

PARTIES, JURISDICTION AND VENUE

2. This case is a class action brought by Plaintiff Michael Seidenstein, individually and on behalf of all other similarly-situated persons, arising out of AB's uniform corporate policy of overstating the alcohol content of numerous of its malt beverage 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 the members of the class of plaintiffs are citizens of states different from the state of Defendant's citizenship.

4. This Court has personal jurisdiction over AB because it is authorized to do business and does business in Texas; it has specifically produced, marketed and sold malt beverages in Texas, and it 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 District 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 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, Plaintiff resided and continues to reside in Collin County, Texas. During the relevant time period, Plaintiff purchased AB's malt beverage products in reliance on the representations contained on AB's labels. Specifically, Plaintiff purchased approximately one six-pack or twelve-pack of Bud Light Platinum, Bud Light Lime or Michelob Ultra per month during the past four years at various retailers (Plaintiff has, of course, only included Bud Light Platinum among his purchases since it entered the market). On the occasions

that Plaintiff purchased Bud Light Platinum, he specifically did so because of its higher alcohol content. The Bud Light Platinum he purchased claimed on its labels that its alcohol content was 6 percent by volume. The Bud Light Lime he purchased claimed on its labels that its alcohol content was 4.2 percent by volume. The Michelob Ultra he purchased claimed on its label that its alcohol content was 4.2 percent by volume. Plaintiff has since learned that these alcohol content claims were uniformly false in that the beer actually had lower alcohol content by volume. Plaintiff took AB's stated percentage of alcohol into account in making his purchases, and he would not have purchased AB's malt beverages had he known that AB's representations were false. Based on Defendant's representations and claims, Plaintiff purchased malt beverages that had less value than their value as warranted (the amount he paid), and he has accordingly suffered legally cognizable damages proximately caused by AB's misconduct. After learning the truth about AB's mislabeling of Bud Light Platinum, Bud Light Lime and Michelob Ultra, Plaintiff stopped purchasing them.

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 accelerated 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 is registered to do business in the state of Texas, and, in fact, operates one of its twelve breweries in Texas. AB manufactures, markets, and sells alcoholic beverages to millions of consumers throughout the United States, including millions of consumers in Texas and in this District. AB may be served with process through its registered agent for service of process in Texas, CT Corporation System, 350 N. St. Paul Street, Suite 2900, Dallas, Texas 75201-4234.

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 cheaper than alcohol, AB adds extra water to its finished products to produce numerous malt beverages that uniformly have significantly lower alcohol content than the percentages displayed on their 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 parent company, Anheuser-Busch InBev SA/NV ("ABI"), 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 breweries, producing over three billion gallons of malt beverages in 2011.¹

A. The Brewing Process for Malt Beverages

10. 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.

11. 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

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

creates the demand for alcoholic malt beverages. Hence, the economic incentive to “water down” malt beverages.

B. AB’s Deliberate Misrepresentations

12. 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%).

13. But AB does not use this precision technology, and resulting high accuracy, to provide consumers with exactly the alcohol content stated 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 packaged, AB waters down its products, “shaving” the total alcohol content to well below the percentages stated on their labels. Specifically, AB uses its technological prowess to produce numerous malt beverages in which the alcohol content is uniformly lower than the percentage it promises on its labels.

14. If AB chose to do so, it could use its Anton Paar meters to produce malt beverages containing almost exactly the alcohol content represented 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 numerous of its malt beverages. AB never intends for these 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 of beer it can sell.

CLASS ACTION ALLEGATIONS

15. Pursuant to Federal Rules of Civil Procedure 23(a) and 23(b), Plaintiff brings this action individually and on behalf of all others similarly situated. Plaintiff seeks certification of the following class (“Class”):

All individuals residing in Texas who purchased in Texas at retail for off-site family, personal or household use and not for re-sale within four years prior to the date of the filing of this action one or more of the following Anheuser-Busch Companies, LLC 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.”

Rule 23(a)

16. **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, the Class is likely to be comprised of millions of consumers. The Class is certainly so numerous that joinder of all members of the Class is impracticable.

17. **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*, Plaintiff and all Class members purchased AB’s alcoholic beverages, which were deliberately misrepresented as containing more alcohol than they actually contained.

18. **Adequacy of Representation:** Plaintiff will fairly and adequately protect the interests of the members of the Classes. Plaintiff has retained highly competent and experienced class action attorneys to represent his interests and those of the Class. Plaintiff’s counsel have the necessary financial resources to adequately and vigorously litigate this class action. Plaintiff has no adverse or antagonistic interests to those of the Class. Plaintiff is 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 he is determined to diligently discharge those duties by vigorously seeking the maximum possible recovery for class members.

19. **Typicality:** Plaintiff’s claims are typical of the claims of the members of the Classes because they all purchased and consumed alcoholic beverages that were deliberately mislabeled as containing more alcohol than they actually contained. Thus, Plaintiff 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)

20. *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 malt beverages (identified above) sold to Class members failed to conform to the promises or affirmations of fact contained on their labels in that their actual percentages of alcohol by volume were less than the amounts stated on their labels;
- b. Whether such failure to conform to the promises or affirmation of fact on the labels constituted a breach of the implied warranty of merchantability;
- c. Whether AB's breach of the implied warranty of merchantability proximately caused damages to Plaintiff and the Class;
- d. The proper measure of damages in this case for breach of the implied warranty of merchantability;
- e. Whether Plaintiff and the Class are entitled to recover damages and attorneys' fees based on AB's breach of the implied warranty of merchantability pursuant to 15 U.S.C. § 2310(d)(1) & (2);
- f. Whether AB violated TEX. BUS. & COM. CODE § 17.50(a)(2) by breaching the implied warranty of merchantability;
- g. Whether AB's breach of the implied warranty of merchantability was a producing cause of economic damages to Plaintiff and the Class;
- h. The appropriate measure of economic damages recoverable pursuant to TEX. BUS. & COM. CODE § 17.50(b)(1);

- i. Whether Plaintiff and the Class should be able to recover restitution for the amount by which Defendant has been enriched by its breach of implied warranty pursuant to TEX. BUS. & COM. CODE § 17.50(3); and
- j. Whether AB should be enjoined from its breach of implied warranty pursuant to TEX. BUS. & COM. CODE § 17.50(b)(2).

21. **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. Given the complexity of the issues presented here, Class members' 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;
- b. It is desirable to concentrate the litigation of these claims in a single forum;
- c. 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, in the extremely unlikely event that numerous individual actions are brought;
- d. In the extremely unlikely event that numerous individual actions are brought, the cost of prosecuting the actions individually will vastly exceed the cost for prosecuting this case as a class action; and
- e. In the extremely unlikely event that numerous individual actions are brought, Class certification will obviate the necessity of a multiplicity of claims.

22. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this case that would preclude its maintenance as a class action.

Rule 23(b) (2)

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

24. Plaintiff also seeks class-wide injunctive relief. AB acted in a manner generally applicable to all Class members by deliberately misrepresenting numerous of their malt beverages as containing more alcohol than they actually contain.

25. 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.

FIRST CAUSE OF ACTION

Breach of the Implied Warranty of Merchantability

26. Plaintiff incorporates herein by reference all facts alleged in the preceding and succeeding paragraphs as if fully set forth here verbatim.

27. AB is a "merchant" as to AB's malt beverages within the meaning of TEX. BUS. & COM. CODE § 2.104(a). It manufactured, distributed and marketed the malt beverages, which are "goods" within the meaning of TEX. BUS. & COM. CODE § 2.105(a). Consequently, pursuant to TEX. BUS. & COM. CODE § 2.314, 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.

28. Plaintiff and Class members purchased AB's malt beverages, which, as stated above, bore promises or affirmations of fact on their labels with respect to their alcohol content. AB breached the implied warranty of merchantability accompanying such transactions, because AB's malt beverages did not conform to the promises or affirmations of fact regarding their alcohol content contained on their labels, as set forth above.

29. As provided by TEX. BUS. & COM. CODE § 2.607(c)(1), Plaintiff, 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. Plaintiff sent this notice by certified mail, return receipt requested, to AB's attorney. A copy of the letter is attached as Exhibit A.

30. AB has not cured the above breach of warranty. As a proximate result of this breach of the implied warranty of merchantability by AB, Plaintiff and the Class have suffered damages measured by the difference in value between the malt beverage as warranted (their purchase prices) and their lower values as delivered.

31. Pursuant to TEX. CIV. PRAC. & REM. CODE § 38.001(8), Plaintiff and the Class are entitled to recover their reasonable attorneys' fees in connection with this cause of action for breach of the implied warranty of merchantability. Plaintiff has complied with TEX. CIV. PRAC. & REM. CODE § 38.002, because he is represented by an attorney, he presented his claim to a duly authorized agent of AB via the letter attached hereto as Exhibit A, and payment was not tendered by AB before the expiration of the thirtieth day after the claim was presented.

SECOND CAUSE OF ACTION

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

32. Plaintiff incorporates herein by reference all facts alleged in the preceding and succeeding paragraphs as if fully set forth here verbatim.

33. Plaintiff and Class members are consumers as defined in 15 U.S.C. § 2301(3).

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

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

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

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

affirmations of fact about alcohol content made on their labels, AB breached the implied warranty of merchantability.

38. By reason of AB's breach of the implied warranty of merchantability, AB proximately caused damages to Plaintiff and the Class as described above, and it is, therefore, liable to Plaintiff and Class members for such damages pursuant to 15 U.S.C. § 2310(d)(1). In addition, pursuant to 15 U.S.C. § 2310(d)(2), Plaintiff 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 Plaintiff and the Class for and in connection with the commencement and prosecution of this action.

39. Pursuant to 15 U.S.C. § 2310(e), on behalf of himself and the Class, Plaintiff 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. Plaintiff sent this notice by certified mail, return receipt requested, to AB's attorney. A copy of the letter is attached as Exhibit A. AB has not cured its breach as to Plaintiff or any other members of the Class.

THIRD CAUSE OF ACTION

Violation of the Texas Deceptive Trade Practices – Consumer Protection Act (“DTPA”) TEX. BUS. & COM. CODE § 1741, *et. seq.*

40. Plaintiff incorporates herein by reference all facts alleged in the preceding and succeeding paragraphs as if fully set forth here verbatim.

41. Plaintiff and all members of the Class are “consumers” as defined in DTPA § 17.45(4). Because AB breached the implied warranty of merchantability as to Plaintiff and all members of the Class, which was a producing cause of economic damages to them, measured as set forth above, they may maintain an action against AB pursuant to DTPA § 17.50(a)(2).

42. Pursuant to DTPA § 17.50(b)(1), Plaintiff and the members of the Class are entitled to recover their economic damages. In addition, pursuant to that same section, because AB's breach of the implied warranty of merchantability was committed knowingly, the jury may

award Plaintiff and each member of the Class up to three times the amount of their economic damages.

43. Pursuant to DTPA § 17.50(b)(3), Plaintiff and the Class are entitled to recover the extra profit (money acquired by AB from Plaintiff and the Class in violation of the DTPA) they made as a result of their dilution of the malt beverages.

44. Pursuant to DTPA § 17.50(b)(2), Plaintiff and the Class are entitled to an injunction preventing AB from continuing to violate the implied warranty of merchantability as described herein.

45. Pursuant to DTPA § 17.50(d), Plaintiff and the members of the Class are entitled to recover their court costs and reasonable and necessary attorneys' fees.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff Michael Seidenstein, individually and on behalf of the Class, requests the following relief:

- a. An order declaring this case may be maintained as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of the proposed Class described herein and appointing Plaintiff to serve as Class Representative and Plaintiff's counsel to serve as Class Counsel for the Class;
- b. A judgment permanently enjoining Defendant from continuing to misrepresent the alcohol content of its malt beverages;
- c. A judgment awarding restitution of the monies Defendant wrongfully acquired from Plaintiff and the Class by its breach of warranty;
- d. A judgment awarding compensatory damages;
- e. A judgment awarding additional damages under the DTPA;
- f. A judgment awarding reasonable attorneys' fees and all costs and expenses incurred in the course of prosecuting this action;
- g. A judgment awarding pre-judgment and post-judgment interest at the maximum permissible rates at law or in equity; and

h. A judgment awarding all such other and further relief as the Court deems just and proper.

REQUEST FOR JURY TRIAL

Plaintiff hereby demands a jury trial on all issues so triable.

Dated: February 28, 2013

Respectfully submitted,

/s/ Roger L. Mandel
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