

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

MILLERCOORS, LLC,)	
)	
Plaintiff,)	
v.)	Case No. 19-cv-218-WMC
)	
ANHEUSER-BUSCH COMPANIES, LLC,)	
)	
Defendant.)	

Anheuser-Busch Companies, LLC’s Response to MillerCoors, LLC’s Proposed Findings of Fact in Support of its Motion for a Preliminary Injunction

Defendant Anheuser-Busch Companies, LLC (“Anheuser-Busch”), pursuant to section III.A.2 of the Court’s procedure on motions for injunctive relief, hereby submits its response to MillerCoors, LLC’s (“MillerCoors”) proposed findings of fact in support of MillerCoors’ motion for a preliminary injunction.

Parties¹

1. MillerCoors, LLC (“MillerCoors”) is a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business located at 250 South Wacker Drive, Suite 800, Chicago, Illinois 60606-5888. Declaration of Ryan Reis (“Reis Decl.”) ¶ 5.

RESPONSE: Not disputed.

¹ MillerCoors’ Statement of Proposed Findings of Fact is interspersed with section headings. These headings are not statements of fact and, therefore, no response is required. To the extent that a response is required, each section heading is disputed because: (a) it is not a statement of fact; (b) it does not cite any source for its proposition, in violation of section II.A.2 of this Court’s Procedure to be Followed on Motions for Injunctive Relief; and (c) it is unsupported by the evidence.

2. Anheuser-Busch Companies, LLC (“AB”) is a limited liability company organized and existing under the laws of the State of Delaware, with its U.S. headquarters located in St. Louis, Missouri. Reis Decl. ¶ 13.

RESPONSE: Not disputed.

Miller Lite and Coors Light are Two of MillerCoors Flagship Beers

3. Frederick Miller started the Miller Brewing Company in 1855. Reis Decl. ¶ 5.

RESPONSE: Not disputed.

4. Adolph Coors started the Coors Brewing Company in 1873. Reis Decl. ¶ 5.

RESPONSE: Not disputed.

5. MillerCoors was created in 2008 as the U.S. joint venture between the owners of the Miller Brewing Company and the Coors Brewing Company. Reis Decl. ¶ 5.

RESPONSE: Not disputed.

6. *Miller Lite* and *Coors Light* were launched in the 1970s and are among the world’s first light beers. Reis Decl. ¶ 5.

RESPONSE: Anheuser-Busch admits that Miller Lite and Coors Light were first brewed in the 1970s. As for MillerCoors’ statement that Miller Lite and Coors Light “are among the world’s first light beers,” this statement is vague and unsubstantiated by credible evidence and, therefore, is disputed.

7. Among American light beers, *Miller Lite* and *Coors Light* have the second and third-highest market share, respectively. Reis Decl. ¶ 11.

RESPONSE: Not disputed.

8. MillerCoors market research shows that the key reasons people buy *Miller Lite* and *Coors Light* are because those beers are (1) authentic, (2) a good value, (3) of high

quality, and (4) refreshing. Reis Decl. ¶ 12.

RESPONSE: Disputed. Anheuser-Busch lacks knowledge of MillerCoors' internal market research or the methodology that it is based upon and, on those grounds, disputes the statements in paragraph 8.

9. Since the mid-1970s, MillerCoors has sold billions of dollars-worth of both *Coors Light* and *Miller Lite* beer throughout the United States. Reis Decl. ¶ 8.

RESPONSE: Disputed. Anheuser-Busch disputes that MillerCoors, which was first formed in 2008, has sold beer since the 1970s. See ECF 10, MillerCoors Proposed Findings of Fact ¶ 5.

10. MillerCoors annual investment in advertising and promoting *Coors Light* and *Miller Lite* in the United States has exceeded hundreds of millions of dollars per year, for the past ten years. Reis Decl. ¶ 10.

RESPONSE: Disputed. Paragraph 10 purports to disclose MillerCoors' annual investment in advertising and promoting Coors Light and Miller Lite. Anheuser-Busch lacks knowledge or information sufficient to respond to this statement and, on that basis, disputes the same.

There is No Corn Syrup or High-Fructose Corn Syrup in the Finished *Miller Lite* and *Coors Light* Beers

11. The brewing process for beer comprises several steps, the first of which is to create a nutrient substrate, called wort, that yeast needs for fermentation. Declaration of Anthony J. Manuele ("Manuele Decl.") ¶ 7.

RESPONSE: Disputed in part. This statement is disputed to the extent that it purports to describe the process for brewing Bud Light. Paragraph 11 purports to describe

in general terms the creation of wort, which MillerCoors states is the first step in brewing beer. Anheuser-Busch does not dispute that wort is a component in brewing beer.

12. Depending on the style and taste characteristics of the beer, the sugars in the wort are sourced either from malt, or from a combination of malt and starchy grains like corn or rice. Manuele Decl. ¶ 8.

RESPONSE: Disputed in part. Anheuser-Busch disputes paragraph 12 to the extent that it can be understood to state that the *only* reasons a brewer may elect to use corn syrup as a source of sugar in its beers have to do with the “the style and taste characteristics of the beer.” Such a statement is incomplete because there exist other reasons a brewer may decide to use corn syrup in the brewing process. For example, corn syrup is less expensive than rice. Declaration of Russell R. Harville, ¶ 2. Anheuser-Busch does not dispute, as a general matter, that sugars used to brew beer may be derived from different sources, including malt, corn, or rice. Nor does Anheuser-Busch dispute, as a general matter, that the characteristics of beer, including taste, may be impacted by the source of the sugar that is used to brew the beer.

13. MillerCoors uses corn syrup as a source of sugar in the brewing process for Miller Lite and Coors Light beers to facilitate fermentation. Manuele Decl. ¶ 9.

RESPONSE: Anheuser-Busch does not dispute and agrees that Coors Light and Miller Lite are brewed with corn syrup. To the extent that paragraph 13 states the reason that MillerCoors uses corn syrup to brew Coors Light and Miller Lite, Anheuser-Busch lacks knowledge or information sufficient to respond to this statement and, on that ground, disputes the same. Except as so stated, the statement in paragraph 13 is disputed.

14. MillerCoors chooses to use corn syrup, rather than another source of sugar, to

aid fermentation because it does not mask or change the barley and hops flavors and aromas distinctive to *Miller Lite* and *Coors Light* beers. Manuele Decl. ¶ 6.

RESPONSE: Disputed. Paragraph 14 purports to state the reason that MillerCoors uses corn syrup to brew Coors Light and Miller Lite. Anheuser-Busch lacks knowledge or information sufficient to respond to this statement and, on that ground, disputes the same. Corn syrup can be used by brewers attempting to save money and to speed along the brewing process. Moreover, MillerCoors has publicly attributed the taste of its beers, in part, to corn syrup, stating that “corn syrup gives beer a milder and lighter-bodied flavor.” Goeler Dec., ¶ 24 (“You see, the ‘corn syrup ... helps make Miller Lite taste so great.”). Thus, MillerCoors apparently chooses to use corn syrup for flavor reasons as well.

15. There is no meaningful difference between using rice or corn syrup as an adjunct in terms of health or safety of the resulting beer product. Declaration of Dr. John S. White (“White Decl.”) ¶ 5(c).

RESPONSE: Disputed that rice and corn syrup are “adjuncts” if that term is being used to have a separate meaning from ingredients. Rice is one of the four essential ingredients used to make Bud Light. Goeler Dec. ¶ 8. MillerCoors has also publicly stated that corn syrup is an “ingredient” in Coors Light and Miller Lite. See Harrison Dec., Ex. 1, June 24, 2015, MillerCoors “Our Beers” (listing corn syrup as an “ingredient” of Miller Lite); *id.*, Ex. 2, June 24, 2015, MillerCoors “Our Beers” (listing corn syrup as an “ingredient” of Coors Light); *id.*, Ex. 3, Dec. 18, 2018, MillerCoors Brand Nutritional Data (listing, without qualification, corn syrup as an “ingredient” in Coors Light and Miller Lite); *id.*, Ex. 4, MillerCoors “Our Great Beers” (listing, without qualification, corn syrup as an “ingredient” in Miller Lite) (last visited April 18, 2019); Ex. 5, MillerCoors “Our

Great Beers” (listing, without qualification, corn syrup as an “ingredient” in Coors Light) (last visited April 18, 2019). Bud Light makes no health or safety claims regarding corn syrup.

16. The corn syrup that MillerCoors uses is specially selected based on a number of criteria: (a) similarity to the sugars that are produced from malt during mashing; (b) as a complement to the sugars sourced from malt; (c) the suitability of these sugars as a nutrient packet for the yeast; (d) the fermentability of the sugars; and (e) the quality and consistency of the process. Manuele Decl. ¶ 6.

RESPONSE: Disputed. Paragraph 16 purports to state the criteria that MillerCoors uses to select the corn syrup used to brew Coors Light and Miller Lite. Anheuser-Busch lacks knowledge or information sufficient to form a belief as to the truth of the statements in paragraph 16 and, on that basis, disputes the same.

17. The yeast’s natural fermentation process converts the corn syrup sugars into ethanol, flavors, aromas, carbon dioxide, heat, and a next generation of yeast cells, leaving a small amount of residual sugars. Manuele Decl. ¶ 10; White Decl. ¶ 5(d).

RESPONSE: Disputed in part. Paragraph 17 describes the fermentation process in MillerCoors beers, including Coors Light. Anheuser-Busch does not dispute, as a general matter, that yeast converts the fermentable sugars to ethanol and carbon dioxide through fermentation. Anheuser-Busch also does not dispute that MillerCoors has stated that Coors Light contains 1 gram of sugar. Harrison Dec., Ex. 3, Dec. 18, 2018, MillerCoors Brand Nutritional Data. To the extent that paragraph 17 describes other mechanics of the brewing process that are specific to MillerCoors beers, however, Anheuser-Busch lacks

information sufficient to respond to these statements and, on that ground, disputes the same. Except as so stated, the statements in paragraph 17 are disputed.

18. No corn syrup appears in the Coors Light and Miller Lite products at the end of fermentation. Manuele Decl. ¶ 11, White Decl. ¶ 5(d).

RESPONSE: Anheuser-Busch lacks knowledge or information sufficient to form a belief as to the truth of this statement and, on that basis, disputes the same.

19. MillerCoors does not add corn syrup or any other sweetener (including high-fructose corn syrup) to the finished Coors Light or Miller Lite products. Manuele Decl. ¶¶ 12, 14.

RESPONSE: Anheuser-Busch lacks knowledge or information sufficient to form a belief as to the truth of this statement and, on that basis, disputes the same.

20. On the other hand, AB does add high-fructose corn syrup to some of its malt beverages. Manuele Decl. ¶ 15.

RESPONSE: Disputed in part. Anheuser-Busch disputes this statement to the extent that it suggests that Bud Light is brewed with or contains high-fructose corn syrup. Bud Light is brewed with four essential ingredients – hops, barley, rice, and water. See Goeler Dec., ¶ 8. To the extent that this paragraph purports to quote, paraphrase, or characterize information available at www.tapintoyourbeer.com about other Anheuser-Busch products, any such information speaks for itself and all information therein must be read in context.

21. AB also uses corn syrup as an adjunct in its Bud Ice, Natural Light, Natural Ice, Busch Light, Rolling Rock, Stella Artois Cidre, Stella Artois Spritzer and Bon & Viv Sparkling. White Decl. ¶ 5(b).

RESPONSE: Disputed in part related to “adjunct” being different from an ingredient in beer. To the extent that this paragraph purports to quote, paraphrase, or characterize the information available at www.tapintoyourbeer.com about Bud Ice, Natural Light, Natural Ice, Busch Light, Rolling Rock, Stella Artois Cidre, Stella Artois Spritzer, and Bon & Viv Sparkling, any such information speaks for itself and all information therein must be read in context and Anheuser-Busch does not dispute that its website is accurate.

22. High-fructose corn syrup is also referred to in abbreviation as “HFCS.” White Decl. ¶¶ 3 & 5(e), Manuele Decl. ¶13.

RESPONSE: Anheuser-Busch does not dispute that the abbreviation “HFCS” can be used to refer to high-fructose corn syrup.

AB Tries to Increase *Bud Light*’s Market Share through its False and Misleading Campaign²

23. AB is a multinational beverage company that sells numerous products, including the *Bud Light* beer. Reis Decl. ¶ 13.

RESPONSE: Not disputed.

24. *Bud Light* has the largest market share among American light beers. Reis Decl. ¶ 13.

RESPONSE: Not disputed.

25. AB sells *Bud Light* in Wisconsin and the Western District of Wisconsin, in

² This heading is not a statement of fact and, therefore, no response is required. To the extent that a response is required, this heading is disputed because Anheuser-Busch’s ads are not false or misleading for the reasons set forth in Anheuser-Busch’s Response to MillerCoors’ Proposed Finding of Fact ¶ 29. Anheuser-Busch also disputes the proposition in this heading on the grounds that it is contradicted by the evidence. *See, e.g., id.* ¶¶ 29, 68-75, 85, 105. The proposition in this heading further is disputed on the grounds that it violates section II.A.2 of this Court’s Procedure to be Followed on Motions for Injunctive Relief because no evidence is cited in support thereof.

quantities that are significant enough that *Bud Light* products are commonly available in restaurants, bars, and stores throughout Wisconsin and the Western District of Wisconsin. Reis Decl. ¶ 13.

RESPONSE: Anheuser-Busch does not dispute that it sells Bud Light in Wisconsin, including within the Western District of Wisconsin, and that Bud Light is sold and enjoyed in restaurants, bars, and stores throughout the State.

26. Before Super Bowl LIII, in January 2019, AB ran an advertisement, in which the *Bud Light* King exclaims that he will ensure that every case of *Bud Light* will soon have an ingredients label so that “the people will be sure . . . that [*Bud Light*] is brewed with the finest ingredients.” Reis Decl. ¶ 34.

RESPONSE: Disputed in part. Anheuser-Busch does not dispute that Bud Light ran the commercial *King’s Speech* in January 2019.

Anheuser-Busch disputes this statement to the extent that it suggests that *King’s Speech* is false or misleading. This commercial is truthful and is not false or misleading. See Anheuser-Busch Response to Proposed Finding of Fact ¶ 29, *infra*. Responding further, paragraph 26 purports to paraphrase the Bud Light commercial *King’s Speech*. That commercial speaks for itself, and Anheuser-Busch disputes any characterization inconsistent therewith. A copy of the transcript to *King’s Speech* is attached as Harrison Dec., Ex. 31; see also Reis Dec. ¶ 34, Ex. 24.

27. The January 2019 advertisement closes with a voiceover: “Introducing our new ingredients label, coming in February.” Reis Decl. ¶ 34.

RESPONSE: Paragraph 27 purports to paraphrase *King's Speech*. That commercial speaks for itself, and Anheuser-Busch disputes any characterization inconsistent therewith. See Anheuser-Busch Response to Proposed Finding of Fact ¶ 26; Harrison Dec., Ex. 31.

28. A true and correct copy of the January 2019 advertisement is submitted to the Court as Exhibit 24 to the Declaration of Ryan Reis.

RESPONSE: Not disputed.

29. On February 3, 2019, during the television broadcast of Super Bowl LIII, AB launched a nationwide advertising campaign (“the Campaign”) featuring claims that *Miller Lite* and *Coors Light* beers are “made with” corn syrup. Reis Decl. ¶ 24.

RESPONSE: Disputed in part. Anheuser-Busch does not dispute that on February 3, 2019, during the broadcast of Super Bowl LIII, Bud Light first ran commercials and other advertisements that truthfully stated the ingredients in Bud Light and the ingredients of Coors Light and Miller Lite. Those advertisements speak for themselves, and Anheuser-Busch disputes any characterization inconsistent therewith. The ads were consistent with the previous transparency commercials and part of the long-standing Bud Light King fantasy commercials.

Anheuser-Busch disputes this statement to the extent that it suggests that Bud Light’s ads are false or misleading. MillerCoors’ use of corn syrup as an ingredient in Coors Light and Miller Lite is not secret. Since 2015, MillerCoors has repeatedly stated without qualification that corn syrup is an “ingredient” in Miller Lite and Coors Light. Harrison Decl., Exs. 1-5. In fact, MillerCoors publicly attributes the taste of its beers, in part, to corn syrup. Goeler Dec., ¶ 24 (“You see, the ‘corn syrup ... helps make Miller Lite taste so great.”).

Confirming its published ingredient list from before Super Bowl LIII, MillerCoors after the Super Bowl repeatedly stated and advertised, across multiple forums, that Miller Lite and Coors Light are “made with,” “brewed with,” and “use” corn syrup. Goeler Dec. ¶¶ 20, 23; Harrison Dec., Ex. 6, Feb. 3, 2019, tweet by MillerCoors executive Pete Marino (“We use corn syrup.”); *id.*, Ex. 7, Feb. 3, 2019, tweet by @MillerLite (“made with”); *id.*, Ex. 8, Feb. 5, 2019, Open Letter (“Miller Lite is indeed brewed with ‘corn syrup’”); *id.* (“You see, the ‘corn syrup’ ... helps make Miller Lite taste so great.”); *id.*, Ex. 9, Feb. 4, 2019, Tweet by @MillerCoors; *id.*, Ex. 10, March 21, 2019, tweet by @MillerLite (“we start with [corn syrup]”); *id.*, Ex. 11, March 25, 2019, tweet by @MillerLite; *id.*, Ex. 12, Feb. 6, 2019, tweet by @CoorsLight.

Except as so stated, the statement in paragraph 29 is disputed.

30. The Campaign included a 60-second television commercial titled “Special Delivery.” Reis Decl. ¶ 24(c)(i).

RESPONSE: Disputed in part. Anheuser-Busch does not dispute that Bud Light ran a 60-second television commercial titled *Special Delivery* during Super Bowl LIII.

Anheuser-Busch disputes this paragraph to the extent that it suggests that *Special Delivery* is false or misleading. This commercial is truthful and is not false or misleading. See Anheuser-Busch Response to Proposed Finding of Fact ¶ 29. Anheuser-Busch also disputes this statement to the extent MillerCoors’ use of the phrase “the Campaign” is meant to imply that the advertisement is false or misleading. See *id.*

31. An electronic file containing a true and correct copy of the 60-second “Special Delivery” commercial is submitted to the Court as Exhibit 4 to the Declaration of Ryan Reis.

RESPONSE: Not disputed.

32. The “Special Delivery” commercial first aired nationwide during Super Bowl LIII, including within the Western District of Wisconsin. Reis Decl. ¶ 24.

RESPONSE: Not disputed.

33. “Special Delivery” has continued to run in television markets across the country, including within the Western District of Wisconsin, both in a full-length version and a shorter 15-second and 30-second “cut-down” versions. Reis Decl. ¶ 25.

RESPONSE: Not disputed.

34. Since Super Bowl LIII through March 18, 2019, the 30- and 60-second versions of the “Special Delivery” commercial have aired a combined 1,006 times on over twenty TV channels. Reis Decl. ¶ 25.

RESPONSE: Disputed. The number of times *Special Delivery* has aired during this time period is set forth in Declaration of Adam J. Simon (“Simon Dec.”), Ex. 1.

35. The “Special Delivery” commercial contains the following scenes in the following order:

- a. The *Bud Light King*, the *Bud Light Knight*, and a wizard discuss how *Bud Light* beer is brewed. Behind the men are four barrels labeled “Water,” “Rice,” “Hops,” and “Barley.”
- b. One of the *Bud Light King*’s knights then enters with a large barrel labeled “Corn Syrup” and announces, “My King, this corn syrup was just delivered.”
- c. The *Bud Light King* responds that the barrel of corn syrup does not belong to the *Bud Light Kingdom* because “[w]e don’t brew *Bud Light* with corn syrup.” Another knight states that “*Miller Lite* uses corn syrup,” prompting the *Bud Light King* to declare that the large barrel of corn syrup must be delivered to the *Miller Lite Castle* at once.

- d. The party then embarks on a dangerous journey to deliver the barrel to the *Miller Lite* Castle.
- e. Once the *Bud Light* King arrives at the *Miller Lite* Castle, he announces, “Oh brewers of *Miller Lite*, we received your corn syrup by mistake. “The *Miller Lite* King, with a supply of *Miller Lite* at his side, answers, “**That’s not our corn syrup, we received our shipment this morning**.... Try the *Coors Light* Castle. They also use corn syrup.”
- f. The party then sets off for the *Coors Light* Castle. Upon arrival, the *Bud Light* King again announces, “Oh brewers of *Coors Light*, is this corn syrup yours?” The *Coors Light* King responds, “Well, well, well, looks like **the corn syrup has come home to be brewed,**” and then, “**To be clear, we brew *Coors Light* with corn syrup.**”
- g. The commercial closes with the written statement “*Bud Light*, Brewed with no Corn Syrup.”

Reis Decl., Ex. 4.

RESPONSE: Paragraph 35 and its subparts purport to describe, quote, and paraphrase *Special Delivery*. That commercial speaks for itself, and Anheuser-Busch disputes any characterization inconsistent therewith. See also Anheuser-Busch Response to Proposed Finding of Fact ¶ 29. The transcript of *Special Delivery* is attached as Harrison Dec., Ex. 32; see also Reis Dec., Ex. 4. Responding further, Anheuser-Busch disputes this paragraph on the grounds that it misquotes *Special Delivery* by erroneously attributing a line to the Miller Lite king. Compare Ex. 35(e) with Harrison Dec., Ex. 32.

36. The “Special Delivery” commercial was one of the most-discussed

commercials of Super Bowl LIII. Reis Decl. ¶ 24.

RESPONSE: Not disputed.

37. AB also aired a 15-second commercial titled “Shop Talk” during the Super Bowl, in which medieval characters state that *Coors Light* and *Miller Lite*, respectively, are “made with corn syrup.” Reis Decl. ¶ 24(c)(ii).

RESPONSE: Disputed in part. Anheuser-Busch does not dispute that the commercial *Medieval Barbers*, which MillerCoors refers to as “Shop Talk,” first aired during Super Bowl LIII.

Anheuser-Busch disputes this paragraph to the extent that it suggests that *Medieval Barbers* is false or misleading. This commercial is truthful and is not false or misleading. See Anheuser-Busch Response to Proposed Finding of Fact ¶ 29. Responding further, to the extent that paragraph 37 purports to paraphrase or describe *Medieval Barbers*, that commercial speaks for itself, and Anheuser-Busch disputes any characterization inconsistent therewith. The *Medieval Barbers* transcript is attached as Harrison Dec., Ex. 33; see also Reis Dec., Ex. 5. Further, Anheuser-Busch disputes MillerCoors’ assertion that *Medieval Barbers* references Miller Lite. See Harrison Dec., Ex. 33 (referring only to Bud Light and Coors Light). Except as so stated, the statement in paragraph 37 is disputed.

38. An electronic file containing a true and correct copy of the “Shop Talk” commercial is submitted to the Court as Exhibit 5 to the Declaration of Ryan Reis.

RESPONSE: Not disputed.

39. Also, during the Super Bowl, AB aired a 15-second commercial titled “Trojan Horse Occupants” in which medieval characters state that *Coors Light* and *Miller Lite*, respectively, are “made with corn syrup.” Reis Decl. ¶ 24(c)(ii).

RESPONSE: Disputed in part. Anheuser-Busch does not dispute that the commercial *Trojan Horse* first aired during Super Bowl LIII.

Anheuser-Busch disputes this paragraph to the extent that it suggests that *Trojan Horse* is false or misleading. This commercial is truthful and is not false or misleading. See Anheuser-Busch Response to Proposed Finding of Fact ¶ 29. Responding further, to the extent that paragraph 39 purports to describe or paraphrase *Trojan Horse*, that commercial speaks for itself, and Anheuser-Busch disputes any characterization inconsistent therewith. The *Trojan Horse* transcript is attached as Harrison Dec., Ex. 34; see also Reis Dec., Ex. 6. Further, Anheuser-Busch disputes MillerCoors' assertion that *Trojan Horse* references Coors Light. Harrison Dec., Ex. 34 (referring only to Bud Light and Miller Lite). Except as so stated, the statement in paragraph 39 is disputed.

40. An electronic file containing a true and correct copy of the "Trojan Hose Occupants" commercial is submitted to the Court as Exhibit 6 to the Declaration of Ryan Reis.

RESPONSE: Not disputed.

41. Since Super Bowl LIII through March 18, 2019, the "Shop Talk" and "Trojan Horse" commercials have aired 273 and 795 times, respectively. Reis Decl. ¶ 25(b),(c).

RESPONSE: Disputed. The number of times each of *Medieval Barbers* and *Trojan Horse* have aired during this time period are set forth in Simon Dec., Ex. 1.

42. This year's Super Bowl LIII advertising commanded between \$5.1 - 5.3 million dollars per 30 seconds of media placement, not including extensive production costs. Reis Decl. ¶ 23.

RESPONSE: Anheuser-Busch does not dispute, as a general matter, that it has been publicly reported that this year’s Super Bowl LIII advertising cost between \$5.1 million and \$5.3 million per 30 seconds of media placement.

43. Soon after the Super Bowl, AB began running more commercials as a part of the Campaign, including a 15-second commercial called “*BudLight Cave Explorers*.” Reis Decl. ¶ 26.

RESPONSE: Anheuser-Busch does not dispute that the commercial *Cave Explorers*, which paragraph 43 refers to as “*Bud Light Cave Explorers*,” first aired after Super Bowl LIII.

Anheuser-Busch disputes this statement to the extent that it suggests that *Cave Explorers* is false or misleading. This commercial is truthful and is not false or misleading. See Anheuser-Busch Response to Proposed Finding of Fact ¶ 29. Anheuser-Busch also disputes this statement to the extent MillerCoors’ use of the phrase “the Campaign” is meant to imply that the advertisement is false or misleading. See *id*.

44. An electronic file containing a true and correct copy of the 15-second “*Bud Light Cave Explorers*” commercial is submitted to the Court as Exhibit 10 to the Declaration of Ryan Reis.

RESPONSE: Not disputed.

45. The “*BudLight Cave Explorers*” commercial contains the following scenes in the following order:

- a. Two medieval characters enter a cave bearing torches.
- b. Once characters read out-loud what is written on the inside of the cave:

“*Coors Light* is made with barley, water, hop extract and corn syrup.”

- c. The other character reads out-loud what is written on the inside of the cave, “*BudLight* is made with barley, rice, water, hops and no corn syrup.”
- d. The first character then responds, “Good to know.”
- e. The commercial closes with the written statement “*BudLight*, Brewed with no Corn Syrup.”

Reis Decl., Ex. 10.

RESPONSE: Paragraph 45 and its subparts purport to describe, quote, and paraphrase *Cave Explorers*. That commercial speaks for itself, and Anheuser-Busch disputes any characterization inconsistent therewith. See also Anheuser-Busch Response to Proposed Finding of Fact ¶ 29. The *Cave Explorers* transcript is attached as Harrison Dec., Ex. 35; see also Reis Dec., Ex. 10.

- 46. AB also ran another 30-second commercial titled “*BudLight* Mountain Folk.”

Reis Decl. ¶ 26.

RESPONSE: Disputed in part. Anheuser-Busch does not dispute that it has run the commercial *Mountain Men*, which paragraph 46 refers to as “*Bud Light* Mountain Folk.”

Anheuser-Busch disputes this statement to the extent that it suggests that *Mountain Men* is false or misleading. This commercial is truthful and is not false or misleading. See Anheuser-Busch Response to Proposed Finding of Fact ¶ 29.

- 47. An electronic file containing a true and correct copy of the 30-second “*Bud Light* Mountain Folk” commercial is submitted to the Court as Exhibit 11 to the Declaration of Ryan Reis.

RESPONSE: Not disputed.

48. The “*BudLight* Mountain Folk” commercial contains the following scenes in the following order:

- a. Medieval characters yell to each other from mountaintops.
- b. One-character yells, “*CoorsLight* is made with barley, water, hop extract and corn syrup.”
- c. Another character replies by yelling, “*Miller Lite* is made with barley, water, hops, hop extract and corn syrup.”
- d. And a third character yells, “*BudLight* is made with barley, rice, water, hops and no corn syrup.”
- e. The commercial closes with the written statement “*BudLight*, Brewed with no Corn Syrup.”

Reis Decl., Ex. 11.

RESPONSE: Paragraph 48 and its subparts purport to describe, quote, and paraphrase *Mountain Men*. That commercial speaks for itself, and Anheuser-Busch disputes any characterization inconsistent therewith. The *Mountain Men* transcript is attached as Harrison Dec., Ex. 36; see also Reis Dec., Ex. 11; Anheuser-Busch Response to Proposed Finding of Fact ¶ 29.

49. AB has also launched print-media and billboard campaigns in connection with the Campaign. Reis Decl. ¶ 29.

RESPONSE: Disputed in part. Anheuser-Busch does not dispute that Bud Light has advertised in print-media and billboards since Super Bowl LIII.

Anheuser-Busch disputes this statement to the extent that it suggests that the advertisements are false or misleading. See Anheuser-Busch Response to Proposed Finding

of Fact ¶ 29. Anheuser-Busch also disputes this statement to the extent MillerCoors' use of the phrase "the Campaign" is meant to imply that the advertisements are false or misleading. *See id.*

50. In one series of billboards, AB claims on the first billboard that "*Coors Light* uses corn syrup," followed by a second billboard stating for *Bud Light*, "We don't." Reis Decl. ¶ 29, Ex. 20.

RESPONSE: Paragraph 50 purports to describe and quote certain billboard advertisements. Those advertisements speak for themselves, and Anheuser-Busch disputes any characterization inconsistent therewith. *See also* Anheuser-Busch Response to Proposed Finding of Fact ¶ 29.

51. True and correct images of the billboards described in Paragraph 50 are submitted to the Court as Exhibit 20 to the Declaration of Ryan Reis.

RESPONSE: Not disputed.

52. In another series, three sequential billboards read 1) "100% less corn syrup than *Coors Light*;" 2) "and...wait for it...;" 3) "100% less corn syrup than *Miller Lite*." Reis Decl. ¶ 29, Ex. 20.

RESPONSE: Paragraph 52 purports to describe and quote certain billboard advertisements. Those documents speak for themselves, and Anheuser-Busch disputes any characterization inconsistent therewith. *See also* Anheuser-Busch Response to Proposed Finding of Fact ¶ 29.

53. True and correct images of the billboards described in Paragraph 52 are submitted to the Court as Exhibit 20 to the Declaration of Ryan Reis.

RESPONSE: Not disputed.

54. Three days after the Super Bowl, AB's official Twitter account displayed a message claiming that the *Bud Light* King had considered using corn syrup in *Bud Light* "to save money" because it is "less expensive," but rejected the idea stating that "it's not [the King's] job to save money." Reis Decl. ¶ 27(a).

RESPONSE: Paragraph 54 purports to describe and quote a tweet by the official Twitter account of Bud Light, not Anheuser-Busch. That tweet speaks for itself, and Anheuser-Busch disputes any characterization inconsistent therewith. Anheuser-Busch disputes this statement to the extent that it suggests that the tweet is false or misleading. See Anheuser-Busch Response to Proposed Finding of Fact ¶ 29. Rice, which is used in Bud Light, is more expensive than corn syrup and Bud Light does not use corn syrup. Harville Dec., ¶ 2.

55. A true and correct copy of the Twitter message is submitted to the Court as Exhibit 2 to the Declaration of Ryan Reis.

RESPONSE: Disputed in part. Exhibit 2 to the Reis Declaration does not contain a tweet and consists only of a photograph of a fictional scroll that was attached to a tweet. Reis Dec., Ex. 2.

56. A few weeks later, the official Twitter account for AB's *Natural Light* beer promoted a photo of "The 'Lite' Family Portrait," showing a bottle of Karo Lite Syrup—a brand of corn syrup—alongside a can of *Miller Lite*. Reis Decl. ¶ 27(f).

RESPONSE: Paragraph 56 purports to describe a tweet by Natural Light. That tweet speaks for itself, and Anheuser-Busch disputes any characterizations inconsistent therewith. Anheuser-Busch disputes this statement to the extent that it suggests that the tweet is false or misleading. See Anheuser-Busch Response to Proposed Finding of Fact ¶ 29.

57. A true and correct copy of the Twitter post is submitted to the Court as Exhibit 18 to the Declaration of Ryan Reis.

RESPONSE: Not disputed.

58. At the end of February 2019 and in connection with the Oscars' broadcast, AB launched two more commercials as part of the Campaign. Reis Decl. ¶ 26.

RESPONSE: Anheuser-Busch does not dispute that Bud Light ran two commercials during the February 2019 Oscars' broadcast.

Anheuser-Busch disputes this statement to the extent that it suggests that these commercials are false or misleading. See Anheuser-Busch Response to Proposed Finding of Fact ¶ 29. Anheuser-Busch also disputes this statement to the extent MillerCoors' use of the phrase "the Campaign" is meant to imply that the advertisement is false or misleading. See id.

59. The first commercial launched in late February 2019, is a 15-second spot called "Thespians Performing Beer Ingredients" that features two female actors exchanging the respective ingredients of *Coors Light* and *Bud Light*. Reis Decl. ¶ 26.

RESPONSE: Paragraph 59 purports to describe the commercial *Thespians*. That commercial speaks for itself, and Anheuser-Busch disputes any characterization inconsistent therewith. Anheuser-Busch disputes this statement to the extent that it suggests that *Thespians* is false or misleading. This commercial is truthful and is not false or misleading. See Anheuser-Busch Response to Proposed Finding of Fact ¶ 29. The transcript of *Thespians* is attached as Harrison Dec., Ex. 37; see also Reis Dec., Ex. 12.

60. An electronic file containing a true and correct copy of the "Thespians Performing Beer Ingredients" commercial is submitted to the Court as Exhibit 12 to the

Declaration of Ryan Reis.

RESPONSE: Not disputed.

61. The “Thespians Performing Beer Ingredients” commercial contains the following scenes in the following order:

- a. The first medieval actress enters the stage holding a bottle of *Miller Lite*.
- b. That first medieval actress then states: “*Miller Lite* is made with barley, water, hops, hop extract and corn syrup.”
- c. The second medieval actress enters the stage holding a bottle of *Bud Light*.
- d. That second medieval actress then states: “*Bud Light* is made with barley, rice, water, hops and no corn syrup.”
- e. The audience applauds.
- f. The commercial closes with the written statement “*Bud Light*, Brewed with no Corn Syrup.”

Reis Decl., Ex. 12.

RESPONSE: Paragraph 61 purports to describe, paraphrase, and quote *Thespians*. That commercial speaks for itself, and Anheuser-Busch disputes any characterization inconsistent therewith. The transcript of *Thespians* is attached as Harrison Dec., Ex. 37.

62. The other commercial launched in late February 2019, is a 24-second mock film preview with the same two female actors. Reis Decl. ¶ 26.

RESPONSE: Paragraph 62 purports to describe the commercial *For Your Consideration*. That commercial speaks for itself, and Anheuser-Busch disputes any characterization inconsistent therewith. See Reis Decl, Ex. 13. Anheuser-Busch disputes

this statement to the extent that it suggests that *For Your Consideration* is false or misleading. See Anheuser-Busch Response to Proposed Finding of Fact ¶ 29.

63. An electronic file containing a true and correct copy of the mock film preview commercial is submitted to the Court as Exhibit 13 to the Declaration of Ryan Reis.

RESPONSE: Not disputed.

64. In the mock film preview commercial, the advertisement shows two still images in quick succession against the backdrop of dramatic music. One reads “CORN SYRUP” “*Miller Lite*” and the other “NO CORN SYRUP” “*BudLight.*” Reis Decl., Ex. 13.

RESPONSE: Paragraph 64 purports to describe, paraphrase, and quote *For Your Consideration*. That advertisement speaks for itself, and Anheuser-Busch disputes any characterization inconsistent therewith. See Reis Dec., Ex. 13.

65. On March 20, 2019, AB premiered a new advertisement, with the *Bud Light* King stating:

Miller, Miller, Miller... I've been made aware of your recent advertisement. I brought you your shipment of corn syrup, and this is how you repay me? Look, if you're this set on imitating our kingdom, may I suggest also imitating us by putting an ingredients label on your packaging. People want to know what ingredients are in their beer! But what do I know? I'm just the king of a kingdom that doesn't brew beer with corn syrup.

The commercial closes with the written statement “*Bud Light, Brewed with no Corn Syrup.*” Reis Dec. ¶ 34.

RESPONSE: Paragraph 65 purports to quote the Bud Light commercial contained in Exhibit 25 to the Declaration of Ryan Reis. That commercial speaks for itself, and Anheuser-Busch denies any characterization inconsistent therewith. Anheuser-Busch disputes this statement to the extent that it suggests that this commercial is false or

misleading. This commercial is truthful and is not false or misleading. See Anheuser-Busch Response to Proposed Finding of Fact ¶ 29; Reis Dec., Ex. 25. The transcript for this advertisement is attached as Harrison, Ex. 38.

66. A true and correct copy of the March 20, 2019 advertisement is submitted to the Court as Exhibit 25 to the Declaration of Ryan Reis.

RESPONSE: Not disputed.

67. After the filing of MillerCoors' Complaint, on March 21, 2019 AB publicly confirmed in news media its express plans to continue the Campaign, when Ms. Gemma Hart, vice president of communications for AB, stated: "We stand behind the Bud Light transparency campaign and have no plans to change the advertising." A true and correct copy of the March 21, 2019 New York Times article reporting this statement is submitted to the Court as Exhibit 27 to the Declaration of Ryan Reis.

RESPONSE: Disputed in part. Paragraph 67 purports to describe and quote Exhibit 27 to the Reis Declaration. That document speaks for itself, and Anheuser-Busch disputes any characterization inconsistent therewith. Anheuser-Busch further disputes this statement to the extent MillerCoors' use of the phrase "the Campaign" is meant to imply that the advertisement is false or misleading. See Anheuser-Busch Response to Proposed Finding of Fact ¶ 29.

AB Proclaims its Intent Behind the Campaign³

68. On February 7, 2019, BeerBusiness Daily reported that according to Andy Goeler,

³ This heading is not a statement of fact and, therefore, no response is required. To the extent that a response is required, this heading is disputed because Anheuser-Busch ads are not false or misleading. *See* Response ¶ 29. Anheuser-Busch also disputes this heading because it is contradicted by the evidence. *See, e.g., id.* ¶¶ 29, 68-75, 85, 105. This heading further is disputed on the grounds that it violates section II.A.2 of this Court's Procedure to be Followed on Motions for Injunctive Relief because it cites no evidence in support of this proposition.

AB's head of marketing for *Bud Light*: "[AB] did focus-group the heck out of this [Special Delivery] ad, and found that consumers generally don't differentiate between [HFCS] and corn syrup, and that it is a major triggering point in choosing brands to purchase, particularly among women." Reis Decl. ¶ 31, Ex. 21, at 1.

RESPONSE: Disputed. Paragraph 68 purports to describe and quote an article by Beer Business Daily dated February 7, 2019. That document speaks for itself, and that document, as well as the language quoted in paragraph 68, must be read in context.

Responding further, Anheuser-Busch disputes paragraph 68 because the language quoted is framed as if it were a direct quotation of Mr. Goeler. On the contrary, Mr. Goeler is not quoted in the Beer Business Daily article. See Reis Dec. Ex. 21. Rather, that publication includes a few sentences about things that were reported that Mr. Goeler said, but provides no context or quotes of his remarks. Id.; Goeler Dec. ¶ 34.

69. In another interview with Food and Wine Magazine, Mr. Goeler stated that AB's research showed that corn syrup is an "ingredient[] [consumers] preferred not to consume if they didn't have to." Reis Decl. ¶ 32, Ex. 22 at 2.

RESPONSE: Disputed. Paragraph 69 purports to paraphrase and quote from Mr. Goeler's interview in *Food & Wine Magazine*. That document speaks for itself and that document, as well as the language quoted in paragraph 69, must be read in context.

Responding further, Anheuser-Busch disputes paragraph 69 because it mischaracterizes and takes out of context Mr. Goeler's statements to *Food & Wine*. The statement quoted in paragraph was made in response to the question: "What is wrong with corn syrup?" Goeler Dec., Ex. 1, at 2. Mr. Goeler's response to that question is: "People started to react to corn syrup, they started to react to no preservatives, and they started to

react to no artificial flavors. These are things that consumers on their own had perceptions – for whatever reason – that these were ingredients they preferred not to consume if they didn’t have to. So it was pretty clear to us what to highlight. If you look at our packaging, we highlight all three of those. No corn syrup. No artificial flavors. No preservatives. It was purely driven by consumer desire.” *Id.*; see also Goeler Dec. ¶ 35.

70. In the same interview with Food and Wine Magazine, Mr. Goeler added that “some consumers — for their own personal reasons — have concluded that they prefer not putting something like corn syrup, if they had a choice, into their body.” Reis Decl. ¶32, Ex. 22 at 3

RESPONSE: Disputed. Paragraph 70 purports to paraphrase and quote a portion of Mr. Goeler’s interview with *Food & Wine*. That document speaks for itself and that document, as well as the language quoted in paragraph 70, must be read in context.

Responding further, Anheuser-Busch disputes paragraph 70 because it mischaracterizes and takes out of context Mr. Goeler’s statement. The statement quoted in paragraph 70 was made in response to the question: “But for these ads, you decided to focus on corn syrup instead of no preservatives or things like that. Why do you think consumers see corn syrup as something they don’t want?” Goeler Dec., Ex. 1, at 3. Mr. Goeler’s response was: “I think it’s probably an ingredient that some prefer not to consume is the simple answer... So consumers are the ones that are saying, ‘Wow, I prefer not putting preservatives [in my beer].’... Some people don’t care. They’re fine with it, but some consumers – for their own personal reasons – have concluded that they prefer not putting something like corn syrup, if they had a choice, into their body.” *Id.*; see also Goeler Dec. ¶ 35.

71. Mr. Goeler said in the interview with Food and Wine Magazine that all of the statements regarding consumers' preferences on corn syrup made it "pretty clear to [AB] what to highlight" in the Campaign. Reis Decl., Ex. 22 at 2.

RESPONSE: Disputed. Paragraph 71 purports to paraphrase and quote a portion of Mr. Goeler's interview with *Food and Wine*. That document speaks for itself and that document, as well as the language quoted in paragraph 71, must be read in context.

Responding further, Anheuser-Busch disputes paragraph 71 because it mischaracterizes and takes out of context Mr. Goeler's statement. The statement quoted in paragraph 71 was made in response to the question: "What is wrong with corn syrup?" Goeler Dec., Ex. 1, at 2. Mr. Goeler's response to that question is: "People started to react to corn syrup, they started to react to no preservatives, and they started to react to no artificial flavors. These are things that consumers on their own had perceptions – for whatever reason – that these were ingredients they preferred not to consume if they didn't have to. So it was pretty clear to us what to highlight. If you look at our packaging, we highlight all three of those. No corn syrup. No artificial flavors. No preservatives. It was purely driven by consumer desire." *Id.*; see also Goeler Dec. ¶ 35.

72. In an interview with the Milwaukee Business Journal, Mr. Goeler announced that his company will "continue to run the current [Campaign] until it starts to reach a certain level of saturation." Reis Decl. ¶ 35, Ex. 26 at 3.

RESPONSE: Disputed. Paragraph 72 purports to paraphrase and quote from a portion of Mr. Goeler's interview with the Milwaukee Business Journal. That document speaks for itself and that document, as well as the language quoted in paragraph 72, must be read in context.

Responding further, Anheuser-Busch disputes paragraph 72 because it mischaracterizes and takes out of context Mr. Goeler’s statements. The language quoted in paragraph 72 was made in response to the question: “What is the future of the corn syrup ads on television?” Goeler Dec., Ex. 2, at 3. Mr. Goeler’s response was: “We will continue to run content focusing on ingredient transparency. We’ll continue to run the current content until it starts to reach a certain level of saturation. We think it has a ways to go. Once it reaches that, like we do all the time, we’ll start putting new pieces of content in. That’s an ongoing piece of managing the brand.” *Id.*; see also Goeler Dec. ¶ 36.

73. In the same interview with the Milwaukee Business Journal, Mr. Goeler observed that “We think it [the Campaign] has a ways to go.” Reis Decl. ¶35, Ex. 26 at 3.

RESPONSE: Disputed. Paragraph 73 purports to paraphrase and quote from a portion of Mr. Goeler’s interview with the Milwaukee Business Journal. That document speaks for itself and that document, as well as the language quoted in paragraph 73, must be read in context. The language quoted in paragraph 73 was made in response to the question: “What is the future of the corn syrup ads on television?” Goeler Dec., Ex. 2, at 3. Mr. Goeler’s response was: “We will continue to run content focusing on ingredient transparency. We’ll continue to run the current content until it starts to reach a certain level of saturation. We think it has a ways to go. Once it reaches that, like we do all the time, we’ll start putting new pieces of content in. That’s an ongoing piece of managing the brand.” *Id.*; see also Goeler Dec. ¶ 36.

74. Again in the same interview with the Milwaukee Business Journal, Mr. Goeler characterized the Campaign as “focusing on ingredient transparency,” and volunteered that AB will be adding new corn syrup-related advertising content to help “manag[e] the brand.” Reis Decl. ¶ 35, Ex. 26 at 3.

RESPONSE: Disputed. Paragraph 74 purports to paraphrase and quote from a portion of Mr. Goeler’s interview with the Milwaukee Business Journal. That document speaks for itself and that document, as well as the language quoted in paragraph 74, must be read in context, and Anheuser-Busch disputes any characterization inconsistent therewith.

Responding further, Anheuser-Busch disputes paragraph 74 because it mischaracterizes and takes out of context Mr. Goeler’s statements. The language quoted in paragraph 74 was made in response to the question: “What is the future of the corn syrup ads on television?” Goeler Dec., Ex. 2, at 3. Mr. Goeler’s response was: “We will continue to run content focusing on ingredient transparency. We’ll continue to run the current content until it starts to reach a certain level of saturation. We think it has a ways to go. Once it reaches that, like we do all the time, we’ll start putting new pieces of content in. That’s an ongoing piece of managing the brand.” *Id.*; see also Goeler Dec. ¶ 36.

75. In a trade publication, AB’s senior director of corporate communications, Josh Gold, responded to a question regarding the reasons for the AB Campaign: “Free beer is a good thing. So is talking about the ingredients inside of beer. We continue to remain focused on transparency because we know that is what consumers are looking for. Knowing what is and isn’t in your beer—whether you paid for it or not—can only be good for the beer industry overall.” Reis Decl. ¶ 33, Ex. 23 at 4.

RESPONSE: Paragraph 75 purports to paraphrase and quote from a portion of the March 14, 2019 Beer Business Daily article. That document speaks for itself and that document, as well as the language quoted in paragraph 75, must be read in context, and Anheuser-Busch disputes any characterization inconsistent therewith. Responding further,

Anheuser-Busch disputes MillerCoors' characterization of Mr. Gold's remarks because they are taken out of context. According to the Beer Business Daily article, the language quoted in paragraph 75 was made in relation to MillerCoors' "smart" Coors Light tap promotion, not in response to a question "regarding the reasons for the AB Campaign." Compare Reis Dec. Ex. 23, at 4 with Proposed Finding of Fact ¶ 75.

Consumers Have Negative Associations with High-Fructose Corn Syrup

76. The corn syrup MillerCoors uses in its brewing process is materially different from HFCS in its manufacture, composition, function and nutrition. Manuele Decl. ¶ 13; White Decl. ¶5(e).

RESPONSE: Disputed in part. Anheuser-Busch does not dispute, as a general matter, that corn syrup and high-fructose corn syrup are distinct substances.

Anheuser-Busch disputes this statement, however, to the extent that it purports to describe and contrast a specific ingredient used in MillerCoors' brewing process. Anheuser-Busch lacks knowledge or information sufficient to respond the statement in paragraph 76 and, on that basis, disputes the same.

77. Despite the differences between corn syrup and HFCS, many consumers do not know that the two substances are distinctly dissimilar. White Decl. ¶5(e); Reis Decl. ¶ 32.

RESPONSE: Disputed. Paragraph 77 consists of MillerCoors' opinions and conclusions, not statements of fact. Therefore, no response is required and, on that ground, paragraph 77 is disputed.

78. Consumers have a negative association with corn syrup in part because of the ongoing controversy whether HFCS, but not corn syrup, is linked to certain health problems or is unsafe. Reis Decl. ¶ 17.

RESPONSE: Disputed. Paragraph 78 consists of MillerCoors' opinions and conclusions, not statements of fact. Therefore, no response is required and, on that ground, the statement in paragraph 78 is disputed.

Social Media Consumer Reaction to the Campaign

79. Following the Super Bowl, numerous tweets and posts on social media focused on the presence of corn syrup in *Miller Lite* and *Coors Light* products. Reis Decl. ¶ 27, Ex. 16.

RESPONSE: Disputed regarding “numerous,” in light of the size of the market and the number of Super Bowl viewers. Paragraph 79 purports to describe or paraphrase certain tweets and posts on social media. Those documents speak for themselves and must be read in context, and Anheuser-Busch denies any characterization inconsistent therewith. Anheuser-Busch further disputes the statement in paragraph 79 to the extent that it implies that the social media posts listed in Exhibit 16 to the Reis Declaration are representative of viewers of the Bud Light advertisements. Except as so stated, the statements in paragraph 79 are disputed.

80. The following are examples of statements about the Campaign made on social media:

- a. “I didn’t think the Super Bowl commercials were great this year. However, they must [have] greatly affected me as I hate corn syrup more than the Patriots. Damn you corn syrup, damn you! #EvilCorinSyrup
#ihatecornsyrup #cornsyrupkilledyourmom #Pats #superbowl #cornsyrup”
Reis Decl., Ex. 16.
- b. “Not only did I watch that entire game but I have Moves Like Jagger in my head while walking my dog who won’t poop, but at least my favorite beer

doesn't have corn syrup in it. Actually I could use some corn syrup right now, & by corn syrup I mean poison." *Id.*

c. "Bad enough we got Corn in our Gas, but we have to have it in our beer too[.]" *Id.*

d. "[I] just ordered "IHate Corn Syrup" shirts[.]" *Id.*

e. "So do you really use high fructose corn syrup? I won't drink your beer anymore if you do." *Id.*

f. "Is it true that there's corn syrup in Coors Light?" *Id.*

RESPONSE: Disputed. Reis Dec. Ex. 16, which paragraph 80 purports to quote, was prepared by MillerCoors and is a compilation of different tweets that were posted by different users. Paragraph 80 purports to quote certain tweets. Those tweets speak for themselves and must be read in context, and any characterizations inconsistent therewith are disputed. Anheuser-Busch further disputes paragraph 80 to the extent that it implies that the social media posts listed in Exhibit 16 to the Reis Declaration are representative of viewers of the Bud Light advertisements.

81. About a week after the Super Bowl, a Facebook user posted a picture from a grocery store showing a display encouraging consumers to "Find out what's in your beer," with cases of *Bud Light* stacked alongside cases of *Miller Lite* with packaged ears of corn and bottles of Aunt Jemima syrup on top. Reis Decl. ¶ 27, Ex. 15.

RESPONSE: Disputed. Paragraph 81 purports to describe and quote a Facebook post by Facebook user Bryan Kline. That document speaks for itself and must be read in context, and Anheuser-Busch disputes any characterizations inconsistent therewith.

82. A flyer from an AB-distributor in Beloit, Kansas advertises Coors Light and Miller Lite as “Value Beers,” because they “are brewed with corn syrup.” Reis Decl. ¶ 18.

RESPONSE: Disputed. The cited declaration does not establish the truth of the matter asserted and Anheuser-Busch lacks sufficient information to answer. Paragraph 82 purports to describe and quote Reis Dec., Ex. 3. That document speaks for itself and must be read in context, and Anheuser-Busch disputes any characterizations inconsistent therewith.

83. A true and correct copy of the flyer is submitted to the Court as Exhibit 3 to Reis Declaration.

RESPONSE: Anheuser-Busch lacks knowledge or information sufficient to form a belief as to the truth of paragraph 83 and, on that basis, disputes the same.

Survey Evidence of Consumers Reaction to Campaign⁴

84. Dr. Yoram Wind from the University of Pennsylvania’s Wharton school, and one of the preeminent consumer behavior and marketing experts in the world, surveyed 2,034 consumers who were exposed to a test or control version of AB’s “Mountain Folk” commercial, and compared the responses of 1016 respondents who were randomly assigned to view the test ad to the responses of 1018 respondents who were randomly assigned to view a control ad. Report of Dr. Yoram Wind (“Wind Report”) p. 5, ¶ 42, p. 12, ¶ 42.

RESPONSE: Disputed in part. Anheuser-Busch does not dispute that Dr. Wind is a professor at the Wharton School of the University of Pennsylvania. Anheuser-Busch also

⁴ This heading is not a statement of fact and, therefore, no response is required. To the extent that a response is required, this heading is disputed because Anheuser-Busch ads are not false or misleading. *See* Response ¶ 29. Anheuser-Busch also disputes this heading to the extent that it suggests that the Bud Light ads mislead consumers., *See, e.g., id.* ¶¶ 29, 68-75, 85-105. This heading is disputed for the additional reason that Dr. Wind’s survey and report are flawed and unreliable. *See* Declaration of John R. Hauser. The proposition in this heading further is disputed on the grounds that it violates section II.A.2 of this Court’s Procedure to be Followed on Motions for Injunctive Relief because it cites no evidence in support of this proposition.

does not dispute that Dr. Wind contends in his report that he surveyed a total of 2,034 consumer responses to either a test commercial or to a so-called “control” commercial that was “exactly the same” as the test commercial “but contained a disclaimer with the information that MillerCoors believes to be true.” Wind Report p. 5, ¶ 15, p. 12 ¶ 42.

Anheuser-Busch disputes that Dr. Wind surveyed only 2,034 consumers, however. His report makes clear that 2,581 respondents made it past the survey’s screening questions and were qualified to participate in the survey. His report also states that more than 500 individuals were excluded on the grounds that they did not perceive the video to comparing Bud Light to Miller Lite and/or Coors Light with respect to corn syrup. Wind Report p. 14 ¶ 44, Fig 1.

Anheuser-Busch further disputes the statements in paragraph 84 to the extent that they suggest that Dr. Wind’s experiment, which he refers to as his “Likelihood of Deception” experiment, reliably determined what consumers who viewed the advertisements at issue believe with respect to corn syrup and Miller Lite or Coors Light.

Declaration of John R. Hauser.

85. The control ad was the same commercial as the test ad with the added, prominent disclaimer: “While Miller Lite and Coors Light are brewed using corn syrup, there is NO corn syrup in the Miller Lite and Coors Light you drink.” Wind Report p. 6, ¶ 15.

RESPONSE: Disputed. Paragraph 85 misquotes the Wind Report and is materially incomplete. The control ad “disclaimer” quoted in paragraph 85 does not match the disclaimer that was used in Dr. Wind’s survey and report. Hauser Dec. According to Dr. Wind’s report, the disclaimer that he used in his survey said:

While corn syrup is used during the brewing of Miller Lite and Coors Light, *there is NO corn syrup in the Miller Lite and Coors Light you drink.*

Wind Report p. 6, ¶ 15. This differs in multiple ways from the language quoted in paragraph 85, which reads:

While Miller Lite and Coors Light are brewed using corn syrup, there is NO corn syrup in the Miller Lite and Coors Light you drink.

MillerCoors' Statement of Proposed Findings of Fact ¶ 85 (purporting to quote Wind Report p. 6, ¶ 15). In the same way, the quoted language in paragraph 85 also does not match the language in the disclaimer video that was provided by MillerCoors to Anheuser-Busch as part of Dr. Wind's backup data. Simon Dec., ¶¶ 4-5.

Based on the materials provided to Anheuser-Busch by MillerCoors, Anheuser-Busch disputes that Dr. Wind's survey data and report contain or present responses from any respondents who viewed the quoted "disclaimer" language in paragraph 85. Dr. Wind Report p. 6, ¶ 15; Simon Dec., ¶¶ 4-5. To the extent that MillerCoors, through paragraph 85 or other paragraphs of its Statement of Proposed Findings of Fact, purports to assert statements, opinions, or conclusions based on responses to the "disclaimer" language quoted in paragraph 85, those statements, opinions, or conclusions are disputed.

Paragraph 85 is disputed for the related reason that Dr. Wind's report and report backup appear to show the existence of unreported data. Hauser Dec. Dr. Wind purports to have used only one disclaimer in his control ad, but his report and the report backup refer to the existence of two disclaimers. *Id.* Dr. Wind's survey data does not show responses from any respondents who were shown one of those two disclaimers. *Id.* Adding to the confusion, the disclaimer in the so-called control ad that was provided to Anheuser-Busch from MillerCoors does not match the disclaimer that is quoted in Dr. Wind's report.

Id. It is unclear from either Dr. Wind's report or the backup which disclaimer actually was used in the survey. ***Id.*** Nor does Dr. Wind explain why, if he only used one of the two disclaimers, he used the one that he did and did not use the other. ***Id.***

86. The consumer survey shows that a representative advertisement from AB's Campaign misleads 61% of light beer consumers (a net of 35% over the control group) into thinking that there is corn syrup in Miller Lite and Coors Light. Wind Report p. 27, ¶¶ 80-81, Fig. 5.

RESPONSE: Disputed. Anheuser-Busch disputes the statements in paragraph 86 because Dr. Wind's "Likelihood of Deception" experiment is flawed and does not reliably determine what consumers who saw the advertisements at issue believe with respect to corn syrup and Miller Lite or Coors Light. *See, e.g.,* Hauser Dec. The figures in this statement appear to be based on responses to a closed-ended question, QF7b, which biased the survey responses. *See, e.g., id.* Moreover, this statement leaves out the fact that no respondents in the test group volunteered in response to open-ended questions about the commercial that they were left with the impression that corn syrup was in the final beers of Miller Lite and Coors Light.

Responding further, the proposition in paragraph 86 is disputed for the additional reason that it reportedly is based on an analysis of consumer survey responses to a control ad that differs from the control ad described in Dr. Wind's report and that provided to Anheuser-Busch by MillerCoors. *Compare* Proposed Finding of Fact ¶ 85 *with* Wind Report p. 6, ¶ 15 and Simon Dec., ¶¶ 4-5.

87. The difference in perception of 35% of consumers "is both economically meaningful and statistically significant." Wind Report p. 2, ¶ 8.

RESPONSE: Disputed. Anheuser-Busch disputes the statements in paragraph 87 because they are based on Dr. Wind’s “Likelihood of Deception” experiment, which is flawed and does not reliably determine what consumers who saw the advertisements-at-issue believe with respect to corn syrup and Miller Lite or Coors Light. *See, e.g., Hauser Dec.; see also Response to Proposed Finding of Fact ¶ 86.* Responding further, Anheuser-Busch disputes this statement for the reasons set forth in its response to Proposed Finding of Fact ¶ 87.

88. The phrases “uses corn syrup”, “brewed with corn syrup” and “made with corn syrup” can be interpreted to mean that corn syrup is added as a finishing ingredient to the beer. Wind Report p. 25, ¶ 78.

RESPONSE: Disputed. Anheuser-Busch disputes the statements in paragraph 88 because they are based on Dr. Wind’s “Likelihood of Deception” experiment, which is flawed in that it (1) relies on leading and suggestive close-ended questions, (2) ignores the answers to open-ended questions, and (3) uses a fundamentally inadequate control. *See, e.g., Hauser Dec.* Dr. Wind’s study does not reliably determine what consumers who saw the advertisements-at-issue believe with respect to corn syrup and Miller Lite or Coors Light. *Id.* Responding further, Anheuser-Busch disputes this paragraph because it is unsupported by the cited source. Neither paragraph 78 of Dr. Wind’s report nor the verbatim comments provided by MillerCoors as backup for Dr. Wind’s report contain the phrase “finishing ingredient.” *See Wind Report p. 25, ¶ 78; Simon Dec., ¶ 8.*

89. The phrase “made with” as utilized in the Campaign is ambiguous because Respondents in the deception survey described the association between *Miller Lite* and *Coors Light* and corn syrup in a number of different ways. Wind Report p. 25, ¶ 78.

RESPONSE: Disputed in part. Anheuser-Busch does not dispute that survey respondents provided different answers from one another in response to the various open-ended questions in Dr. Wind’s survey. Anheuser-Busch disputes that the phrase “made with” is ambiguous. Anheuser-Busch also disputes the statements in ¶ 89 to the extent they suggest that that the association consumers described was that corn syrup was in the beer they drink or that corn syrup and HFCS are the same. See Response to ¶ 87 (no respondents in the test group volunteered in response to open-ended questions that they believed corn syrup to be in the Miller Lite or Coors Light beer they drink); Hauser Dec. (“only 1.3 percent of all respondents mentioned “fructose” in their open-ended responses.”). Anheuser-Busch further disputes this statement for the reasons set forth in its response to Proposed Finding of Fact ¶ 88. Except as so stated, the statements in paragraph 89 are disputed.

90. Significantly more respondents who saw the test stimulus than who saw the control stimulus believed that the commercial implied that corn syrup and high fructose corn syrup are the same. Wind Report p. 31, ¶¶ 86, Fig. 8.

RESPONSE: Disputed. Anheuser-Busch disputes the conclusion in paragraph 90 because it is unsupported by the evidence, as set forth in Anheuser-Busch’s response to Proposed Finding of Fact ¶ 88. Further, only 1.4 percent (14 out of 1,016) of respondents who saw the original video advertisement and 1.3 percent (13 out of 1,018) of respondents who saw the video advertisement with disclaimer mentioned fructose” (or a variation of “fructose”) in their open-ended responses. Hauser Dec. This difference is not statistically meaningful. *Id.*

91. The “ingredients” focus of the AB ads prior to the Super Bowl served to “prime”

consumers to think of beer ingredients when they later encountered AB's Campaign, which calls out the use of corn syrup. Wind Report p. 35, ¶ 89(d).

RESPONSE: Disputed. Anheuser-Busch disputes the conclusions in paragraph 91 because they are based on Dr. Wind's "Likelihood of Deception" experiment, which is flawed and does not reliably determine what consumers who saw the advertisements-at-issue believe with respect to corn syrup and Miller Lite or Coors Light. See, e.g., Hauser Dec. Anheuser-Busch further disputes the conclusions in paragraph 91 because his analysis of consumer perceptions and consumer communications and social media is flawed. Id. Anheuser-Busch also disputes these conclusions to the extent that they are based on Anheuser-Busch supposedly unveiling the fact that corn syrup is an ingredient in Miller Lite and Coors Light; in truth, MillerCoors has disclosed its use of corn syrup as an ingredient in those beers for over five years. Harrison Dec., Ex. 4, (Great Beers); id., Ex. 3, (December 18, 2018 Nutritional Data).

92. In January 2019 (before the Campaign launched), MillerCoors had received virtually no consumer communications related to corn syrup. Wind Report p. 38, ¶ 93.

RESPONSE: Disputed. Anheuser-Busch disputes the statement in paragraph 92 because it is vague, incomplete, and requires context. The Wind Report states that MillerCoors received "virtually no consumer communications related to corn syrup" in January, and that in February, MillerCoors received "145 such communications...nearly 50 times as many as it had received before the corn syrup ad campaign, while the overall number of consumer communications MillerCoors received decreased." Wind Report, p. 38, ¶ 93. This small number of communications after the Super Bowl consists of thoughts from a miniscule fraction of the overall relevant consumers, and Dr. Wind provided no evidence that his dataset of particular consumers who actively reached out to MillerCoors

is representative of all potential MillerCoors consumers. Hauser Dec. Nor does Dr. Wind provide evidence that this small number of consumers who did actively reach out to MillerCoors is representative of the consumers who did not. *Id.* Dr. Wind provides no evidence that his review of MillerCoors' consumer communications is applicable beyond the individual consumers. *Id.* Anheuser-Busch further disputes this statement to the extent that it implies that there was an increase in negative consumer sentiment toward MillerCoors following the launch of the advertisements-at-issue. *Id.* ¶¶ 53-55.

93. Following the Super Bowl, MillerCoors received approximately 170 consumer communications regarding corn syrup. Wind Report p. 38, ¶ 93.

RESPONSE: Disputed. Anheuser-Busch disputes this statement because there is no evidence that the inquiries were from people who were actual consumers of Miller Lite or Coors Light and to the extent that it implies that there was a spike in consumer inquiries related to corn syrup following the launch of the advertisements-at-issue or is evidence of increased negative sentiment toward MillerCoors. Hauser Dec. Anheuser-Busch also disputes this statement to the extent that it implies that this number of consumer communications is meaningful in the context of the total number of viewers of these advertisements or is representative of all potential MillerCoors consumers. *Id.*; *see also* Response to Proposed Finding of Fact ¶ 92. Except as so stated, the statements in paragraph 93 are disputed.

94. Eighteen percent of the consumer communications received by MillerCoors noted that the presence of corn syrup would cause those consumers to likely end or decrease their purchases of Miller Lite or Coors Light. Wind Report pp. 39, ¶ 94.

RESPONSE: Disputed. Anheuser-Busch disputes this statement because there is no evidence that the communications were from people who were actual consumers of Miller

Lite or Coors Light. This percentage of consumer communications is based on a small number of communications that consist of thoughts from a miniscule fraction of the overall relevant consumers. Hauser Dec. Dr. Wind provided no evidence that his dataset of particular consumers who actively reached out to MillerCoors is representative of all potential MillerCoors consumers. Hauser Dec. Nor does Dr. Wind provide evidence that this small number of consumers who did actively reach out to MillerCoors is representative of the consumers who did not. *Id.* ¶ 55. Dr. Wind provides no evidence that his review of MillerCoors' consumer communications is applicable beyond the individual consumers. *Id.*

Responding further, Anheuser-Busch disputes paragraph 94 because it implies that there was an increase in negative sentiment toward MillerCoors or that the advertisements-at-issue mislead these individual consumers or other consumers. *Id.* ¶¶ 53-55; *see also* Response to Proposed Finding of Fact ¶ 29. Anheuser-Busch also disputes this statement to the extent that it implies that this percentage of consumer communications is meaningful in the context of the total number of viewers of these advertisements or is representative of all potential MillerCoors consumers. *Id.*; *see also* Response to Proposed Findings of Fact ¶¶ 92-93.

95. The social media activity generated after the Campaign demonstrated consumer confusion regarding the presence of corn syrup in the final Miller Lite and Coors Light beer products. WindReportp. 50, ¶ 118.

RESPONSE: Disputed. Anheuser-Busch disputes this conclusion because it is unreliable, based on flawed analysis and methodology, and supported by no evidence that shows that the consumer sentiments expressed on social media and summarized in the Wind Report are representative of the broader consumer population's intent to purchase

MillerCoors products. Hauser Dec. Anheuser-Busch further disputes this conclusion to the extent that it implies support or validation for the findings of Dr. Wind’s flawed survey. *Id.*

96. The social media activity showed significant negative sentiment toward MillerCoors as a result of the Campaign. Wind Report pp. 39-41, ¶¶ 94-95, Fig. 12.

RESPONSE: Disputed. Anheuser-Busch disputes this conclusion because it is unreliable, based on flawed analysis and methodology, and supported by no evidence that shows that the consumer sentiments expressed on social media and summarized in the Wind Report are representative of the broader consumer population’s intent to purchase MillerCoors products. Hauser Dec. Anheuser-Busch further disputes this conclusion to the extent that it implies support or validation for the findings of Dr. Wind’s flawed survey. *Id.*

97. At the direction of Dr. Wind, Voluble, collected posts from various social media forums and reviews, including Instagram, Reddit, Twitter and YouTube. Wind Report p. 42, ¶100.

RESPONSE: Anheuser-Busch does not dispute that the Wind Report states that Dr. Wind asked Voluble to collect social media posts published on various forums between January 1, 2019 and March 12, 2019. Anheuser-Busch lacks knowledge or information sufficient to confirm the truth of this statement and, on that grounds, disputes the same.

98. Voluble-collected posts were organized into two categories—(1) Twitter posts in which an account authored by AB mentioned corn syrup, and subsequent retweets of those posts (the “Bud Light-Owned Dataset”); and (2) online conversations mentioning corn syrup in Bud Light, Miller Lite or Coors Light (the “Corn Syrup Dataset”). Wind Report p.43, ¶ 102.

RESPONSE: Anheuser-Busch does not dispute that the Wind Report states that Voluble collected posts organized into the two categories listed in paragraph 98. Anheuser-

Busch lacks knowledge or information sufficient to confirm the truth of this statement and, on that ground, disputes the same. Anheuser-Busch further disputes this statement to the extent that it implies that these datasets are reliable, capture “the majority of social media discussion,” Wind Report p. 48, ¶ 112, or support Dr. Wind’s flawed conclusion that the advertisements-at-issue generated negative consumer sentiment toward MillerCoors based on concerns relating to the presence of corn syrup in beer. Hauser Dec.

99. The Bud Light Owned Dataset generated 3,206,145 total impressions. Wind Report p. 45, ¶¶108-109, Fig. 14.

RESPONSE: Disputed. Anheuser-Busch disputes this statement because, although the Wind Report portrays these “total impressions” as actual impressions, review of the methodology Dr. Wind used to calculate these impressions shows that these are only potential impressions. Hauser Dec. This statement further is disputed because Dr. Wind’s method for estimating the total social media impressions is flawed, employs unrealistic assumptions, and exaggerates the total number of impressions. *Id.*

100. The Corn Syrup Dataset generated 314,587,587 total impressions. Wind Report p. 48, ¶ 112, Fig. 16.

RESPONSE: Disputed. Anheuser-Busch disputes this statement because, although the Wind Report portrays these “total impressions” as actual impressions, review of the methodology Dr. Wind used to calculate these impressions shows that these are only potential impressions. Hauser Dec. This statement further is disputed because Dr. Wind’s method for estimating the total social media impressions is flawed, employs unrealistic assumptions, and exaggerates the total number of impressions. *Id.* Anheuser-Busch further

disputes this statement because the so-called Corn Syrup Dataset considers only a small portion of the relevant online conversation and is based on only 24,273 unique posts. *Id.*

101. Voluble also analyzed a random sample of the Corn Syrup Dataset large enough to draw conclusions with a high degree of statistical precision. Wind Report p. 43, ¶ 104, p. 49, ¶ 116.

RESPONSE: Disputed. Anheuser-Busch disputes this statement because the so-called Corn Syrup Dataset considers only a small portion of the relevant online conversation, 24,273 unique posts, which is an incomplete universe. Hauser Dec.

102. Consumers expressed negative sentiment toward corn syrup in connection with beer or beer brewing more than twice as often as positive sentiment. Wind Report p. 50, ¶ 117, Fig. 17.

RESPONSE: Disputed. Anheuser-Busch disputes this conclusion because it is based on Dr. Wind's social media study, which employs a flawed methodology that exaggerates the impact of the advertising. Hauser Dec. Dr. Wind's method for determining impressions employs unrealistic assumptions, does not reflect consumer perception, and exaggerates the total number of impressions. *Id.* Further, Dr. Wind's Corn Syrup Dataset considers only a small portion of the relevant online conversation, 24,273 unique posts, which is an incomplete universe. *Id.* Anheuser-Busch further disputes this conclusion for the reasons stated in Anheuser-Busch's Response to Proposed Findings of Fact ¶¶ 98-100.

103. 28.6% of consumer posts indicated that the author was confused regarding the presence of corn syrup in the final beer products. Wind Report p. 54, ¶ 124, Fig. 19.

RESPONSE: Disputed. Anheuser-Busch disputes this conclusion because it is based on Dr. Wind's social media study, which employs a flawed methodology that exaggerates the impact of the advertising. Hauser Dec. Dr. Wind's method for determining impressions

employs unrealistic assumptions, does not reflect consumer perception, and exaggerates the total number of impressions. *Id.* Further, Dr. Wind’s Corn Syrup Dataset considers only a small portion of the relevant online conversation, 24,273 unique posts, which is an incomplete universe. *Id.* Anheuser-Busch further disputes this conclusion for the reasons stated in Anheuser-Busch’s Response to Proposed Findings of Fact ¶¶ 98-100. Anheuser-Busch also disputes this conclusion to the extent that it implies support or validation for the findings of Dr. Wind’s flawed “Likelihood of Deception” survey. *Id.* ¶ 62.

104. Dr. Wind’s opinion is that the social media analysis demonstrated the Campaign created confusion, health concerns, and disgust toward *Miller Lite* and *Coors Light* beers. Wind Report p. 58, ¶ 133.

RESPONSE: Disputed. Anheuser-Busch disputes this conclusion because it is based on Dr. Wind’s social media study, which employs a flawed methodology that exaggerates the impact of the advertising. Hauser Dec. Dr. Wind’s method for determining impressions employs unrealistic assumptions, does not reflect consumer perception, and exaggerates the total number of impressions. *Id.* Further, Dr. Wind’s Corn Syrup Dataset considers only a small portion of the relevant online conversation, 24,273 unique posts, which is an incomplete universe. *Id.* Anheuser-Busch further disputes this conclusion for the reasons stated in Anheuser-Busch’s Response to Proposed Findings of Fact ¶¶ 98-100. Anheuser-Busch also disputes this conclusion to the extent that it implies support or validation for the findings of Dr. Wind’s flawed “Likelihood of Deception” survey. *Id.* ¶ 62.

105. Dr. Wind’s opinion is that the Campaign has damaged MillerCoors. Wind Report p. 2, ¶ 4, p. 36, ¶ 90, p. 59, ¶ 137.

RESPONSE: Disputed. Anheuser-Busch disputes this opinion because it is based on the results of Dr. Wind’s flawed “Likelihood of Deception” experiment and his flawed

social media analysis. Hauser Dec. Dr. Wind does not conduct any credible study or analysis suggesting that Bud Light's advertisements has or is likely to impact consumer purchase behavior. *Id.* Nor does Dr. Wind provide reliable and sufficient evidence to demonstrate that the Bud Light advertisements are exploiting negative consumer sentiment toward corn syrup or causing meaningful harm to MillerCoors. *Id.*

Responding further, Anheuser-Busch disputes this opinion because it is contradicted by public statements MillerCoors and its executives have made since Super Bowl LIII. As reported in a February 4, 2019 Beer Business Daily report, "MillerCoors' spokesman told [the reporter] privately that they were actually excited that AB opened the door to the conversation." Harrison Dec., Ex. 13, Feb. 4, 2019, *Beer Business Daily* Article; Ex. 8, Feb. 5, 2019, Open Letter (thanking Bud Light for "starting this conversation on such a big stage"); Ex. 14, Feb. 13, 2019, *Milwaukee Business Journal* Article (referring to the Bud Light advertisements as a "gift"); Ex. 15, Feb. 13, 2019, PR Week Article (statement by MillerCoors vice president that Bud Light advertisements were "a significant favor" to MillerCoors). Further, MillerCoors publicly has claimed that the advertisements have benefitted MillerCoors. Ex. 16, March 8, 2019, *Behind the Beer* (statement by MillerCoors vice president that MillerCoors has experienced "consistent growth across all channels" and that "we are confident that Bud Light's attempts to knock us off our path are not working"); Ex. 17, March 8, 2019, tweet by MillerCoors vice president Adam Collins (reporting that Miller Lite increased sales and market share in 2019 while Bud Light has lost sales and market share); Ex. 18, March 11, 2019, Tweet by @MillerCoors ("Since #cornroversy, Bud Light has lost share at an accelerated pace. Meanwhile, Miller Lite has posted share gains and Coors Light has held share."); Declaration of Cesar

Vargas, ¶¶ 3-4 (text messages from MillerCoors executive Peter Marino to Cesar Vargas, Vice President of Legal and Corporate Affairs for Anheuser-Busch, stating “You gave us a gift. Thank you” and “you don’t realize what a massive gift you handed us. Thank you” and “A sincere thanks to you and the team. This is awesome”); Declaration of Gemma Hart, ¶¶ 3-4 (text messages from Peter Marino to Gemma Hart, Vice President of Communications for Anheuser-Busch, stating “This is going to be a lot of fun. You gave us a gift” and “See you on the battlefield”).

Jurisdiction

106. The Court has subject matter jurisdiction over this action because MillerCoors claims are brought under the Lanham Act, a federal statute. *See* Dkt. 1, ¶¶ 99-116.

RESPONSE: Paragraph 106 is a legal conclusion to which no response is required.

107. The Court has personal jurisdiction over AB because AB conducts substantial amounts of business in the State of Wisconsin. *See* Reis Decl. ¶ 13.

RESPONSE: Paragraph 107 is a legal conclusion to which no response is required.

108. Venue is proper in this Court because AB conducts substantial amounts of business in the Western District of Wisconsin. *See* Reis Decl. ¶¶ 99-116.

RESPONSE: Paragraph 108 is a legal conclusion to which no response is required.

Dated: April 18, 2019

Respectfully submitted,

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