

**Parties:** Molson Coors Beverage Company / Anheuser-Busch Companies LLC

**Product:** Miller Lite

**Product Type:** Food / Beverage

**Disposition:** Modified / Discontinued

**Claim:** Express Claims

## BBB NATIONAL PROGRAMS

### NATIONAL ADVERTISING DIVISION

ANHEUSER-BUSCH COMPANIES LLC ,  
*Challenger,*

MOLSON COORS BEVERAGE COMPANY,  
*Advertiser.*

Case No. 7183

Closed 02/03/2023

## FAST-TRACK SWIFT CASE

- NAD has found that claims that foods or beverages have a bad taste or no taste require substantiation.
- In the context in which it appears, “light beer shouldn’t taste like water. It should taste like beer” is not puffery or a mere opinion.

**Basis of Inquiry:** As part of NAD’s Fast-Track SWIFT program designed to quickly and efficiently review advertising claims that involve a single well-defined advertising issue, Anheuser-Busch Companies LLC (“A-B” or “Challenger”) challenged Molson Coors Beverage Company’s (“Molson Coors” or “Advertiser”) claim in television and online video advertising that “light beer shouldn’t taste like water. It should taste like beer.”

### I. Fast-Track SWIFT Eligibility<sup>1</sup>

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<sup>1</sup> A challenge is appropriate for determination in SWIFT if it involves a single, well-defined issue such as an express claim that does not require review of complex legal argument or evidence and is capable of resolution within the SWIFT timeline. NAD/NARB Procedures Sec. 1.1(E)(2). NAD has also designated specific categories of cases that it considers for SWIFT: (1) the prominence or sufficiency of disclosures, including disclosure issues in influencer marketing, native advertising, and incentivized reviews; (2) misleading pricing and sales claims; and (3) misleading express claims that do not require review of complex evidence or substantiation such as a review of clinical or technical testing or consumer perception evidence. To ensure that the challenged claim meets this criteria, NAD/NARB Procedures require an initial review by NAD when the SWIFT challenge is first filed and then again in response to an advertiser’s objection to the challenge being resolved in SWIFT. NAD/NARB Procedures, Sec. 6.1(C) and 6.2 (A). Further, if it becomes clear at any point during the pendency of a challenge that it is no longer appropriate for SWIFT, NAD will administratively close the case and it may be transferred to standard or complex track. NAD/NARB Procedures 6.2(C).

NAD thanks the Advertiser for its voluntary participation in the NAD Fast-Track SWIFT process.

The parties each manufacture competing light beers. Among others, A-B manufactures Bud Light and Michelob Ultra and Miller Coors manufactures Miller Lite. A-B challenged Molson Coors's claim that "light beer shouldn't taste like water. It should taste like beer." in advertising promoting Miller Lite.

One video features a male cyclist pedaling hard to reach the top of mountain. When he reaches the summit, he opens a blue slender can labeled "Extremely Light Beer" (which A-B argued is similar in appearance to a Michelob Ultra can). The tired cyclist refreshes himself by pouring the beer over his head and the announcer says "light beer shouldn't taste like water. It should taste like beer" The next shot shows a can of Miller Lite and concludes "More taste, 96 calories. Miller Lite." Another video features a female athlete strenuously exercising at a "boot camp" who also refreshes herself at the end of a workout by pouring a beer labeled "Extremely Light Beer" over her head. The announcer also says "light beer shouldn't taste like water. It should taste like beer" before concluding with "More taste, 96 calories. Miller Lite."<sup>2</sup>

The Challenger argued that the videos falsely disparage Michelob Ultra and other light beers by claiming that consumers find them to be tasteless or having a taste similar to water. The Challenger argued that the videos go even further than false disparagement into the realm of ash canning or false denigration by communicating that competing light beers are of little or no value to drink and only good for pouring out of the can to shower oneself as with water.

Molson Coors objected to A-B's request that the matter be considered under the Fast-Track SWIFT process on the grounds that the challenge is not actually predicated on an express claim, but rather whether there are any potential implications stemming from the entire content of the videos. Molson Coors also noted that its "more taste" claim had previously been the subject of an NAD proceeding, and in that case, the "more taste" claim necessitated the review of complex and voluminous evidence.<sup>3</sup>

NAD carefully considered Molson Coors's objection and determined that the challenge could proceed in SWIFT as it presents a single issue relating to the claim "light beer shouldn't taste like water. It should taste like beer" and whether it is misleading. NAD noted, however, that its review in this Fast-Track SWIFT challenge would be limited to this single issue and not a review of any potentially implied messages of a general taste preference.

## **I. Decision**

The Challenger argued that the videos, with their words — "light beer shouldn't taste like water. It should taste like beer" —and their imagery — tired athletes pouring beers on themselves to cool off — tell consumers that light beers other than Miller Lite taste like water. The Challenger contended that there is no evidence to suggest that its Michelob Ultra or other light beers are tasteless or taste like water.

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<sup>2</sup> In at least one version of the videos, the sentence "It should taste like beer" is not included. The Advertiser noted that the videos had stopped airing on television months prior to the filing of the challenge. The videos, however, remained available on YouTube.

<sup>3</sup> *MillerCoors, LLC (Miller Lite Beer)*, Report #6227, NAD/CARU Case Reports (December 2018).

The Advertiser argued that the challenged tagline is not an express claim but rather a subjective opinion about what beer should and should not taste like which cannot be objectively proved or disproved. The Advertiser also contended that the statement is puffery because it is not sufficiently specific and material enough to create expectations in consumers. The Advertiser did not submit any tests or other evidence supporting the claim that any competing light beers “taste like water.”<sup>4</sup>

NAD has found that claims that foods or beverages have a bad taste or no taste require substantiation.<sup>5</sup> In *Traeger Pellet Grills LLC (Traeger Grills)*, Report #6327, NAD/CARU Case Reports (December 2019), NAD reviewed advertising promoting wood burning grills. In a commercial, a man says that the meat cooking on his gas grill “tastes like gas.” NAD determined that this was an “unsupported objectively provable (and falsely denigrating) taste claim” as it would have been possible for the advertiser to test whether propane cooking made food taste like gas. As NAD explained in *Traeger Grills*, if the advertising “refers to specific attributes which are likely to suggest that a product is comparatively better in some recognizable way,” even if the claim is “communicated in a humorous way, such a message requires substantiation.”

Although no specific competing light beer is identified by name in the videos, NAD determined that tasting “like water” is a measurable attribute. Reliable sensory testing could demonstrate whether consumers detect a watery taste or the complete absence of taste. Consumers may also reasonably expect that the statement is supported by such evidence. In the context in which it appears, “light beer shouldn’t taste like water. It should taste like beer” is not puffery or a mere opinion. It appears in an advertisement where Miller Lite’s own taste is referenced (“More taste”) and a generic competing product is depicted. Thus in this context it is not a stray opinion because it appears where the subject is the relative taste attributes of Miller Lite versus other light beers. The activity depicted, athletes cooling off their bodies by showering themselves with a can of light beer rather than drinking it, is exaggerated and humorous, but speaks to the attribute of taste and serves to bolster the specific express message about other light beers tasting “like water.”<sup>6</sup>

As the Advertiser did not submit evidence supporting the claim that any other light beers “taste like water,” NAD recommended that the Advertiser discontinue the claim that “light beer shouldn’t taste like water. It should taste like beer.” Nothing in this decision precludes the Advertiser from making other truthful and not misleading claims relating to consumers’ taste preferences or other claims pertaining to the taste qualities of its beers or competing beers.

## II. Conclusion

NAD recommended that the Advertiser discontinue the claim that “light beer shouldn’t taste like water. It should taste like beer.” Nothing in this decision precludes the Advertiser from making other

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<sup>4</sup> Molson Coors submitted a declaration from its Director of Research and Development and Innovation in which he stated that market research and his experience indicates that consumers want their beer to taste like beer and not water, an opinion which he shares.

<sup>5</sup> See, e.g., *BA SPORTS NUTRITION, LLC (BodyArmor Sports Drink)*, Report #7047, NAD/CARU Case Reports (October 2021) (recommending that claim that Gatorade is “gross” be discontinued).

<sup>6</sup> As there was no evidence in the record relating to the taste qualities of any competing light beer or whether they taste “like water,” NAD did not reach the question of whether the blue “Extremely Light Beer” can in the videos signified a specific competitor such as Michelob Ultra.

truthful and not misleading claims relating to consumers' taste preferences or other claims pertaining to the taste qualities of its beers or competing beers.

### **III. Advertiser's Statement**

Molson Coors Beverage Company disagrees with the decision and recommendation of the National Advertising Division and will appeal the decision to the National Advertising Review Board. Anheuser-Busch took issue with a statement in the contested ads that "Light beer shouldn't taste like water. It should taste like beer." A-B argued that this statement disparaged Michelob Ultra. However, as NAD found, the ads do not expressly identify Michelob Ultra or any other light beers. Nevertheless, as part of its decision, NAD recommended that Molson Coors refrain from publicly stating that "light beer shouldn't taste like water." Molson Coors vehemently disagrees. It is our firm belief – one we believe is shared by our customers – that light beer should not taste like water, and we should not be precluded from sharing that opinion. (**#7183 ELU, closed 02/03/2023**)

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