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CYNTHIA LUMMIS, WYOMING

United States Senate

COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION

WASHINGTON, DC 20510-6125

WEBSITE: <https://commerce.senate.gov>

August 15, 2023

Mr. Michel Doukeris
Chief Executive Officer
Anheuser-Busch InBev SA/NV
Brouwerijplein 1
3000 Leuven
Belgium

Dear Mr. Doukeris:

I am writing to alert you to your subsidiary Anheuser-Busch's failure to comply with an investigation by the United States Senate Committee on Commerce, Science, and Transportation ("Commerce Committee" or "the Committee") regarding marketing alcohol to children and to request that you direct Anheuser-Busch to cooperate with the investigation.

On May 17, I wrote to Anheuser-Busch CEO Brendan Whitworth requesting documents and information regarding alarming allegations that Anheuser-Busch was marketing beer to minors through its partnership with social media influencer Dylan Mulvaney.¹ In response to my letter and at my request, the Code Compliance Review Board ("CCRB" or "the Board") of the Beer Institute, an industry-funded lobbyist group representing U.S. brewers, also initiated a review of Anheuser-Busch's compliance with the beer industry's self-imposed Advertising and Marketing Code ("Code").² A dissenting opinion in the CCRB review by retired Judge Paul Summers, the only attorney on the Board, corroborated my concerns.³ In his opinion, Judge Summers explained "Mulvaney appeals to persons below the legal drinking age with a 'special attractiveness' . . . is especially attractive to young teens and girls; is often recognized as preadolescent; and caters to very young people."⁴ Judge Summers concluded Anheuser-Busch "knew all this, or the company's

¹ A copy of the May 17, 2023, letter is attached as Exhibit A. The purchase or possession of alcohol by anyone under 21 is illegal throughout the U.S. and many states also prohibit the marketing of alcohol to children. *Alcohol Policy Information System: State Profiles of Underage Drinking Laws*, NAT'L INST. ON ALCOHOL ABUSE & PREVENTION (last visited Aug. 15, 2023), <https://alcoholpolicy.niaaa.nih.gov/underage-drinking/state-profiles>; see, e.g., Ala. Admin. Code r. 20-X-7-.01(h) ("No advertisement shall include anything which might appeal to minors by implying that the consumption of alcoholic beverages is fashionable or the accepted course of behavior."); 3 Va. Admin. Code § 5-20-10(D)(1) ("No advertising shall contain any statement, symbol, depiction or reference that [w]ould tend to induce minors to drink, or would tend to induce persons to consume to excess.").

² See Beer Institute Code Compliance Review Board, *Dylan Mulvaney Complaint* (July 18, 2023), <https://www.beerinstitute.org/wp-content/uploads/2023/07/CCRB-Dylan-Mulvaney-Complaint-Packet-with-Decisions-7.18.23.pdf>.

³ *Id.* at 70-74.

⁴ *Id.* at 74.

leadership should have known,” and found that Anheuser-Busch “violated the Code as to advertising and marketing to people below the legal drinking age.”⁵

Meanwhile, nearly three months have passed since I requested documents from Mr. Whitworth in my capacity as Ranking Member of the Commerce Committee, and Anheuser-Busch has yet to provide the Committee with a single document. Anheuser-Busch’s failure to cooperate and blatant disregard for U.S. congressional oversight is unacceptable. Given your broader responsibility for the Anheuser-Busch InBev portfolio of more than 500 brands, I trust you share my sincere concern with the possibility that Anheuser-Busch is marketing alcohol to children⁶ and will direct Anheuser-Busch to cooperate immediately with the Commerce Committee’s investigation. The level of cooperation the Committee receives will bear significantly on my assessment of whether this is part of a broader problem across the Anheuser-Busch InBev product line and whether changes to federal law are necessary to prohibit Anheuser-Busch InBev from marketing beer to children.

The Need for Clear Advertising Guidelines in the Digital Sphere

My May 17th requests were designed to obtain pertinent information about how Bud Light selects marketing partners and applies beer industry guidelines in the context of social media. There are currently no federal laws against advertising alcohol to minors, in part because of the beer industry’s professed commitment to self-regulation. As Ranking Member on the Commerce Committee, it is my duty to ensure that the Beer Institute’s private regulatory regime is working; if it is not, then our Committee may be forced to consider legislating to protect consumers, including impressionable children. Congress cannot effectively weigh the costs and benefits of legislation unless it understands how brewers are adapting to the digital sphere. Anheuser-Busch’s response to my request is thus key to the Committee’s consideration of such potential legislation.

It is concerning, for example, that brewers do not prescreen branded content by social media influencers. According to your company, “[s]uch marketing is unique in that both the content and the platform are not controlled by the brewer; rather, influencers develop their own content and post it on their own page on an agreed-upon platform.”⁷ In other words, Anheuser-Busch claims Mulvaney alone was responsible for the content of the February 11th and April 1st posts on behalf of Bud Light.⁸ Yet, as Judge Summers observed, “If a company sends a social media influencer a beer with his / her picture on the can, one can expect that the recipient will act on it. That is common sense.”⁹

⁵ *Id.*

⁶ *See id.* (“Mulvaney appeals to little children”).

⁷ *Response of Anheuser-Busch Companies to Senator Ted Cruz’s June 14, 2023 CCRB Complaint*, 4 (July 7, 2023), <https://www.beerinstitute.org/wp-content/uploads/2023/07/CCRB-Dylan-Mulvaney-Complaint-Packet-with-Decisions-7.18.23.pdf> [hereinafter *AB Response*].

⁸ This cannot be the full truth given that Anheuser-Busch apparently asked influencers to “assist it in promoting the Bud Light ‘Hold’ Super Bowl ad” and “Mulvaney was provided specific instructions” regarding posting on Instagram. *See id.* at 4, 7.

⁹ *Dylan Mulvaney Complaint*, *supra* note 2 at 74.

Anheuser-Busch's Initial Response

Based on those concerns, I sought documents from Anheuser-Busch to better understand how industry guidelines were applied to Bud Light's decision to partner with Mulvaney. I hoped these documents would shed light on how Anheuser-Busch "vets its partnerships," especially when "selecting online influencers for its marketing efforts."¹⁰ Thus my aim differs from that of the CCRB, whose "sole mission . . . is to examine the marketing/advertising *materials* that are the subject of a complaint," not to examine the selection process itself or the suitability of Code provisions.¹¹

My May 17th letter was initially met with a roughly page-long unsigned response from Anheuser-Busch failing to provide any documents. In subsequent communications with the Committee, counsel to Anheuser-Busch refused to provide any documents, citing the then-ongoing CCRB review.¹² This is nonsensical. A review conducted by an industry trade association is not a substitute for congressional oversight. The CCRB's review was limited in scope—the CCRB does not "investigate marketing partnerships"¹³ and did not demand supporting evidence from Anheuser-Busch. As CCRB Member Judge Summers observed, Anheuser-Busch "failed to provide the reasonable documentation" requested in my letter and complaint, even though I had issued "reasonable requests" and responses from Anheuser-Busch would have been "elucidating."¹⁴

Anheuser-Busch's Latest Response

Moreover, even now that the CCRB has completed its review, Anheuser-Busch persists in refusing to provide the requested documents,¹⁵ revealing plainly that the ongoing CCRB review was never the real reason for Anheuser-Busch's refusal to cooperate. Anheuser-Busch is now suggesting that CCRB review was sufficient, and that it need not cooperate with congressional document requests. This position is untenable; Anheuser-Busch does not decide whether and when a congressional investigation is concluded.

This position is also troubling given the factual inaccuracies in the CCRB majority opinion. The Board left lingering questions about the marketing partnership with Mulvaney and advanced a misleading narrative about the audience data reviewed by the brewer. We still do not know, for example, exactly when Bud Light hired Mulvaney. The CCRB majority's opinion also includes numerous inaccuracies material to its decision.¹⁶ For example, the Board was under the bewildering

¹⁰ Exhibit A at 1.

¹¹ *Dylan Mulvaney Complaint*, *supra* note 2 at 65. Although the Committee's purpose in obtaining this information does in fact differ from the CCRB's functions, that the CCRB review was ongoing could never have been a valid basis for refusing to comply. The U.S. Supreme Court has never articulated a restriction on congressional oversight based on collateral adjudication of the same matter by a private entity such as the CCRB.

¹² *See, e.g.*, Email from Counsel for Anheuser-Busch to Committee Staff (June 17, 2023) (on file with the Committee).

¹³ *Dylan Mulvaney Complaint*, *supra* note 2 at 67.

¹⁴ *Id.* at 74.

¹⁵ Email from Counsel for Anheuser-Busch to Committee Staff (July 24, 2023) (on file with the Committee).

¹⁶ *See Dylan Mulvaney Complaint*, *supra* note 2 at 67 ("While the CCRB has addressed a number of issues in our report, we want to make two points crystal clear that when taken together make it impossible to conclude that Anheuser-Busch violated the Code.")

misapprehension that Anheuser-Busch “hired”¹⁷ CreatorIQ to prepare an “audience composition study”¹⁸ and that CreatorIQ “determined that 80.35 percent of Mulvaney’s Instagram audience was 21 years of age or older.”¹⁹ The truth is that Anheuser-Busch *itself* extracted Mulvaney’s Instagram age ranges from existing Instagram data reposted on the CreatorIQ platform and then *itself* applied what it calls the “standard methodology”²⁰ to guess what percent of the 18–24 category was above the legal drinking age. CreatorIQ had no role, whatsoever, in assessing Mulvaney’s audience demographics prior to the placement of the Bud Light ads, a fact CreatorIQ confirmed to the Committee.²¹ It simply re-presented audience data that was already available to Mulvaney through Instagram.²²

These dilatory tactics by your subsidiary must end. Otherwise, Anheuser-Busch InBev will leave Congress no choice but to infer this obstructionism is intended to shield inculpatory information from the Committee’s investigation. Accordingly, I request you instruct Anheuser-Busch to immediately comply with this investigation and May 17th document request and no later than August 29, 2023.²³

Sincerely,



Ted Cruz
Ranking Member

Cc: Brendan Whitworth, Chief Executive Officer, Anheuser-Busch
William Cunningham, Member, Code Compliance Review Board
Rory Davies, Member, Code Compliance Review Board
Paul Summers, Member, Code Compliance Review Board
Brian Crawford, President, Beer Institute

¹⁷ *Id.* at 66.

¹⁸ *Id.*

¹⁹ *Id.* at 67.

²⁰ *See AB Response, supra* note 6 at 7.

²¹ Email from CreatorIQ to Committee Staff (July 25, 2023) (on file with the Committee).

²² One thing CreatorIQ does provide, and which Anheuser-Busch should have access to, is audience demographic data for TikTok and other social media sites. I requested “[c]opies of all materials in the possession of Anheuser-Busch showing the age demographics of Dylan Mulvaney’s audience, including but not limited to the platforms of Instagram and TikTok.” Exhibit A at 5.

²³ For reference, the requests from the May 17th letter are included in an appendix to this letter. Further, this letter serves as a reminder to preserve all documents and information, including e-mails, text messages, internal message system messages, calls, logs of meetings, and internal memoranda responsive to the requests in the May 17th letter.

Appendix: Document Requests from May 17, 2023, Letter

1. All documents or communications between or among any employees of Anheuser-Busch regarding the partnership between Anheuser-Busch and Dylan Mulvaney.
2. Copies of all scripts, including any and all drafts, reviewed by Anheuser-Busch for social media content from Dylan Mulvaney.
3. Copies of any guidance or requests provided by Anheuser-Busch, or its agents, directing, encouraging, or soliciting content from Dylan Mulvaney related to Bud Light or any other Anheuser-Busch products.
4. All documents or communications between Dylan Mulvaney, his agents, including at Dylan Mulvaney's talent representation firm CAA, and staff or representatives of Anheuser-Busch, including any advertising placement agents retained by Anheuser-Busch.
5. Copies of any after-the-fact audits conducted in relation to Anheuser-Busch's advertising partnership with Dylan Mulvaney.
6. Copies of all materials in the possession of Anheuser-Busch showing the age demographics of Dylan Mulvaney's audience, including but not limited to the platforms of Instagram and TikTok.
7. Copies of Anheuser-Busch's corporate policy for advertising on social media platforms, including but not limited to, TikTok and Instagram.
8. Copies of all documents provided to the Beer Institute related to Anheuser-Busch's response to this complaint.

EXHIBIT A

MARIA CANTWELL, WASHINGTON, CHAIR

AMY KLOBUCHAR, MINNESOTA
BRIAN SCHATZ, HAWAII
EDWARD MARKEY, MASSACHUSETTS
GARY PETERS, MICHIGAN
TAMMY BALDWIN, WISCONSIN
TAMMY DUCKWORTH, ILLINOIS
JON TESTER, MONTANA
KYRSTEN SINEMA, ARIZONA
JACKY ROSEN, NEVADA
BEN RAY LUJAN, NEW MEXICO
JOHN HICKENLOOPER, COLORADO
RAPHAEL WARNOCK, GEORGIA
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CYNTHIA LUMMIS, WYOMING

LILA HELMS, MAJORITY STAFF DIRECTOR
BRAD GRANTZ, REPUBLICAN STAFF DIRECTOR

United States Senate

COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION

WASHINGTON, DC 20510-6125

WEBSITE: <https://commerce.senate.gov>

May 17, 2023

Mr. Brendan Whitworth
Anheuser-Busch Companies, LLC
United States Chief Executive Officer
One Busch Place
St. Louis, MO 63118

Mr. Brendan Whitworth
Beer Institute
Chairman & Senior Director
440 First Street NW, Suite 350
Washington, DC 20001

Dear Mr. Whitworth:

We are writing to you today in both your capacity as the United States Chief Executive Officer of the Anheuser-Busch Companies (“Anheuser-Busch” or “your company”) and as the Chairman and Senior Director of the Beer Institute, the beer industry’s self-regulatory body with authority over the advertising of beer. Our requests are two-fold.

First, we write to ask that the Beer Institute’s Code Compliance Review Board open an investigation to review Anheuser-Busch’s recent and ongoing marketing partnership with Dylan Mulvaney. The Beer Institute must examine whether your company violated the Beer Institute’s Advertising/Marketing Code and Buying Guidelines prohibiting marketing to individuals younger than the legal drinking age.

The evidence detailed below overwhelmingly shows that Dylan Mulvaney’s audience skews significantly younger than the legal drinking age and violates the Beer Institute’s Advertising/Marketing Code and Buying Guidelines. We would urge you, in your capacity at Anheuser-Busch, to avoid a lengthy investigation by the Beer Institute by instead having Anheuser-Busch publicly sever its relationship with Dylan Mulvaney, publicly apologize to the American people for marketing alcoholic beverages to minors, and direct Dylan Mulvaney to remove any Anheuser-Busch content from his social media platforms.

Second, we believe that Anheuser-Busch’s clear failure to exercise appropriate due diligence when selecting online influencers for its marketing efforts warrants detailed oversight by Congress. To that end, this letter includes a series of document requests that will help clarify how Anheuser-Busch vets its partnerships and how Anheuser-Busch failed in assessing the propriety of a partnership with Dylan Mulvaney. Our document requests can be found at the end of this letter.

BACKGROUND

On April 1, 2023, Dylan Mulvaney announced on Instagram that he had recently inaugurated a partnership with Bud Light, one of Anheuser-Busch's brands.¹

As you and your Anheuser-Busch colleagues are aware, Dylan Mulvaney is a prominent social media influencer with 1.8 million followers on Instagram and 10.8 million followers on TikTok.² As Mulvaney's talent agency CAA notes, he is infamous for the "series titled '*Days of Girlhood*'" which "received over 750 million views in less than 100 days."³ (emphasis added) Mulvaney's "*Days of Girlhood*" series should have been the first red flag to Anheuser-Busch that it was entering into a partnership with an individual whose audience skews impermissibly below the Beer Institute's proscribed guidelines.

The use of the phrase "Girlhood" was not a slip of the tongue but rather emblematic of a series of Mulvaney's online content that was specifically used to target, market to, and attract an audience of young people who are well below the legal drinking age in the United States. Examples include:

- Dylan Mulvaney lip-syncing "I am Eloise, I am six" while dressed as a small child. This video gathered 7.1 million views.⁴ It aired thirteen days before the Bud Light partnership.
- Dylan Mulvaney during "Day 100 of being a girl" "at the mall" giving away merchandise and cash to teenage girls, at least one of whom was still in braces.⁵ That video garnered over 11 million views.
- Dylan Mulvaney pandering to teen developmental issues when he recorded a TikTok pining about "30,000 people want to be my first kiss as a girl."⁶ That video received 9.6 million views.
- Another video of Dylan Mulvaney in Target shopping for Barbie dolls that garnered 8.3 million views.⁷ Mattel, the maker of Barbie, has, according to market analysts, a "clearly demarcated target market for [the] Barbie doll [consisting of] young girls of 3-12 years of age...."⁸

An objective survey of Dylan Mulvaney's content clearly presents a faux, pre-pubescent girl persona that is created and presented to specifically appeal to young viewers.

¹ https://www.instagram.com/reel/CqgTftujqZc/?utm_source=ig_web_copy_link

² <https://www.instagram.com/dylanmulvaney/>; <https://www.tiktok.com/@dylanmulvaney?lang=en>

³ <https://www.caa.com/caaspeakers/dylan-mulvaney>

⁴ <https://www.tiktok.com/@dylanmulvaney/video/7212043896430415147>

⁵ <https://www.tiktok.com/@dylanmulvaney/video/7111457500167228714?lang=en>

⁶ <https://www.tiktok.com/@dylanmulvaney/video/7123736509467004206>

⁷ <https://www.tiktok.com/@dylanmulvaney/video/7109259848784776494>

⁸ <https://www.researchomatic.com/mattel-barbie-doll-target-market-156300.html>

AUDIENCE DEMOGRAPHICS

Publicly available data indicates that both the Instagram and TikTok platforms skew heavily toward younger audiences. As Hootsuite, a leading social media marketing platform pointed out recently, if you want to reach children—Instagram, which is where Anheuser-Busch rolled out the Mulvaney/Bud Light partnership—is the ideal social media platform.⁹ Hootsuite noted that “overall, Instagram is Gen[eration] Z’s favorite social media platform. Global internet users aged 16 to 24 prefer Instagram to other social platforms. . . even ranking it above TikTok.”¹⁰ For marketing professionals seeking to reach the age 16 to 24 year old cohort, Instagram is an ideal platform.¹¹

TikTok users also skew equally young. A leaked presentation about TikTok user demographics showed that 17% of the TikTok user base is 13 to 17 years old and 42% of the audience is between the ages of 18 and 24 years of age.¹² While Anheuser-Busch appears to have targeted its rollout of the Mulvaney/Bud Light partnership on Instagram, it is obvious, given Dylan Mulvaney’s significant social media following on TikTok, that this influencer campaign would spill over to TikTok as well.

PROHIBITED ADVERTISING

The Mulvaney/Bud Light campaign is starkly similar to the discredited and now illegal marketing campaigns of cigarette manufacturers that used youth-favored advertising tools such as “Joe Camel” in an attempt to develop early brand loyalty with children who were legally prohibited from smoking cigarettes.¹³ In fact, your VP of Marketing has said as much stating, “I’m a businesswoman. I had a really clear job to do when I took over Bud Light, and it was ‘This brand is in decline, it’s been in a decline for a really long time, and **if we do not attract young drinkers** to come and drink this brand there will be no future for Bud Light.’”¹⁴ (emphasis added) Unfortunately, Anheuser-Busch has a history of inappropriately marketing beer to individuals younger than the legal drinking age. In 2009, the Federal Trade Commission and dozens of colleges strongly criticized Anheuser-Busch for marketing Bud Light to underage college students.¹⁵

Marketing to minors is prohibited under the Beer Institute’s Advertising/Marketing Code and Buying Guidelines. Section 3.c.i specifically states:¹⁶

⁹ <https://blog.hootsuite.com/instagram-demographics/>

¹⁰ *Id.*

¹¹ *Id.*

¹² <https://www.businessinsider.com/tiktok-pitch-deck-shows-new-e-commerce-ads-2021-4#the-company-says-17-of-its-audience-is-ages-13-to-17-while-42-is-18-to-24-3>

¹³ <https://www.ftc.gov/news-events/news/press-releases/1997/05/joe-camel-advertising-campaign-violates-federal-law-ftc-says>

¹⁴ <https://nypost.com/2023/04/10/bud-lights-marketing-vp-was-inspired-to-update-fratty-out-of-touch-branding/>

¹⁵ <https://www.wsj.com/articles/SB125116535930755741>

¹⁶ <https://www.beerinstitute.org/policy-responsibility/responsibility/advertising-marketing-code/>

Placements made by or under the control of the Brewer in magazines, in newspapers, on television, on radio, and in digital media in which there is no dialogue between a Brewer and user, may only be made where at least 73.6% of the audience is expected to be adults of legal drinking age. A placement will be considered compliant if the audience composition data reviewed prior to placement meets the percentage set forth above.

The general demographics of Instagram and TikTok, combined with the pre-pubescent content for girls pushed by Dylan Mulvaney, and informed by comments from Anheuser-Busch's VP for Marketing regarding young drinkers, should have provided *overwhelming* evidence to the Beer Institute that Anheuser-Busch's sponsored social media influencer advertising had both the design and effect of marketing an adult beverage product to an audience whose composition was less than 73.6% individuals of legal drinking age, thus violating the standards required by the Beer Institute. With that in mind, we ask Anheuser-Busch to: (1) immediately review all of their influencer relationships and sever any and all relationships with persons whose online personas violate the Beer Institute's marketing standards, as Dylan Mulvaney's clearly does, and (2) to ask that Dylan Mulvaney and all similarly inappropriate persons used by Anheuser-Busch in its marketing remove all Anheuser-Busch content from their online accounts. If your company fails to do so, we ask the Beer Institute to find Anheuser-Busch in violation of the Advertising/Marketing Code and Buying Guidelines and order them to sever their relationship with Mulvaney.

DOCUMENT PRODUCTION

In addition to requesting Beer Institute oversight of the advertising partnership with Dylan Mulvaney, Anheuser-Busch shall respond by providing copies of the following documents by not later than May 31, 2023 so that Congress can exercise its oversight responsibilities.

1. All documents or communications between or among any employees of Anheuser-Busch regarding the partnership between Anheuser-Busch and Dylan Mulvaney.
2. Copies of all scripts, including any and all drafts, reviewed by Anheuser-Busch for social media content from Dylan Mulvaney.
3. Copies of any guidance or requests provided by Anheuser-Busch, or its agents, directing, encouraging, or soliciting content from Dylan Mulvaney related to Bud Light or any other Anheuser-Busch products.
4. All documents or communications between Dylan Mulvaney, his agents, including at Dylan Mulvaney's talent representation firm CAA, and staff or representatives of Anheuser-Busch, including any advertising placement agents retained by Anheuser-Busch.
5. Copies of any after-the-fact audits conducted in relation to Anheuser-Busch's advertising partnership with Dylan Mulvaney.

6. Copies of all materials in the possession of Anheuser-Busch showing the age demographics of Dylan Mulvaney's audience, including but not limited to the platforms of Instagram and TikTok.
7. Copies of Anheuser-Busch's corporate policy for advertising on social media platforms, including but not limited to, TikTok and Instagram.
8. Copies of all documents provided to the Beer Institute related to Anheuser-Busch's response to this complaint.

We look forward to your prompt response to our concerns.

Sincerely,



Ted Cruz
Ranking Member
Committee on Commerce, Science,
and Transportation



Marsha Blackburn
Ranking Member
Subcommittee on Consumer Protection,
Product Safety, and Data Security

cc: Gavin Hattersley, Vice Chairman & Senior Director, Beer Institute and CEO, Molson
Coors Beverage Company

Brian Crawford, President & CEO, Beer Institute