



CODE COMPLIANCE REVIEW BOARD

2022-2023 REPORT



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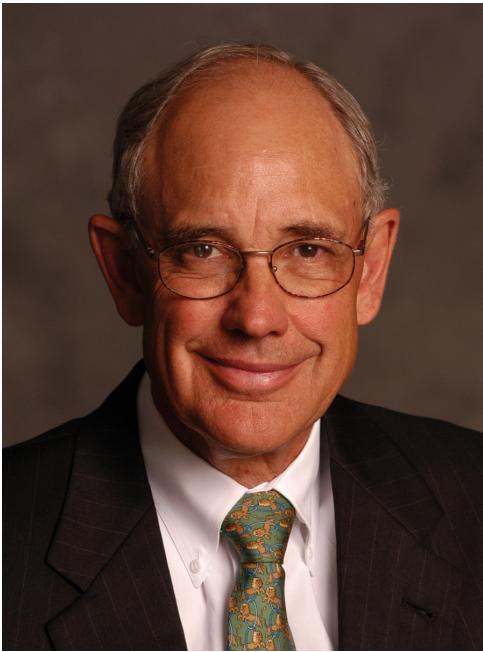
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A LETTER FROM THE CCRB CHAIRMAN



I am pleased to share with you the eighth report on the work of the Code Compliance Review Board (CCRB). This report covers CCRB activities during 2022 and 2023.

Over these two years, the Beer Institute continued to update the Buying Guidelines as new census data and other demographic figures became available. These changes include updating the audience composition standard based on 2020 Census data, as well as addressing alcohol variants of non-alcohol products. These updates help make certain that beer industry advertisements reach adults of legal drinking age, and it's critical that they adapt to meet new and changing population standards.

During the period of this report, the CCRB received and considered one case about brewer advertising. This report contains a summary of the case and the Board's final decision. CCRB members continue to adjudicate these claims in a transparent and timely manner based on the robust foundation provided by the Advertising and Marketing Code. The decision included in this report is posted, together with other materials and past reports, on the Beer Institute website.

We are thankful for the beer industry's continued support of the Advertising and Marketing Code. CCRB review of advertising complaints is an effective channel for consumers with questions or concerns about specific advertising and marketing. As always, the CCRB looks forward to improving its role to strengthen the self-regulation of advertising by the Beer Institute's brewer and beer importer members.

Sincerely,

A handwritten signature in black ink, appearing to read "William H. Cunningham". The signature is fluid and cursive, written over a white background.

William H. Cunningham
Chairman

CCRB

MEMBERS



WILLIAM H. CUNNINGHAM, PH.D.

Dr. Cunningham is currently serving as the chairman. He served for 7 years as president of The University of Texas at Austin and 8 years as chancellor and chief executive officer of The University of Texas System. In addition to his extensive background in higher education, Dr. Cunningham has a longstanding academic interest in consumer protection issues. He serves as a board member and advisor to several major corporations and non-profit organizations.



RORY DAVIES

Ms. Davies is the former executive vice president of the National Association of Broadcasters where she developed and oversaw the broadcast industry's national public service initiatives, including efforts to combat underage drinking and drunk driving. She is also a former National Board member of Mothers Against Drunk Driving. Ms. Davies has worked in the White House and on Capitol Hill.



JUDGE PAUL G. SUMMERS (RET.)

Judge Summers is a retired senior judge by appointment of the Tennessee Supreme Court. A partner in the regional law firm of Waller Lansden Dortch & Davis, Judge Summers previously served as attorney general of Tennessee. He was a judge of the Tennessee Court of Criminal Appeals and district attorney general of the 25th Judicial District. He served as a JAG officer for over three decades in the U. S. military, retiring with a rank of colonel (O-6). He was awarded with the Legion of Merit for his service.

CCRB

ACTIVITY: 2022-2023

During the time period of this report, the Code Compliance Review Board (CCRB) met annually to gather input and updates from alcohol beverage industry experts about trends and challenges in the market, the current media atmosphere and new and developing advertising and marketing platforms. Additionally, the Beer Institute updated the Advertising and Marketing Code. The changes reflect shifting demographic standards, new product innovations, social media usage and more. Regular updates to the Ad Code and Buying Guidelines ensure consistent application of the beer industry's commitment to advertising and marketing responsibly. The CCRB invested considerable time and thought into reviewing brewer marketing practices. The Board issued one decision, along with a dissenting opinion, on a complaint filed in 2023. This report includes the Board's decision letter and the dissenting opinion, with a larger report file containing communications between the brewers and complainants on the Beer Institute website.



SUMMARY:

DYLAN MULVANEY COMPLAINT

ADVERTISEMENT:

February 11, 2023, Only Bud Light Instagram Post (<https://www.instagram.com/p/CoITxPFjU2N/>);
April 1, 2023, March Madness Instagram Post (<https://www.instagram.com/p/CqgTftujqZc/>);
and all advertising and marketing stemming from Anheuser-Busch Companies' relationship with Dylan Mulvaney.

PRODUCT ADVERTISED:

Bud Light

COMPLAINANTS:

Senators Ted Cruz and Marsha Blackburn

BREWER:

Anheuser-Busch Companies, LLC

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.

**BEER INSTITUTE
CODE COMPLIANCE REVIEW BOARD**

440 First Street, NW, Suite 350
Washington, D.C. 20001
202-737-2337

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:

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 elements 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, Zebrafi, 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

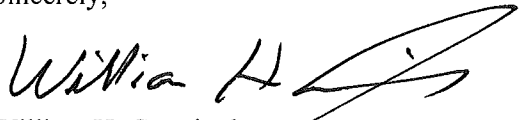
The CCRB spent a considerable amount of time reviewing the advertisements; studying the Beer Institute’s Advertising/Marketing Code and Buying Guidelines, and debating the allegations of your complaints against the response of Anheuser-Busch. While the CCRB has addressed a number of issues in our report, 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

Dissenting Decision

Code Compliance Review Board (CCRB) Process

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.”

Letter of May 17, 2023

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*):

- *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.*

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

ADVERTISING AND MARKETING CODE

INTRODUCTION

Beer is a legal beverage meant to be consumed responsibly by adults of legal drinking age. Its origins are ancient, and it has been respected 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 efforts by Brewers to inform legal drinking-age adult 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 beer consumers 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.

GUIDELINES

1. These guidelines apply to all beer-branded advertising and marketing materials created by or under the control of a 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 adult consumers 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 because of a dare.
 - c. Beer advertising and marketing materials should not portray persons lacking control over their behavior, movement, or speech because 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 before, 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 the 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 people 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. For the avoidance of doubt, an element has “primary appeal” if it appeals to more underage persons than 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 consider all elements of the advertising and marketing materials, including but not limited to the following:
 - Symbols
 - Language
 - Music
 - Gestures
 - Public figures
 - Cartoon characters
 - Groups or organizations

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- b. Beer advertising and marketing materials should not depict Santa Claus.
 - c. Beer advertising and marketing materials will meet the following criteria:
 - i. Placements in magazines, newspapers, on television, radio, Digital Media, and through Social Media Influencers may only be made where the audience for the placement is expected to be at least 73.8% adults of legal drinking age. A placement will comply with this standard if the audience composition data, reviewed before the placement, meets, or exceeds the above percentage.
 - ii. A Brewer will take reasonable steps to restrict access to those users who have confirmed they are of legal drinking age on all Brewer-owned or controlled websites, branded social media channels, and other Digital Media, including downloadable content. 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 (i.e., age-gating) before viewing an advertisement by or communicating with a Brewer; or 2) restriction of the site to users of legal drinking age through registration.
 - iii. In addition to confirming that users are of legal drinking age, where practicable, a Brewer will post reminders at appropriate locations on all Brewer-owned or controlled websites, branded social media channels, and other Digital Media, including downloadable content, that the Brewer's products are intended only for those of legal purchase age. Content that can be shared with others directly from the Brewer's website or a Brewer-controlled third-party Digital Media site will also include a reminder that such content should not be shared with persons below the legal drinking age.
 - iv. A Brewer will require Social Media Influencers posting beer-branded content on social media platforms to implement age-gating measures, if available on such platforms, to restrict persons below the legal drinking age from accessing that beer-branded marketing and advertising. A brewer will also require Social Media Influencers to comply with the content-related guidelines of this Code.
 - v. "Digital Media" means all digital media programming, including but not limited to internet sites, mobile sites, commercial marketing e-mails, downloadable content, SMS and MMS messaging, social media sites, digitally-screened radio and television, and mobile applications.
 - vi. "Social Media Influencer" is a person who posts beer-branded content on a social media platform at a Brewer's request. To avoid doubt, athletes, entertainers, celebrities, and other public figures generally recognizable to their intended audience are Social Media Influencers under the Code when they post beer-branded content at a Brewer's request on social media platforms.
 - d. A Brewer placing advertising or marketing materials in Digital Media, in magazines, in newspapers, on television, on radio, or through Social Media Influencers will conduct after-the-fact audits, at least semi-annually where possible, of substantially all its placements. If a Brewer learns that an advertising placement did not meet the Code's audience demographic standard, it will take steps to prevent a reoccurrence. These steps may include but are not limited to investigating exceptions; taking steps to remove a post or placement; canceling placements with unacceptable audience composition; reallocating purchases to a different and acceptable time slot; contacting the media outlet/station concerning 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 or influencer posts to determine whether buys or agreements should be canceled or reallocated. Buying Guidelines for implementing this section will be distributed along with this Code.

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- e. A Brewer will regularly monitor user-generated content posted on the Brewer’s websites, branded social media channels, or other beer-branded Digital Media sites, and beer-branded content from Social Media Influencers for compliance with this Code. If a Brewer finds content that does not comply with the Code, the Brewer will take appropriate action to correct or remove the content or to request correction or removal of the content.
 - f. 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, parents can reach out to the Beer Institute for the names of producers of parental control software and applications that allow parents to block, filter, and monitor the Digital Media sites their children may access on their computer or mobile devices.
 - g. Models and actors employed to appear in beer advertising and marketing materials should be at least 25 years old, substantiated by proper identification, and reasonably appear to be of legal drinking age.
 - h. Public figures, such as athletes, entertainers, celebrities, and Social Media Influencers, who are generally recognizable to their intended audience may appear in beer advertising and marketing if they are of legal drinking age, reasonably appear to be of legal drinking age, and do not appeal primarily to persons below the legal drinking age.
 - i. 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 placing 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.
 - j. 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.
 - k. Advertising and marketing materials for the alcohol variant of any non-alcohol product, including but not limited to packaging, should be readily distinguishable from the advertising and marketing materials of the non-alcohol product to not confuse consumers about the alcohol nature of the alcohol variant. Advertising and marketing materials, including but not limited to displays, signage, and sampling, should not feature both the non-alcohol product and the alcohol variant.
- 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 due to 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, or 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. Outdoor Signage

Beer-branded signage and other outdoor advertising should not be placed within 500 linear feet of any established and conspicuously identified elementary or secondary schools or place of worship, or any playground, field, or sports facility that is both public and intended primarily for youth

athletics. The foregoing restriction does not apply to signage or outdoor advertising at public, sporting, cultural or civic events, or locations licensed to sell alcoholic beverages.

12. 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 the 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 information from consumers who identify as below the legal drinking age and will otherwise comply with all applicable privacy laws. Brewers will also employ a mechanism for consumers to opt-in to receive advertising and marketing communications from a Brewer and an opt-out feature to stop receiving such communications.

13. Product placement

Movies and television programs frequently portray the 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 a product placement that portrays the purchase or consumption of their products by persons 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 73.8% 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 on 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 complainant who is a Beer Institute member 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, within 45 days of the Brewer's response, 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), and submit supplementary information, if any, regarding the complaint. In such an 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 Beer Institute will compile the complaint file and transmit the same to the CCRB.

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 is 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 file, including 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.

CODE DISSEMINATION

The Beer Institute will post this Code and accompanying Buying Guidelines on its website at www.beerinstitute.org. Brewers will either provide copies to their employees, wholesale distributors, and outside agencies whose responsibilities include advertising and marketing beer, as well as to any outside party who might request it, or make them aware that the Code and Buying Guidelines are available on the Beer Institute website.

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 73.8% 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.

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 Compliant. 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 21+ 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.

REPRESENTING AMERICA'S BREWERS, BEER IMPORTERS AND SUPPLIERS SINCE 1862.

The Beer Institute, based in Washington, D.C., represents the \$409 billion beer industry – an industry that includes 6,600 brewers and nearly 2.4 million American jobs. The Beer Institute is a national trade association for the American brewing industry, representing both large and small brewers, as well as importers and industry suppliers. Our organization, founded in 1862 as the U.S. Brewers Association and reorganized as the Beer Institute in 1986, represents the beer industry before Congress, state legislatures and public forums across the country. We're committed to developing sound public policy, focusing on community involvement and personal responsibility.



BEER INSTITUTE

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