints about ads in bad taste and beneath standards with odd legal logic, strange semantics, and frequent dalliances from comprehension of the purpose for having the code.

That has always been a disappointment. The advertising code is an aspiration. It was intended to raise standards and engender trust in the products and the manufacturers.

It is thus unseemly for brewers defending tasteless skit ads – those portraying wilding, felonious assault on women, drinking beer before breakfast or getting dressed – to act like a common criminals defended by Legal Aid by trying to weasel out of trouble by trying to split hairs in the code or employing super narrow lawyer loopholes that will let them and their tasteless advertising just barely squeak past sanctions on a technicality – usually unsuccessfully.

In fact, it is pretty ugly. If the brewers were committed to ads in good taste rather than being committed to lip service about ads in good taste, then they should be using this forum to hear out consumers and discuss the propriety of their advertising in an intellectual way. In fairness, they have not really had to do so, as the Board has usually covered for them by ignoring or rewriting entire sections of the code and/or by creating bizarre new definitions for words beyond what is provided by standard American dictionaries, thereby allowing brewers to just barely sneak over the low bar set by the code intending to achieve better advertising.

But now, the companies have sunk to a new low: just lying and hiding what they are up to. Are Board members prepared to look into their mirrors each morning knowing they have accepted any and every lie at face value?
**Budweiser**

Budweiser is trying to fool the Board about its illicitly erected product billboard in a playground, and in particular on the fence at a baseball stadium primarily used by college students, few of whom would be LDA, in violation of Rules 12 and 3e.

I previously submitted these 2 photos showing the whereabouts of the sign and a detailed account of who uses the field. These were not challenged.
AB’s representative, David McKenzie had three unsworn responses.

With no basis whatever, McKenzie claims first that the Rule 12 only applies to signs adjacent to highways, and second, he claims that the area is not a playground.

Those are lies.

The rule itself could not be more explicit. A sign may be no less than 500 feet from a playground, much less be posted in a playground. Period. There are no exceptions or equivocations of any kind. Absolutely nothing in, near, or about the rule even begins to hint it says what McKenzie says it says.

It is one thing to ask an arbitrator for a weird misinterpretation of a rule or for an off-text exception following unforeseen difficulties with it. But this is just McKenzie lying about the contents of the code and hoping no one notices.

Now let’s turn to his other contention, which is that the sign is not in a playground.

McKenzie contends, despite a satellite photograph of an open, active recreation city park with an open to all corners softball field, a soccer field with the goals in position, and a basketball court near the baseball diamond, that there is no playground on that site.

What else it could be besides a playground he does not say. Other than lie about the contents of the photo, the best he can hope for is that you will not believe your eyes.

Now let’s deal with his contention that the sign isn’t in violation of Rule 3f, which prohibits the placement of logos on, among other things, “other materials intended primarily for use by persons below” LDA. McKenzie claims the rule really only applies to “branded apparel.”

Here too, a lie. Clothing and “other materials” are separately included in a list of items prohibited from having beer logos. If the term “other materials” was bizarrely meant to only refer to “branded apparel” – despite the fact clothing is already on the list – McKenzie did not indicate where or when that was established or what grammar supports that. It would seem far more likely that his unattributed assertion is an unfounded factoid made up just now. Perhaps his willingness to make up a story from scratch is a function of getting paid by the respondent for spin. There is literally no reason why the Board or anyone should be bound by an unproved contrivance, advanced for the first time devoid of context, that defies logic and English.

Fences are part of the field under the rules of baseball. A batted or thrown ball that hits the Budweiser billboard is in bounds and in play. The games played on that field in the middle of a playground involve participants who are college students, although that league also permits recently graduated high schoolers. Most of the players are not LDA. There could hardly be a more obvious violation of both the letter and the spirit of the code than the placement of giant beer ad exactly where children and adolescents play ball.

Absent the board’s acceptance of some completely fabricated alternate version reality and the plain text of the code to lower the bar on what is tasteful advertising, this is as cut and dried as it gets.

As a passing note, McKenzie and AB also tried to shift the blame for the misplaced sign to AB’s local distributor, Lake Beverage. That was an ugly typical common-criminal defense.

First, it would be awfully convenient to be able to declare all wrongly placed billboards the fault of third party non-members of the Beer Institute, leaving no one officially accountable.
Second, distributors are affected by the Code even though they aren’t members. “The Beer Institute encourages all with whom Brewers do business to adhere to the law, as well as this voluntary Advertising and Marketing Code.” As brewers know what the distributors are doing with the trademarks and logos they have licensed to them and as they benefit from misplaced ads with profits, were they are committed to more than lip service about compliance, they could sanction companies using their marks while flouting the rules rather than claim helplessness. Ultimately, the buck stops with the brewers. AB should stop blaming its associates for dirty work when it has the last clear chance to prevent violations and can do so easily.

**Coors**

Coors representative Kelly Grebe is an out and out liar.

In defending an illicit posting of its commercials to Youtube, Grebe maintains

[T]here is no interaction or dialogue between the consumer and the advertising.

... Lastly, despite having no requirement under the BI Code to do so, MillerCoors uploads all of our content to an age-gated channel, working directly with YouTube to do so.

All of that is false, as demonstrated by the picture, obtained yesterday.

The claim that there is no dialog between viewer and Coors via Youtube is laughable.
The top red arrow indicates that the presence of an age gate: the Youtube sign in. Underage users are restricted to family friendly content. Anyone who doesn’t sign in is so restricted too. Posters, on the honor system, are obliged to indicate what is and is not family friendly to make the system work as intended.

When a user signs in and starts viewing posted content, information about him goes to the poster, as do lots of analytics. A signed in user may also post a comment directed to Coors or the
world about the ad or anything else, at present there are 104 comments from viewers, many if not most of them directed at Coors, which can then moderate the comments posted. A signed in user may also subscribe and start getting communications including email notices about changes to the channel. He or she may also “like” or “dislike” a video or “flag” a video that the user believes to be inappropriate, infringing copyright, or otherwise in violation of Youtube’s terms and conditions.

These are all dialogs between viewers and brewers. The insinuation that this doesn’t exist and that there is no contact between Coors and the people who see its ads on Youtube is a lie.

The fact Youtube does not require viewers to sign in does not negate the existence of the dialog and the age gate. The fact that Coors has circumvented the age gate by choosing not to age restrict content does not provide a loophole that lets Coors have it both ways – a dialog system to get user information and input but not a dialog system to send its ads to children illicitly.

As of today, MillerCoors has still not utilized the sign in to prevent its ads to any one of any age notwithstanding a rule that requires age confirmation whenever there is a dialog. The age gate remains unused. Any assertion that MillerCoors does whatever is necessary to comply with the Code’s age access rules is false.

In the same vain, Coors engages in lies by omission in several places.

Grebe told the Board that Youtube is 86%+ LDC. But he does not say where that number came from or how he knows that to be correct. Nor does he contradict my research that showed that there is no way to tell what those percentages are because Youtube analytics group 18-24 year olds together, leaving is no way to how many within the group are LDA. He says nothing whatsoever about the constituency of the television market.

Instead, there are naked, unsourced claims about the demographics, tendered on a take it or leave it basis. It is bizarre that this is was Grebe’s course because under Code’s Digital Media Guidelines age rules at page 15, brewers must know their audience in advance and the results are subject regular audit under rule 3 c (iii). If there really was research and audit results bearing him out, that documentation could have been – and should have been – attached to his statement for corroboration. So in light of the foregoing, there is no reason to believe any of his stuff – like Donald Trump’s claims about his unseen tax returns – is anything more than fantasy and lies.

Grebe also says a committee made up of (unspecified) individuals with (unspecified) qualifications, an (unspecified) agenda, and an (unspecified) amount of bias, relying on (unspecified) methods and (unspecified) data and evidently no real data about the TV audience agreed to approve the advertisement at an (unspecified) time, and he suggests that these (unknown) individuals’ conclusions justifies the placement ad showing a knucklehead drinking in the shower and two knuckleheads drinking in their pajamas before they breakfast and that their conclusions are somehow binding on the Board and the world.

I disagree. Even if any part of this unbelievably banal, cockamamie and unproven story was true, it is utterly meaningless. God only knows who those people are and why they act as they do, if they exist at all. No board is obliged to accept that disgraceful proffer as definitive.

A more subtle lie comes in the form of the defense of using snowboarder Christian Connors in a video ad from 2013.
To be sure, Grebe is correct that there are different rules for “generally recognizable athletes, entertainers and other celebrities” on the one hand and “actors and models” on the other. Actors must be a confirmed 25 years old; “generally recognizable athletes” only have to reasonably appear to be LDA. But that begs the question of whether Connors, who was born in 1989 and would have been 23 or 24 all during 2013, is a “generally recognizable athlete.”

Grebe tries to cruise past this crucial point and gives no proof that Connors is or was “generally recognizable.” Instead, he refers to Connors as an “athlete.”

Everyone on earth is a Public Accountant but only persons with qualifications can be a Certified Public Accountant. Likewise, everyone on earth is an athlete, but only a performer with qualifications can be a “generally recognizable athlete” under this rubric. Did Christian Connors compete on ESPN? Is he recognized by strangers in public in 2013 or now? Were articles written about him in Sports Illustrated? Did he appear on David Letterman? Does he sign autographs for money at card shows? Is he the subject of reality programming?

No. No. No. No. No. And no. He is not “generally recognizable.” If he had as much as 15 minutes of fame, they were long ago. Using him as an under 25 performer in an ad that pops up on youtube at whatever random time anyone of any age chooses to summon it up or at any when youtube’s algorithms choose to show it is a code violation for use of underage actors.

Lawyers use the phrase “Falsus in uno, falsus in omnibus.” What it means is if a witness lies on one point, you are free to assume he is lying about everything.

I encourage that. There are a ton of lies in the CoorsMiller response, including items that seem to be made up from whole cloth five minutes ago, and no reason whatever for the Board to try to dance around Grebe’s transparent lies in order to yield a naked save for CoorsMiller. That will not look good in court or at the Federal Trade Commission.

**Moderno**

Moderno’s representative, Matt Stanton, is also a liar. Here’s what he said about the ability of youtube users to access Moderno’s ad featuring Melissa Stockwell.

... the Moderno brand page on YouTube is only accessible to logged-in users, who are 21 or older (based on the information provided in their YouTube or Google accounts). If a user is not logged in, under the legal drinking age, or has not provided a birth date in his or her account information, that user will not be served Moderno advertising via the YouTube platform, nor will that user be able to access the Moderno brand page on YouTube.

 Entirely false. Here’s the photo. The green arrow is me not signed in. The white arrow is Melissa Stockwell holding a Moderno in an ad that has begun. The blue arrow is the proof I was at the Moderno brand page. I note in passing that Stanton wrote that on August 28, Moderno had more than two weeks to fix the site after he lied but allowed the proof he lied to remain on Moderno’s Youtube channel.
With that settled, we come to the issue of whether or not Modelo complies with the research parts of the age rules.

Here’s what Stanton said about that.

In compliance with the Code, Constellation uses a variety of measures available on YouTube and Google to ensure that its ads are targeted and served to adults who are confirmed as 21 years of age or older.

His statement is interesting more for what is omitted than for his lies about restricting ads. While he claims Modelo utilized (unspecified) techniques and that (unspecified) individuals examined them, where is the paper trail required by the Digital Medial Guide? Where did Modelo get 18-21 age group numbers that no one prepares and no one seems to compile? And how did I reach a supposedly restricted ad having despite not signing in?

Now around those lies comes the more subjective question of whether Modelo pitches itself as part and parcel of the process that makes Melissa a great athlete. I say that the ad is reasonably point blank about insinuating that Melissa has a “fighting spirit,” and that drinking Modelo is a character building trait useful to sport and life, and as it is a product for those with a “fighting spirit” and specifically not for us losers who don’t drink Modelo.

Stanton contends otherwise, ie, that viewers cannot read into the ad any suggestion from Modelo that drinking its beer, which engenders a “fighting spirit” makes buyers better people.

Around his obvious lies about whether the ad is available on youtube or not and whether the company checks the demographics, it is hard to imagine he believes his own assessment.

Sincerely,

Rod Kovel
Advertisements mentioned in complaints (YouTube link provided)
**Coors Light Advertisements:**

1. The Official Beer of Being Done Wearing a Bra - :30
   - [https://www.youtube.com/watch?v=R6kZAIcImvA](https://www.youtube.com/watch?v=R6kZAIcImvA)

2. The official Beer of Drinking in the Shower - :30
   - [https://www.youtube.com/watch?v=ENBChGETkTw](https://www.youtube.com/watch?v=ENBChGETkTw)

3. The official Beer of Saturday Morning - :30
   - [https://www.youtube.com/watch?v=TM_ZHB05reg](https://www.youtube.com/watch?v=TM_ZHB05reg)

4. Coors Light’s #BreakTheIce Part 1: Urban Jungle
   - [https://www.youtube.com/watch?v=s8zEcv0WraY](https://www.youtube.com/watch?v=s8zEcv0WraY)

5. Coors Light’s #BreakTheIce Part 2: Over The Wire
   - [https://www.youtube.com/watch?v=casRzFB-xd0](https://www.youtube.com/watch?v=casRzFB-xd0)

6. Coors Light’s #BreakTheIce Part 6: Exclusive Action
   - [https://www.youtube.com/watch?v=0F1rOCMCrtA&feature=youtu.be&t=78](https://www.youtube.com/watch?v=0F1rOCMCrtA&feature=youtu.be&t=78)

**Modelo Advertisements:**

1. Fighting for her Fellow Veterans with Melissa Stockwell | ModeloUSA
   - [https://www.youtube.com/watch?v=HcXttiTnWcM](https://www.youtube.com/watch?v=HcXttiTnWcM)

2. Fighting for His Community with Brian Ortega | ModeloUSA
   - [https://www.youtube.com/watch?v=aCrkfyjYYI](https://www.youtube.com/watch?v=aCrkfyjYYI)
Anheuser-Busch CCRB Submission
ANHEUSER-BUSCH’S RESPONSE TO THE COMPLAINT
BY ROD KOVEL REGARDING GENEVA RED WINGS STADIUM SIGNAGE

Anheuser-Busch submits this response to the Beer Institute’s Code Compliance Review Board opposing the complaint filed by Mr. Rod Kovel on September 17, 2019. Mr. Kovel’s complaint was an amalgam of complaints about many brewers’ ads. In this response Anheuser-Busch deals with the only issue that relates to it—the stadium signage in Geneva, NY. (Mr. Kovel complains about two Modelo ads. In the United States, Constellation Brands advertises Modelo, and thus Anheuser-Busch is not the company that will be responding to those aspects of Mr. Kovel’s complaint.)

Mr. Kovel asserts that Budweiser has a billboard in a municipal playground in violation of Beer Institute Code Paragraphs 12 and 3(f). Mr. Kovel is mistaken. Our local wholesaler, Lake Beverage Corp., sponsored the Geneva Red Wings by buying fence signage for the season at the team’s baseball stadium. The fence signage Mr. Kovel complains of faces inside the stadium and simply displays the Budweiser name and logo.

First, it should be noted at the outset that the fence signage in the baseball stadium is not a “billboard” within the terms of the Beer Institute’s Advertising and Marketing Code Guideline 12. The Cambridge English Dictionary defines “billboard” as “a very large board on which advertisements are shown, esp. at the side of a road.” See also Macmillan Dictionary (Examples: “Billboard refers to a kind of large, outdoor advertisement that is usually seen in cities or along major roadways.”). Wikipedia explains that a billboard is “a large outdoor advertising structure (a billing board), typically found in high traffic areas such as along busy roads.” https://en.wikipedia.org/wiki/Billboard

The sign at issue here, which merely displays our brand logo, is 7’ x 12’. It is not a billboard governed by Guideline 12. Rather, it is stadium signage erected at a facility by an event sponsor. Guideline 3(e) allows a brewer to erect advertising at a facility that is used primarily for adult oriented events (such as sports), even though the facility also may, in some instances, also host events where an underage audience may be present.
Second, there can be little doubt that McDonough Park is a baseball stadium, not a playground within the language of Guideline 12. The stadium is not generally open to the public during the off-season; it is a stadium that the Red Wings work hard to maintain. The website for the Geneva Red Wings baseball team proudly observes that this is an historic baseball stadium:

McDonough Park opened in 1958 as the home of the minor league Geneva Red Legs and remains in use today as the proud home of the prestigious Perfect Game Collegiate League’s Geneva Red Wings. *With a seating capacity of over three thousand and a trendy stadium atmosphere, McDonough Park has grand history in its roots as the home of several other minor league teams such as the Geneva Cubs and Geneva Reds.* . . . As the home of the Red Wings, the park will once again become a mainstay for fans throughout the Upstate New York area as Geneva battles opposing teams throughout New York. With new ownership that has over 30 years of experience in the collegiate game, the Red Wings have revamped McDonough park making it *the most unique stadium in the area.*

Third, this stadium has a primarily adult audience. Western New York is a baseball fan’s Mecca. Everyone knows the National Baseball Hall of Fame and Museum in Cooperstown, New York. But there are a number of small ballparks scattered throughout Western New York that draw baseball history buffs from throughout the country. For example:

Along the New York State Thruway, there are 5 Minor League stadiums, all within an hour from each other. Two are still in use as Affiliated Minor League Parks: Auburn and Batavia. The other three, Geneva, Little Falls, and Newark, are serving the MLB sponsored Collegiate Summer circuit.


Mr. Kovel complains that many of the college students who play games in the stadium in may be underage. That has never been the standard under the Beer Institute Code. Indeed, brewers have signage at college athletic stadiums
used for college sports teams, and this is allowed under the Code. See, e.g., Code Guideline 10(a)(i). Why? Because the audience for the games is primarily comprised of adults above the legal drinking age. The applicable standard here is Guideline 3(e) of the Code, which directs:

Beer should not be advertised or marketed at any event where most of the audience is reasonably expected to be below the legal drinking age. This guideline does not prevent Brewers from erecting advertising and marketing materials at or near facilities that are used primarily for adult-oriented events, but which occasionally may be used for an event where most attendees are under the legal drinking age.

The adults of Geneva are invested in the Geneva Red Wings. They house the players in their homes for the summer. They turn out for the games, as do their competitors’ towns and baseball pilgrims. The Red Wings play some 60 home and away games over the summer. Plainly, “most of the audience is reasonably expected to be [above] the legal drinking age,” consistent with Guideline 3(e).

Lake Beverage Corporation is one of many local businesses to sponsor the Red Wings. The list of other sponsors in no way suggests that the advertisers at the stadium are targeting people under 21 years of age; rather, they clearly are advertising to an adult audience. Besides Budweiser/Bud Light, the team’s sponsors listed on its homepage are banks, insurers, construction firms, and materials suppliers, among others:

*Bank of the Finger Lakes
*Generations Bank
*LNB Banking
*Geneva Historical Society
*Chrisanatha Construction Corp.
*Geneva General Dermatology

*Red Jacket
*Assemblyman Brian M. Kolb
*Bond, McDonald & Lehman, PC
*Fingerlakes1.com
*NY State Senator Pamela Helming
*Lake Country Dental
*Sherwin Williams

*Carl’s Pools & Spas
*Finger Lakes Limousine & Coach
*Hobart
*Sunset Bowl
*Simmons-Rockwell
*D-Bat
*Geneva Lakefront Ramada
Finally, Mr. Kovel is simply wrong to cite Guideline 3(f) of the Code, which applies to things intended for use primarily by persons below the legal drinking age, such as toys, games, branded apparel, and other material. Stadium signage is not anything intended for use primarily by underage people. Rather, it is branding intended to be viewed primarily by adults. Absolutely nothing that Mr. Kovel has said supports the notion that this signage is somehow designed to target underage people who cannot lawfully purchase the product. Like the banks, insurers, contractors, and the law firm that also sponsored the Red Wings, Lake Beverage hoped to support its local team and reach adults in the community who actually could buy their goods and services. As such, Guideline 3(f) has nothing to say about this signage.

As an aside, we should note that Mr. Kovel misunderstands the importance of the fact that this stadium signage placement was made by our wholesaler, Lake Beverage. Wholesalers live, work, and worship in the communities that they service. They often have children in the local schools, and have a keen ability to understand what is appropriate and responsible in their community. The fact that Lake Beverage chose to support its local team by putting discreet stadium signage in the Red Wings’ stadium makes us more—not less—sure that this placement conforms to the values of the Beer Institute’s Advertising and Marketing Code. We do not believe that Lake Beverage would place advertising in any way
targeting the youth of their community, and as is demonstrated above, they did not do so in this instance.
MillerCoors Supplemental Submission to CCRB
VIA E-MAIL

October 9, 2019

Beer Institute Code Compliance Review Board
440 First Street NW
Suite 350
Washington, D.C. 20001

RE: MillerCoors Supplemental Response to Mr. Rod Kovel’s 9/17/19 Ad Code Complaint

Link to Coors Light Commercials: https://spaces.hightail.com/space/BcstK0SZsB

Dear Code Compliance Review Board:

MillerCoors is in receipt of Mr. Kovel’s complaint to the Beer Institute ("BI") dated September 17, 2019, requesting review by the Code Compliance Review Board ("CCRB"). MillerCoors previously responded directly to each of Mr. Kovel’s complaints by e-mail dated August 22, 2019. While MillerCoors is disappointed that the response did not satisfactorily address Mr. Kovel’s concerns, MillerCoors will primarily rely upon that response before the CCRB. However, MillerCoors also provides this supplemental response to be considered by the CCRB in its review. For convenience, we have included a link above to the Coors Light commercials at issue in Mr. Kovel’s complaint. We have also attached the August 22, 2019 e-mail response to Mr. Kovel’s August 4th and August 13th complaints to the Beer Institute.

Mr. Kovel alleges that our previous response is false as it pertains to YouTube placement of our videos because he maintains that there is a dialogue between MillerCoors and the consumer on YouTube. There is not. MillerCoors placements on YouTube comply with the BI Code. The requirement regarding an affirmative age confirmation is contained in section 3(c)(ii) of the BI Code, which prohibits placement in digital media in which there is a dialogue between the user and the Brewer unless the user confirms that he or she is of legal drinking age. A dialogue is a conversation between two or more people. There was a lot of discussion and thought when these revised digital guidelines to the BI Code were adopted. A comment or a like is not a dialogue. A dialogue must consist of a back and forth conversation between a user and the advertiser.

Here, MillerCoors merely posts its video on YouTube, which is a BI audience compliant site. While people may comment on the ad posts, MillerCoors does not respond in any way. MillerCoors purposefully does not engage in any dialogue to ensure compliance with the BI Code. As an aside, Mr. Kovel also alleges, somewhat nefariously, that MillerCoors gets information and analytics about those persons who post comments on its YouTube advertisements. While we do not believe it is relevant to a question of dialogue, we have confirmed that Mr. Kovel is simply wrong and that MillerCoors does not get any information about the identity or demographics of any poster.
As part of our earlier response, MillerCoors explained to Mr. Kovel that YouTube complies with the BI Code's Media Buying Guidelines as audience composition on the platform is 86%+ legal drinking age consumers. This is a statistic from Comscore, an independent media measurement agency that analyzes audience composition. We confirmed this composition on October 7, 2019, and YouTube is still running at 86%+ legal drinking age consumers. For an established social media channel, these Comscore numbers do not typically vary by much over weeks or months unless something significant happens with the media channel itself. In addition to YouTube meeting the demographic requirement for beer advertising, all of the MillerCoors YouTube beer-brand channels are appropriately age gated for legal drinking age consumers. This is a belt and suspenders approach that is not required, but MillerCoors desires to ensure it is not advertising to people under the legal drinking age. Plus, despite already clearly being in compliance, to further ensure responsible practices, MillerCoors is now age gating every individual video, which clearly goes well above and beyond what is required under the BI Code.

Finally, MillerCoors would like to briefly address Mr. Kovel's allegation that featuring Christian Connors in a 2013 video snowboarding demonstration violated the BI Code. We would like to thank Mr. Kovel for bringing this to our attention as it was an old campaign that no longer appropriately represented the brand positioning. Therefore, MillerCoors has affirmatively removed this video from its YouTube channel. However, as we mentioned to Mr. Kovel, Mr. Connors was a popular up and coming snowboarder. He was readily known within that community. He is now retired from snowboarding, but it is still quite simple to Google his name, snowboarding and age to find his demographic data. There is simply nothing to indicate that MillerCoors somehow violated the BI Code by showing Mr. Connors, an athlete who was of legal drinking age at the time of the video, participating in his sport of snowboarding. Further, as set out in our earlier response, there is no reason to believe that his sport primarily appeals to consumers under 21 years of age or that MillerCoors was advertising in any way that appealed to an under-21 demographic.

We sincerely hope that our initial response to Mr. Kovel, as well as this supplemental response, provided the CCRB with what it needs to find MillerCoors in full compliance with the BI Code. If there are any additional questions, please do not hesitate to reach out to us.

Very truly yours,

Shelly S. Watson
Associate General Counsel
Dear Mr. Kovel:

Your August 4 and August 13 complaints to the Beer Institute regarding recent Coors Light television commercials, "The Official Beer of Drinking in the Shower," "The Official Beer of Being Done Wearing a Bra" and "La Cerveza Oficial del Sábado por la Mañana" were referred to me for review. Your complaints also identified concerns with an old video series "Break the Ice." We take your concerns seriously as MillerCoors is committed to ensuring that all of its advertising and marketing is responsible and directed primarily to adults of legal drinking age. To advance this commitment, MillerCoors has an internal advertising pre-clearance process called the Marketing Compliance Program ("MCP"). The MCP, among other things, is designed to ensure that MillerCoors advertising and marketing complies with the requirements of the Beer Institute Advertising and Marketing Code ("BI Code"). I will do my best to try to address all of your concerns; however, if upon receipt you feel that I missed something, please let me know and I will respond accordingly.

It appears that your first concern relates to the Coors Light television advertisement, "The Official Beer of Drinking in the Shower." You question whether this advertisement complies with sections 2(e) and 3(c)(ii) of the BI Code. Those sections state the following:

2. Beer advertising and marketing materials should portray beer in a responsible manner:
   (e) Beer advertising and marketing materials should not portray beer drinking before or during activities, which for safety reasons, require a high degree of alertness or coordination.

3. Brewers are committed to a policy and practice of responsible advertising and marketing. As a part of this philosophy, beer advertising and marketing materials are intended for adult consumers of legal drinking age. Advertising or marketing materials should avoid elements that appeal primarily to persons below the legal drinking age. Advertising and marketing materials appeal primarily to person below the legal drinking age if they have special attractiveness to such persons beyond their general attractiveness for person of legal drinking age.

   (c) Beer advertising and marketing materials will meet the following criteria:
      (ii). Placements made by or under the control of the Brewer in digital media in which there is a dialogue between a user and a Brewer may only be made where a user confirms that he or she is of legal drinking age. Confirmation may vary depending upon available technology but includes either: 1) disclosure of a user's full birth date or other method of active confirmation prior to viewing an advertisement by or communicating with a Brewer; or, 2) restriction of the site to users of legal drinking age through registration. The offer of downloadable content by a Brewer that can be permanent accessed by a user without viewing a Brewer's owned or controlled compliant digital media site or a third-party compliant digital media site, will similarly meet the standard set forth in this Section 3(c)(ii).

First, per our MCP process, this television advertisement was reviewed and approved by our Marketing Compliance Committee ("MCC"). MCC thoroughly considered the same concerns that you raised and did not find any violation of the BI Code finding that showering was not deemed to require a high degree of alertness or coordination. Additionally, we were very deliberate in the portrayal of the responsible consumption given the overall context of the time and location of the shower and showering. The spot was also approved by all television network standards and practices departments. The disclaimer was added, similar to other advertising disclaimers, to remind people to use good judgment and to be responsible when consuming any alcohol beverage. As I reviewed the article that you included, it specifically provides that there is no data to support any connection between beer and slips and falls in bathrooms. However, we are always open to receiving additional information regarding any of our advertising and marketing and we will ensure that MCC considers this information and any additional research regarding such incidents.

Second, I am not clear how you are claiming a violation of 3(c)(ii) with respect to this advertisement. I will assume that you located it on YouTube; and therefore, it relates to your overall concerns with any placements on YouTube. You are incorrect regarding placements on YouTube. The media placement on YouTube complies with the BI Code's Media Buying Guidelines as the audience
composition on the platform is 86%+ legal-drinking age consumers. Additionally, there is no interaction or dialogue between the consumer and the advertising. Therefore, Section 3(c)(ii) is inapplicable. Lastly, despite having no requirement under the BI Code to do so, MillerCoors uploads all of our content to an age-gated channel, working directly with YouTube to do so.

With reference to the YouTube video that you included in your complaint, claiming that the advertisement was encouraging a certain type of irresponsible behavior, not only do we vehemently disagree, but the video you provided was created and launched well in advance of our new advertising so it is imply incorrect and inappropriate to attempt to claim any such connection.

When you reference "La Cerveza Oficial del Sabbath por la Mañana" you also reference 14(e). Below is 14 (c) and I am unclear how it applies to this advertisement. Can you please clarify so that we may properly respond?

14. Product Placement
   (c) Underage drinking: Brewers discourage underage drinking and do not intend for their products to be purchased or consumed illegally by people below the legal drinking age. Consistent with that philosophy, Brewers will not approve product placement which portrays purchase or consumption of their products by persons who are below the legal drinking age.

Next you reference the video vignette “Break the Ice” and allege violations of 3(c)(ii), 3(f), 3(e) and 3(d).

3. Brewers are committed to a policy and practice of responsible advertising and marketing. As a part of this philosophy, beer advertising and marketing materials are intended for adult consumers of legal drinking age. Advertising or marketing materials should avoid elements that appeal primarily to persons below the legal drinking age. Advertising and marketing materials appeal primarily to person below the legal drinking age if they have special attractiveness to such persons beyond their general attractiveness for person of legal drinking age.

   (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 of legal drinking age. For the avoidance of doubt, generally recognizable athletes, entertainers and other celebrities who are of legal drinking age are not models or actors under this provision, provided that such individuals reasonably appear to be of legal drinking age and do not appear primarily to persons below the legal drinking age.

   (e) Beer should not be advertised or marketed at any event where most of the audience is reasonably expected to be below the legal drinking age. This guideline does not prevent Brewers from erecting advertising and marketing materials at or near facilities that are used primarily for adult-oriented events, but which occasionally may be used for an event where most attendees are below the legal drinking age.

   (f) No beer identification, including logos, trademarks, or names should be used or licensed for use on clothing, toys, games or game equipment, or other materials intended for use primarily by persons below the legal drinking age.

“Break the Ice” is a video vignette from 2013. Any depiction of the consumption of a Coors product occurs after the activity in question. It is not “while taking a brief timeout” as you allege, nor do we believe that is a reasonable interpretation. Furthermore, there is nothing in the video series that would appeal primarily to persons under the legal drinking age. Additionally, Mr. Connors, as an athlete (not an actor or model), was clearly over the age of 21 at the time of the video. Thus, there is no violation of the BI Code. Finally, snowboards and skis are most certain NOT intended for use primarily for persons below the legal drinking age. There is neither a BI Code violation nor any other type of violation by including Coors logos on snowboards or skis or any other manner of sporting equipment.

We hope that this information appropriately addresses your concerns and please let me know if there were specific question that were not addressed. However, in the event you wish to pursue your complaint further, as you know, you may request a review by the Beer Institute Code Compliance Review Board by completing the Complaint Form at www.beerinstitute.org.

Very truly yours,

Kelly Grebe
Chief Legal Officer

Kelly H. Grebe-MillerCoors
Chief Legal Officer

2
Constellation Brands Beer
Division CCRB Submission
On August 13, 2019, Constellation Brands Beer Division (“Constellation”) received an email from the Beer Institute which included a complaint from Mr. Rod Kovel. The complaint alleged that Constellation’s Modelo® advertisements featuring Melissa Stockwell and Brian Ortega, and placement of the subject advertisements on the YouTube platform (“YouTube”), violate the Beer Institute Advertising & Marketing Code (the “Code”). Constellation responded to the email complaint by letter on August 28, 2019 (the “August Letter”). The Beer Institute then notified Constellation that Mr. Kovel subsequently requested formal review of his complaint by the Code Compliance Review Board in a letter to the Beer Institute dated September 17, 2019 (the “September Letter”).

Mr. Kovel’s initial complaint alleged that Constellation violated Sections 3(c)(ii) and 4(c) of the Code. In the September Letter, Mr. Kovel asserted that Constellation falsely represented its use of YouTube in the August Letter. Constellation now files this response to Mr. Kovel’s complaint, affirming—once again—that the content and placement of its Modelo® advertisements comply with the standards set forth in the Code. Unless otherwise specified herein, capitalized terms used in this response shall have the meanings applied in the Code.

I. ANALYSIS OF MR. KOVEL’S SECTION 3(c)(ii) COMPLAINT

Mr. Kovel makes a number of assertions regarding YouTube in his initial complaint and the September Letter, namely, that Constellation’s use of the platform violates Section 3(c)(ii) because it is a platform upon which a brewer and a user can engage in dialogue, and the referenced advertisements are accessible to individuals who are not age-verified as older than twenty-one. Mr. Kovel also questions the LDA Compliance numbers for YouTube as a whole. For this reason, an analysis of compliance under Section 3(c)(i) is also relevant to this response.

Section 3(c)(i) states, in part:

“Placements made by or under the control of the Brewer . . . in digital media in which there is no dialogue between a Brewer and a user, may only be made where at least 71.6% of the audience is expected to be adults of legal drinking age.”

The relevant portions of Section 3(c)(ii) are as follows:

“Beer advertising and marketing materials will meet the following criteria . . . Placements made by or under the control of the Brewer in digital media in which there is a dialogue between a user and a Brewer may only be made where a user confirms that he or she is of legal drinking age. Confirmation may vary depending upon available technology but includes either: 1) disclosure of a user’s full birth date or other method of active confirmation prior to viewing an advertisement by or communicating with a Brewer; or, 2) restriction of the site to users of legal drinking age through registration.”

A. CONSTELLATION’S USE OF YOUTUBE COMPLIES WITH SECTION 3(c)(i)

1 Mr. Kovel’s initial complaint, the August Letter and the September Letter are attached hereto as Exhibit A.
To ensure compliance with Section 3(c) of the Code, brewers refer to the Code Buying Guidelines. Under the Digital Media Guidelines, specifically, brewers are expected to assess LDA Compliance for non-targeted Digital Media Placements using an Audience Measurement Service. An Audience Measurement Service is defined in the Code as “a nationally recognized and independent company, including but not limited to Nielsen, Scarborough Research, Mediamark Research, Inc., Edison and Comscore.” In compliance with the Buying Guidelines, Constellation relies on data from Comscore to assess LDA Compliance on YouTube.

Comscore Media Metrix data consistently confirms that YouTube, as a platform, is LDA Compliant. Constellation receives reports on this data from its media buying agency on a quarterly basis, and the most recent report listed YouTube’s LDA Compliance at 84.1%. These numbers well exceed the 71.6% compliance requirement set forth in the Code.

While Constellation’s placements on YouTube are only served and targeted to users age-verified as twenty-one or older (as described further below and in the August Letter), users can also search for specific Modelo advertisements on the platform (which appears to be the method used by Mr. Kovel as referenced in his September Letter). For the reasons set forth above, access to the Modelo advertisements via the search mechanism complies with Section 3(c)(i) of the Code.

B. CONSTELLATION’S USE OF YOUTUBE COMPLIES WITH SECTION 3(c)(ii)

Under Section 3(c)(ii) of the Code, users must first confirm they are of legal drinking age before they can engage in dialogue with a brewer. This Section also lists a number of methods to confirm a user’s age, including “restriction of the site to users of legal drinking age through registration”.

In Mr. Kovel’s September Letter, he includes a screenshot with arrows to indicate that he is not signed into the platform while “at the Modelo brand page.” This statement is misleading. On YouTube, users can only engage in dialogue with or access the Modelo USA brand page if they are logged in (to YouTube or Google) and have provided age data confirming they are twenty-one years or older. In fact, if an individual who is not logged in to YouTube or Google attempts to subscribe to the Modelo USA brand page, access the Modelo USA brand page, or engage in dialogue with the Modelo USA brand via the comment mechanism, the individual will be prompted to log-in first. Furthermore, anyone who attempts to access the Modelo USA brand page who is under the age of twenty-one (or who is not logged in), will be redirected to a page warning the user that Modelo USA branded content is age restricted.

In its August Letter, Constellation shared that it only serves its advertisements on YouTube to users age verified as twenty-one or older who are logged in to YouTube or Google. Similarly, the Modelo USA brand page on YouTube, and the ability for users to engage in dialogue with the Modelo USA brand, is only accessible to logged-in users, who are twenty-one or older (based on the information provided in their YouTube or Google accounts). Finally, as a general matter, Constellation’s digital media team regularly assesses each brand’s Code compliance on social media platforms, including YouTube, and makes improvements on its targeting and age verification techniques as new technologies become available. In fact, using newly available

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3 See Exhibit B, YouTube Screenshots at 2-3 (capturing log-in prompts for subscriptions requests); YouTube Screenshots at 4-5 (capturing log-in prompts for brand page access requests); YouTube Screenshots at 6-7 (capturing log-in prompts for providing comments).
4 Id. at 4-5.
technology, Constellation recently implemented a video-level twenty-one plus age-gate to its Modelo USA commercials on YouTube.\(^5\)

Accordingly, Constellation’s use of YouTube also complies with Section 3(c)(ii) of the Code.

II. ANALYSIS OF MR. KOVEL’S SECTION 4(C) COMPLAINT

In Mr. Kovel’s initial email to the Beer Institute, he alleged that Constellation’s Modelo commercials featuring Brian Ortega\(^6\) and Melissa Stockwell\(^7\) also violate Section 4(c) of the Code. As reference to the Brian Ortega commercial is absent from Mr. Kovel’s September Letter, Constellation trusts that its response in the August Letter regarding the Brian Ortega commercial is satisfactory. Constellation addresses Mr. Kovel’s remaining concerns regarding Section 4(c) and the Melissa Stockwell commercial below.

Section 4(c) of the Code states:

“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 complement a particular occasion or activity. Beer advertising and marketing should not, however, claim or represent that individuals cannot obtain social, professional, educational, athletic or financial success or status without beer consumption.”

A. CONSTELLATION’S MODELO ADVERTISING COMPLIES WITH SECTION 4(c)

The Melissa Stockwell commercial tells the story of veteran and triathlete, Melissa Stockwell. In the :30 advertisement, viewers watch a series of vignettes which feature Melissa participating and training in her respective sport, while the voiceover narrates the story of her “fighting spirit”. The bookends of the spot feature Melissa holding and toasting a Modelo beer in a social setting that does not feature her training or competing.

In his September Letter, Mr. Kovel states the Melissa Stockwell advertisement insinuates that “Melissa has a ‘fighting spirit’”, that “drinking Modelo is a character-building trait useful to sport and life” and that Modelo is a “product for those with a ‘fighting spirit’”. He also alleges that the commercial suggests that drinking Modelo beer engenders a “fighting spirit”, which “makes buyers better people.”

The Modelo advertisement intends to convey that Melissa has a “fighting spirit” and that Modelo beer is brewed for those with a “fighting spirit.” As stated in the August Letter, this multi-year campaign focuses on sharing the stories of individuals who have a “fighting spirit.” This campaign was born out of a desire for the Modelo brand to better connect with its target demographic: LDA consumers from all walks of life who are driven by a sense of purpose to make their lives and the worlds they live in better, no matter what obstacles stand in their way. There is nothing in the commercial that conveys—expressly or by implication—that consumption or purchase of Modelo beer had an influence or impact on Melissa’s character or success as a triathlete. In fact, the advertisement conveys the opposite message. Rather than depict that

\(^5\) See Exhibit C.
\(^6\) View at https://cavalryagency.egnyte.com/dl/KodVvyXzFq
\(^7\) View at https://cavalryagency.egnyte.com/dl/0UgSrLccFs
consumption or purchase of Modelo beer improves one’s success or character, the Melissa Stockwell commercial conveys that Modelo is the right choice for those individuals who are working hard to persevere, achieve success, overcome adversity and face challenges, (i.e., those with a “fighting spirit”) without regard to purchase or consumption of the beer.

For these reasons, and those stated in the August Letter, the Melissa Stockwell commercial complies with Section 4(c) of the Code.

III. CONCLUSION

For the reasons set forth above, Constellation respectfully requests that the Code Compliance Review Board dismiss Mr. Kovel’s complaint, and hold that Constellation’s use of YouTube and the content of the Modelo Melissa Stockwell (and Brian Ortega) advertisements, do not violate Sections 3(c) and 4(c) of the Code.
EXHIBIT A
At the end of this email, please find an Ad Code complaint regarding ads from AB and MC and two Constellation commercials for Modelo beer, “Melissa Stockwell” and “Brian Ortega.”

The complaint, submitted by Rod Kovel, alleges the Constellation commercials violate Sections 3c (ii) and 4c of the Ad Code.

For your reference, Mr. Kovel complained earlier this year about an Anheuser-Busch Bud Light commercial. The CCRB did not sustain his complaint. The complaint and the CCRB’s decision is available at: https://www.beerinstitute.org/responsibility/ccrb-complaint-decisions/

The Ad Code provisions at issue provide:

Section 3c(ii) -- “Placements made by or under the control of the Brewer in digital media in which there is a dialogue between a user and a Brewer may only be made where a user confirms that he or she is of legal drinking age. Confirmation may vary depending upon available technology but includes either: 1) disclosure of a user’s full birth date or other method of active confirmation prior to viewing an advertisement by or communicating with a Brewer; or, 2) restriction of the site to users of legal drinking age through registration. The offer of downloadable content by a Brewer that can be permanently accessed by a user without viewing a Brewer’s owned or controlled compliant digital media site or a third-party compliant digital media site, will similarly meet the standard set forth in this Section 3(c)(ii).”

Section 4(c) – “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 complement 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.”

Mr. Kovel sent me his complaint by email today, August 13. The Ad Code says, “Brewers will endeavor to respond to a complainant within two weeks of receiving notice of a complaint from the Beer Institute,” which means August 28, 2019. Please let me know whether you are reasonably able respond to the complaint within this timeframe or whether you need more time. The response should go directly to Mr. Kovel. He can be
reached by email to [REDACTED]. Please send me a copy. The other brewers will send separate responses.

After receiving your response, Mr. Kovel has the right to request review of his complaint by the CCRB. If he makes that request, he may also submit other material for the Board’s review. You will have an opportunity to prepare an additional submission to the CCRB if you so choose. I will need copies of the commercials if the complaint goes to the CCRB.

Thank you very much.

MJ

Mary Jane Saunders
Vice President and General Counsel
Beer Institute
440 First Street, NW, Suite 350

www.beerinstitute.org

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From: Rod Kovel [REDACTED]
Sent: Tuesday, August 13, 2019 12:23 PM
To: ADCode [REDACTED]
Subject: Complaint about uncontrolled ad placements and inappropriate content: multiple companies

I have not contacted the brewers first.

I have complained in the past, and this step has repeatedly been an unproductive use of my time, the brewer's time and the panelists' time as the panelists, (and the brewers) have typically disregarded those defenses raised by public relations departments of the respective brewers when matters come before the panel.

In a complaint I recently submitted about "Corn Syrup" the panel ignored the AB response, and raised its own parody defense on behalf of AB even as it was clearly violating the rule against disparaging a member/competitor by attacking its ingredients, only to have AB reject the ostensibly winning defense here once Coors/Miller sued it under the Lanham Act by claiming the ad was truthful and thus lawfully disparaging under Federal law.

I don't see the point of getting a brewer's assessment first if the panel is going to ignore it anyway.

Ads indiscriminately posted to Youtube
That being said, I’m protesting specifically Modello’s (AB) use of Youtube to post ads at https://www.youtube.com/watch?v=HcXttiTnWcM and https://www.youtube.com/watch?v=aCrkfyjYYY, Coors/Miller for an ad at https://www.youtube.com/watch?v=o-FipnCufCk and by extension, these companies and all other members for all their ads posted to their respective Youtube channels.

Section 3c of the Guidelines speaks to situations in which members post to digital media, ie websites, that do or do not have dialogs with their users.

In the case of digital media that do not have dialogs, a member may only place an ad there if it can "expect" based on "audience composition data reviewed prior to placement: that 71.6% of the users are of legal drinking age, which is 21 in the US.

In the case of websites that do have dialogs with users, the brewer must be able to confirm the specific viewer wanting to see the ad is above legal drinking age.

As for the former, it is clear that the brewers are not following the rules. This site discusses the ages of Youtube viewers https://www.statista.com/statistics/296227/us-youtube-reach-age-gender/ but notably omits mention of those users under 18, and those 18's are lumped into an 18-24 bracket. It seems that no one has good information about how many under 21's are seeing those ads, and it seems difficult if not impossible to assess who exactly is watching what amongst Youtube users not signed in. The result, it seems to me, is that it is impossible in the absence of firm "audience composition data" for a brewer to able to "expect" what percentage of viewship comes from over 21's. Yet, that is the express requirement of the Guidelines, for better or worse.

Moreover, youtube is a dialog service. Viewers are actually encouraged to log in so the Youtube algorithms can provide interesting content, but viewers are not obliged to log in. At the same time, content posters have the ability to mark uploads as inappropriate for children, and Youtube blocks user designated inappropriate videos to anyone not signed in and/or presently of suitable age per their account.

But the foregoing brewers have deliberately failed to take advantage of that scheme, allowing its ads to be seen by anyone whether or not signed in, and whether or not of appropriate age. Moreover, the algorithms used by Youtube for users not signed in allow videos not posted as inappropriate for children to go to users who have not specifically requested them regardless of age. A child watching other commercials on Youtube may well end up with a beer ad.

These results are inexcusable. The brewers can do the research necessary to see who is watching their ads, and they can control where their ads go with a tremendous degree of precision but choose to do nothing despite an ostensible commitment to responsible advertising.

**Billboard indiscriminately placed in a public park**

I am protesting a Bud billboard that defies 3f and 12 because it is placed at a high school and college baseball field in a municipal park in Geneva, NY called McDonough Park that is rented to a collegiate summer league team known as the Geneva Red Wings.

![image001.jpg](image001.jpg)

![image002.jpg](image002.jpg)

There's no excuse for indiscriminately putting up a beer ad in an open city park where kids are playing ball with and without supervision much of the year. Moreover, the team that uses the facility is a collegiate summer team; only a few of the players may be old enough to drink legally, and the team and the league cater to families bringing young children and Little Leaguers to the game and interact with team players.
Ads with active pro athletes insinuating training and social benefits

Next, I am protesting Modelo’s ads (illicitly posted to Youtube at https://www.youtube.com/watch?v=HcXttiTnWcM and https://www.youtube.com/watch?v=aCrkfyjYYI that respectively insinuate that active triathlete Melissa Stockwell and active UFC participant Brian Ortega get a training and social benefit from drinking beer https://www.ttb.gov/rulings/95-2.htm.

The ATF Ruling 95-2 indicates it evaluates the legality of ads on a case by case basis, looking for something misleading or deceptive. That is the case with each of these ads: they portray the athlete drinking beer with comrades as an extension of their personalities (their "fighting spirit") and their training regimes, thereby "enhanc[ing] athletic prowess, performance at athletic activities or events, health or conditioning ..."

As such, it comes within the rubric of advertising the ATF "considers to be unacceptable pursuant to sections 205(e) and (f) and implementing regulations..." and would therefore violate section 4c of the Guidelines too.

The Official Beer of Drinking in the Shower and Breaking Ice

I previously wrote to Ms. Saunders of the Institute regarding my objections to these particularly atrocious ads, also illicitly posted to Youtube without regard to who gets to see them. I respectfully repeat and reiterate them as if fully set forth here if that is necessary as a procedural formality to draw the panel's attention to them.

Rod Kovel
August 28, 2019

Re: Beer Institute Advertising & Marketing Code Complaint

Dear Mr. Kovel:

Constellation Brands Beer Division is in receipt of your complaint alleging violations of the Beer Institute Advertising & Marketing Code (the “Code”) dated August 13, 2019. In your complaint, you assert that Constellation’s Modelo® TV commercials featuring Melissa Stockwell and Brian Ortega violate Section 4(c) of the Code, and that placement of these advertisements on YouTube violates Section 3(c)(ii) of the Code. For the reasons set forth below, Constellation respectfully asserts that the content and placement of its advertisements comply with the standards set forth in the Code.

Allegations regarding Section 4(c)

In your complaint, you correctly assert that the Melissa Stockwell and Brian Ortega commercials feature the principal talent’s “fighting spirit.” These advertisements are part of the Modelo® “Fighting Spirit” campaign, which was launched in 2016 and tells the stories of individuals who have an unwavering drive for progress and a better life, and who have fought to overcome adversity and obstacles to achieve success. While the commercials tell Melissa’s and Brian’s respective “fighting spirit” stories, there is nothing in the referenced advertisements that conveys that drinking Modelo beer is part of their athletic success or provides a “training or social benefit” to either individual.

In fact, the scenes that feature Modelo beer depict the principal talent in social settings among friends—not as part of the athletic competition scenes throughout the commercials. This change in scenery, and cut between the scenes, was intentional. Section 4(c) of the Code states that “beer advertising and marketing materials may portray beer as a part of personal and social interactions and experiences,” which is the case in each of these commercials. Constellation understands that beer advertising and marketing should not “claim or represent that individuals cannot obtain social, professional, educational, athletic or financial success or status without beer consumption”, which is why the scenes featuring Modelo beer are distinct from scenes which feature the athletes competing in their respective sports. As the commercials separate the occasions which feature beer from those which feature athletic competition—and make no reference to consumption of beer as part of achieving athletic success—the referenced commercials are compliant with the Code.

Allegations regarding Section 3(c)(ii)

You also allege that Constellation has violated Section 3(c)(ii) of the Code with certain placements
on the YouTube platform. Section 3(c)(ii) states that “placements made by or under the control of the Brewer in digital media in which there is a dialogue between a user and a Brewer may only be made where a user confirms that he or she is of legal drinking age.” In compliance with the Code, Constellation uses a variety of measures available on YouTube and Google to ensure that its ads are targeted and served to adults who are confirmed as 21 years of age or older.

On the YouTube platform, users can view Modelo branded content one of two ways: (i) either served as a paid placement between other content on the platform (analogous to a commercial viewed during a television broadcast); or (ii) via the Modelo brand page on the YouTube site. Both methods are restricted to users of legal drinking age, and age information is collected by the platform from users’ YouTube or Google accounts. The Modelo paid placements on the platform, pursuant to YouTube platform guidelines, are only served to users ages 21 or older who are logged in to YouTube or Google. Similarly, the Modelo brand page on YouTube is only accessible to logged-in users, who are 21 or older (based on the information provided in their YouTube or Google accounts). If a user is not logged in, under the legal drinking age, or has not provided a birth date in his or her account information, that user will not be served Modelo advertising via the YouTube platform, nor will that user be able to access the Modelo brand page on YouTube.

Constellation takes responsible advertising very seriously and we trust the information provided in this response addresses your concerns. If you remain dissatisfied, you may request review of your complaint by the Code Compliance Review Board.

Sincerely,

Matt Stanton
Senior Vice President, Public Affairs, Constellation Brands, Inc.
Dear Members of the Board:

I am a repeat complainer about ads that violate code standards. I’m using this reply to complain about the responders as much more than about the ads. That I have omitted a response to some legal points made by the brewers is about me focusing attention on the out and out deceit that plagues the instant review. Silence does not mean I agree with any of their legal arguments, some of which are patently absurd.

I should note that I told Mary Jane Saunders that I would be calling out liars and anyone who accepts obvious lies at face value very directly unless she told the respondents to rethink and redo their responses. I did not hear back.

Discussion

In the past, brewers defended complaints about ads in bad taste and beneath standards with odd legal logic, strange semantics, and frequent dalliances from comprehension of the purpose for having the code.

That has always been a disappointment. The advertising code is an aspiration. It was intended to raise standards and engender trust in the products and the manufacturers.

It is thus unseemly for brewers defending tasteless skit ads – those portraying wilding, felonious assault on women, drinking beer before breakfast or getting dressed – to act like a common criminals defended by Legal Aid by trying to weasel out of trouble by trying to split hairs in the code or employing super narrow lawyer loopholes that will let them and their tasteless advertising just barely squeak past sanctions on a technicality – usually unsuccessfully.

In fact, it is pretty ugly. If the brewers were committed to ads in good taste rather than being committed to lip service about ads in good taste, then they should be using this forum to hear out consumers and discuss the propriety of their advertising in an intellectual way. In fairness, they have not really had to do so, as the Board has usually covered for them by ignoring or rewriting entire sections of the code and/or by creating bizarre new definitions for words beyond what is provided by standard American dictionaries, thereby allowing brewers to just barely sneak over the low bar set by the code intending to achieve better advertising.

But now, the companies have sunk to a new low: just lying and hiding what they are up to. Are Board members prepared to look into their mirrors each morning knowing they have accepted any and every lie at face value?
Budweiser

Budweiser is trying to fool the Board about its illicitly erected product billboard in a playground, and in particular on the fence at a baseball stadium primarily used by college students, few of whom would be LDA, in violation of Rules 12 and 3e.

I previously submitted these 2 photos showing the whereabouts of the sign and a detailed account of who uses the field. These were not challenged.
AB’s representative, David McKenzie had three unsworn responses.

With no basis whatever, McKenzie claims first that the Rule 12 only applies to signs adjacent to highways, and second, he claims that the area is not a playground.

Those are lies.

The rule itself could not be more explicit. A sign may be no less than 500 feet from a playground, much less be posted in a playground. Period. There are no exceptions or equivocations of any kind. Absolutely nothing in, near, or about the rule even begins to hint it says what McKenzie says it says.

It is one thing to ask an arbitrator for a weird misinterpretation of a rule or for an off-text exception following unforeseen difficulties with it. But this is just McKenzie lying about the contents of the code and hoping no one notices.

Now let’s turn to his other contention, which is that the sign is not in a playground.

McKenzie contends, despite a satellite photograph of an open, active recreation city park with an open to all comers softball field, a soccer field with the goals in position, and a basketball court near the baseball diamond, that there is no playground on that site.

What else it could be besides a playground he does not say. Other than lie about the contents of the photo, the best he can hope for is that you will not believe your eyes.

Now let’s deal with his contention that the sign isn’t in violation of Rule 3f, which prohibits the placement of logos on, among other things, “other materials intended primarily for use by persons below” LDA. McKenzie claims the rule really only applies to “branded apparel.”

Here too, a lie. Clothing and “other materials” are separately included in a list of items prohibited from having beer logos. If the term “other materials” was bizarrely meant to only refer to “branded apparel” – despite the fact clothing is already on the list – McKenzie did not indicate where or when that was established or what grammar supports that. It would seem far more likely that his unattributed assertion is an unfounded factoid made up just now. Perhaps his willingness to make up a story from scratch is a function of getting paid by the respondent for spin. There is literally no reason why the Board or anyone should be bound by an unproved contrivance, advanced for the first time devoid of context, that defies logic and English.

Fences are part of the field under the rules of baseball. A batted or thrown ball that hits the Budweiser billboard is in bounds and in play. The games played on that field in the middle of a playground involve participants who are college students, although that league also permits recently graduated high schoolers. Most of the players are not LDA. There could hardly be a more obvious violation of both the letter and the spirit of the code than the placement of giant beer ad exactly where children and adolescents play ball.

Absent the board’s acceptance of some completely fabricated alternate version reality and the plain text of the code to lower the bar on what is tasteful advertising, this is as cut and dried as it gets.

As a passing note, McKenzie and AB also tried to shift the blame for the misplaced sign to AB’s local distributor, Lake Beverage. That was an ugly typical common-criminal defense.

First, it would be awfully convenient to be able to declare all wrongly placed billboards the fault of third party non-members of the Beer Institute, leaving no one officially accountable.
Second, distributors are affected by the Code even though they aren’t members. “The Beer Institute encourages all with whom Brewers do business to adhere to the law, as well as this voluntary Advertising and Marketing Code.” As brewers know what the distributors are doing with the trademarks and logos they have licensed to them and as they benefit from misplaced ads with profits, were they are committed to more than lip service about compliance, they could sanction companies using their marks while flouting the rules rather than claim helplessness. Ultimately, the buck stops with the brewers. AB should stop blaming its associates for dirty work when it has the last clear chance to prevent violations and can do so easily.

**Coors**

Coors representative Kelly Grebe is an out and out liar.

In defending an illicit posting of its commercials to Youtube, Grebe maintains

[T]here is no interaction or dialogue between the consumer and the advertising. 

.... Lastly, despite having no requirement under the BI Code to do so, MillerCoors uploads all of our content to an age-gated channel, working directly with You-

Tube to do so.

All of that is false, as demonstrated by the picture, obtained yesterday.

The claim that there is no dialog between viewer and Coors via Youtube is laughable. The top red arrow indicates that the presence of an age gate: the Youtube sign in. Underage users are restricted to family friendly content. Anyone who doesn’t sign in is so restricted too. Posters, on the honor system, are obliged to indicate what is and is not family friendly to make the system work as intended.

When a user signs in and starts viewing posted content, information about him goes to the poster, as do lots of analytics. A signed in user may also post a comment directed to Coors or the
world about the ad or anything else, at present there are 104 comments from viewers, many if not most of them directed at Coors, which can then moderate the comments posted. A signed in user may also subscribe and start getting communications including email notices about changes to the channel. He or she may also “like” or “dislike” a video or “flag” a video that the user believes to be inappropriate, infringing copyright, or otherwise in violation of Youtube’s terms and conditions.

These are all dialogs between viewers and brewers. The insinuation that this doesn’t exist and that there is no contact between Coors and the people who see its ads on Youtube is a lie.

The fact Youtube does not require viewers to sign in does not negate the existence of the dialog and the age gate. The fact that Coors has circumvented the age gate by choosing not to age restrict content does not provide a loophole that lets Coors have it both ways – a dialog system to get user information and input but not a dialog system to send its ads to children illicitly.

As of today, MillerCoors has still not utilized the sign in to prevent its ads to any one of any age notwithstanding a rule that requires age confirmation whenever there is a dialog. The age gate remains unused. Any assertion that MillerCoors does whatever is necessary to comply with the Code’s age access rules is false.

In the same vain, Coors engages in lies by omission in several places.

Grebe told the Board that Youtube is 86%+ LDC. But he does not say where that number came from or how he knows that to be correct. Nor does he contradict my research that showed that there is no way to tell what those percentages are because Youtube analytics group 18-24 year olds together, leaving is no way to how many within the group are LDA. He says nothing whatsoever about the constituency of the television market.

Instead, there are naked, unsourced claims about the demographics, tendered on a take it or leave it basis. It is bizarre that this is was Grebe’s course because under Code’s Digital Media Guidelines age rules at page 15, brewers must know their audience in advance and the results are subject regular audit under rule 3 c (iii). If there really was research and audit results bearing him out, that documentation could have been – and should have been – attached to his statement for corroboration. So in light of the foregoing, there is no reason to believe any of his stuff – like Donald Trump’s claims about his unseen tax returns – is anything more than fantasy and lies.

Grebe also says a committee made up of (unspecified) individuals with (unspecified) qualifications, an (unspecified) agenda, and an (unspecified) amount of bias, relying on (unspecified) methods and (unspecified) data and evidently no real data about the TV audience agreed to approve the advertisement at an (unspecified) time, and he suggests that these (unknown) individuals’ conclusions justifies the placement ad showing a knucklehead drinking in the shower and two knuckleheads drinking in their pajamas before they breakfast and that their conclusions are somehow binding on the Board and the world.

I disagree. Even if any part of this unbelievably banal, cockamamie and unproven story was true, it is utterly meaningless. God only knows who those people are and why they act as they do, if they exist at all. No board is obliged to accept that disgraceful proffer as definitive.

A more subtle lie comes in the form of the defense of using snowboarder Christian Connors in a video ad from 2013.
To be sure, Grebe is correct that there are different rules for “generally recognizable athletes, entertainers and other celebrities” on the one hand and “actors and models” on the other. Actors must be a confirmed 25 years old; “generally recognizable athletes” only have to reasonably appear to be LDA. But that begs the question of whether Connors, who was born in 1989 and would have been 23 or 24 all during 2013, is a “generally recognizable athlete.”

Grebe tries to cruise past this crucial point and gives no proof that Connors is or was “generally recognizable.” Instead, he refers to Connors as an “athlete.”

Everyone on earth is a Public Accountant but only persons with qualifications can be a Certified Public Accountant. Likewise, everyone on earth is an athlete, but only a performer with qualifications can be a “generally recognizable athlete” under this rubric. Did Christian Connors compete on ESPN? Is he recognized by strangers in public in 2013 or now? Were articles written about him in Sports Illustrated? Did he appear on David Letterman? Does he sign autographs for money at card shows? Is he the subject of reality programming?

No. No. No. No. No. And no. He is not “generally recognizable.” If he had as much as 15 minutes of fame, they were long ago. Using him as an under 25 performer in an ad that pops up on youtube at whatever random time anyone of any age chooses to summon it up or at any when youtube’s algorithms choose to show it is a code violation for use of underage actors.

Lawyers use the phrase “Falsus in uno, falsus in omnibus.” What it means is if a witness lies on one point, you are free to assume he is lying about everything.

I encourage that. There are a ton of lies in the CoorsMiller response, including items that seem to be made up from whole cloth five minutes ago, and no reason whatever for the Board to try to dance around Grebe’s transparent lies in order to yield a naked save for CoorsMiller. That will not look good in court or at the Federal Trade Commission.

**Modelo**

Modelo’s representative, Matt Stanton, is also a liar. Here’s what he said about the ability of youtube users to access Modelo’s ad featuring Melissa Stockwell.

... the Modelo brand page on YouTube is only accessible to logged-in users, who are 21 or older (based on the information provided in their YouTube or Google accounts). If a user is not logged in, under the legal drinking age, or has not provided a birth date in his or her account information, that user will not be served Modelo advertising via the YouTube platform, nor will that user be able to access the Modelo brand page on YouTube.

Entirely false. Here’s the photo. The green arrow is me not signed in. The white arrow is Melissa Stockwell holding a Modelo in an ad that has begun. The blue arrow is the proof I was at the Modelo brand page. I note in passing that Stanton wrote that on August 28. Modelo had more than two weeks to fix the site after he lied but allowed the proof he lied to remain on Modelo’s Youtube channel.
With that settled, we come to the issue of whether or not Modelo complies with the research parts of the age rules.

Here’s what Stanton said about that.

In compliance with the Code, Constellation uses a variety of measures available on YouTube and Google to ensure that its ads are targeted and served to adults who are confirmed as 21 years of age or older.

His statement is interesting more for what is omitted than for his lies about restricting ads. While he claims Modelo utilized (unspecified) techniques and that (unspecified) individuals examined them, where is the paper trail required by the Digital Media Guide? Where did Modelo get 18-21 age group numbers that no one prepares and no one seems to compile? And how did I reach a supposedly restricted ad having despite not signing in?

Now around those lies comes the more subjective question of whether Modelo pitches itself as part and parcel of the process that makes Melissa a great athlete. I say that the ad is reasonably point blank about insinuating that Melissa has a “fighting spirit,” and that drinking Modelo is a character building trait useful to sport and life, and as it is a product for those with a “fighting spirit” and specifically not for us losers who don’t drink Modelo.

Stanton contends otherwise, ie, that viewers cannot read into the ad any suggestion from Modelo that drinking its beer, which engenders a “fighting spirit” makes buyers better people.

Around his obvious lies about whether the ad is available on youtube or not and whether the company checks the demographics, it is hard to imagine he believes his own assessment.

Sincerely,

Rod Kovel
EXHIBIT B
Melissa Stockwell gave more for her country than most would be willing to give. But as a disabled veteran, her Fighting Spirit refused to give up. Now Melissa represents her country as a Triathlete, and helps to train and inspire others like her to overcome their obstacles.
Melissa Stockwell gave more for her country than most would be willing to give. But as a disabled veteran, her Fighting Spirit refused to give up. Now Melissa represents her country as a Triathlete, and helps to train and inspire others like her to overcome their obstacles.
Melissa Stockwell gave more for her country than most would be willing to give. But as a disabled veteran, her Fighting Spirit refused to give up. Now Melissa represents her country as a Triathlete, and helps to train and inspire others like her to overcome their obstacles.
EXHIBIT C
Welcome to Modelo USA's official YouTube channel. We are a family of beers founded in Mexico and brewed with a Fighting Spirit.

- **Everyone deserves a fighting chance | Modelo USA**
  - Modelo USA
  - 3 days ago • 27 views
  - Modelo is partnering with the International Rescue Committee to give a fighting chance to refugees, immigrants and Americans in...

- **Everyone deserves a fighting chance | Modelo USA**
  - Modelo USA
  - 3 days ago • 17 views
  - Modelo is partnering with the International Rescue Committee to give a fighting chance to refugees, immigrants and Americans in...

- **Modelo USA | 2019 TV Commercials**
  - Modelo USA
  - Fighting for his community with Brian Ortega | ModeloUSA
  - 0:16
  - View full playlist

- **Fighting for her Fellow Veterans with Melissa Stockwell | Modelo USA**
  - Modelo USA
  - 5 months ago • 9,310 views
  - Melissa Stockwell gave more for her country than most would be willing to give. But as a disabled veteran, her Fighting Spirit...

- **Fighting for His Community with Brian Ortega | Modelo USA**
  - Modelo USA
  - 7 months ago • 73,023 views
  - As the Official Beer of UFC, Modelo continually celebrates The Fighting Spirit that pushes us forward. Brian Ortega doesn't just...

- **Aerial Firefighter Jon Hernandez's Fighting Spirit | Modelo USA**
  - Modelo USA
  - 2 months ago • 4,425 views
  - Jon Hernandez found his Fighting Spirit by staring down fear and taking a leap. As an aerial firefighter, Jon parachuted into...

- **Veteran Triathlete Melissa Stockwell Fought to Overcome Obstacles | Modelo USA**
  - Modelo USA
  - 5 months ago • 2,242 views
Modelo is partnering with the International Rescue Committee to give a fighting chance to refugees, immigrants, and Americans in need. Because we know it doesn't matter where you come from. It matters what you're made of.

SHOW MORE

Loading...
CCRB Decision
November 8, 2019

Mr. Rod Kovel
1368 Meadowbrook Road
Merrick, NY 11566

Dear Mr. Kovel:

We write in response to your complaints concerning possible violations of the Beer Institute’s Advertising and Marketing Code (the Code) by MillerCoors, Anheuser-Busch, and Constellation Brands. The complaints were submitted to Mary Jane Saunders, General Counsel of the Beer Institute (BI) via email on 8/4/19, 8/7/19, and 8/17/19 respectively. You also submitted a letter to the Code Compliance Review Board (CCRB) on 9/17/19. The CCRB reviews complaints from the perspective of a “reasonable adult consumer of legal drinking age.”

The CCRB’s primary function is to ensure that Brewers and importers comply with the Code through an orderly and independent process. The CCRB’s “appellate” review empowers Complainants with an effective, efficient method to have their complaints addressed and decided. This process is a significant part of the industry’s dedication to responsible advertising methods.

The CCRB is composed of individuals with varied professional experiences who are independent from the brewing industry. CCRB members are neutral and detached. They perform a quasi-appellate function when the Complainant is dissatisfied with the response to the complaint from the Brewer. Decisions of the CCRB are final.

Before addressing the several advertising complaints made by you, the CCRB would like to take this opportunity to summarize the review process pursuant to the Code.

The beer industry, through the United Brewers Industrial Foundation, adopted the first marketing “Code of Practice” after the end of Prohibition in 1937. Over eighty years later, the earlier code was replaced by the Advertising and Marketing Code, which was adopted by the BI. The CCRB’s critical function is to ensure that Brewers and beer importers comply with the Code; and Complainants have an effective, efficient process to complain about how Brewers and importers are advertising and marketing their products.

Since the Code of Practice was created, media and advertising have changed considerably. Updated in 2005, the Code changes primarily involved the complaint process, including CCRB reviews. For the beer industry to continue its principles and long tradition of self-regulation, industry-wide compliance with the Code remains essential.

In the United States, state and federal law have established a three-tiered beer distribution system; the first tier are beer manufacturers and importers, known as “Brewers” in the Code. The second tier are wholesale distributors, and the third tier are licensed retail establishments. Companies at each tier maintain their commercial independence. Only first tier beer manufacturers and importers are eligible to belong to the BI. BI members pledge to voluntarily abide by the Code as a condition precedent to membership. In addition, the Code states that “The Beer Institute encourages all with whom Brewers do business to adhere to the law, as well as this voluntary Advertising and Marketing Code.”
According to the Code, Brewers “employ the perspective of the reasonable adult consumer of legal drinking age in advertising and marketing their products....” The focus of advertising and marketing is with adult consumers who are of legal drinking age.

The Code consists of an introduction; general guidelines; principles; examples; magazine guidelines; television guidelines; radio guidelines; newspaper guidelines; digital media guidelines; and the “Code Compliance Review Process, Review Board and Dissemination.” This last listed section is where the CCRB enters the process.

Each member of the BI commits to accepting complaints about advertising or market from any person or entity. A complaint must allege that such materials are inconsistent with the Code. The complaint must be in writing in a form available on BI’s website and must include documentation and supporting data. It will be submitted to the Brewer by the BI or directly to the Brewer by the Complainant. Brewers are encouraged to respond to the Complainant within two weeks. If the Complainant does not respond to the Brewer’s response within a reasonable period, the BI will assume the matter has been resolved and the case is closed.

If the Complainant is dissatisfied with the Brewer’s response to the complaint, the Complainant contacts BI; explains his or her dissatisfaction; and requests review of the matter by the CCRB. The Brewer then has an opportunity to respond to the requested review and attach any data or material supporting the Brewer’s response to the complaint.

The review by the CCRB is “de novo,” a legal term which means “new trial” or “from the beginning.” Although these proceedings are not a legal trial, they are administrative or regulatory in nature; and the Complainant has the burden of proof by a preponderance of the evidence, or, in lay terms, a burden of “more likely than not.” There are no strict rules of evidence, but fundamental fairness to both sides always prevails. In the interest of fairness, if the record is not complete in the view of the CCRB, the Board may investigate independently, if appropriate.

The CCRB uses principles of statutory and regulatory construction and interpretation when deciding what words mean in the Code. For example, words are understood in their ordinary, everyday meaning; however, if the context indicates otherwise, they may bear a technical sense. This depends on the context of the guidelines or rules. Likewise, another canon of interpretation is that words are given the meaning they had when the text was adopted.

The members of the CCRB are “...individuals with a variety of experience who are independent of the brewing industry. The CCRB reviews complaints...and decides whether such complaints identify advertising or marketing materials that are inconsistent with one or more guidelines of the Code. Once the CCRB issues its decision, the Complainant and the Brewer will be notified. The complaint, any Brewer’s response and the Board decision will be posted on the Beer Institute website. If a violation of the Code has occurred, the Brewer is expected to promptly revise its advertising or marketing materials to conform to the CCRB’s decision or withdraw the advertising or marketing materials.”

A majority vote of the CCRB members is required to make a decision of binary choices: violation or no violation. For over a decade the Board has consisted of three members. One member is the Producer for the Commission on Presidential Debates; former Executive Vice President of the National Association of Broadcasters; and former board member of Mothers Against Drunk Driving. Our second member is a former state district attorney general; criminal appeals and senior judge; and Attorney General of Tennessee. He is former chair and board member of The Jason Foundation, Inc., a national nonprofit dedicated to the education and prevention of youth suicide. Our chair is Professor of Marketing at the University of Texas; former Chancellor of the University of Texas System; and is a board member and advisor to several major corporations.

**McDonough Park (Anheuser-Busch)**

Complainant alleges that the Brewer has violated Sections 3(f) and 12 of the Code by the placement of a 7’ X 12’ sign, apparently as part of the centerfield fence of McDonough Park, bearing the Budweiser logo and name.

Seth Hawkins, Senior Associate General Counsel with Anheuser-Busch, states in an email to the CCRB dated November 4, 2019 that “Lake Beverage informed AB on September 30 — the day before we filed our initial
response to Mr. Kovel’s complaint – that the baseball season for the Geneva Red Wings ended long ago and that it would not sponsor the team or have banners in the stadium next season. We have confirmed that the banners already have been removed by the stadium operators.” Therefore, it is the majority opinion of the CCRB that there is no reason for it to opine on the issues raised by Mr. Kovel since there is no longer a case in controversy. The “banners” in question which were placed in the venue by Lake Beverage have been taken down and will not be used in the future.

The Official Beer of Drinking in the Shower (MillerCoors)

Mr. Kovel believes (8/4/19 email to M.J. Saunders) that the commercial “The Official Beer of Drinking in the Shower,” which was sponsored by MillerCoors, violates Sections 2(e) and 3(c)(ii) of the Code. Section 2(e) states “Beer advertising and marketing materials should not portray beer drinking before or during activities, which for safety reasons, require a high degree of alertness or coordination.” The CCRB believes that drinking a beer out of a can in a shower does not involve an activity “which for safety reasons, requires a high degree of alertness or coordination.” It is the unanimous opinion of the CCRB that the abovementioned advertisement does not violate Section 2(e) of the Code.

Section 3(c)(ii) states in part “Placements made by or under the control of the Brewer in digital media in which there is a dialogue between a user and a Brewer may only be made where a user confirms that he or she is of legal drinking age.” A dialogue is defined in Webster’s New Collegiate Dictionary as “a conversation between two or more persons.” Kelly Grebe, the Chief Legal Officer for MillerCoors, states in her email to Mr. Kovel dated 8/22/19 “there is no interaction or dialogue between the consumer and the advertising.” In addition, the letter to the CCRB from Shelly S. Watson, Associate General Counsel, (10/9/19), states “Mr. Kovel alleges that our previous response is false as it pertains to YouTube placement of our videos because he maintains that there is a dialogue between MillerCoors and the consumer on You Tube. There is not.” “While people may comment on the ad posts, MillerCoors does not respond in any way. MillerCoors purposefully does not engage in any dialogue to ensure compliance with the BI Code.” In summary, the CCRB believes there was no dialogue in the abovementioned commercial and, therefore, it is the unanimous opinion of the CCRB that the above advertisement does not violate Section 3(c)(ii).

Mr. Kovel apparently feels that the commercial is in violation of the Beer Institute’s legal drinking standard of 71.6% as stated in Section 3(c)(i). The Beer Institute’s Advertising and Marketing Code refers numerous times to the fact that advertising and marketing materials must be intended for adult consumers of “legal drinking age.” Section 3(c)(i) states “Placements made by or under the control of the Brewer in magazines, in newspapers, on television, on radio, and in digital media in which there is no dialogue between a Brewer and user, may only be made where at least 71.6% of the audience is expected to be adults of legal drinking age.” Shelly S. Watson, Associate General Counsel of MillerCoors, states in her letter to the CCRB on 10/9/19 that “As part of our earlier response, MillerCoors explained to Mr. Kovel that YouTube complies with the BI Code’s Media Buying Guidelines as audience composition on the platform is 86%+ legal drinking age consumers. This is a statistic from Comscore, an independent media measurement agency that analyzes audience composition. We confirmed this composition on October 7, 2019, and YouTube is still running at 86%+ legal drinking age consumers.”

The CCRB confirmed independently that Comscore does a month by month audience demographic study of YouTube users. In addition, the Comscore data shows that YouTube viewers consistently exceed the 71.6% standard that is referred to in Section 3(c)(i). The CCRB unanimously finds that there is no violation of Section 3(c)(i) of the Beer Institute’s Advertising and Marketing Code with respect to the abovementioned advertisement.

La Cerveza Official del Sabado por la Manana (MillerCoors)

Mr. Kovel states (email to Ms. Saunders on 8/4/19) that “maybe Coors should take another look at 14(c)” with respect to its advertisement “La Cerveza Official del Sabado por la Manana.”

Section 14(c) of the Beer Institute’s Advertising and Marketing Code states “Brewers discourage underage drinking and do not intend for their products to be purchased or consumed illegally by people below the legal drinking age. Consistent with that philosophy, Brewers will not approve product placement which portrays purchase or
consumption of their products by persons who are below the legal drinking age.” The CCRB does not believe that the advertisement in question portrays consumption of beer by people who are below the legal drinking age. It is the unanimous opinion of the CCRB that the abovementioned advertisement does not violate Section 14(c) of the Code.

**The Official Beer of Being Done Wearing a Bra (MillerCoors)**

Mr. Kovel states (email to MJ Saunders 8/4/19) “I found the ad in question; The Saturday morning drinking ad; “The Official Beer of Being Done Wearing a Bra” ad; and “Break the Ice” are all on the Coors YouTube channel.” Mr. Kovel goes on to say “You are as much a witness as I am that Youtube does not check the ages of its users. It also has a nasty tendency to show whatever it likes to whomever is there when autoplay is turned on. This is a categorical violation of your rule requiring age checks.”

The Beer Institute’s Advertising and Marketing Code refers numerous times to the fact that advertising and marketing materials must be intended for adult consumers of “legal drinking age”. Section 3(c)(i) states “Placements made by or under the control of the Brewer in magazines, in newspapers, on television, on radio, and in digital media in which there is no dialogue between a Brewer and user, may only be made where at least 71.6% of the audience is expected to be adults of legal drinking age.”

Shelly S. Watson, Associate General Counsel of MillerCoors, states in her letter to the CCRB on 10/9/19 that “As part of our earlier response, MillerCoors explained to Mr. Kovel that YouTube complies with the BI Code’s Media Buying Guidelines as audience composition on the platform is 86%+ legal drinking age consumers. This is a statistic from Comscore, an independent media measurement agency that analyzes audience composition. We confirmed this composition on October 7, 2019, and YouTube is still running at 86%+ legal drinking age consumers.”

The CCRB confirmed independently that Comscore does a month by month audience demographic study of YouTube users. In addition, the Comscore data shows that YouTube viewers consistently exceed the 71.6% standard that is referred to in Section 3(c)(i). The CCRB unanimously finds that there is no violation of Section 3(c)(i) of the Code with respect to the abovementioned advertisement.

**Break the Ice (MillerCoors)**

Mr. Kovel believes (email to Ms. Saunders on 8/4/19) the advertisement “Break the Ice” violates Sections 3(c)(ii), 3(d), 3(e), and 3(f) of the Beer Institute Advertising and Marketing Code.

Shelly S. Watson states in a letter to the CCRB dated 10/9/19 that the abovementioned commercial which features Christian Connors in a 2013 video snowboarding demonstration “is an old campaign that no longer appropriately represented the brand positioning. Therefore, MillerCoors has affirmatively removed the video from its YouTube channel.” Therefore, the CCRB unanimously concludes that there is no reason for it to opine on the issues raised by Mr. Kovel since the advertisement has been voluntarily withdrawn from the Brewer’s YouTube channel.

**Fighting Spirit Campaign (Constellation Brands)**

The Complainant alleges that Modelo Beer, a Constellation Brand product, has violated Section 4(c) of the Beer Institute Advertising and Marketing Code based on the content of Constellation’s 2016 Modelo “Fighting Spirit” television commercials featuring triathlete Melissa Stockwell and UFC participant Brian Ortega.

Section 4(c) states “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 complement 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.”
Ms. Stockwell is an injured Iraqi War veteran who has overcome her disability to become a triathlete champion. She is shown at the beginning and end of the commercial toasting with a Modelo beer in hand and a medal around her neck, clearly demonstrating that the celebratory toast takes place post-competition, after the medals have been awarded. There is no implication in the commercial that drinking Modelo helped her achieve her championship. According to Section 4(c), “a brand may be portrayed in appropriate surroundings as a superior choice to complement a particular occasion or activity.” The Board unanimously agrees that this is the case in this commercial and therefore, there is no violation of Section 4(c) of the Code.

Brian Ortega, a UFC participant, is similarly shown at the beginning and end of the commercial, toasting with friends after an event. He is not shown drinking during training or competition. There is no implication that drinking Modelo has improved Mr. Ortega’s prowess, performance or training. According to Section 4(c), “a brand may be portrayed in appropriate surroundings as a superior choice to complement a particular occasion or activity.” The Board unanimously finds that this is the case and finds no violation of Section 4(c) of the Advertising and Marketing Code.

The Complainant also alleges that the “Fighting Spirit” campaign violates Section 3(c)(ii) of the same Code by reason of placement of these advertisements on YouTube. He alleges that the commercials are inappropriately accessible to those under the legal drinking age and that the ads use unspecified “techniques” to sidestep age gating requirements.

The Advertising and Marketing Code in Section 3(c)(ii) reads “Placements made by or under the control of the Brewer in digital media in which there is a dialogue between a user and a Brewer may only be made where a user confirms that he or she is of legal drinking age. Confirmation may vary depending upon available technology but includes either: 1) disclosure of a user’s full birth date or other method of active confirmation prior to viewing an advertisement by or communicating with a Brewer, or, 2) restriction of the site to users of legal drinking age through registration.”

In its response to the Complainant, Constellation states, “on YouTube, users can only engage in dialogue with or access the Modelo USA brand page if they are logged in (to YouTube or Google) and have provided age data confirming they are twenty-one years or older.” Attempts by the CCRB to access the Modelo commercials without registering with Google or YouTube, both third-party compliant digital media sites, were unsuccessful.

In addition, Constellation outlines the company’s use of Comscore, an independent Audience Measurement Service company (like Nielsen), to assess legal drinking age compliance on YouTube. “The Comscore Media Metrix data consistently confirms that YouTube, as a platform, is LDA compliant.” Constellation finds the most recent Comscore report of YouTube’s LDA Compliance to well exceed the 71.6% compliance requirement set forth in the Code. It is the unanimous opinion of the CCRB that the abovementioned commercial does not violate Section 3(c)(i) of the Code.

The CCRB spent a considerable amount of time reviewing the advertisements; studying the Code Guidelines in question; and debating the allegations of your complaints against the response of the Brewers. The findings of the Board are final. They will be communicated to Anheuser-Busch, MillerCoors, and Constellation Brands. Findings will be publicly available on the Beer Institute’s website and published in an annual report. This correspondence will conclude the complaint and review process.

Sincerely,

William H. Cunningham
Chairman

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