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United States Senate

COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION

WASHINGTON, DC 20510-6125

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

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

November 20, 2023

Krishna Subramanian
Chief Executive Officer
Captiv8
217 South B Street, Suite 1
San Mateo, CA 94401

Dear Mr. Subramanian:

In May, I initiated a congressional investigation into whether Anheuser-Busch's marketing partnership with social media influencer Dylan Mulvaney violated beer industry prohibitions on marketing to minors.¹ At my request, the beer industry's internal Code Compliance Review Board ("CCRB") examined Mulvaney's February 11th and April 1st posts on behalf of Bud Light for potential violations of the industry's Advertising and Marketing Code.² Ultimately, dissenting CCRB Judge Paul Summers agreed that Anheuser-Busch had violated the Code because it knew or should have known that Mulvaney primarily appeals to persons below the legal drinking age, especially "young teens and girls."³

Unfortunately, CCRB failed to investigate the origins of the Bud Light-Mulvaney marketing partnership and advanced a misleading narrative about the brewer's vetting process. Captiv8 is mentioned nowhere in CCRB's opinion—a significant omission given that your company reportedly "brokered" the deal.⁴

Anheuser-Busch evidently reached out to Captiv8 in March after "a Bud Light team member who 'wanted to push and make change'" conceived of a March Madness post appealing to younger members of the "LGBTQ+ community."⁵ Captiv8 then "introduced" Anheuser-Busch to

¹ *Sens. Cruz, Blackburn Open and Call for Probe of Bud Light Potentially Marketing to Underage Individuals Through Partnership with Dylan Mulvaney* (May 17, 2023), <https://www.commerce.senate.gov/2023/5/sens-cruz-blackburn-open-and-call-for-probe-of-bud-light-potentially-marketing-to-underage-individuals-through-partnership-with-dylan-mulvaney>.

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 74.

⁴ Brock Colyar, *Girlhood, Interrupted*, THE CUT (Sept. 13, 2023), <https://www.thecut.com/article/dylan-mulvaney-cut-cover-profile.html>.

⁵ Owen Myers, *'Panic and Rash Decision-Making': Ex-Bud Light Staff on One of the Biggest Boycotts in US History*, THE GUARDIAN (Sept. 19, 2023), <https://www.theguardian.com/world/2023/sep/19/dylan-mulvaney-bud-light-boycott>.

Mulvaney,⁶ who was selected over other young influencers like 23-year-old actress Reneé Rapp.⁷ Mulvaney agreed to the deal with Bud Light “a couple of weeks” after celebrating “Day 365 of Girlhood” at Rockefeller Center on March 13th.⁸ Both Captiv8 and Bud Light signed off on the influencer’s now notorious April 1st Instagram reel.⁹

The fact that Anheuser-Busch sought out Captiv8 to attract young drinkers is not surprising; Captiv8 has positioned itself as a leading agency for influencer marketing, which it calls “the best way to sell to Gen Z.”¹⁰ Captiv8 highlights the fact that “73% of Gen Z-ers say they would make a purchase based on a social media recommendation.”¹¹ The agency has hosted panels on how creators are driving social commerce among Gen Z¹² and how companies can use influencer marketing to “thoughtfully reach Gen Z audiences.”¹³

It is surprising, however, that Captiv8 signed off on Mulvaney’s April 1st post even though it was neither age gated nor marked with a “paid partnership” label as required by Instagram (and, arguably, the FTC’s endorsement guidelines).¹⁴ The failure to age gate meant the advertisement was guaranteed to be seen by Mulvaney’s followers, many of whom are under the age of 21. The lack of a paid partnership label on both Mulvaney posts is especially significant given lingering questions about the timing and scope of the influencer’s work for Bud Light. Anheuser-Busch has implausibly maintained that the company’s partnership with Mulvaney consisted of just “one can, one influencer, one post, and not a campaign.”¹⁵ “It was not an advertisement,” insisted AB InBev CEO Michel Doukeris.¹⁶ Yet Mulvaney appears to have been engaged for two distinct, sports-related campaigns during the Super Bowl and March Madness. The question is, if Captiv8

⁶ Lisa Fickenscher, *Ad Agency That Tapped Dylan Mulvaney for Bud Light in ‘Serious Panic Mode’*: Source, N.Y. POST (June 4, 2023), <https://nypost.com/2023/06/04/ad-agency-that-tapped-dylan-mulvaney-for-bud-light-in-serious-panic-mode>.

⁷ Myers, *supra* note 5.

⁸ Colyar, *supra* note 4.

⁹ Myers, *supra* note 5.

¹⁰ Sasha Karelsky, *The Best Way to Sell to Gen Z? Influencer Marketing*, CAPTIV8 (Mar. 3, 2020), <https://captiv8.io/blog/2020/03/03/if-you-want-to-reach-gen-z-look-to-influencers/>.

¹¹ Andrew Chen, *Influencer Marketing Trends: Three Trends to Expect in 2023*, CAPTIV8 (Jan. 5, 2023), <https://captiv8.io/blog/2023/01/05/influencer-marketing-trends-three-trends-to-expect-in-2023/>.

¹² Panel, *How Creators Are Driving Social Commerce Amongst Gen Z*, Youth Marketing Strategy Los Angeles (Nov. 3, 2022).

¹³ Panel, *Intentional Influencer Marketing: How to Thoughtfully Reach Gen-Z Audiences*, Influencer Marketing Show (June 21, 2023).

¹⁴ See *Dylan Mulvaney Complaint*, *supra* note 2 at 32–33, 38; *FTC’s Endorsement Guides: What People Are Asking*, FTC, <https://www.ftc.gov/business-guidance/resources/ftcs-endorsement-guides-what-people-are-asking> (last visited Nov. 20, 2023) (“If an Instagram post makes an endorsement in the beginning of the description, any required disclosure should be presented without having to click ‘more.’”)

¹⁵ Motley Fool Transcribing, *Anheuser-Busch InBev/NV (BUD) Q1 2023 Earnings Call Transcript*, THE MOTLEY FOOL (May 4, 2023), <https://www.fool.com/earnings/call-transcripts/2023/05/04/anheuser-busch-inbev-nv-bud-q1-2023-earnings-call-t/>.

¹⁶ Eri Sugiura, *AB InBev Boss Blames Social Media ‘Misinformation’ for Backlash Against Bud Light*, FINANCIAL TIMES (May 8, 2023), <https://www.ft.com/content/dc63c64c-d32e-460a-afdc-458c94860c93>.

was enlisted in March, what role could it have had with respect to Mulvaney's initial, February 11th post?

The Standing Rules of the Senate provide the Committee on Commerce, Science, and Transportation the authority to "review and study, on a continuing basis" matters of interstate commerce and consumer affairs.¹⁷ So that I may understand the full scope of Captiv8's work on the Bud Light-Mulvaney marketing partnership and its role in the influencer marketing industry more generally, please provide the documents requested below and written responses to the questions below no later than December 4, 2023, and in accordance with the attached instructions.

1. What was Captiv8's role, if any, with respect to Dylan Mulvaney's February 11th Instagram post promoting Bud Light's "Hold" ad?¹⁸ Identify any Captiv8 products, services, or solutions used by Anheuser-Buch or its agents to promote the "Hold" ad and explain how each was used.
2. What was Captiv8's role with respect to Dylan Mulvaney's April 1st Instagram post?¹⁹ Identify any Captiv8 products, services, or solutions used by Anheuser-Buch or its agents to promote the Easy Carry Contest and explain how each was used.
3. Captiv8's platform "allow[s] discoverability for ethnicity, disabilities, and gender and sexual identity."²⁰ Relatedly, Captiv8's Influencer Velocity Index (IVI), an AI-powered talent recommendation engine, enables brands to auto-generate a list of influencers based on targeted audience characteristics, such as gender, ethnicity, and age.²¹
 - a. Is it possible for an alcohol brand with access to Captiv8's platform to search for an influencer whose audience includes individuals under the age of 21?
 - b. Is it possible for a brand with access to Captiv8's platform to search for an influencer whose audience is predominantly of one race or ethnicity?
 - c. Is it possible for a brand with access to Captiv8's platform to search for an influencer of a particular (1) sexual orientation or (2) gender identity?
4. Provide all documents or communications, including financial statements, by or for, or sent to or from, any current or former employee of Captiv8 that were created on or after

¹⁷ S. Rules XXV(1)(f), XXVI(8).

¹⁸ See Dylan Mulvaney (@dylanmulvaney), *Only @budlight*, INSTAGRAM (Feb. 11, 2023), <https://www.instagram.com/p/CoITxPFjU2N>.

¹⁹ See Dylan Mulvaney (@dylanmulvaney), *Happy March Madness!!*, INSTAGRAM (Apr. 1, 2023), <https://www.instagram.com/p/CqgTftujqZc>.

²⁰ CAPTIV8, <https://captiv8.io/> (last visited Nov. 20, 2023).

²¹ *Advanced Influencer Marketing Solutions*, CAPTIV8, <https://captiv8.io/advanced/> (last visited Nov. 20, 2023).

December 1, 2022, and refer or relate to (1) Anheuser-Busch, including Bud Light, or (2) Dylan Mulvaney.

5. Provide all metrics or data for Dylan Mulvaney available on a Captiv8 platform or in Captiv8's possession, including but not limited to metrics or data for the February 11th and April 1st Instagram posts.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Ted Cruz', is written over a horizontal line.

Ted Cruz
Ranking Member