CODE COMPLIANCE REVIEW BOARD
COMPLAINT PACKET

Dylan Mulvaney Complaint
**Dylan Mulvaney Complaint**  
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Dylan Mulvaney Complaint

Summary


Product Advertised: Bud Light

Complainants: Senators Ted Cruz and Marsha Blackburn

Brewer: Anheuser-Busch Companies

Nature of Complaint: Senators Cruz and Blackburn allege that by affiliating with Dylan Mulvaney, a social media influencer, Anheuser-Busch Companies violated the Beer Institute Advertising and Marketing Code Section 3(c)(i) and Buying Guidelines prohibiting marketing to individuals younger than the legal drinking age.

Requested relief: Senators Cruz and Blackburn ask the CCRB to find Anheuser-Busch Companies violated the Advertising and Marketing Code and Buying Guidelines and order them to sever their relationship with Dylan Mulvaney.
Advertising/Marketing Code and Buying Guidelines
Introduction

Beer is a legal beverage meant to be consumed responsibly by adults of legal drinking age. Its origins are ancient, and it has held a respected position in nearly every culture and society since the dawn of recorded history.

In the United States, beer is a mature product category with broad cultural acceptance and a history of memorable and distinctive advertising that, because of its humor and creativity, has long been a favorite among American adult consumers. Advertising and marketing materials are legitimate efforts by Brewers to inform consumers of the particular styles and attributes of numerous beers and other malt beverages that are available. Brewer advertising and marketing materials also foster competition, persuade adult consumers of beer to try particular brands, and maintain customer loyalty.

Brewers should employ the perspective of the reasonable adult consumer of legal drinking age in advertising and marketing their products, and should be guided by the following basic principles, which have long been reflected in the policies of the brewing industry and continue to underlie this Code:

• Beer advertising should not suggest directly or indirectly that any of the laws applicable to the sale and consumption of beer should not be complied with.
• Brewers should adhere to contemporary standards of good taste applicable to all commercial advertising and consistent with the medium or context in which the advertising appears.
• Advertising themes, creative aspects, and placements should reflect the fact that Brewers are responsible corporate citizens.
• Brewers strongly oppose abuse or inappropriate consumption of their products.

The term “beer” as used in this Code covers all types of malt beverages, including but not limited to, beers and flavored malt beverages, as well as various specialty products containing alcohol such as hard cider. The production, distribution, and sale of beer in the United States are subject to extensive laws and regulations, enforced by federal, state, and local governments. Federal and state laws establish a three-tiered distribution system for beer. The first tier is composed of beer manufacturers and importers, which are referenced throughout this Code as “Brewers.” The second tier is made up of wholesale distributors, and the third tier includes a wide range of licensed retail outlets, at which beer is sold to consumers. Companies in each tier of this distribution system are required by law to maintain their commercial independence. The Beer Institute encourages all with whom Brewers do business to adhere to the law, as well as this voluntary Advertising and Marketing Code.
Advertising/Marketing Code
Guidelines

1. These guidelines apply to all beer-branded advertising and marketing materials created by or under the control of the Brewer. In applying these guidelines, creative elements are to be considered in the overall context of the advertisement or marketing materials. Humor, parody, satire, and all other advertising themes and devices should be readily identifiable as such by reasonable adults of legal drinking age. These guidelines do not apply to educational materials, messages of a non-brand specific nature, or materials or messages designed specifically to address issues of alcohol awareness, abuse, drunk driving, underage drinking, or over-consumption.

2. Beer advertising and marketing materials should portray beer in a responsible manner:
   a. Beer advertising and marketing materials should not portray, encourage, or condone drunk driving.
   b. Although beer advertising and marketing materials may show beer being consumed (where permitted by media standards), advertising and marketing materials should not depict situations where beer is being consumed rapidly, excessively, involuntarily, as part of a drinking game, or as a result of a dare.
   c. Beer advertising and marketing materials should not portray persons lacking control over their behavior, movement, or speech as a result of consuming beer or in any way suggest that such conduct is acceptable.
   d. Beer advertising and marketing materials should not portray or imply illegal activity of any kind by an individual prior to, during, or after the individual consumes, purchases, or is served beer, unless the portrayal or implication of illegal activity is a basic element or feature of a parody or spoof and is readily identifiable as such.
   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.
   f. Retail outlets where beer is served or sold portrayed in advertising should not be depicted as unkempt or unmanaged.

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 persons below the legal drinking age if they have special attractiveness to such persons beyond their general attractiveness for persons of legal drinking age.
   a. In considering whether beer advertising and marketing materials appeal primarily to persons below the legal drinking age, Brewers should take into account the following elements among others:
      • Symbols
      • Language
      • Music
      • Gestures
      • Entertainers or celebrities
      • Cartoon characters
      • Groups or organizations
   b. Beer advertising and marketing materials should not depict Santa Claus.
c. Beer advertising and marketing materials will meet the following criteria:

i. 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 73.6%* of the audience is expected to be adults of legal drinking age. A placement will be considered compliant if the audience composition data reviewed prior to placement meets the percentage set forth above.

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).

iii. The Brewer placing advertising or marketing materials in digital media, in magazines, in newspapers, on television and on radio will conduct periodic after-the-fact audits, at least semi-annually where possible, of substantially all of its placements. If a Brewer learns that a placement did not meet the Code standard, it will take steps to prevent a reoccurrence. These steps may include, but are not limited to: investigating exceptions; canceling placements with unacceptable audience composition; reallocating purchases to a different and acceptable time slot; contacting the media outlet/station with regard to placement errors or possible reporting errors; reemphasizing audience composition requirements with media buyers and media outlets; and, continued monitoring of a program or time slot to determine whether buys should be canceled or reallocated.

iv. Digital media includes all beer-branded digital advertising and marketing placements made by or under the control of the Brewer in all forms, including but not limited to Brewer owned or controlled or third-party internet and/or mobile sites, commercial marketing e-mails, downloadable content (including downloadable desktop features), SMS and MMS messaging, and social media sites.

v. Buying Guidelines for the implementation of this section will be distributed in conformance with the dissemination provisions of this code.

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.

g. Brewers recognize that parents play a significant role in educating their children about the legal and responsible use of alcohol and may wish to prevent their children from accessing digital media without parental supervision. To facilitate this exercise of parental responsibility, the Beer Institute will provide to

*Increases to 73.8% for new Placements effective September 1, 2023
manufacturers of parent control software the names and website addresses of all member-company websites. Additionally, Brewers will require disclosure of a viewer’s date of birth at the entry to their beer-branded websites and will post reminders at appropriate locations in their websites indicating that Brewer products are intended only for those of legal purchase age. These locations include entrance into the website, purchase points within the website, and access into adult-oriented locations within the website, such as virtual bars. Content that can be shared with others directly from a Brewer’s digital media site or a Brewer-controlled third party digital media site will include terms of use instructing users that such content should not be shared with persons below the legal drinking age.

4. Beer advertising and marketing materials should not make the following exaggerated product representations:
   a. Beer advertising and marketing materials should not convey the impression that a beer has special or unique qualities if in fact it does not.
   b. Beer advertising and marketing materials should make no scientifically unsubstantiated health claims.
   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.
   d. Beer advertising or marketing materials should not claim or represent that individuals cannot solve social, personal, or physical problems without beer consumption.

5. Beer advertising and marketing materials:
   a. Should not contain language or images that are lewd or indecent in the context presented and the medium in which the material appears.
   b. May contain romantic or flirtatious interactions but should not portray sexually explicit activity as a result of consuming beer.

6. Beer advertising and marketing materials should not contain graphic nudity.

7. Beer advertising and marketing materials should not employ religion or religious themes.

8. Beer advertising and marketing materials should not disparage competing beers.
   a. Comparisons or claims distinguishing competing beers should be factual.
   b. Beer advertising and marketing materials should never suggest that competing beers contain objectionable additives or ingredients.

9. Beer advertising and marketing materials should not disparage anti-littering and recycling efforts. Beer advertising and marketing materials should not show littering or otherwise improper disposal of beer containers, unless the scenes are used clearly to promote anti-littering and/or recycling.
10. College marketing

Beer advertising and marketing materials on college and university campuses, or in college-owned media, should not portray consumption of beer as being important to education, nor will advertising directly or indirectly degrade studying. Beer may be advertised and marketed on college campuses or at college-sponsored events only when permitted by appropriate college policy.

a. On-campus promotions/sponsorships

i. Brewer sponsored events: Brewer sponsorship of on-campus events or promotions at on-campus licensed retail establishments will be limited to events conducted in accord with this Code, state law, and applicable institutional policies. In their content and implementation, company on-campus promotions and sponsorships will not encourage the irresponsible, excessive, underage, or otherwise illegal consumption of beer.

ii. Branded products: Beer-branded promotional products such as key chains, clothing, posters, or other tangible goods designed to promote specific beer brands, are intended only for adults of legal drinking age. Distribution of these items will therefore take place only at licensed retail establishments or where distribution is limited to those of legal drinking age, and otherwise conforms to applicable laws and institutional policies.

iii. Tastings: Tasting events at which product samples are provided should occur at licensed retail establishments or where distribution is limited to those of legal drinking age, and otherwise conforms to applicable laws and institutional policies.

b. Brewer sales representatives

Brewer sales representatives who undertake sales calls on or near a college campus will be adults of legal drinking age, and will conduct sales activities in conformity with this Code.

11. User-Generated Content in Digital Media

User-generated content that is posted on beer-branded digital media sites created by or under the control of a Brewer will be monitored for compliance with this Code on a regular basis. If noncompliant user-generated content is discovered on these sites, the Brewer will take appropriate action.

12. Billboards

Billboard advertisements by Brewers will be located at least 500 linear feet from established and conspicuously identified elementary or secondary schools, places of worship, or public playgrounds.

13. Internet Privacy Policy

Brewers will maintain internet privacy policies that are publicly available on their websites. These policies will govern the collection of personal information from legal drinking age consumers on Brewer websites. Before they collect information from any consumer, Brewers will require that individual to verify that he or she is of legal drinking age. Brewers will not collect any information from consumers who identify themselves as below the legal drinking age. Brewers will not collect the personal information they collect from legal drinking age consumers. Brewers will keep consumer information secure and require that any third parties retained by Brewers that have access to Brewer consumer information also keep such consumer information secure. Brewers will also employ a mechanism for consumers to opt-in to receive communications from a Brewer as well as an opt-out feature to stop receiving such communications. Consumer information collected by Brewers is intended to be used for business purposes only.

14. Product placement

Movies and television programs frequently portray consumption
of beer and related signage and props in their productions. Brewers encourage producers to seek approval before using their products, signage, or other props in artistic productions. While producers sometimes seek prior approval from Brewers, the final artistic and editorial decisions concerning product portrayal are always within the exclusive control of the movie or television producers.

With regard to those producers who seek Brewer approval or those Brewers who seek placement opportunities, product placement will be guided by the following principles:

a. Case-by-Case Approval: Brewers will approve or reject product placement in specific projects or scenes on a case-by-case basis, based upon the information provided by the movie or television program’s producers.

b. Portrayal of drinking and driving: Brewers discourage the illegal or irresponsible consumption of their products in connection with driving. Consistent with that philosophy, Brewers will not approve product placement where the characters engage in illegal or irresponsible consumption of their products in connection with driving.

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.

d. Primary appeal to persons below the legal drinking age: 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 where the primary character(s) are below the legal drinking age or the primary theme(s) are, because of their content or presentation, specifically attractive to persons below the legal drinking age beyond the general attractiveness such themes have for persons of legal drinking age.

e. Portraying alcoholism/alcohol abuse: Brewers do not want their products to be abused. Consistent with that philosophy, Brewers will not approve product placement where characters use their products irresponsibly or abusively or where alcoholism is portrayed, unless the depiction supports a responsible-use message.

f. Measured media: Brewers will not request or approve a product placement in any measured media unless the placement is consistent with the Buying Guidelines that accompany this Code and at least 73.6% of the audience is reasonably expected to be adults of legal drinking age.

**Code Compliance Review Process**

Each member of the Beer Institute is committed to the philosophy of the Code and to compliance with the Code. To
demonstrate this commitment, Beer Institute members openly accept Code complaints from any person or entity, including a complaint from another Brewer.

To facilitate the review of a complaint that a Brewer’s advertising or marketing materials is inconsistent with the Code, the complaint should be submitted in writing, using the form available at www.beerinstitute.org. Copies of the form may also be obtained by calling the Beer Institute at 1-800-379-2739. The complainant will complete the form, including name and contact information, attach any supporting data, material or documentation regarding the complaint, including any prior communication with the advertising Brewer, and submit the same to the Beer Institute. A Beer Institute member complainant will first forward its complaint to the advertising member Brewer for resolution before filing any formal complaint with the Beer Institute.

Upon receipt of a completed complaint, the Beer Institute will promptly notify the Brewer and ask the Brewer to respond directly to the complainant within a reasonable time. Beer Institute-member Brewers will endeavor to respond to a complainant within two weeks of receiving notice of a complaint from the Beer Institute.

**Code Compliance Review Board**

If a complainant is dissatisfied with the response received from a Brewer, the complainant may contact the Beer Institute, explain why the complainant is dissatisfied with the response, and request review of the matter by the Beer Institute Code Compliance Review Board (CCRB). In such event, the Beer Institute will ask the Brewer to provide for the CCRB’s review, a copy of the advertising or marketing materials at issue as well as any data, material or documentation to support their response to the complaint.

The CCRB is composed of individuals with a variety of experience who are independent of the brewing industry. The CCRB reviews complaints from the perspective of the reasonable adult consumer of legal drinking age, and decides whether such complaints identify advertising or marketing materials that are inconsistent with one or more guidelines in the Code. Once the CCRB issues its decision, the complainant and the Brewer will be notified, and the complaint, any Brewer response and the Board decision will be posted on the Beer Institute website. If a violation 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.
Buying Guidelines
Definitions

**Audience Measurement Service**: A nationally recognized and independent company, including but not limited to Nielsen, Scarborough Research, Mediamark Research, Inc., Edison, and ComScore, that measures audiences in various advertising media.

**Cinema**: Films shown in a theatre for public entertainment.

**Code**: The Beer Institute Advertising and Marketing Code.

**Consumer Data Source**: Consumer that provides age data, or an independent third party providing age data.

**Digital Media**: All digital media programming, including but not limited to internet sites, mobile sites, commercial marketing emails, downloadable content, SMS and MMS messaging, social media sites, digitally-streamed radio and television, and mobile applications.

**LDA Compliant (and LDA Compliance)**: When Audience Measurement Service demographic data for the Rating Period confirms that adults of legal drinking age (LDA) comprise at least 73.6%* of the audience for the Placement or a Consumer Data Source confirms with reasonable certainty that the individual(s) to whom the Placement will be delivered are 21 years of age or older. In evaluating LDA Compliance, always use the best available data.

**Rating Period**: The two most recent consecutive periods, or a period of not less than two months, whichever is longer, during which audience demographic data for a medium is collected and reported by an Audience Measurement Service.

**Placements**: Advertising and marketing that is purchased or placed in any medium, including but not limited to Print, Television, Radio or Digital Media, and including all bonus placements.

**Print**: All newspaper, magazine and other print publications, including but not limited to advertising supplements, newspaper or magazine sections, and other forms of advertising added to or delivered with a newspaper or magazine.

**Radio**: All radio programming, including but not limited to terrestrial and subscription-based.

**Television**: All television programming, including but not limited to addressable, automatic, programmatic, bulk or block whether national, regional, local, subscription-based, network or cable.

*Increases to 73.8% for new Placements effective September 1, 2023*
General Standards

Brewers are committed to a policy and practice of responsible advertising and marketing. To ensure that beer advertising and marketing materials are directed to adult consumers of legal drinking age, Brewers make Placements based on the audience composition restrictions set forth in Section 3(c) of the Code. Section 3(c) requires that all Placements that are subject to the Code must be LDA Compliant.

Brewers will conduct post-Placement audits of all completed Placements on no less than a semi-annual basis, using to the extent available, the same data that was used to make the Placement. If a post-Placement audit shows that a completed Placement was not LDA Compliant, the Brewer will take reasonable steps to prevent a reoccurrence as described in the Code.

Print Guidelines

A. For Print Placements, Brewers will assess LDA Compliance using audience composition data from an Audience Measurement Service providing age 12-plus audience composition data to the extent available, or if not available, age 18-plus audience composition data. For Print Placements in new or unmeasured publications, Brewers will use (i) subscription data provided by the publisher, or (ii) an Audience Measurement Service providing audience composition data from comparable print publications.

B. Print Placements in editions of publications that are limited to subscribers 21 years of age or older are deemed LDA Compliant.
Television Guidelines

A. For non-automated Television Placements, Brewers will assess LDA Compliance using audience composition data from an Audience Measurement Service.

1. For (a) existing national network, syndicated and cable programs and (b) new or unmeasured national network syndicated and cable programs, Brewers will use national audience composition data for the program or daypart being bought.

2. For new or unmeasured national network, syndicated and cable programs, Brewers will use national audience composition data for comparable programs or dayparts.

3. For existing local programs, Brewers will use local or regional audience composition data for the program or daypart being bought or, if local or regional audience composition data is not available, national audience composition data for the program or daypart being bought.

4. For new or unmeasured local programs, Brewers will use national audience composition data for comparable programs or daypart being bought.

B. An automated Television Placement, wherein the advertisement is directed to a specific household device, will be deemed LDA Compliant if a Consumer Data Source confirms with reasonable certainty that the individual(s) to whom the ad will be delivered are 21 years of age or older.

C. For Television Placements in new and unmeasured programs not included in any subsection above, Brewers will assess LDA Compliance using national or local audience composition data for a comparable program or daypart. (For guidance on streaming television, refer to the “Digital Media Guidelines” section.)
Radio Guidelines

A. For Radio Placements on subscription-based programming, Brewers will use the Average Quarter Hour (AQH) Persons measurement in an Audience Measurement Service to assess LDA Compliance. (For guidance on streaming radio, refer to the “Digital Media Guidelines” section.)

B. For terrestrial Radio Placements, Brewers will use Nielsen’s 21+ Composition Report to assess LDA Compliance. Absent conflicting information in Nielsen’s 21+ Composition Report, Radio Placements shall be made using the following Nielsen standard dayparts or time periods:

i. AM Drive – Monday thru Friday 6:00 a.m. – 10:00 a.m.
ii. Midday – Monday thru Friday 10:00 a.m. – 3:00 p.m.
iii. PM Drive – Monday thru Friday 3:00 p.m. – 7:00 p.m.
iv. Evening – Monday thru Friday 7:00 p.m. – 12:00 midnight
v. Monday through Friday 12:00 midnight – 6:00 a.m.
vi. Saturday & Sunday 6:00 a.m. – 10:00 a.m.
vii. Saturday & Sunday 10:00 a.m. – 3:00 p.m.
viii. Saturday & Sunday 3:00 p.m. – 7:00 p.m.
ix. Saturday & Sunday 7:00 p.m. – 12:00 midnight
x. Saturday & Sunday 12:00 midnight – 6:00 a.m.

Each hour of any other time period, even if adjacent to one of the foregoing Nielsen standard dayparts or time periods, should be independently verified as LDA Compliant using Nielsen’s 21+ Composition Report.

C. As new Nielsen 21+ Composition Reports become available during the term of a continuing agreement to purchase Radio Placements, Brewers will review the new data to determine whether new Radio Placements purchased under the agreement continue to be LDA Complaint. If not, Brewers will, as soon as practicable, make schedule adjustments, cancellations, or other appropriate changes to ensure LDA Compliance for the term of the agreement.

D. Use the best available data in evaluating LDA Compliance. If both Portable People Meter (PPM) and diary methods are available for auditing, PPM data should be used.

E. A Radio Placement will be considered appropriate in a PPM measured market when data for the most recent, consecutive rating periods covering the previous six months from the day the ad placement is made shows that the time period purchased is LDA Compliant.

F. A Radio Placement will be considered appropriate in a diary measured market when data for the most recent, consecutive rating periods covering the previous six months from the day the placement is made shows that the time period purchased is LDA Compliant.

G. For Radio Placements on unmeasured terrestrial radio stations, Brewers will assess LDA Compliance using audience composition data from applicable time periods for comparable stations in comparable markets.
Digital Media Guidelines

A. For general Digital Media Placements that are not targeted to a specific individual, Brewers should assess LDA Compliance using an Audience Measurement Service. New or unmeasured general Digital Media Placements that are not targeted to a specific individual may be made using audience composition data for measured Digital Media in the same category and with similar content and/or by taking other reasonable measures to predict LDA audience composition. Such steps include, for example, reviewing media content and information on the purpose and target audience of the specific medium or site prior to purchase of advertising and obtaining confirmation from the operator of the digital media that its internal data indicates that the medium or site is LDA Compliant.

B. If a Digital Media Placement is made in Digital Media where the dissemination of such placement is restricted only to registered LDA users of that site, such Placements will be deemed LDA Compliant even if the overall audience for the unrestricted content in the Digital Media is not LDA Compliant.

C. A Digital Media Placement to an individual consumer will be considered LDA Compliant if prior to making the Placement and using a Consumer Data Source, the Brewer confirms with reasonable certainty that the individual consumer is at least 21 years of age or older.

Cinema

A. To assess LDA Compliance for a Cinema Placement, Brewers should use an appropriate Audience Measurement Service providing 12+ audience composition data to the extent available or, if not available, 18+ audience composition data for comparable films. Data should be from the most recent, consecutive Rating Periods covering the previous twelve months.

B. When assessing LDA Compliance, both the film’s genre and its Motion Picture Association of America rating should be considered.

Code Dissemination

Copies of this Code will continue to be made available to Brewer employees, wholesale distributors and outside agencies whose responsibilities include advertising and marketing beer, as well as to any outside party who might request it.
May 17, 2023

Mr. Brendan Whitworth
Anheuser-Busch Companies, LLC
United States Chief Executive Officer
One Busch Place
St. Louis, MO 63118

Mr. Brendan Whitworth
Beer Institute
Chairman & Senior Director
440 First Street NW, Suite 350
Washington, DC 20001

Dear Mr. Whitworth:

We are writing to you today in both your capacity as the United States Chief Executive Officer of the Anheuser-Busch Companies (“Anheuser-Busch” or “your company”) and as the Chairman and Senior Director of the Beer Institute, the beer industry’s self-regulatory body with authority over the advertising of beer. Our requests are two-fold.

First, we write to ask that the Beer Institute’s Code Compliance Review Board open an investigation to review Anheuser-Busch’s recent and ongoing marketing partnership with Dylan Mulvaney. The Beer Institute must examine whether your company violated the Beer Institute’s Advertising/Marketing Code and Buying Guidelines prohibiting marketing to individuals younger than the legal drinking age.

The evidence detailed below overwhelmingly shows that Dylan Mulvaney’s audience skews significantly younger than the legal drinking age and violates the Beer Institute’s Advertising/Marketing Code and Buying Guidelines. We would urge you, in your capacity at Anheuser-Busch, to avoid a lengthy investigation by the Beer Institute by instead having Anheuser-Busch publicly sever its relationship with Dylan Mulvaney, publicly apologize to the American people for marketing alcoholic beverages to minors, and direct Dylan Mulvaney to remove any Anheuser-Busch content from his social media platforms.

Second, we believe that Anheuser-Busch’s clear failure to exercise appropriate due diligence when selecting online influencers for its marketing efforts warrants detailed oversight by Congress. To that end, this letter includes a series of document requests that will help clarify how Anheuser-Busch vets its partnerships and how Anheuser-Busch failed in assessing the propriety of a partnership with Dylan Mulvaney. Our document requests can be found at the end of this letter.
BACKGROUND

On April 1, 2023, Dylan Mulvaney announced on Instagram that he had recently inaugurated a partnership with Bud Light, one of Anheuser-Busch’s brands.\(^1\)

As you and your Anheuser-Busch colleagues are aware, Dylan Mulvaney is a prominent social media influencer with 1.8 million followers on Instagram and 10.8 million followers on TikTok.\(^2\) As Mulvaney’s talent agency CAA notes, he is infamous for the “series titled ‘Days of Girlhood’” which “received over 750 million views in less than 100 days.” \(^3\) (emphasis added) Mulvaney’s “Days of Girlhood” series should have been the first red flag to Anheuser-Busch that it was entering into a partnership with an individual whose audience skews impermissibly below the Beer Institute’s proscribed guidelines.

The use of the phrase “Girlhood” was not a slip of the tongue but rather emblematic of a series of Mulvaney’s online content that was specifically used to target, market to, and attract an audience of young people who are well below the legal drinking age in the United States. Examples include:

- Dylan Mulvaney lip-syncing “I am Eloise, I am six” while dressed as a small child. This video gathered 7.1 million views.\(^4\) It aired thirteen days before the Bud Light partnership.
- Dylan Mulvaney during “Day 100 of being a girl” “at the mall” giving away merchandise and cash to teenage girls, at least one of whom was still in braces.\(^5\) That video garnered over 11 million views.
- Dylan Mulvaney pandering to teen developmental issues when he recorded a TikTok pining about “30,000 people want to be my first kiss as a girl.”\(^6\) That video received 9.6 million views.
- Another video of Dylan Mulvaney in Target shopping for Barbie dolls that garnered 8.3 million views.\(^7\) Mattel, the maker of Barbie, has, according to market analysts, a “clearly demarcated target market for [the] Barbie doll [consisting of] young girls of 3-12 years of age.”\(^8\)

An objective survey of Dylan Mulvaney’s content clearly presents a faux, pre-pubescent girl persona that is created and presented to specifically appeal to young viewers.

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\(^1\) https://www.instagram.com/reel/CqgTfuqZc/?utm_source=ig_web_copy_link
\(^3\) https://www.caa.com/caaspeakers/dylan-mulvaney
\(^4\) https://www.tiktok.com/@dylanmulvaney/video/7212043896430415147
\(^6\) https://www.tiktok.com/@dylanmulvaney/video/7123736509467004206
\(^7\) https://www.tiktok.com/@dylanmulvaney/video/719259848784776494
\(^8\) https://www.researchomatic.com/mattel-barbie-doll-target-market-156300.html
AUDIENCE DEMOGRAPHICS

Publicly available data indicates that both the Instagram and TikTok platforms skew heavily toward younger audiences. As Hootsuite, a leading social media marketing platform pointed out recently, if you want to reach children—Instagram, which is where Anheuser-Busch rolled out the Mulvaney/Bud Light partnership—is the ideal social media platform.9 Hootsuite noted that “overall, Instagram is Generation Z’s favorite social media platform. Global internet users aged 16 to 24 prefer Instagram to other social platforms. . . even ranking it above TikTok.”10 For marketing professionals seeking to reach the age 16 to 24 year old cohort, Instagram is an ideal platform.11

TikTok users also skew equally young. A leaked presentation about TikTok user demographics showed that 17% of the TikTok user base is 13 to 17 years old and 42% of the audience is between the ages of 18 and 24 years of age.12 While Anheuser-Busch appears to have targeted its rollout of the Mulvaney/Bud Light partnership on Instagram, it is obvious, given Dylan Mulvaney’s significant social media following on TikTok, that this influencer campaign would spill over to TikTok as well.

PROHIBITED ADVERTISING

The Mulvaney/Bud Light campaign is starkly similar to the discredited and now illegal marketing campaigns of cigarette manufacturers that used youth-favored advertising tools such as “Joe Camel” in an attempt to develop early brand loyalty with children who were legally prohibited from smoking cigarettes.13 In fact, your VP of Marketing has said as much stating, “I’m a businesswoman. I had a really clear job to do when I took over Bud Light, and it was ‘This brand is in decline, it’s been in a decline for a really long time, and if we do not attract young drinkers to come and drink this brand there will be no future for Bud Light.’”14 (emphasis added) Unfortunately, Anheuser-Busch has a history of inappropriately marketing beer to individuals younger than the legal drinking age. In 2009, the Federal Trade Commission and dozens of colleges strongly criticized Anheuser-Busch for marketing Bud Light to underage college students.15

Marketing to minors is prohibited under the Beer Institute’s Advertising/Marketing Code and Buying Guidelines. Section 3.c.i specifically states:16

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9 https://blog.hootsuite.com/instagram-demographics/
10 Id.
11 Id.
14 https://nypost.com/2023/04/10/bud-lights-marketing-vp-was-inspired-to-update-fratty-out-of-touch-branding/
15 https://www.wsj.com/articles/SB125116535930755741
16 https://www.beerinstitute.org/policy-responsibility/responsibility/advertising-marketing-code/
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 73.6% of the audience is expected to be adults of legal drinking age. A placement will be considered compliant if the audience composition data reviewed prior to placement meets the percentage set forth above.

The general demographics of Instagram and TikTok, combined with the pre-pubescent content for girls pushed by Dylan Mulvaney, and informed by comments from Anheuser-Busch’s VP for Marketing regarding young drinkers, should have provided overwhelming evidence to the Beer Institute that Anheuser-Busch’s sponsored social media influencer advertising had both the design and effect of marketing an adult beverage product to an audience whose composition was less than 73.6% individuals of legal drinking age, thus violating the standards required by the Beer Institute. With that in mind, we ask Anheuser-Busch to: (1) immediately review all of their influencer relationships and sever any and all relationships with persons whose online personas violate the Beer Institute’s marketing standards, as Dylan Mulvaney’s clearly does, and (2) to ask that Dylan Mulvaney and all similarly inappropriate persons used by Anheuser-Busch in its marketing remove all Anheuser-Busch content from their online accounts. If your company fails to do so, we ask the Beer Institute to find Anheuser-Busch in violation of the Advertising/Marketing Code and Buying Guidelines and order them to sever their relationship with Mulvaney.

DOCUMENT PRODUCTION

In addition to requesting Beer Institute oversight of the advertising partnership with Dylan Mulvaney, Anheuser-Busch shall respond by providing copies of the following documents by not later than May 31, 2023 so that Congress can exercise its oversight responsibilities.

1. All documents or communications between or among any employees of Anheuser-Busch regarding the partnership between Anheuser-Busch and Dylan Mulvaney.

2. Copies of all scripts, including any and all drafts, reviewed by Anheuser-Busch for social media content from Dylan Mulvaney.

3. Copies of any guidance or requests provided by Anheuser-Busch, or its agents, directing, encouraging, or soliciting content from Dylan Mulvaney related to Bud Light or any other Anheuser-Busch products.

4. All documents or communications between Dylan Mulvaney, his agents, including at Dylan Mulvaney’s talent representation firm CAA, and staff or representatives of Anheuser-Busch, including any advertising placement agents retained by Anheuser-Busch.

5. Copies of any after-the-fact audits conducted in relation to Anheuser-Busch’s advertising partnership with Dylan Mulvaney.
6. Copies of all materials in the possession of Anheuser-Busch showing the age demographics of Dylan Mulvaney’s audience, including but not limited to the platforms of Instagram and TikTok.

7. Copies of Anheuser-Busch’s corporate policy for advertising on social media platforms, including but not limited to, TikTok and Instagram.

8. Copies of all documents provided to the Beer Institute related to Anheuser-Busch’s response to this complaint.

We look forward to your prompt response to our concerns.

Sincerely,

[Signatures]

Ted Cruz
Ranking Member
Committee on Commerce, Science, and Transportation

Marsha Blackburn
Ranking Member
Subcommittee on Consumer Protection, Product Safety, and Data Security

cc: Gavin Hattersley, Vice Chairman & Senior Director, Beer Institute and CEO, Molson Coors Beverage Company

Brian Crawford, President & CEO, Beer Institute
May 19, 2023

The Honorable Ted Cruz  
Ranking Member  
Committee on Commerce, Science, and Transportation  
U.S. Senate  
254 Russell Senate Building  
Washington, DC 20510

The Honorable Marsha Blackburn  
Ranking Member  
Subcommittee on Consumer Protection, Product Safety, and Data Security  
Committee on Commerce, Science, and Transportation  
U.S. Senate  
254 Russell Senate Building  
Washington, DC 20510

Dear Ranking Member Cruz and Ranking Member Blackburn,

Anheuser-Busch Companies (“Anheuser-Busch”) appreciates the opportunity to respond to your letter of May 17, 2023 regarding Bud Light and social media influencer Dylan Mulvaney, and to provide additional background on the importance we place on marketing alcohol beverages only to people of legal drinking age.

As an initial matter, this social media influencer was not engaged to post on TikTok, and in fact did not make any such posts on that platform. Rather, this influencer was engaged to post on Instagram only.

We complied with all provisions of the Beer Institute Advertising and Marketing Code. This is true even under the general principles and guidelines that govern traditional advertising placements. At the time of the engagement, available data indicated that Mulvaney’s Instagram audience complied with the Beer Institute’s standards. In fact, Instagram as a platform predominantly consists of adults, with data indicating that almost 80% of users are over the age of 21.

Anheuser-Busch does not market its products to people below the legal drinking age. The Ad Code dates back almost 90 years and contains detailed procedures for the placement of advertising. We have long adhered to these rigorous requirements, and in each case, our marketing is directed to our consumers – adults of legal drinking age.

Anheuser-Busch is deeply committed to the responsible advertisement of its products and we take our role as a responsible marketer very seriously. Since 1985, Anheuser-Busch and its wholesaler partners have invested more than $1 billion in responsible drinking initiatives and community-based programs to prevent underage drinking, impaired driving, and other harmful activities. In addition to our support for programs that seek to prevent underage drinking such as We I.D., TIPS alcohol training, and the FTC’s “We Don’t Serve Teens” initiative, we created
“Family Talk About Drinking,” which gives parents tools for discussing and setting expectations about drinking with their family.

We are proud of our record of industry leadership and ongoing efforts to promote responsible drinking behaviors. Together with our wholesaler partners, we employ more than 8,200 people across Texas and Tennessee, and the beer industry in total contributes more than $33 billion to your states’ economies.

Thank you again for the opportunity to respond to your letter.

ANHEUSER-BUSCH COMPANIES
MEMORANDUM

TO: Beer Institute’s Code Compliance Review Board (CCRB)
FROM: U.S. Senate Commerce Committee Ranking Member Ted Cruz
DATE: June 14, 2023
RE: Complaint – Anheuser-Busch’s Marketing Partnership with Dylan Mulvaney

INTRODUCTION

For the past two months, independent beer distributors and their employees across America, from truck drivers to salespeople, have suffered the negative consequences of the decision by Anheuser-Busch, which is owned by the global beer conglomerate AB InBev, to partner with social media influencer Dylan Mulvaney.1 Mulvaney’s April 1st Instagram post2 on behalf of Bud Light sparked a backlash from customers, who slammed the brewer’s controversial new marketing approach. Beer distributors and their employees have been economically harmed by a decision outside their control.

On May 17, 2023, Senators Ted Cruz and Marsha Blackburn sent a letter to Brendan Whitworth in both his capacity as U.S. CEO of the Anheuser-Busch Companies (“Anheuser-Busch”) and as Chairman and Senior Director of the Beer Institute.3 The senators’ letter raised concerns about Anheuser-Busch’s marketing partnership with Mulvaney. Sens. Cruz and Blackburn alleged that Anheuser-Busch had violated the Beer Institute Advertising and Marketing Code’s (the “Ad Code”) prohibition on marketing to minors. The letter included multiple examples of online content by Mulvaney that was used to target, market to, and attract an audience of young people who are well below the legal drinking age in the United States. These examples, with accompanying screenshots, are included in the appendix to this memorandum. The senators requested documents from Anheuser-Busch and called for a review by the Code Compliance Review Board (“CCRB”).

On May 19, 2023, Anheuser-Busch sent a letter responding to the complaint, which did not provide any of the documents that the senators requested.4 Sen. Cruz was dissatisfied with the response since it was not signed by Whitworth or any other representative of Anheuser-Busch, failed to comply with the senators’ reasonable request for documents in furtherance of their congressional oversight responsibilities, and provided no corroborating data to show that Mulvaney’s posts complied with the Ad Code. Sen. Cruz’s staff relayed his dissatisfaction with

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3 A copy of the senators’ May 17th letter is attached as Exhibit A. Sen. Cruz is the Ranking Member of the Senate Commerce Committee and Sen. Blackburn is the Ranking Member of the Committee’s subcommittee on Consumer Protection, Product Safety, and Data Security. Both the Committee and this subcommittee have jurisdiction over consumer products, including beer, and consumer protection matters.
4 A copy of Anheuser-Busch’s May 19th response letter to Sens. Cruz and Blackburn is attached as Exhibit B.
the response in an email to Anheuser-Busch on May 20, 2023. His staff reiterated the request for CCRB review on a call with counsel for the Beer Institute on May 23, 2023.

While the May 17th letter focused on an Instagram post dated April 1, 2023, Sen. Cruz is challenging all advertising and marketing materials stemming from Anheuser-Busch’s partnership with Mulvaney. This memorandum supplements the senator’s arguments and draws the CCRB’s attention to additional facts that bolster the initial May 17th complaint letter.

SUPPLEMENTAL FACTS

Mulvaney’s February 11, 2023, Instagram Post for Bud Light

The May 17th letter stated that “[o]n April 1, 2023, Mulvaney announced on Instagram that he had recently inaugurated a partnership with Bud Light.” Here is a screenshot of that post⁵:

As a result of a Wall Street Journal article published on May 21, 2023, Sen. Cruz has now learned that Mulvaney’s partnership with Anheuser-Busch began months prior to the April 1st

⁵ Dylan Mulvaney (@dylanmulvaney), supra note 2.
Instagram post. On February 11, 2023, Mulvaney posted a video on Instagram with the caption #budlightpartner. The video showed Mulvaney dancing in a bathtub with an open can of Bud Light, a stack of Bud Light cans in the background. Here is a screenshot of that post:

![Instagram post screenshot](image)

This earlier February 11th post disproves AB InBev CEO Michel Doukeris’s statement on a May 4, 2023, earnings call that the company’s partnership with Mulvaney consisted of “one can, one influencer, one post and not a campaign.” In fact, Anheuser-Busch employed Mulvaney to advertise and market Bud Light on multiple occasions.

**Bud Light’s Failure to Ensure Individuals Under the Legal Drinking Age Could Not Access Mulvaney’s April 1st Bud Light Instagram Post**

The senator has also learned that Mulvaney and Bud Light violated Instagram policies on age gating. Instagram requires creators to block all U.S. users under the age of 21 from viewing

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7 Dylan Mulvaney (@dylanmulvaney), *Only @budlight*, INSTAGRAM (Feb. 11, 2023), https://www.instagram.com/p/CoiTxPFjU2N/.
branded content promoting or referencing alcohol. But, as Washington Post columnist Philip Bump has reported, Bud Light and Mulvaney failed to appropriately age gate the April 1st post to prevent underage individuals from accessing the post. Bump created a “new account for someone age 16” but saw that the “content was visible both when linked directly and on Mulvaney’s page,” in violation of site policy.

Bump’s experiment also illustrates how easy it is for users to lie about their age when signing up for a new Instagram account. As the Wall Street Journal has reported, “Instagram doesn’t verify the age a user declares when creating an account.” Rather, it employs “an honor system, and one that isn’t always followed.” According to a 2021 survey by the Social Institute cited by the Journal, 47% of high schoolers reported creating social-media accounts before age 13, in violation of Instagram rules.

**Further Evidence of Mulvaney’s Appeal to Underage Persons**

Sen. Cruz asks the CCRB to note the following additional examples of Mulvaney’s appeal to those under the age of 21:

- In a June 2022 feature in Los Angeles Magazine, Mulvaney discussed targeting those below the legal drinking age: “I didn’t have that open and vulnerable creator, or role model growing up. . . . Four-year-old, eight-year-old, 15-year-old Dylan, they didn’t have a ‘me’ to go on TikTok. . . . But I want to be that for my younger self.” Why, the magazine asked, was Mulvaney’s video series titled “Days of Girlhood” rather than “Days of Womanhood”? “I didn’t get to have girlhood growing up on time as everyone else, and I’m now learning all the things that little girls got to learn so long ago,” Mulvaney replied. “I am going through many of the experiences of a child or a young adult. . . .” (emphasis added)

- When asked in a September 2022 interview with Observer about getting started online, Mulvaney replied, “I downloaded TikTok, assuming it was a kids’ app.” TikTok is Mulvaney’s primary social media platform. (emphasis added)

- In November 2022, Mulvaney posted a TikTok video directed “to all the queer and trans kids and teens out there who have been following along on my journey.”

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honored that you’ve accepted me as one of your own,” Mulvaney stated. “It feels like we’re all just kind of still kids trying to figure it out.” (emphasis added)

- When asked about posting on TikTok in a March 2023 interview with Variety, Mulvaney stated, “I thought it was a kids app that you dance on.” (emphasis added)

- In a March 13, 2023, appearance on The Drew Barrymore Show, Mulvaney spoke about deciding what content to share with fans: “I think back to my childhood self and I think about if I was following myself on TikTok as like a young kid, what would I want to hear?… you know so much of my audience is a younger demographic…” (emphasis added)

- In a live performance at Rockefeller Center that evening, March 13, 2023, to celebrate Day 365 of “Girlhood,” Mulvaney thanked parents who were watching “for letting me be a character in your children’s lives.” Mulvaney, a former Broadway performer, then sang the following lyrics from Stephen Sondheim’s Into the Woods: “Careful the things you say / Children will listen / Careful the things you do / Children will see and learn / Children may not obey / But children will listen / Children will look to you / For which way to turn / To learn what to be.” (emphasis added)

- In an April 27, 2023, feature in Bustle, Mulvaney stated, “I actually think it’s very special that parents are allowing their kids to follow me, so I want to maintain that relationship as much as I can.” (emphasis added)

- In an Instagram video posted that same day, April 27, 2023, Mulvaney told followers, “You might want to grab a beverage; this is going to be a longer one.”

- Mulvaney recently partnered with Lionsgate to promote the coming-of-age, teen film “Are You There God? It’s Me, Margaret”, which is a film adaptation of a famous, bestselling book for young readers by Judy Blume. In a TikTok video advertising the movie, Mulvaney asked Blume what advice she had for “young creatives.” No wonder, for the novel on which the film is based remains popular with young audiences. It’s

20 Dylan Mulvaney (@dylanmulvaney), Chatting with one of my heroes, Judy Blume!!*, TiKTOK (May 12, 2023), http://www.tiktok.com/@dylanmulvaney/video/7232377894104861994.
currently the #1 bestselling children’s book on girls’ & women’s issues on Amazon.com.21

- When Mulvaney recently posted a TikTok video celebrating the beginning of Pride Month, the official Barbie TikTok account commented “Slayy.”22

ARGUMENT

Anheuser-Busch’s marketing partnership with Mulvaney violated Section 3 of the Beer Institute Ad Code. Section 3 states “[a]dvertising or marketing materials should avoid elements that appeal primarily to persons below the legal drinking age,” meaning that “they have special attractiveness to such persons beyond their general attractiveness for persons of legal drinking age.”23

The February 11th and April 1st Instagram posts violate Section 3 for three reasons:

**Mulvaney Appeals Primarily to Underage Persons (Section 3(a))**

*First*, considered holistically, the challenged posts appeal primarily to persons below the legal limit. Section 3(a) of the Ad Code states that “[i]n considering whether beer advertising and marketing materials appeal primarily to persons below the legal drinking age, Brewers should take into account the following elements among others. . . . Entertainers or celebrities.”24

Mulvaney is an entertainer or celebrity with “special attractiveness” to persons below the legal drinking age. As noted in the May 17th letter, Mulvaney’s “Days of Girhood” video series includes clips of the influencer employing children’s characters like Barbie and Eloise, a fictional six-year-old girl who is the main character in a well-known children’s book series; giving away merchandise to young teenage girls at the mall; and discussing teen developmental issues such as the “first kiss as a girl.” These videos were all posted on TikTok, a platform that Mulvaney considered to be “a kids app” and where the influencer spoke to “kids and teens out there,” saying, “I’m kind of honored that you’ve accepted me as one of your own.” In addition, in multiple interviews and settings, Mulvaney not only expressed the desire to be a role model for children, stating that “I want to be that” and “I want to maintain that relationship as much as I can,” but also acknowledged this was already in fact the case. Mulvaney thanked parents “for letting me be a character in your children’s lives” and said it was “very special that parents are allowing their kids to follow me.”

Mulvaney’s public persona is relevant to whether the February 11th and April 1st Instagram posts “appeal primarily to person below the legal drinking age.” When considering a Section 3 claim based on the presence of an entertainer or celebrity, the CCRB, in the past, has looked beyond

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22 Dylan Mulvaney (@dylanmulvaney), June 1st Has Me Feelin Good, TikTok (June 1, 2023), https://www.tiktok.com/t/ZTRo7P98J/.
24 Id.
the challenged advertising or marketing materials to consider the entertainer or celebrity’s image and audience in a broader context. For example, in its April 29, 2014, decision regarding the Anheuser-Busch television commercial “Epic Night,” which featured the band OneRepublic and the actors Arnold Schwarzenegger and Don Cheadle, the CCRB looked to the percentage of OneRepublic’s fans under the legal drinking age and whether the band had special attractiveness to people under the age of 21. The CCRB also evaluated the presence of Arnold Schwarzenegger and Don Cheadle in the commercial. It considered their age, recognition rate among various age demographics, viewing audience for recent films, and, in the case of Mr. Cheadle, the content rating of a television show in which he starred, which was rated TV-MA for mature audiences. Taken together, in this particular case, the CCRB concluded that these factors demonstrated that the commercial appealed primarily to adults of legal drinking age.

Here, in contrast, 26-year-old Mulvaney has a young fan base, employs themes that are especially attractive to girls and young teens, and is most easily recognized by young people, especially those on TikTok, Instagram, and other forms of social media. Unlike Cheadle’s television show, Mulvaney’s posts have no content rating.

**The Bud Light-Mulvaney April 1st Post Failed to Confirm Instagram Users Were of Legal Drinking Age (Section 3(c)(ii))**

Second, the April 1st placement violated Section 3(c)(ii) of the Ad Code because it initiated dialogue between Instagram users and Anheuser-Busch without confirming that users were of legal drinking age.

Section 3(c)(ii) states “[p]lacements 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.” For placements involving dialogue, age confirmation can occur in one of two ways: “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 April 1st placement involved “dialogue” between users and Anheuser-Busch. The video received over 12,000 comments, 40,000 shares and 185,000 likes from Instagram users. Moreover, the post included specific instructions for users, asking them to “[s]hare a video with #EasyCarryContest.” Users responded to these instructions by creating new posts and reels with the recommended hashtag, tagging the Bud Light Instagram account. As noted, the April 1st post was not age gated and did not require “active confirmation” of a user’s age prior to viewing. Nor is Instagram restricted to persons of legal drinking age.

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26 Id.
27 Id. at 6.
28 Beer Institute, *supra* note 23 at 5.
29 Id.
Less than 73.6% of the Audience of the Bud Light-Mulvaney Posts Were of Legal Drinking Age (Section 3(c)(i))

Third, even assuming the posts in question did not involve dialogue, they violated Section 3(c)(i) of the Ad Code because less than 73.6% of the expected audience was of legal drinking age.

Section 3(c)(i) applies to “digital media in which there is no dialogue between a Brewer and user.” An advertising or marketing placement complies with Section 3(c)(i) “if the audience composition data reviewed prior to placement meets the percentage set forth above.” The Beer Institute Buying Guidelines separately specify that all placements must be legal drinking age compliant, which is “[w]hen Audience Measurement Service demographic data for the Rating Period confirms that adults of legal drinking age (LDA) comprise at least 73.6% of the audience for the Placement or a Consumer Data Source confirms with reasonable certainty that the individual(s) to whom the Placement will be delivered are 21 years of age or older.” Brewers may choose an Audience Measurement Service like Nielsen or a Consumer Data Source like Instagram to assess audience demographics, but they must “use the best available data.”

The May 17th letter from Sens. Cruz and Blackburn cited statistics showing that the Instagram audience skews younger and that internet users aged 16 to 24 prefer it to other social platforms. For now, this is the extent of their knowledge based on public information. A brewer like Anheuser-Busch, on the other hand, is required to review audience composition data prior to placement. The Ad Code therefore directs a brewer whose advertising or marketing has been challenged “to provide for the CCRB’s review, a copy of the advertising or marketing materials at issue as well as any data, material or documentation to support their response to the complaint.”

Here, Anheuser-Busch stated in its May 19th letter that “[a]t the time of the engagement, available data indicated that Mulvaney’s Instagram audience complied with the Beer Institute’s standards.” However, the brewer has refused to provide Sens. Cruz and Blackburn with any data to support this claim. Anheuser-Busch has refused to comply with the document requests outlined in the senators’ May 17th letter, including the request for any material “showing the age demographics of Dylan Mulvaney’s audience, including but not limited to the platforms of Instagram and TikTok.” Anheuser-Busch also failed to specify when its engagement with Mulvaney began—a notable omission given the now-discovered February 11th post. CCRB should therefore seek Instagram Insights audience data—which is a Consumer Data Source—for Mulvaney’s account, as well as for the February 11th and April 1st posts.

Indeed, CCRB should seek all documentation responsive to the eight requests outlined in the senators’ May 17th letter. (Those requests are listed in the appendix to this memorandum.) Such

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31 Beer Institute, supra note 23 at 5.
32 Id.
34 Id.
35 Beer Institute, supra note 23 at 9.
36 See Exhibit B.
37 See Exhibit A.
documentation would include demographic information in Anheuser-Busch’s control or possession concerning Mulvaney’s audience on TikTok and other social media platforms. Anheuser-Busch has obstinately refused to produce this material to the senators. Mulvaney’s audience demographics on social media sites other than Instagram, including TikTok, are relevant to the Section 3(c)(i) analysis due to the well-documented marketing spillover effect. Although Bud Light initiated its campaign on Instagram, versions of the posts circulated on TikTok and similar social media sites where they were likely viewed by minors.38

Finally, the CCRB should critically assess any audience metrics submitted by Anheuser-Busch and determine whether the brewer truly used the “best available data” to confirm audience demographics with “reasonable certainty,” as the Beer Institute’s Buying Guidelines require. Neither of the Mulvaney-Bud Light posts in question included a “paid partnership” label for branded content, in violation of Instagram rules.39 And, as a result, Mulvaney and Anheuser-Busch might not have access to the granular data they otherwise would have, especially if the posts in question had been run as “partnership ads,” which would have allowed the creator and business to target users under the age of 21.40 Instead, Mulvaney’s Instagram account may currently only show Instagram Insights audience demographics for the last 90 days41—well after the date of the engagement.

In addition, as noted above, Instagram’s lack of sufficient age verification measures means that official metrics may not account for young people who lied about their age when making an Instagram account; the data could overstate the percentage of viewers above the legal drinking age. Instagram also groups persons between the ages of 18 and 24 into a single demographic category, which elides the percentage of viewers who are above and below the legal drinking age of 21. The public debate surrounding Bud Light’s partnership with Mulvaney may have shifted the age demographic of the current audience, skewing the February 11th and April 1st posts’ viewership—as well as the viewership for Mulvaney’s account—toward older users who sought out the primary sources after the outbreak of the controversy. Accordingly, CCRB must look to historical data on Mulvaney’s reach audience, including from spillover sites, that was reviewed by Anheuser-Busch prior to the placement of the February 11th and April 1st posts. CCRB must then determine whether this data confirmed the 73.6% audience threshold with “reasonable certainty” and whether it was the “best available data” at the time.

**CONCLUSION**

For the above reasons, Sen. Cruz asks the CCRB to find that Anheuser-Busch’s partnership with Dylan Mulvaney—and particularly the Instagram posts dated February 11, 2023, and April 1, 2023—violated the Ad Code’s prohibition on marketing to minors.

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38 See, e.g., Daily Mail (@dailymail), Cheers to a milestone anniversary, TIKTOK (Apr. 3, 2023), https://www.tiktok.com/t/ZTRo7XfuN/.
APPENDIX

The senators’ May 17th letter included the following examples of online content by Mulvaney that was specifically used to target, market to, and attract an audience of young people well below the legal drinking age in the United States. This appendix includes screenshots of that content.

- Dylan Mulvaney lip-syncing “I am Eloise, I am six” while dressed as a small child. This video gathered 7.1 million views.\(^{42}\) It aired thirteen days before Mulvaney’s April 1\(^{st}\) Instagram post promoting Bud Light. Here are screenshots of that post, which is captioned “[c]hildhood dream unlocked”:

\(^{42}\) Dylan Mulvaney (@dylanmulvaney), Childhood dream unlocked, TikTok (Mar. 18, 2023), https://www.tiktok.com/@dylanmulvaney/video/7212043896430415147
Dylan Mulvaney during “Day 100 of being a girl” “at the mall” giving away merchandise and cash to teenage girls, at least one of whom was still in braces.\(^{43}\) That video garnered over 11 million views. Here are screenshots of that post:

Dylan Mulvaney pandering to teen developmental issues when he recorded a TikTok pining about how “30,000 people want to be my first kiss as a girl.”44 That video received 9.6 million views. Here is a screenshot of that post:

- Another video of Dylan Mulvaney in Target shopping for Barbie dolls that garnered 8.3 million views.⁴⁵ According to market analysis, “the Barbie Toy market primarily targets[s] young children aged 3–9 years.”⁴⁶ Here are screenshots of that post:

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The senators’ May 17th letter requested that Anheuser-Busch provide copies of the following documents by no later than May 31, 2023, so that Congress could exercise its oversight responsibilities. Anheuser-Busch has failed to comply with this reasonable oversight request.

- All documents or communications between or among any employees of Anheuser-Busch regarding the partnership between Anheuser-Busch and Dylan Mulvaney.

- Copies of all scripts, including any and all drafts, reviewed by Anheuser-Busch for social media content from Dylan Mulvaney.

- Copies of any guidance or requests provided by Anheuser-Busch, or its agents, directing, encouraging, or soliciting content from Dylan Mulvaney related to Bud Light or any other Anheuser-Busch products.

- All documents or communications between Dylan Mulvaney, his agents, including at Dylan Mulvaney’s talent representation firm CAA, and staff or representatives of Anheuser-Busch, including any advertising placement agents retained by Anheuser-Busch.

- Copies of any after-the-fact audits conducted in relation to Anheuser-Busch’s advertising partnership with Dylan Mulvaney.

- Copies of all materials in the possession of Anheuser-Busch showing the age demographics of Dylan Mulvaney’s audience, including but not limited to the platforms of Instagram and TikTok.

- Copies of Anheuser-Busch’s corporate policy for advertising on social media platforms, including but not limited to, TikTok and Instagram.

- Copies of all documents provided to the Beer Institute related to Anheuser-Busch’s response to this complaint.
EXHIBIT A
May 17, 2023

Mr. Brendan Whitworth
Anheuser-Busch Companies, LLC
United States Chief Executive Officer
One Busch Place
St. Louis, MO 63118

Mr. Brendan Whitworth
Beer Institute
Chairman & Senior Director
440 First Street NW, Suite 350
Washington, DC 20001

Dear Mr. Whitworth:

We are writing to you today in both your capacity as the United States Chief Executive Officer of the Anheuser-Busch Companies (“Anheuser-Busch” or “your company”) and as the Chairman and Senior Director of the Beer Institute, the beer industry’s self-regulatory body with authority over the advertising of beer. Our requests are two-fold.

First, we write to ask that the Beer Institute’s Code Compliance Review Board open an investigation to review Anheuser-Busch’s recent and ongoing marketing partnership with Dylan Mulvaney. The Beer Institute must examine whether your company violated the Beer Institute’s Advertising/Marketing Code and Buying Guidelines prohibiting marketing to individuals younger than the legal drinking age.

The evidence detailed below overwhelmingly shows that Dylan Mulvaney’s audience skews significantly younger than the legal drinking age and violates the Beer Institute’s Advertising/Marketing Code and Buying Guidelines. We would urge you, in your capacity at Anheuser-Busch, to avoid a lengthy investigation by the Beer Institute by instead having Anheuser-Busch publicly sever its relationship with Dylan Mulvaney, publicly apologize to the American people for marketing alcoholic beverages to minors, and direct Dylan Mulvaney to remove any Anheuser-Busch content from his social media platforms.

Second, we believe that Anheuser-Busch’s clear failure to exercise appropriate due diligence when selecting online influencers for its marketing efforts warrants detailed oversight by Congress. To that end, this letter includes a series of document requests that will help clarify how Anheuser-Busch vets its partnerships and how Anheuser-Busch failed in assessing the propriety of a partnership with Dylan Mulvaney. Our document requests can be found at the end of this letter.
BACKGROUND

On April 1, 2023, Dylan Mulvaney announced on Instagram that he had recently inaugurated a partnership with Bud Light, one of Anheuser-Busch’s brands.¹

As you and your Anheuser-Busch colleagues are aware, Dylan Mulvaney is a prominent social media influencer with 1.8 million followers on Instagram and 10.8 million followers on TikTok.² As Mulvaney’s talent agency CAA notes, he is infamous for the “series titled ‘Days of Girlhood’” which “received over 750 million views in less than 100 days.”³ (emphasis added) Mulvaney’s “Days of Girlhood” series should have been the first red flag to Anheuser-Busch that it was entering into a partnership with an individual whose audience skews impermissibly below the Beer Institute’s proscribed guidelines.

The use of the phrase “Girlhood” was not a slip of the tongue but rather emblematic of a series of Mulvaney’s online content that was specifically used to target, market to, and attract an audience of young people who are well below the legal drinking age in the United States. Examples include:

- Dylan Mulvaney lip-syncing “I am Eloise, I am six” while dressed as a small child. This video gathered 7.1 million views.⁴ It aired thirteen days before the Bud Light partnership.

- Dylan Mulvaney during “Day 100 of being a girl” “at the mall” giving away merchandise and cash to teenage girls, at least one of whom was still in braces.⁵ That video garnered over 11 million views.

- Dylan Mulvaney pandering to teen developmental issues when he recorded a TikTok pining about “30,000 people want to be my first kiss as a girl.”⁶ That video received 9.6 million views.

- Another video of Dylan Mulvaney in Target shopping for Barbie dolls that garnered 8.3 million views.⁷ Mattel, the maker of Barbie, has, according to market analysts, a “clearly demarcated target market for [the] Barbie doll [consisting of] young girls of 3-12 years of age.”⁸

An objective survey of Dylan Mulvaney’s content clearly presents a faux, pre-pubescent girl persona that is created and presented to specifically appeal to young viewers.

¹ https://www.instagram.com/reel/CqgTfujqZc/?utm_source=ig_web_copy_link
³ https://www.caa.com/caaspeakers/dylan-mulvaney
⁴ https://www.tiktok.com/@dylanmulvaney/video/7212043896430415147
⁵ https://www.tiktok.com/@dylanmulvaney/video/7111457500167228714?lang=en
⁶ https://www.tiktok.com/@dylanmulvaney/video/7123736509467004206
⁷ https://www.tiktok.com/@dylanmulvaney/video/7109259848784776494
AUDIENCE DEMOGRAPHICS

Publicly available data indicates that both the Instagram and TikTok platforms skew heavily toward younger audiences. As Hootsuite, a leading social media marketing platform pointed out recently, if you want to reach children—Instagram, which is where Anheuser-Busch rolled out the Mulvaney/Bud Light partnership—is the ideal social media platform.9 Hootsuite noted that “overall, Instagram is Generation Z’s favorite social media platform. Global internet users aged 16 to 24 prefer Instagram to other social platforms. . . even ranking it above TikTok.”10 For marketing professionals seeking to reach the age 16 to 24 year old cohort, Instagram is an ideal platform.11

TikTok users also skew equally young. A leaked presentation about TikTok user demographics showed that 17% of the TikTok user base is 13 to 17 years old and 42% of the audience is between the ages of 18 and 24 years of age.12 While Anheuser-Busch appears to have targeted its rollout of the Mulvaney/Bud Light partnership on Instagram, it is obvious, given Dylan Mulvaney’s significant social media following on TikTok, that this influencer campaign would spill over to TikTok as well.

PROHIBITED ADVERTISING

The Mulvaney/Bud Light campaign is starkly similar to the discredited and now illegal marketing campaigns of cigarette manufacturers that used youth-favored advertising tools such as “Joe Camel” in an attempt to develop early brand loyalty with children who were legally prohibited from smoking cigarettes.13 In fact, your VP of Marketing has said as much stating, “I’m a businesswoman. I had a really clear job to do when I took over Bud Light, and it was ‘This brand is in decline, it’s been in a decline for a really long time, and if we do not attract young drinkers to come and drink this brand there will be no future for Bud Light.’”14 (emphasis added) Unfortunately, Anheuser-Busch has a history of inappropriately marketing beer to individuals younger than the legal drinking age. In 2009, the Federal Trade Commission and dozens of colleges strongly criticized Anheuser-Busch for marketing Bud Light to underage college students.15

Marketing to minors is prohibited under the Beer Institute’s Advertising/Marketing Code and Buying Guidelines. Section 3.c.i specifically states.16

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9 https://blog.hootsuite.com/instagram-demographics/
10 Id.
11 Id.
14 https://nypost.com/2023/04/10/bud-lights-marketing-vp-was-inspired-to-update-fratty-out-of-touch-branding/
15 https://www.wsj.com/articles/SB125116535930755741
16 https://www.beerinstitute.org/policy-responsibility/responsibility/advertising-marketing-code/
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 73.6% of the audience is expected to be adults of legal drinking age. A placement will be considered compliant if the audience composition data reviewed prior to placement meets the percentage set forth above.

The general demographics of Instagram and TikTok, combined with the pre-pubescent content for girls pushed by Dylan Mulvaney, and informed by comments from Anheuser-Busch’s VP for Marketing regarding young drinkers, should have provided overwhelming evidence to the Beer Institute that Anheuser-Busch’s sponsored social media influencer advertising had both the design and effect of marketing an adult beverage product to an audience whose composition was less than 73.6% individuals of legal drinking age, thus violating the standards required by the Beer Institute. With that in mind, we ask Anheuser-Busch to: (1) immediately review all of their influencer relationships and sever any and all relationships with persons whose online personas violate the Beer Institute’s marketing standards, as Dylan Mulvaney’s clearly does, and (2) to ask that Dylan Mulvaney and all similarly inappropriate persons used by Anheuser-Busch in its marketing remove all Anheuser-Busch content from their online accounts. If your company fails to do so, we ask the Beer Institute to find Anheuser-Busch in violation of the Advertising/Marketing Code and Buying Guidelines and order them to sever their relationship with Mulvaney.

DOCUMENT PRODUCTION

In addition to requesting Beer Institute oversight of the advertising partnership with Dylan Mulvaney, Anheuser-Busch shall respond by providing copies of the following documents by not later than May 31, 2023 so that Congress can exercise its oversight responsibilities.

1. All documents or communications between or among any employees of Anheuser-Busch regarding the partnership between Anheuser-Busch and Dylan Mulvaney.

2. Copies of all scripts, including any and all drafts, reviewed by Anheuser-Busch for social media content from Dylan Mulvaney.

3. Copies of any guidance or requests provided by Anheuser-Busch, or its agents, directing, encouraging, or soliciting content from Dylan Mulvaney related to Bud Light or any other Anheuser-Busch products.

4. All documents or communications between Dylan Mulvaney, his agents, including at Dylan Mulvaney’s talent representation firm CAA, and staff or representatives of Anheuser-Busch, including any advertising placement agents retained by Anheuser-Busch.

5. Copies of any after-the-fact audits conducted in relation to Anheuser-Busch’s advertising partnership with Dylan Mulvaney.
6. Copies of all materials in the possession of Anheuser-Busch showing the age demographics of Dylan Mulvaney’s audience, including but not limited to the platforms of Instagram and TikTok.

7. Copies of Anheuser-Busch’s corporate policy for advertising on social media platforms, including but not limited to, TikTok and Instagram.

8. Copies of all documents provided to the Beer Institute related to Anheuser-Busch’s response to this complaint.

We look forward to your prompt response to our concerns.

Sincerely,

Ted Cruz
Ranking Member
Committee on Commerce, Science, and Transportation

Marsha Blackburn
Ranking Member
Subcommittee on Consumer Protection, Product Safety, and Data Security

cc: Gavin Hattersley, Vice Chairman & Senior Director, Beer Institute and CEO, Molson Coors Beverage Company

Brian Crawford, President & CEO, Beer Institute
May 19, 2023

Dear Ranking Member Cruz and Ranking Member Blackburn,

Anheuser-Busch Companies (“Anheuser-Busch”) appreciates the opportunity to respond to your letter of May 17, 2023 regarding Bud Light and social media influencer Dylan Mulvaney, and to provide additional background on the importance we place on marketing alcohol beverages only to people of legal drinking age.

As an initial matter, this social media influencer was not engaged to post on TikTok, and in fact did not make any such posts on that platform. Rather, this influencer was engaged to post on Instagram only.

We complied with all provisions of the Beer Institute Advertising and Marketing Code. This is true even under the general principles and guidelines that govern traditional advertising placements. At the time of the engagement, available data indicated that Mulvaney’s Instagram audience complied with the Beer Institute’s standards. In fact, Instagram as a platform predominantly consists of adults, with data indicating that almost 80% of users are over the age of 21.

Anheuser-Busch does not market its products to people below the legal drinking age. The Ad Code dates back almost 90 years and contains detailed procedures for the placement of advertising. We have long adhered to these rigorous requirements, and in each case, our marketing is directed to our consumers – adults of legal drinking age.

Anheuser-Busch is deeply committed to the responsible advertisement of its products and we take our role as a responsible marketer very seriously. Since 1985, Anheuser-Busch and its wholesaler partners have invested more than $1 billion in responsible drinking initiatives and community-based programs to prevent underage drinking, impaired driving, and other harmful activities. In addition to our support for programs that seek to prevent underage drinking such as We I.D., TIPS alcohol training, and the FTC’s “We Don’t Serve Teens” initiative, we created
“Family Talk About Drinking,” which gives parents tools for discussing and setting expectations about drinking with their family.

We are proud of our record of industry leadership and ongoing efforts to promote responsible drinking behaviors. Together with our wholesaler partners, we employ more than 8,200 people across Texas and Tennessee, and the beer industry in total contributes more than $33 billion to your states’ economies.

Thank you again for the opportunity to respond to your letter.

ANHEUSER-BUSCH COMPANIES
EXECUTIVE SUMMARY

Since 1938, the Beer Institute’s Advertising and Marketing Code has been widely recognized as the best-in-class example of industry self-regulation of advertising. Guideline 3 of the BI’s Ad Code establishes the overarching principle that beer advertising and marketing must not have primary appeal to underage people—meaning a special appeal to underage people over and above the ordinary appeal to of-age adults.

Although the Complaint alleges that two Instagram posts by Dylan Mulvaney targeted underage people in violation of the BI’s Ad Code, it is obvious that they did not:

- Nothing about the content of the posts primarily appeals to people under 21 years of age, which is the standard under the BI’s Ad Code.
  - What was actually said does not appeal primarily to underage people.
  - There were no sound or visual effects that appeal primarily to underage people.
  - The persons appearing in the posts were all over 25 and reasonably appeared to be of legal drinking age.

- When Mulvaney was engaged, the audience demographics for the influencer’s Instagram account were 80.35% of legal drinking age, which far exceeds the BI Ad Code’s 73.6% standard.

- The Complaint repeatedly references Tik Tok, but the posts at issue were made on Instagram, not Tik Tok. The influencer’s Instagram account—where the two posts regarding Bud Light actually appeared—did not target people under 21 years of age, as reflected by a review of other posted content:
  - Prior sponsors on the influencer’s Instagram account included adult products like Svedka Vodka, KIND snacks, SodaStream carbonated drink machines, and Motorola Razr phones.
  - There were many adult cultural references on that Instagram account prior to the posts, including Jackie Kennedy, Marilyn Monroe, and characters from 1980s and 1990s television shows. In fact, in the April 1 post that is the primary subject of the Complaint, the influencer appears as an adult character from a 60-year-old movie.

- The two posts did not violate the Ad Code’s content or placement standards, and thus the CCRB should find the Complaint is without merit.
PRELIMINARY STATEMENT

In early 2023, Bud Light was running a commercial that had debuted during the NFL playoffs. It featured a woman carrying five beers through a crowded bar with the tag line, “Easy to drink. Easy to enjoy.” See https://www.youtube.com/watch?v=-ZU3yx2672g. AD AGE described it this way:

The ad, entitled “Handful” [or “Magnet”], shows a woman confidently navigating her way through a crowded bar while holding five pint glasses of Bud Light in her hands as “Hypnotize” by the Notorious B.I.G. plays. She dodges a pool cue, a disappointed man holding his beers on a tray, and a large bouncer, winking as she arrives at a table of friends without having spilled a drop.

Jon Springer, Watch Bud Light’s First Ad from Anomaly, as the Beer Moves Away from Humor, ADVERTISING AGE (Jan. 23, 2023).

During the March Madness basketball tournament, Bud Light sponsored a contest in which consumers were urged to create their own videos demonstrating their skills in carrying Bud Lights and post them to Facebook, Instagram, or Twitter with the hashtag #EasyCarryContest. As part of this promotion, the Bud Light brand team engaged a variety of social media influencers appealing to different adult audiences. One of the many influencers that Bud Light enlisted in this effort was 26 year-old Dylan Mulvaney. The overall program was similar to the week leading up to the Super Bowl, where Mulvaney and several other influencers recreated Bud Light’s Super Bowl spot, “Hold.”

Senator Cruz’s complaint to this Board—that Mulvaney’s Super Bowl and March Madness Instagram posts were intended to market beer to people under the legal drinking age—has no merit. Bud Light advertises to adults of legal drinking age who can lawfully buy the product. The people appearing in the two sponsored Instagram posts at issue exceeded the legal drinking age, ranging from 26 to 36 years of age. None of the content held a primary appeal to underage people. And the audience composition of Mulvaney’s Instagram account exceeded the Beer Institute’s 73.6% standard for traditional advertising placements. When one reviews the challenged posts, it is readily apparent that the subject matter of the posts does not appeal primarily to people under the legal drinking age.

The Code Compliance Review Board reviews the facts, views the marketing, reads the submissions, and applies the Beer Institute’s Advertising and Marketing Code. Anheuser-Busch is confident that when the CCRB does that, it will conclude that there was no Code violation here.

THE CHALLENGED MARKETING

The April 1, 2023 March Madness Instagram Post

On April 1st—near the end of the March Madness basketball tournament—a post appeared on Mulvaney’s personal Instagram account promoting a contest that Bud Light was running: the
Easy Carry Contest. This influencer was one of many whom Bud Light was using simultaneously to reach different portions of the overall adult consumer base for the product. Similar to Bud Light’s “Magnet” ad, the post starts with the influencer carrying five beers at one time. The text of the post encouraged consumers to post to Facebook, Instagram, or Twitter a video of themselves demonstrating how many Bud Lights they could carry. All they had to do was post their video to one of those platforms with the hashtag #EasyCarryContest. The winner of the contest would win the $15,000 prize.

Here is a link to Mulvaney’s March Madness Instagram post, [https://www.instagram.com/p/CqgTftujqZc/](https://www.instagram.com/p/CqgTftujqZc/), and the text beneath the post’s video reads as follows:

Happy March Madness!! Just found out this had to do with sports and not just saying it’s a crazy month! In celebration of this sports thing @budlight is giving you the chance to win $15,000! Share a video with #EasyCarryContest for a chance to win!! Good luck!

#budlightpartner

**The February 11, 2023 Super Bowl Instagram Post**

Previously, on February 11, 2023—the day before the Super Bowl—a mash-up split-screen video was posted on Mulvaney’s personal Instagram account. On the left side was the Bud Light “Hold” ad that was to air in the Super Bowl the next day. That ad—which ranked #6 of 51 ads in USA Today’s Ad Meter reader’s poll—had no elements of special appeal to underage people. The 60-second spot featured 36-year-old actor Miles Teller, his 30-year-old wife Keleigh Sperry, and the couple’s French bulldog Bugsy, dancing to commonly-used hold music. The ad ends with Bud Light’s tagline: EASY TO DRINK. EASY TO ENJOY.

On the right side of the split screen is 26-year-old Mulvaney similarly listening and dancing to the same automated hold music. In the background is a three-tiered display of cans of Bud Light.

Here is a link to Mulvaney’s Super Bowl Instagram post [https://www.instagram.com/p/CoiTxPFjU2N/](https://www.instagram.com/p/CoiTxPFjU2N/), and the text of the post reads as follows:

only @budlight could have a commercial so catchy it makes you wanna dance in the tub! go vote #easytoenjoy 10/10 at the link in my bio

#budlightpartner

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2 To qualify as a winner, entrants also had to be a follower of one of Bud Light’s age-gated social media profiles.

The link Mulvaney referred to was a link to the voting page for the USA Today Ad Meter poll. Anheuser-Busch had asked a number of influencers to assist it in promoting the Bud Light “Hold” Super Bowl ad.

ARGUMENT

The Beer Institute’s Advertising and Marketing Code has long been a model for self-regulation, and has been repeatedly updated to address evolving technology and practices in the fields of advertising and marketing, as well as changing social norms. The BI Ad Code includes placement standards for brewer advertising and marketing in traditional measured media (television, radio, print) and on digital sites, whether owned by the brewer or by third parties. The emergence of “social media influencers,” however, is a subject that is not specifically mentioned in the Code. Such marketing is unique in that both the content and the platform are not controlled by the brewer; rather, influencers develop their own content and post it on their own page on an agreed-upon platform, such as Instagram, Facebook, or Twitter. Although such placements are not specifically addressed in the BI Ad Code, Guideline 3 governs content creation and placement for all beer marketing and establishes the overarching principle that beer advertising and marketing must not have primary appeal to underage people—meaning a special appeal to underage people over and above the ordinary appeal to of-age adults.

Here, the two challenged Mulvaney posts fully comply with the BI Ad Code. These posts do not primarily appeal to underage people. Moreover, Anheuser-Busch complied with the overall spirit of the Code by ensuring before the placements that Mulvaney’s Instagram page had an of-age adult audience of more than 73.6%.

1. The Actual Content of the Posts Does Not Appeal Primarily To Underage People

Reviewing the dialogue, text, and actions of the people in the two posts makes it abundantly clear that neither post was targeting underage people. Guideline 3 of the Code prohibits marketing that “appeal[s] primarily to” underage people, i.e., marketing that has “special attractiveness to such persons beyond their general attractiveness for persons of legal drinking age.”

Guideline 3(a) instructs that in evaluating such “special attractiveness,” brewers should take into account a number of listed elements. Any reasonable person reviewing the symbols, language, music, gestures, and groups/organizations of the two challenged Instagram posts would have to concede that none of them support a conclusion that the posts were targeting people under the legal drinking age.

The March Madness post—which was the subject of the first letter to the Beer Institute—simply has a speaker who feigns ignorance of March Madness being about basketball and then instructs viewers how to enter a contest by posting a video to social media with a hashtag. Nothing about that suggests a “primary appeal” to underage people. The post includes only Mulvaney, who is dressed as a famous adult character from a 60-year-old movie, a drawn curtain, a table, and several cans of Bud Light. There is no music or other element that can be argued to appeal to minors. The element that has sparked public debate—the single personalized can given to Mulvaney as a gift—similarly cannot be argued to appeal primarily to underage people.
As for the Bud Light “Hold” post—which Senator Cruz raised in his latest submission to the Beer Institute—it is not relatable to underage people, let alone “primarily appealing” to them under the Code. The hook—the notion of listening to elevator music while waiting on hold for customer service—is far more relatable to adults, who are more likely to have those experiences. And silly dancing has a long tradition in commercials to sell products to adults, such as Nextel, T-Mobile, and Roomba vacuums.

There can be no legitimate argument that the actual content of the challenged Instagram posts appeals primarily to underage people.

2. The Influencer Is Not an Entertainer Who Appeals Primarily to Underaged People

The only other Section 3(a) factor left is “entertainers or celebrities.” The Complaint’s allegation that the posts improperly “target” underage people rests on the assertion that Dylan Mulvaney has followers who are younger than 21 on another social media platform, Tik Tok. First, these were Instagram posts; there is no challenged Tik Tok post related to Bud Light, and Bud Light does not advertise on Tik Tok or sponsor Tik Tok posts. Further, the Complaint’s allegations regarding Mulvaney’s audience on Tik Tok (or any other platform for that matter) are not based on authoritative data. Rather, it only points to generalized or anecdotal statements about the platforms as a whole. In any event, Guideline 3(a) does not automatically preclude someone who may also have underage fans from appearing in beer marketing. Each individual advertisement must be reviewed holistically to determine whether it appeals primarily to minors.

Dylan Mulvaney is a 26-year-old influencer whose prior work has been decidedly adult in nature, including a career on Broadway and appearances on broadcast news and talk shows. The fact that Mulvaney is not a youth-oriented entertainer is further demonstrated by other sponsorships on Mulvaney’s Instagram account. A review of that account reveals that partners included Svedka Vodka, KIND snacks, SodaStream carbonated drink machines, and Motorola Razr phones. These brand affiliations do not suggest that any post is, by virtue of who made it, youth-oriented.

Further, in the months leading up to the engagement, Mulvaney referenced Jackie Kennedy, Marilyn Monroe, and characters from TV shows popular in the 1980s and 1990s. In the March

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4 https://www.youtube.com/watch?v=AGwiQEAPImY.

5 https://www.youtube.com/watch?v=VQ3d3KigPQM.

6 https://youtu.be/6ym8BCqgw0w.

7 For “entertainers and celebrities,” Guideline 3(d) employs the same “primary appeal” standard.

8 Specific to Instagram as a platform, the Complaint is incorrect that it is primarily used by underage people. Data from March 2023, the time of the primarily post at issue, shows that 79% of users on Instagram were above the legal drinking age. https://www.statista.com/statistics/398166/us-instagram-user-age-distribution/
Madness post about which Senator Cruz complains, Mulvaney appears as a character from a 1961 film, which most people under 21 likely have not even seen and will not recognize.

The Complaint relies on Tik Tok posts, which may have a different audience from Instagram. But Mulvaney’s posts were not on Tik Tok; rather they appeared on Instagram. And in defending a CCRB complaint, a brewer is *not* required to defend every social media post or interview an influencer has ever given. Rather, it must simply defend the content and placement of the brand-related posts in question.

### 3. The Audience Demographics for the Influencer’s Instagram Account Exceeded 73.6%

Section 3(c)(i) provides that placements of beer marketing in digital media where there is no dialogue between the brewer and the user may be made “where at least 73.6% of the audience is expected to be adults of legal drinking age.” A placement will be considered compliant if the audience composition data reviewed prior to placement meets the percentage set forth above.” These rules are for traditional advertising placements on TV, radio, and digital, but even if applied to Mulvaney’s influencer posts, the Super Bowl and March Madness posts easily met this standard.\(^9\)

Anheuser-Busch uses Creator IQ to manage its marketing with social media influencers.\(^11\) In 2020, Forrester, a leading business research and consulting firm, reviewed the available social influencer marketing platforms and concluded that Creator IQ was one of the three leading social influencer marketing solutions, finding that its strengths included its analytics and data science capabilities.\(^12\) Creator IQ is a partner with Instagram and reports Instagram’s demographics on influencers’ Instagram accounts.

In December 2022, prior to engaging Mulvaney, Anheuser-Busch used Creator IQ to verify that the 21+ audience for Mulvaney’s Instagram account exceeded 73.6%. Creator IQ reported the following breakdowns:

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\(^9\) The Beer Institute recently announced that, effective September 2, 2023, the audience composition standard will change to 73.8% to reflect updated Census data. [https://www.beerinstitute.org/policy-responsibility/responsibility/advertising-marketing-code/](https://www.beerinstitute.org/policy-responsibility/responsibility/advertising-marketing-code/).

\(^10\) The Complaint incorrectly asserts that the March Madness post is one where there is *dialogue* between the user and the brewer, citing “over 12,000 comments, 40,000 shares, and 185,000 likes.” (Compl. at 7.) User interaction with the influencer is *not* “dialogue” between the brewer and the users. Indeed, if it were, then *every* social media post would be “dialogue,” as the whole point of such posts for influencers is engagement. “Dialogue” is a two-way conversation, and as the term is used in the Code, it requires communication from the user to the brewer and communication from the brewer to the user. Here, a third-party influencer posted content. Users engaged with that third party using standard “comment” and “like” functions. Section 3(c)(ii) of the Code, which concerns digital media placements involving “dialogue,” simply does not apply in this situation. This is equally true with respect to the Easy Carry Contest that Bud Light was running at the time, in which users of Facebook, Instagram, and Twitter were invited to post a video to their own page on the platform with a qualifying hashtag. That is not “dialogue” and thus is not governed by Section 3(c)(ii).

\(^11\) [https://www.creatoriq.com/](https://www.creatoriq.com/).

Because, as the Complaint notes, Instagram’s age-range 18-24 covers both of-age and underage adults, the standard methodology for eliminating underage people from this age group is to use only 57% of the audience in this age range (4/7ths of the 18-24 age range). Thus, the estimated number assigned to the 21-24 subset was 18.75% (.57 x 32.9 = 18.75). 13 Accordingly, when added to the 25+ segments, the total of-age audience for Mulvaney’s Instagram account was 80.35%, which far exceeded 73.6%.

Thus, based on this demographic make-up, Anheuser-Busch properly concluded that it could engage Mulvaney to post on Instagram. The Complaint asserts that people may lie to Instagram about their age in establishing accounts, and that Instagram does not independently verify users’ information. (Compl. at 9.) The Complaint also states that Mulvaney’s posts may not have met Instagram’s own policies for user posts. None of these complaints, however, are issues to be determined by the CCRB, as they do not arise out of the Beer Institute’s Ad Code and thus are beyond its jurisdiction. Further, the influencer agreement with Mulvaney required compliance with all applicable laws, rules and regulations, including the terms and conditions of all applicable third party web sites as well as the FTC Guides. This included an obligation to disclose the connections with Bud Light and include any hashtags such as #ad or #sponsored that are required by the FTC Guides. Finally, Mulvaney was provided specific instructions on how to age-gate posts on the Instagram platform.

**CONCLUSION**

Anheuser-Busch is proud of its history as the industry leader in tackling youth access to alcohol. Since 1985, Anheuser-Busch and its wholesalers have invested more than $1 billion in responsible drinking initiatives and community-based programs to prevent underage drinking, impaired driving, and other harmful drinking behaviors. More than 20 years ago, Anheuser-Busch was the first brewer to create an expert-developed guide to help parents communicate their expectations about drinking to their sons and daughters. Called “Family Talk About Drinking,” 14 this initiative has grown into an entire online community and resource for parents to learn new ideas, share solutions, and ask questions about how best to tackle problems related to underage drinking.

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13 This methodology, which assumes each year has equal shares, likely overestimated the share of the underage audience. Notably, the entire under-18 share was only 5.5%, while the 25-34 share was the largest by far (41.3%).

14 [https://www.familytalkaboutdrinking.com/about.html](https://www.familytalkaboutdrinking.com/about.html)
Anheuser-Busch also created the “We I.D.” program, which helps retailers spot fake I.D.s and keep alcohol out of the hands of underage people, and the TIPS program that helps train servers to avoid serving minors. Additionally, Anheuser-Busch was an inaugural participant in the Federal Trade Commission’s “We Don’t Serve Teens” campaign, which seeks to educate adults why they should not provide alcohol to minors.\(^\text{15}\)

Anheuser-Busch also goes to great lengths to ensure compliance with the Beer Institute’s Advertising and Marketing Code, especially its provisions regarding avoiding primary appeal to underage people. Self regulation works. The Federal Trade Commission has conducted four studies of the alcohol industry’s self-regulation of advertising in the last 25 years. In its last report, the FTC observed that 93.1\% of the industry’s placements met the industry’s audience composition standard, which resulted in 97.3\% of the industry’s total advertising impressions being comprised of adults aged 21 and over.\(^\text{16}\) It further found that in the case of websites that are measured by audience composition services and not age gated, the industry “achieved very high (over 99 percent) levels of compliance with the . . . audience composition standard then in effect.”\(^\text{17}\) The FTC concluded that “[t]he Commission continues to support self-regulation of alcohol marketing to reduce the likelihood that such marketing will target those under the legal drinking age,” and “self regulation is an appropriate response to concerns about the impact of alcohol advertising on youth . . .”\(^\text{18}\)

Anheuser-Busch respectfully asks the CCRB to reject the arguments articulated in the Complaint and conclude that the Hold and March Madness Instagram posts complied with the BI Ad Code and did not primarily appeal to underage people.

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\(^{15}\) https://consumer.ftc.gov/features/we-dont-serve-teens.


\(^{17}\) Id. at 23-24.

\(^{18}\) Id. at 34.
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254 Russell Senate Building  
Washington, DC 20510  

The Honorable Marsha Blackburn  
Ranking Member  
Subcommittee on Consumer Protection,  
Product Safety, and Data Security  
Committee on Commerce, Science, and  
Transportation  
U.S. Senate  
254 Russell Senate Building  
Washington, DC 20510  

Dear Ranking Member Cruz and Ranking Member Blackburn:  

We write in response to your complaints concerning possible violations of the Beer Institute’s Advertising/Marketing Code and Buying Guidelines (the Code) by Anheuser-Busch. The complaints were submitted to Brendan Whitworth, United States Chief Executive Officer for Anheuser-Busch Companies, LLC and Chairman and Senior Director of the Beer Institute, on 5/17/23 and to the Beer Institute Code Compliance Review Board (CCRB) on 6/14/23.  

History of the CCRB and its Review Process  

Before addressing the several advertising complaints made by you, the CCRB would like to take this opportunity to summarize the history and review process of the Code. The CCRB reviews complaints from the perspective of a “reasonable adult consumer of legal drinking age.”  

The CCRB’s only function is to ensure that beer manufacturers and importers, which are referenced in this document as Brewers, 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.  

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 Beer Institute. The CCRB’s critical function is to ensure that Brewers comply with the Code; and complainants have an effective, efficient process to address concerns about how Brewers are advertising and marketing their products.  

Since the Code of Practice was created, media and advertising have changed considerably. For example, the Code was updated in the 1950’s when television became common place. 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 Beer Institute whose 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 Beer Institute commits to accepting complaints about advertising or marketing 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 Beer Institute’s website and must include documentation and supporting data. It will be submitted to the Brewer by the Beer Institute or directly to the Brewer by the complainant. Brewers are encouraged to respond to the complainant within two weeks.

If the complainant is dissatisfied with the Brewer’s response to the complaint, the complainant may request a review of the matter by the CCRB. As shown by the record, in this case the Beer Institute gives both the complainant and the Brewer an opportunity to submit supplemental materials for the CCRB to review.

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.

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’s 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, Rory Davies, is the former Executive Vice President of the National Association of Broadcasters overseeing the broadcast industry’s public service initiatives, including drunk driving and underage drinking, and former National Board member of Mothers Against Drunk Driving. Our second member, Paul Summers, is a former state district attorney general; criminal appeals and senior judge; and Attorney General of Tennessee. He is Chair and board member of The Jason Foundation, Inc., a national nonprofit dedicated to the education and prevention of youth suicide. Our chair, William Cunningham, is a Professor of Marketing at the University of Texas at Austin; former Chancellor of the University of Texas System; and is a board member and advisor to several major corporations.

The sole mission of the CCRB is to examine the marketing/advertising materials that are the subject of a complaint to determine if they violate the Beer Institute’s Advertising/Marketing Code and Buying Guidelines. Our findings are outlined below.

Complaint by Senators Cruz and Blackburn

Attract an Audience of Young People. Your letter of 5/17/23 and the supplemental memorandum from Senator Cruz dated 6/14/23 makes it very clear that you feel the two Mulvaney Instagram posts in question were “specifically used to target, market to, and attract an audience of young people who are well below the legal drinking age in the United States.”

Section 3 of the Advertising/Marketing Code and Buying Guidelines states that “advertising or marketing materials should avoid elements that appeal primarily to persons below the legal, drinking age. Advertising and marketing materials appeal primarily to persons below the legal drinking age if they have special attractiveness to such persons beyond their general attractiveness for persons of legal drinking age.” In determining if a beer advertisement or marketing materials appeals primarily to persons below the legal drinking age, Brewers should examine the following among others: “symbols, language, music, gestures, entertainers or celebrities, cartoon characters, and groups or organizations.”

We have carefully examined all the material presented in the two Mulvaney Instagrams. The Happy March Madness Instagram post (4/1/23) shows Mulvaney sitting at a table with five Bud Light beer cans. Mulvaney is dressed in a conservative black dress with long black gloves. Mulvaney says “I celebrated my day 365 of womanhood and Bud Light sent me possibly the best gift ever — a can with my face on it.” Mulvaney says nothing in the post that would indicate it is aimed at people less than 21 years of age. In addition, there is nothing in Mulvaney’s appearance, including her clothing, that would indicate that the Instagram in question was directed at individuals under the age of 21. There are no symbols, language, music, gestures, cartoon characters, or groups or organizations that would indicate the Instagram was directed at people of less than drinking age.

The 2/11/23 Bud Light Mulvaney Instagram titled “Bud Light/Easy to Enjoy” shows Mulvaney dancing in a bathtub drinking Bud Light. She is dressed in a bathing suit. There are no symbols, language, music, questions, cartoon characters, groups or organizations, or in her personal appearance that would suggest that the Instagram post is aimed at people less than 21 years of age.

The CCRB does not find that the two Instagrams in question have a special attractiveness to persons below the legal drinking age. As a result, the CCRB has determined that there is no violation of Guideline 3 in the Code.

Demographics Section 3(c)(i) of the Code 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 73.6% of the audience is expected to be adults of legal drinking age. A placement will be considered compliant “if the audience composition data reviewed prior to placement meets the percentage (73.6) set forth above.”

Your complaint states that “publicly available data” indicates that both Instagram and TikTok skew heavily toward younger audiences. While you provide numerous anecdotal references to Hootsuite and other ecommerce news/press releases, the CCRB does not find the material presented to be dispositive that the Instagram advertisements in question are directed to people below the legal drinking age.

In December 2022 prior to engaging Mulvaney, Anheuser-Busch, hired CreatorIQ to determine if the audience for Mulvaney’s Instagram account exceeded 73.6% people of legal drinking age. CreatorIQ’s website states they use “advanced data-science and analysis, industry-leading measurement standards” to help businesses market products. They have a significant partner base that includes YouTube, TikTok, Twitch, Twitter, Facebook, Pinterest, Instagram, Shopify, PayPal, Amazon, DocuSign, Goggle Analytics, Tableau, AvantLink, Impact.com, and Awin. CreatorIQ has a number of large sophisticated clients, including Disney, Estee Lauder, Red Bull, Yeti, Sephora, Unilever, Google, Univision, DiGiorno, ZebraPi, Calvin Klein, and Coach. Finally, CreatorIQ has won numerous industry awards during the last several years.

CreatorIQ determined that Mulvaney’s Instagram postings account was made up of 80.35% of people of legal drinking age. The CCRB believes that CreatorIQ is a sophisticated organization that did research which determined that more than 73.6% of Mulvaney’s Instagram audience are over the age of 21. Section 3(c)(i) of the Code says “A placement will be considered compliant if the audience composition data reviewed prior to placement meet the percentage (73.6) set forth above.” The CCRB concludes that the Instagram postings do not violate Section 3(c)(i) of the Code because an audience composition study was done by a reputable firm (CreatorIQ) prior to the placement of the Mulvaney Instagram post, which found that the Mulvaney Instagram audience was made up of 80.35% of people of legal drinking age.

Instagram policies. Your complaint states that people may lie about their age when establishing an Instagram account. In addition, you state “Instagram doesn’t verify the age of a user declared when creating an account.” You also state that Mulvaney’s posts in the past may not have always met Instagram’s own policies. CCRB concludes that these issues are beyond its jurisdiction.

Public persona. You state that Mulvaney’s public persona is relevant to the question of whether the Instagrams in question “appeal primarily to person below the legal, drinking age.” The CCRB believes the actor’s (Mulvaney) persona must be judged in its totality. We have carefully examined all of the material you have provided us ranging from phrases such as “girlhood,” Mulvaney lip-syncing, “I am Eloise, I am six,” “Day 100 of being a girl,” “But I want to be that for my younger self,” to thanking parents “for letting me be a character in your children’s lives.”

In addition to the material you cite, the CCRB has determined that Mulvaney has done substantial adult work, including talk shows, music videos, TV shoots, and TV series. Mulvaney also advertises a variety of adult products. The CCRB concludes that Section 3(a) of the Code does not prohibit entertainers and celebrities from appearing in a beer advertisement, even if they have under drinking age fans.

TikTok. Your correspondence makes a number of references to TikTok. Mulvaney was engaged to post material on Instagram, not TikTok. Anheuser-Busch did not use TikTok as an authorized platform in its advertising with Mulvaney.
Dialogue. Section 3(c)(ii) of the code states that “placement made by or under control of the Brewer 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.” Your correspondence states that “The April 1st placement, involved a “dialogue” between users and Anheuser-Busch. The video received over 12,000 comments, 40,000 shares and 185,000 likes from Instagram users. Moreover, the post included specific instructions for users, asking them to share a video with #EasyCarryContest. Users responded to these instructions by creating new posts and reels with the recommended hashtag, tagging the Bud Light Instagram account.”

A dialogue involves a conversation and normally multiple interactions. As you point out, viewers “responded” to Instagram. A response is not in the CCRB’s opinion a dialogue. The April 1 Instagram, Happy March Madness, only encourages people to respond by posting videos on Facebook, Instagram, or Twitter showing how many glasses of beer they can carry. The CCRB concludes that the communication in the April 1 Instagram does not involve a dialogue and, therefore, there is no violation of Section 3(c)(ii).

Investigation. Your letter of 5/17/23 asks “that the Beer Institute’s Code Compliance Review Board open an investigation to review Anheuser-Busch’s recent and ongoing marketing partnership with Dylan Mulvaney.” The CCRB functions within the guidelines of the Beer Institute Advertising/Marketing Code and Buying Guidelines. It is beyond our jurisdiction to investigate marketing partnerships. CCRB examines only advertising and marketing materials that have been presented to the public.

VP Marketing. In your letter of 5/17/23, you quote the new VP of Marketing at Bud Light as saying “this brand is in decline, it’s been in a decline for a really long time, and if we do not attract young drinkers to come and drink this brand, there will be no future for Bud Light.”

The CCRB does not conclude that this statement implies that Anheuser-Busch was advertising to people below the legal drinking age to consume beverages.

Document production. The correspondence from you asked for eight document packages so that “Congress can exercise its oversight responsibilities.” The CCRB does not have the authority to require Anheuser-Busch to comply with your request for documents. In addition, the CCRB does not believe it needs the documents you have requested to complete its review of your complaint.

Conclusion

The CCRB spent a considerable amount of time reviewing the advertisements; studying the Beer Institute’s Advertising/Marketing Code and Buying Guidelines, and debating the allegations of your complaints against the response of Anheuser-Busch. While the CCRB has addressed a number of issues in our report, we want to make two points crystal clear that when taken together make it impossible to conclude that Anheuser-Busch violated the Code. First, there is absolutely nothing in the Mulvaney Instagram posts in question that would “have a special attractiveness” to people below the legal drinking age. Second, Anheuser-Busch hired CreatorIQ, which is an independent highly respected marketing firm to test the audience age composition of Mulvaney’s Instagram post prior to the placement of the advertisement. CreatorIQ determined that 80.35% of Mulvaney’s Instagram audience was 21 years of age or older. The Code states that a placement will be considered “compliant” if the audience composition data reviewed prior to placement meets the 73.6% standard.

In conclusion, Chairman Cunningham and Ms. Davies support the decision that Anheuser-Busch’s use of Mulvaney’s Instagram posts are consistent with the Beer Institute Advertising/Marketing Code and Buying Guidelines and, therefore, Anheuser-Busch has not violated the Beer Institute’s Advertising/Marketing Code and Buying Guidelines. Mr. Summers dissents from this opinion.
First adopted post-Prohibition, the Beer Institute’s Advertising/Marketing Code and Buying Guidelines have a long history of being amended to meet evolving social, commercial, and technological conditions. In keeping with that tradition, the CCRB urges the Beer Institute to examine the role of influencers and social media in Brewer advertising. While the Code does cover such advertising, further amplification can provide helpful guidance to Brewers regarding advertising through this increasingly common form of media. In addition, the term “dialogue” should be defined in more detail.

The findings of the board are final. The findings will be publicly available on the Beer Institute website and published in the Beer Institute annual report. This correspondence will conclude the complaint interview process.

Sincerely,

William H. Cunningham
Chairman

xc: CCRB Board Members:
  Ms. Rory Davies
  Mr. Paul Summers
A dissatisfied complainant may submit his or her request for review by the Beer Institute Code Compliance Review Board (CCRB). Board members are appointed by the Beer Institute. The CCRB review is de novo. Review will be considered a fresh, original review, regardless of the evidence submitted by the complainant or brewer prior to the request for review. Either side may use the same evidence or offer different evidence at the de novo review.

Each member of the Beer Institute (BI) is committed to following the Advertising/Marketing Code and Buying Guidelines (Code). The board members of the CCRB “are independent of the brewing industry. The CCRB reviews complaints from the perspective of the reasonable adult consumer of legal drinking age and decides whether...complaints identify advertising and marketing materials that are inconsistent with one or more guidelines of the Code.” CCRB board members have varied backgrounds, experiences, and expertise.

A complainant has the burden of proving before the CCRB his or her claim/s by a preponderance of the evidence. To prove something by a preponderance of the evidence means to prove that it is more probably true than not. Burden of proof means the obligation of a party to prove by a preponderance his or her claim/s. Evidence in proceedings under the Code is not the same as evidence or procedures employed before a civil or criminal trial. If the offered evidence is reasonably and likely reliable, then such is admissible evidence and should be considered by the finder of fact, the CCRB. The CCRB decides the weight of the evidence.

The CCRB, a tribunal, makes a decision as to whether advertising or marketing materials violate the Code. After the tribunal's decision, the complainant and brewer are notified. The complaint, brewer’s response, and the decision are posted on the Beer Institute's website. If the brewer has violated the Code, the brewer is expected to change the “…materials to conform to the CCRB’s decision or withdraw the advertising or marketing materials.”

On May 17, 2023, Senator Ted Cruz of Texas and Senator Marsha Blackburn of Tennessee wrote to Mr. Brendan Whitworth, CEO of Anheuser-Busch Companies, LLC (AB) as well as in his capacity as Chairman of Beer Institute (BI). They wrote to AB and BI regarding “…the beer industry's self-regulatory body with authority over the advertising of beer.” As it concerns the purview of BI, they alleged that AB violated the Code in partnering with Dylan Mulvaney by promoting marketing to individuals younger than the legal drinking age. Mulvaney apparently is 26 years old and an actor. As alleged, one of Mulvaney’s primary personas is that of a little girl, whose age is clearly less than that of the legal drinking age. Since Mulvaney's perceived age as a prepubescent or preadolescent girl is significantly less than the legal drinking age, the senators requested that AB “…publicly sever its relationship with Dylan Mulvaney, publicly apologize to the American people for marketing alcoholic beverages to minors, and direct Dylan...
Mulvaney to remove any Anheuser-Busch content from (Mulvaney’s) social media platform.” AB did not heed to these requests.

The senators alleged that “…Mulvaney announced on Instagram that (Mulvaney) had inaugurated a partnership with Bud Light, one of Anheuser-Busch’s brands.” The originating event allegedly occurred on April 1, 2023. Allegedly a Bud Light can of beer had been sent by AB to Mulvaney with the latter’s photo embedded on it as a celebration of “Girlhood.”

The senators allege that Mulvaney is a well known, “…prominent social media influencer…” and allegedly has about “…1.8 million followers on Instagram…..” They allege the actor promoted the “Days of Girlhood” series with millions of viewers. This should have been a “…red flag to Anheuser-Busch that it was entering into a partnership with an individual whose audience skews impermissibly below the Beer Institute’s proscribed guidelines.”

The senators list numerous ways that Dylan Mulvaney appeals to very young audiences. Mulvaney often dresses and acts like a young girl. The actor gives merchandise and cash to young teenage girls and promotes “Barbie” dolls to young girls. The senators posit that “(a)n objective survey of Dylan Mulvaney’s content clearly presents a faux, pre-pubescent girl persona that is created and presented to specifically appeal to young viewers.”

In addition to the complaint invoking the purview and jurisdiction of the CCRB, the senators requested that AB respond by May 31st to eight written requests for documents or admissions, “…so that Congress can exercise its oversight responsibilities.”

The letter and attachments of May 17th by Senators Blackburn and Cruz are part of this decision of the CCRB as an allied document. They are set out as if verbatim.

Letter of May 19, 2023

On May 19, 2023, in an unsigned document, Anheuser-Busch responded to the May 17th letter. AB denied allegations of impropriety and violation/s of the Code. AB cited that “(w)e complied with all provisions of the Beer Institute Advertising and Marketing Code.” No mention was made of the eight requests for documents or admissions. The letter by AB to Senators Blackburn and Cruz are incorporated herein as an allied document as if set out verbatim.

Complaint of June 14, 2023

On June 14, 2023, Senator Ted Cruz filed his formal complaint with the Beer Institute’s Code Compliance Review Board (CCRB). He entitles his complaint “Complaint - Anheuser-Busch’s Marketing Partnership with Dylan Mulvaney.” Complainant attaches and cites the May 17, 2023, letter to AB and the unsigned response by AB on May 19th. Senator Cruz acknowledges the lack of response from the brewer, AB, to the May 17th requests for documentation or corroborating data to show that AB’s and Mulvaney’s actions complied with the Code. Senator Cruz lists the eight documentary or communications requests as follows (quoted sections are italicized):
Senator Cruz did not just focus on the April 1st Instagram post. “…Senator Cruz is challenging all advertising and marketing materials stemming from Anheuser-Busch’s partnership with Mulvaney. This memorandum supplements the senator’s arguments and draws the CCRB’s attention to additional facts that bolster the May 17th complaint letter.” This complaint, along with all exhibits, photos, and comments, are incorporated herein as if set out verbatim. The complaint listed reasons or allegations, any one of which if proven by a preponderance of evidence, would be inconsistent with and a violation of the Code.

**July 7, 2023, Supplemental Response by Anheuser-Busch**

Respondent Anheuser-Busch filed a response to Senator Cruz’s complaint of June 14, 2023. In the response by AB, filed July 7, 2023, the respondent refuted every allegation of alleged Code violation. AB argued that the marketing or advertising posts or material in question did not appeal to or were particularly attractive to persons under the legal drinking age. AB argued that Dylan Mulvaney is not an entertainer who appeals primarily to underage people. Further, AB argued that the audience demographics of the influencer’s Instagram account exceeded 73.6%. In sum, AB argued that the CCRB should find that AB did not in any way violate the Code.
Once again, the respondent AB did not address the request by complainant/s that AB respond to the eight requests for documents or admissions. The July 7th unsigned response by AB is incorporated herein as if set out verbatim.

Relevant Sections of Advertising/Marketing Code and Buying Guidelines

The Code’s Introduction mentions several statements and principles regarding adults, advertising, and marketing. (Direct quotations are italicized.) The Code concerns itself with young children and persons below the legal drinking age.

Beer is a legal beverage meant to be consumed responsibly by adults of legal drinking age. Brewers should employ the perspective of the reasonable adult consumer of legal drinking age in advertising and marketing their products…. Beer advertising should not suggest directly or indirectly that any of the laws applicable to the sale and consumption should not be complied with (sic). Brewers should adhere to contemporary standard of good taste…consistent with the medium or context in which the advertising appears. Advertising themes, creative aspects, and placements should reflect that Brewers are responsible corporate citizens. Brewers strongly oppose abuse or inappropriate consumption of their products.

The Guidelines provide further relevant principles. (Direct quotations are italicized.)

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 and marketing materials appeal primarily to persons below the legal drinking age if they have special attractiveness to such persons beyond their general attractiveness for persons of legal drinking age.

a. In considering whether beer advertising and marketing materials appeal primarily to persons below the legal drinking age, Brewers should take into account the following elements among others: Symbols, Language, Music, Gestures, Entertainers or celebrities, Cartoon characters, Groups or organizations.

b. Beer advertising and marketing materials should not depict Santa Claus.

d. Models and actors employed to appear in beer advertising and marketing…should reasonably appear to be of legal drinking age.

Under 14(c) of the Guidelines: Brewers discourage underage drinking and do not intend for their products to be purchased or consumed by people below the legal drinking age.

Dissenting Decision and Conclusion

Dylan Mulvaney has a persona wherein the actor looks and acts like a little girl. Mulvaney appeals to little children and often behaves like one. As Guidelines 3 and 3a direct, it is not simply the advertisement or marketing that matters; it is the larger context that matters. The
entertainer enjoyed being accepted by young children. The actor celebrated the 365 days of “Girlhood.” An actor, entertainer, or social media influencer, Mulvaney appeals to persons below the legal drinking age with a “special attractiveness.” Mulvaney is especially attractive to young teens and girls; is often recognized as preadolescent; and caters to very young people. AB knew all this, or the company’s leadership should have known.

If a company sends a social media influencer a beer with his / her picture on the can, one can expect that the recipient will act on it. That is common sense. It is rational thinking of an adult. If AB had sent Mulvaney a beer can while the latter’s persona was that of a 51 year-old woman, then there probably would be no violation. However, suppose that Mulvaney was an actor posing as Santa Claus, an elderly man clearly of legal drinking age. If this “Santa Claus” appeared in any beer advertisement or marketing, that would certainly be a real problem for the brewer.

Whether AB has a formal partnership or a loose agreement with Mulvaney is of no concern to the CCRB. The brewer knew, or should have known, the consequences of sending the can of beer to Mulvaney or in some other way partnering with the actor. The consequences to the company, employees, and its shareholders have been incalculable. Those are not the issues to be decided by the CCRB. Our concern is whether the brewer violated the Code by a preponderance of the evidence. This writer, a CCRB board member, finds that the brewer has violated the Code as to advertising and marketing to people below the legal drinking age. The complainant/s have met the burden of proof by a preponderance of the evidence.

The CCRB does not need to delve into the other causes of action in the complaint. Complainant/s have proven a violation of the Code. It is academic since, to this board member’s knowledge, AB failed to provide the reasonable documentation requested in the joint May 17th letter and June 14th formal complaint. They are reasonable requests by the complainant/s. Responses from AB would have been elucidating. This writer can assume that the complaint’s positions as to these documents or admissions are more likely true than not, and are verified. At any rate, the respondent AB cannot rely on them in defense.

Anheuser-Busch’s actions are inconsistent with the guidelines in the Code. The company has violated the Beer Institute’s Code. The complainant or complainants should prevail. I respectfully dissent from the majority of my colleagues on the CCRB.

PAUL G. SUMMERS
BOARD MEMBER
CODE COMPLIANCE REVIEW BOARD