

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

THOMAS GREENBERG AND	:	CIVIL ACTION
GERALD GREENBERG, <i>on behalf of</i>	:	
<i>themselves and all others</i>	:	NO.
<i>similarly situated,</i>	:	
PLAINTIFFS,	:	
	:	
v.	:	CLASS ACTION
	:	
ANHEUSER-BUSCH COMPANIES, LLC ,	:	
DEFENDANT.	:	JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiffs Thomas Greenberg and Gerald Greenberg (“Plaintiffs”), by and through their undersigned attorneys bring this action individually and on behalf of all other similarly situated members of the public against Anheuser-Busch Companies, LLC, (“AB” or “Defendant”), for compensatory damages, restitution, and equitable, injunctive and declaratory relief. Plaintiffs allege, on information and belief except for information regarding their individual facts, as follows:

NATURE OF THE ACTION

1. Defendant AB makes claims about the alcohol content of its malt beverages in its products’ labels in the Commonwealth of Pennsylvania. In most instances, AB’s decision to make such claims is purely voluntary. AB’s claims are false in every instance and are based on its uniform corporate policy of overstating the amount of alcohol in each of AB’s products. Using highly advanced process control instrumentation and corporate protocols, AB can and does identify and control, with great accuracy and precision, the exact alcohol content of each unit it sells, but nevertheless intentionally misrepresents each such product as having a greater amount of alcohol than it actually contains. By falsely representing the alcohol content of the products it sells to

Pennsylvania residents, AB has violated Pennsylvania's consumer protection statutes as set forth below.

PARTIES, JURISDICTION AND VENUE

2. The instant case is a class action brought by Plaintiffs Thomas Greenberg and Gerald Greenberg, individually and on behalf of other similarly-situated consumers in Pennsylvania, arising out of AB's uniform corporate policy of overstating the alcohol content of its products.

3. This Court has original jurisdiction pursuant to the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1332(d)(2). The matter in controversy, exclusive of interest and costs, exceeds the sum or value of \$5,000,000 and is a class action in which any member of a class of plaintiffs is a citizen of a State different from any defendant.

4. This Court has personal jurisdiction over AB because it is authorized to do business and does business in Pennsylvania; it has specifically produced, marketed and sold malt beverages in Pennsylvania, and has sufficient minimum contacts with this State and/or sufficiently and purposefully avails itself to the markets of this State through its production, marketing and sales within this State, to render the exercise of jurisdiction by this Court permissible.

5. Venue as to AB is proper in this Court pursuant to 28 U.S.C. § 1391 in that many of the acts and transactions giving rise to this action occurred in this District and because AB:

- a. Is authorized to conduct business in this District and has intentionally availed itself of the laws and markets within this District through the production, marketing and sales of alcoholic beverages in this District;
- b. Does substantial business in this District; and
- c. Is subject to personal jurisdiction in this District.

6. At all relevant times, Plaintiffs Thomas Greenberg and Gerald Greenberg resided and continue to reside in Montgomery County, Pennsylvania. During the relevant

time period, Plaintiffs purchased AB's malt beverage products in reliance on the representations contained on AB's labels. Specifically, Plaintiff Thomas Greenberg regularly purchased approximately 2 cases of Budweiser per month during the past four years at retailers licensed by the Commonwealth of Pennsylvania to sell malt beverage products by the case. Plaintiff Gerald Greenberg regularly purchased approximately 4 cases of Budweiser per month during the past four years at retailers licensed by the Commonwealth of Pennsylvania to sell malt beverage products by the case. Each container of Budweiser they purchased had a claim set forth on the label that the alcohol content of that container was 5 percent by volume. Plaintiffs have since learned that these claims of 5 percent alcohol were in each case overstated. Plaintiffs took AB's stated percentage of alcohol into account in making their purchases and would not have purchased AB's malt beverages had they known that AB's representations were false. Based on Defendant's representations and claims, Plaintiffs purchased malt beverages that had less value than what they paid, and has accordingly suffered legally cognizable damages proximately caused by Defendant's misconduct.

7. AB is a Delaware limited liability corporation, wholly owned and controlled by Anheuser-Busch InBev SA/NV, a publicly-traded company (NYSE: BUD). Anheuser-Busch InBev SA/NV was formed in November of 2008 following the merger of InBev and Anheuser Busch. Following the merger, AB vigorously implemented the deceptive practices described below, sacrificing the quality products once produced by Anheuser-Busch in order to reduce costs. AB's principal place of business is in St. Louis, Missouri. AB manufactures, markets, and sells alcoholic beverages to millions of consumers throughout the United States, including millions of consumers in Pennsylvania and in this District.

FACTS

8. AB possesses sophisticated process control technology that enables it to precisely identify and control the exact alcohol content of malt beverages to within

hundredths of one percent (i.e. .01%). Because water is less expensive than alcohol, AB adds extra water to its finished products to produce malt beverages that consistently have significantly lower alcohol content than the percentage displayed on its labels. By doing so, AB is able to produce a significantly higher number of units of beer from the same starting batch of ingredients. However, consumers receive watered down beer containing less alcohol than is stated on the labels of AB's products. **There are no impediments – economic, practical or legal – to AB accurately labeling its products to reflect their true alcohol content. Nevertheless, AB uniformly misrepresents and overstates that content.** On information and belief, AB's mislabels the alcohol content in this manner for at least the following products: "Budweiser"; "Bud Ice"; "Bud Light Platinum"; "Michelob"; "Michelob Ultra"; "Hurricane High Gravity Lager"; "King Cobra"; "Busch Ice"; "Natural Ice"; "Black Crown" and "Bud Light Lime."

9. AB's uniform misrepresentations deceive reasonable consumers who rely on AB's labels, and allow AB to gain an unfair competitive advantage in violation of Pennsylvania law.

A. AB's Unlawful, Unfair and Fraudulent Business Practices

10. AB's parent company, Anheuser-Busch InBev SA/NV, is the world's largest producer of alcoholic beverages. In 2011, its global production exceeded 10 billion gallons of malt beverages, on which it generated gross profits of more than \$22 billion. In the United States alone, ABI operates 13 large scale breweries, producing over three billion gallons of malt beverages in 2011.¹

i. The Brewing Process for Malt Beverages

11. AB processes each batch of malt beverages utilizing what it terms "high gravity," meaning that certain key variables, such as alcohol content, are initially kept at specifications above the desired final product, until the last stage. At this last stage, water and CO2 are added to yield a final product.

¹ See 2011 ABI Annual Report, p. 2, 8, 47.

12. At the heart of any alcoholic beverage process is “fermentation.” This process involves yeast converting certain carbohydrates into ethanol (intoxicating alcohol to humans), and CO₂ (carbon dioxide for carbonation). It is the expensive and time-consuming fermentation process that creates the alcohol content in the beverage, and it is this by-product, ethanol, which creates demand for alcoholic malt beverages. Hence, the economic incentive to “water down” malt beverages.

ii. **AB’s Deliberate Misrepresentations**

13. Sometime prior to 2008, AB began using in-line alcohol measuring instrumentation, known as Anton Paar meters – technology which allows AB to measure the alcohol content of malt beverages to within hundredths of one percent (i.e. + or - 0.01%).

14. But AB does not use this precision technology, and resulting high accuracy, to provide consumers with exactly what is on the labels; instead, AB uses its precise knowledge of the alcohol content of its products to deceive consumers. During AB’s “finishing adjustment process,” the last process the malt beverage undergoes before it is bottled, AB waters down its products, “shaving” the total alcohol content to well below the percentage stated on its labels. Specifically, AB uses its technological prowess to produce malt beverages in which the alcohol content is consistently lower than the level it promises on its labels.

15. If AB chose to, it could use its Anton Paar meters to target the exact alcohol content of its finished products to conform to the representations on its labels. Conversely, since AB knows the precise alcohol content of each of its products, it could conform its labels for each such product to accurately state that content. Instead, and even though AB knows the true alcohol content of its products, it intentionally and falsely overstates the alcohol content of its malt beverages. AB never intends for the malt beverage to possess the amount of alcohol that is stated on the label. As a result, AB’s

customers are overcharged for watered-down beer and AB is unjustly enriched by the additional volume it can sell.

16. AB's conduct is intentionally deceptive and violates Pennsylvania's Unfair Trade Practices and Consumer Protection Law ("UTCPL") prohibiting consumer deception. Moreover, AB is also subject to various specific requirements for accuracy and honesty when claiming alcohol content of products sold to the general public. AB's failures to comply with these requirements, in addition to its voluntary misrepresentations about the alcohol content of its malt beverages, violate Pennsylvania's consumer protection statutes.

CLASS ACTION ALLEGATIONS

17. Pursuant to Federal Rules of Civil Procedure 23(a) and 23(b), Plaintiffs bring this action individually and on behalf of all others similarly situated. Plaintiffs will seek certification of the following class:

All consumers who purchased at retail for personal, family or household purposes and not for re-sale within the statutory time period one or more of the following Anheuser-Busch Companies, LLC products at retail locations in the Commonwealth of Pennsylvania for off-site consumption: "Budweiser"; "Bud Ice"; "Bud Light Platinum"; "Michelob"; "Michelob Ultra"; "Hurricane High Gravity Lager"; "King Cobra"; "Busch Ice"; "Natural Ice"; "Black Crown" and "Bud Light Lime."

18. **Numerosity:** AB enjoys a 47.7% market share of the sale of malt beverages in the United States. Although the number of class members is not presently known, it is likely to be comprised of millions of consumers throughout Pennsylvania. The Class is certainly so numerous that joinder of all members of the Class is impracticable.

19. **Commonality:** As outlined below, common questions of law and fact exist

as to all members of the Class. Common questions of fact and law exist because, *inter alia*, Plaintiffs and all class members purchased AB's alcoholic beverages, which were deliberately misrepresented as containing more alcohol than they actually contained.

20. ***Adequacy of Representation:*** Plaintiffs will fairly and adequately protect the interests of the members of the Class. Plaintiffs have retained highly competent and experienced class action attorneys to represent their interests and that of the Class. Plaintiffs and their counsel have the necessary financial resources to adequately and vigorously litigate this class action. Plaintiffs have no adverse or antagonistic interests to those of the Class. Plaintiffs are willing and prepared to serve the Court and the Class members in a representative capacity, with all of the obligations and duties material thereto, and are determined to diligently discharge those duties by vigorously seeking the maximum possible recovery for class members.

21. ***Typicality:*** Plaintiffs' claims are typical of the claims of the members of the Class because they purchased and consumed alcoholic beverages that were deliberately misrepresented as containing more alcohol than they actually contained. Thus, Plaintiffs and class members sustained the same injury arising out of AB's common course of conduct in violation of law as complained of herein. The injury of each class member was caused directly by AB's wrongful conduct in violation of law as alleged herein.

Rule 23(b) (3)

22. This action is appropriate as a class action pursuant to Rule 23(b) (3) of the Federal Rules of Civil Procedure.

23. ***Common Questions of Law and Fact Predominate:*** The questions of law and fact common to the members of the class predominate over any questions affecting only individual members. These common questions include, but are not limited to:

- a. Whether AB's products sold to class members were labeled as containing more alcohol than they in fact contained;

- b. Whether AB deliberately, and as a matter of corporate policy, misrepresented their products sold to class members as containing more alcohol than they actually contained;
- c. Whether AB engaged in deceptive and unfair business practices related to its representations about the alcohol content of the products it sold to class members;
- d. Whether Plaintiffs and class members are entitled to declaratory, injunctive and/or equitable relief; and
- e. Whether Plaintiffs and class members are entitled to compensatory damages, including actual and statutory damages plus interest thereon and/or monetary restitution.

24. ***Superiority:*** A class action is superior to other available methods for the fair and efficient adjudication of the controversy, and will create a substantial benefit to both the public and the courts in that:

- a. Costs of prosecuting the action individually will vastly exceed the costs for prosecuting the case as a class action;
- b. Class certification will obviate the necessity of a multiplicity of claims;
- c. It is desirable to concentrate the litigation of these claims in a single forum;
- d. Unification of common questions of fact and law into a single proceeding before this Court will reduce the likelihood of inconsistent rulings, opinions, and decisions.
- e. A class action is a superior means of fairly and efficiently resolving this dispute. Given the complexity of the issues presented here, individual claims are not sufficiently sizeable to attract the interest of highly able and dedicated attorneys who will prosecute them on a

contingency basis. A class action is therefore essential to prevent a failure of justice.

25. Plaintiffs are unaware of any difficulties that are likely to be encountered in the management of this Class Action Complaint that would preclude its maintenance as a class action.

Rule 23(b) (2)

26. This action is also appropriate as a class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure.

27. Plaintiffs also seek injunctive and corresponding declaratory relief for the entire Class. AB acted in a manner generally applicable to the entire Class by deliberately misrepresenting their products as containing more alcohol than they actually contain.

28. AB's wrongful conduct and practices, if not enjoined, will subject class members and other members of the public to substantial continuing harm and will cause irreparable injuries to class members who are misled and denied their rights.

COUNT I

**VIOLATIONS OF PENNSYLVANIA UNFAIR TRADE PRACTICES
AND CONSUMER PROTECTION LAW**

29. Plaintiffs incorporate herein by reference all other paragraphs of this Complaint.

30. This cause of action is brought pursuant to the Pennsylvania Unfair Trade Practices Act and Consumer Protection Law ("UTCPL"), 73 P.S. § 201-1, *et seq.*, which provides protection for Pennsylvania consumers against unfair or deceptive acts or practices in the conduct of any trade or commerce as defined in 73 P.S. § 201-2(4)(i) - § 201-2(4)(xxi). *See* 73 P.S. § 201-3.

31. Plaintiffs and the Class are "persons" as defined by the UTCPL.

32. AB's ongoing deliberate manipulation of the brewing process and production of malt beverages, the alcohol content of which is intentionally misstated and inaccurate, violates the following subsections of the UTCPL, 73 P.S. § 201-2(4) in these respects:

- (a) § 201-2(4)(v) AB's acts and practices constitute misrepresentations that AB's malt beverages have characteristics, benefits or uses which they do not have;
- (b) § 201-2(4)(vii) AB misrepresented that its malt beverages are of a particular standard, quality and/or grade, when they are of another;
- (c) § 201-2(4)(ix) AB's acts and practices constitute the advertisement of goods, without the intent to sell them as advertised; and
- (d) § 201-2(4)(xxi) AB's acts and practices of misrepresenting the actual alcohol content of its products when offering them for sale in Pennsylvania constitutes deceptive conduct in violation of 73 P.S. 201-2(4)(xxi), as amended in 1996, otherwise known as the "catch-all" provision of Pennsylvania's UTCPL, which allows Plaintiffs to bring a claim for "deceptive" conduct.

33. By reason of the foregoing, Plaintiffs and the Class have been harmed, entitling them to injunctive relief, actual damages, treble damages, and cost and reasonable attorneys' fees.

COUNT II

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

34. Plaintiffs incorporate herein by reference all other paragraphs of this Complaint.

35. AB is a “merchant” as to the products within the meaning of Pennsylvania Commercial Code, 13 Pa. C.S.A. §2104. It manufactured, distributed and marketed the malt beverages, which are “goods” within the meaning of Pennsylvania Commercial Code, 13 Pa. C.S.A. §2105(a). Consequently, pursuant to Pennsylvania Commercial Code, 13 Pa. C.S.A. §2314, it impliedly warranted the malt beverages were merchantable, including that they would conform to the promises or affirmations of fact made on their containers or labels.

36. Plaintiffs and class members purchased AB’s malt beverages, which, as stated above, bore promises or affirmations of fact on their containers or labels with respect to the stated percentages of alcohol. As also stated above, AB breached the implied warranty of merchantability accompanying such transactions because Plaintiffs and class members did not receive goods that conformed to the promises or affirmations of fact on their containers or labels. *See* 13 Pa. C.S.A. §§ 2314(a) and 2314(b)(6).

37. As provided by Pennsylvania Commercial Code 13 Pa. C.S.A. §2607, Plaintiffs, individually and on behalf of the Class, notified AB in writing of its breach of warranty to give AB the opportunity to cure such breach. Plaintiffs sent this notice by certified mail, return receipt requested, to AB’s agent for service of process. A true and correct copy of said letter is attached hereto, made a part hereof and marked as Exhibit “A.”

38. AB has not cured the above breach of warranty. As a proximate result of this breach of warranty by AB, Plaintiffs and the class have suffered damages in an amount to be determined at trial.

COUNT III

Violation of Magnusson-Moss Warranty Act, 15 U.S.C.A. § 2301 et seq.

39. Plaintiffs incorporate herein by reference all other paragraphs of this Complaint.

40. Plaintiffs and the class members are consumers as defined in 15 U.S.C. § 2301(3).

41. AB is a supplier and warrantor as defined in 15 U.S.C. § 2301(4) and (5).

42. AB's malt beverages, as listed above, are consumer products as defined in 15 U.S.C. § 2301(1).

43. In connection with their sale of malt beverages, AB gave to Plaintiffs and all Class members who purchased the malt beverages an implied warranty as defined in 15 U.S.C. § 2301(7); namely, the implied warranty of merchantability. Specifically, AB warranted that the malt beverages would conform to the promises or affirmations of fact made on their containers or labels. Because the malt beverages did not conform to the promises and affirmations of fact about alcohol content made on their containers or labels, AB breached the implied warranty of merchantability.

44. AB's malt beverages, as listed above, are not governed by the Federal Food, Drug and Cosmetics Law.

45. By reason of AB's breach of the implied warranty of merchantability, AB proximately caused damage to Plaintiffs and the Class and is therefore liable to have violated the statutory rights of the Plaintiffs and Class members pursuant to the

Magnusson-Moss Warranty Act, 15 U.S.C.A. § 2310(d)(1)01et seq., thereby causing damage to Plaintiffs and the Class. Pursuant to 15 U.S.C. § 2310(d)(1), Plaintiffs and the Class are entitled to recover the damages proximately caused to them by AB's breaches of implied warranty. In addition, pursuant to 15 U.S.C. § 2310(d)(2), Plaintiffs and the Class are entitled to recover a sum equal to the aggregate amount of costs and expenses (including attorneys' fees based on actual time expended) determined by the Court to have been reasonably incurred by Plaintiffs and the Class for and in connection with the commencement and prosecution of this action.

46. Pursuant to 15 U.S.C. § 2310(e), on behalf of themselves and the Class, Plaintiffs notified AB in writing of its breach of warranty and violation of the MMWA to give AB the opportunity to cure such breach and violation. Plaintiffs sent this notice by certified mail, return receipt requested, to AB's registered agent for service of process. A copy of the letter is attached as Exhibit A. AB has not cured its breach as to Plaintiffs or any other members of the Class.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of the class, pray for an order:

- a. Declaring this a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of the proposed Class described herein and appointing Plaintiffs to serve as class representatives and Plaintiffs' counsel as Lead Counsel for the Class;
- b. Preliminarily and permanently enjoining Defendant from continuing to misrepresent the alcohol content of its malt beverages, and from pursuing the above policies, acts and practices related to such sales;
- c. Requiring Defendant to fund a corrective advertising campaign in order to remedy its wrongful and illegal conduct;

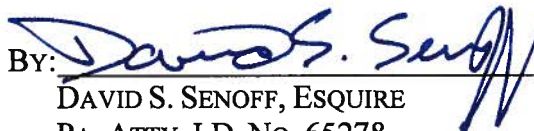
- d. Awarding restitution of the monies Defendant wrongfully acquired by its wrongful and illegal conduct;
- e. Requiring disgorgement of monies wrongfully obtained as a result of Defendant's wrongful and illegal conduct;
- f. Awarding compensatory damages, including actual, treble and statutory damages, arising from Defendant's wrongful and illegal conduct;
- g. Awarding exemplary damages as allowed by law;
- h. Awarding reasonable attorneys' fees and all costs and expenses incurred in the course of prosecuting this action;
- i. Awarding pre-judgment and post-judgment interest at the legal rate; and
- j. For such other and further relief as the Court deems just and proper.

REQUEST FOR JURY TRIAL

Plaintiffs hereby demand a jury trial on all issues so triable.

DATED: FEBRUARY 25, 2013

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