

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

MILLERCOORS, LLC,

Plaintiff,

v.

ANHEUSER-BUSCH COMPANIES, LLC,

Defendant.

Case No. 19-cv-00218

**PLAINTIFF MILLERCOORS, LLC'S MOTION
FOR LEAVE TO FILE A REPLY BRIEF IN SUPPORT OF
ITS MOTION FOR PRELIMINARY INJUNCTION**

Plaintiff MillerCoors, LLC (“MillerCoors”) respectfully requests leave to file a reply brief in support of its motion for preliminary injunction. This request is for leave to file a reply brief only. MillerCoors is not requesting leave to file additional declarations or Proposed Findings of Fact. A reply brief is necessary to address new issues and arguments raised by Defendant Anheuser-Busch Companies, LLC (“AB”) in its brief in opposition to the motion. Moreover, a reply brief will, we believe, benefit the Court by providing it with MillerCoors written response to AB’s arguments prior to the possible preliminary injunction hearing. Granting this request will not delay the proceedings.

MillerCoors initiated this lawsuit on March 21, 2019 by filing a complaint against AB for false advertising and trademark dilution under the Lanham Act. (Dkt. 1). MillerCoors filed its motion for preliminary injunction to enjoin AB from continuing its false campaign a week later on March 28, 2019. (Dkt. 8). The Court ordered a briefing schedule on the motion and set May 16, 2019 as a tentative date for a hearing. (Dkt. 19 & 24).

On April 18, 2019, AB filed a 50-page brief in opposition to MillerCoors motion for preliminary injunction. (Dkt. 39).¹ AB's brief was accompanied by six separate declarations, most of which attached new exhibit evidence (Dkt. 31-35, 40), as well as an expert report, which attached results from a social media study reportedly commissioned by AB for purposes of its opposition (Dkt. 36).

AB's brief and supporting materials raise several issues that MillerCoors did not and could not have anticipated in its opening motion. Moreover, the supporting declarations, exhibits, and expert report introduce new evidence and opinion that MillerCoors did not and could not have addressed in its opening submission. MillerCoors requests an opportunity to respond to these new issues and evidence in advance of any decision on its requested injunction.

MillerCoors will provide the Court with clarifying explanation and analysis on the new issues and evidence, including:

1. AB's comparison of MillerCoors use of certain terms, such as "ingredients," to AB's use of those terms in its current campaign. MillerCoors uses such terms in a responsible manner, by providing consumers pure information. In contrast, AB uses the terms in a context that causes consumer confusion.
2. AB's suggestion that MillerCoors has not shown harm from AB's campaign because MillerCoors has reported that one of its affected beers, *Miller Lite*, gained market share in spite of the campaign. This claim is unsupported by the law--lost market share is not the only way to show harm from a competitor's false advertising.

¹ AB filed a motion to dismiss MillerCoors complaint the same day. (Dkt. 28). MillerCoors is afforded a response to this motion. However, AB's motion to dismiss is more circumscribed than its brief in opposition, thus, MillerCoors response to the motion to dismiss cannot address all of the new issues raised in AB's opposition brief.

3. AB's use of statements made by MillerCoors representatives to attempt to show lack of injury. AB takes the statements out of context, but even taken on their face, the statements do not foreclose harm from AB's false campaign.
4. AB's reliance on its rebuttal expert and the results from a new social media study commissioned by AB. AB's rebuttal expert criticizes MillerCoors expert's report, but the criticisms lack merit.
5. AB's claim that it will be harmed by an injunction. AB rests this claim on the flawed premise that it has no other forms of advertising but its false campaign.
6. AB's new argument that MillerCoors has "unclean hands." AB claims that MillerCoors cannot act on AB's false campaign because it too has used the disputed terms--but this ignores the contexts in which the terms have been used by either party.
7. Other miscellaneous legal issues, including AB's interpretation of the standards for presumption of harm/injury, and AB's claims that MillerCoors delayed in filing its motion.

MillerCoors reply brief will not cause any delay in the proceeding. There are over three weeks before the Court's tentative date for a hearing. Accordingly, MillerCoors requests May 9, 2019 as its deadline to reply. This deadline corresponds with MillerCoors deadline to respond to AB's motion to dismiss (Dkt. 28) and its still one week before the hearing date (Dkt. 24).

For these reasons, MillerCoors respectfully requests leave to file a reply brief in support of its motion for a preliminary injunction on or before May 9, 2019.

Respectfully submitted this 25th day of April, 2019.

/s/ Donald Schott

Donald Schott
don.schott@quarles.com
Anita Marie Boor
anita.boor@quarles.com
QUARLES & BRADY, LLP
33 East Main Street, Suite 900
Madison, WI 53703
(608) 283-2452

Christopher A. Cole
ccole@crowell.com
David Ervin
dervin@crowell.com
CROWELL & MORING LLP
1001 Pennsylvania Avenue NW
Washington, D.C. 20004
(202) 624-2701

Holly Melton
hmelton@crowell.com
CROWELL & MORING LLP
590 Madison Avenue, 20th Floor
New York, NY 10022
(212) 895-4258

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the foregoing document to be served on counsel for Defendant Anheuser-Busch Companies, LLC via the Court's electronic filing system.

/s/ Donald Schott
Donald Schott