

Context is King for the King of Beers: The “No Corn Syrup” Injunction Gets Sticky

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by Connor J. Hansen

Anyone who saw the Special Delivery commercial during the Super Bowl is familiar with Bud Light’s “No Corn Syrup” campaign. The Special Delivery commercial made it pretty clear that Miller Light and Coors Light are *brewed with* corn syrup whereas Bud Light is brewed with rice. As the campaign evolved to include dozens of commercials, print advertisements, and social media posts, Anheuser-Busch dropped the “brewed with” language in favor of bare statements that Bud Light has “No Corn Syrup.” Comparative advertisements go even further, by displaying Miller Light or Coors Light in direct association with the words corn syrup:

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MillerCoors, the owner of Miller Lite and Coors Lite, sued Anheuser-Busch on March 21, 2019, alleging that the “No Corn Syrup” campaign constitutes false advertising under the Lanham Act.

The case is still in the early stages of litigation, but it’s not looking good for Bud Light. On

May 24, 2019, the Western District of Wisconsin granted a preliminary injunction in MillerCoors' favor. The original preliminary injunction enjoined Anheuser-Busch from using versions of the "No Corn Syrup" campaign that do not clearly indicate that the presence or absence of corn syrup relates to the brewing process.

During brewing, yeast break down sugar, converting it into alcohol and carbon dioxide through fermentation. The yeast is then removed along with any excess sugar. Miller Light and Coors Light both use corn syrup as their main sugar source during brewing. Bud Light proudly uses rice as its main sugar source. Because MillerCoors uses corn syrup and Bud Light does not use corn syrup during the brewing process, the phrases "No Corn Syrup," "100% Less Corn Syrup," and similar statements are factually accurate.

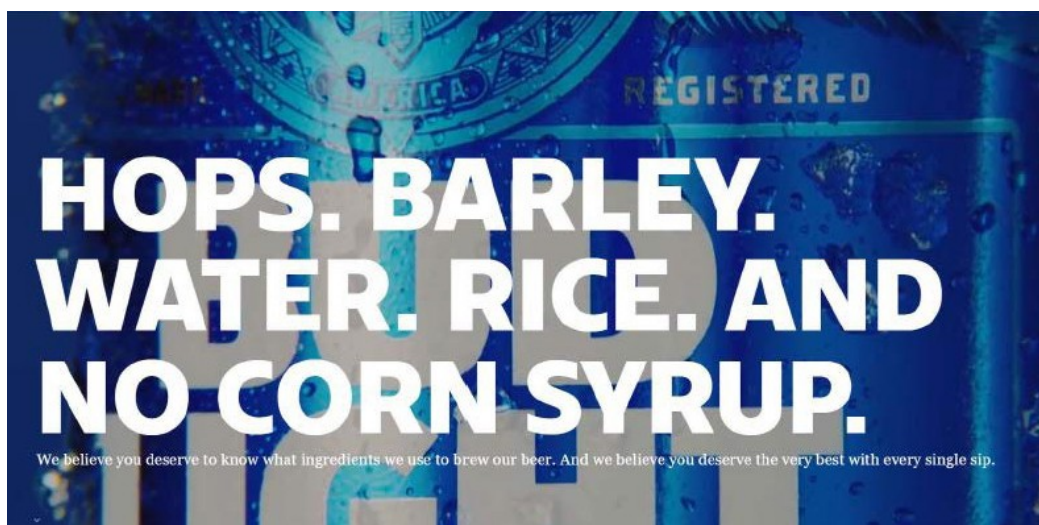
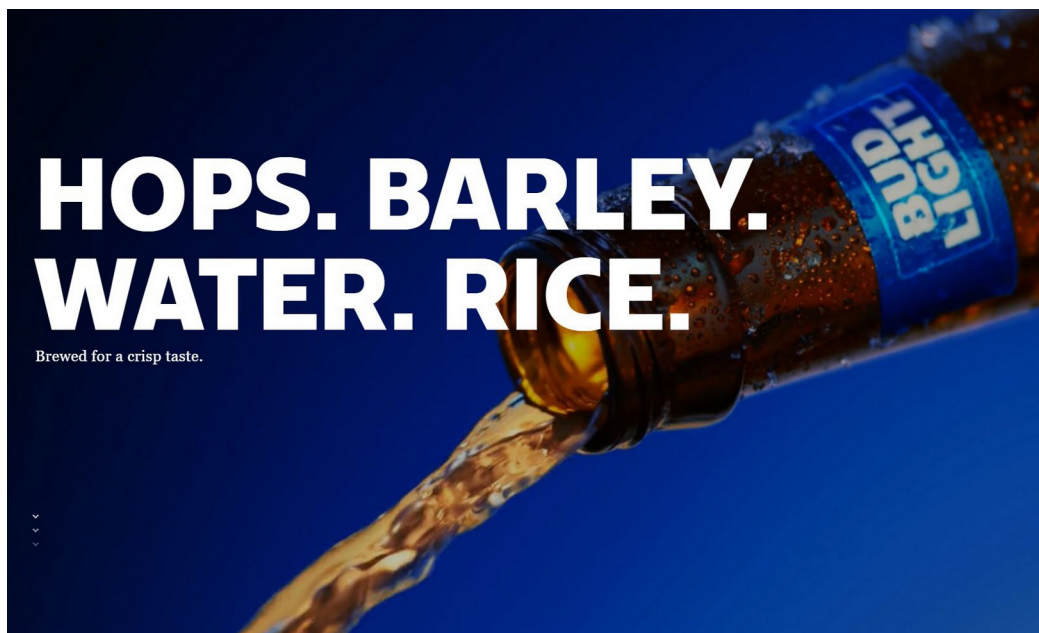
But in the false advertising world, a factually true statement may be deemed impliedly false or misleading if the true statement is likely to deceive or confuse consumers. The Bud Light statements that fail to indicate that "No Corn Syrup" refers to the brewing process, according to the court, may deceive consumers into believing that the finished products, Miller Light and Coors Light, actually contain corn syrup in the beer itself. MillerCoors was able to show that some customers exposed to the "No Corn Syrup" campaign actually believed that Miller Light and Coors Light contain corn syrup. This was enough for the court to find that MillerCoors is likely to succeed on claims related to these statements and that MillerCoors would be irreparably harmed without a preliminary injunction. The original preliminary injunction only applied to commercials, print advertising, and social media.

In a more recent development, on September 4, 2019, the court modified the preliminary injunction, extending it to include Bud Light packaging. The Bud Light packaging does not directly compare Bud Light with Miller Light or Coors Light — it just indicates that Bud Light lacks corn syrup. However, MillerCoors was able to show that consumers view the packaging as implicitly comparing Bud Light to Miller Light and Coors Light because the three beers are almost always displayed alongside one another in retail stores and they make up nearly 100% of the light beer market in the United States. The court also viewed the packaging in light of the larger campaign, which does expressly compare Bud Light with MillerCoors' beers.

Because the packaging lacks express comparative statements, the modified injunction allows Anheuser-Busch to use all of the "No Corn Syrup" packaging that it had on hand as of June 6, 2019. Anheuser-Busch is allowed to use the packaging until March 2, 2020, or until it runs out of the packaging, whichever occurs first.

Context in advertising is key, especially when comparing a product with competing products. Had Bud Light always indicated that Miller Light and Coors Light are *brewed with* corn syrup, the advertising likely would not be subject to the current injunction. Moreover, in extending the injunction to include packaging that does not include a comparative reference to MillerCoors' beers, the court considered the packaging in the context of Anheuser-Busch's broader advertising campaign and the fact that only three beer brands make up nearly the entire light beer market in the U.S.

Bud Light already had to change their advertisements to comply with the original injunction, removing any bare references to a lack of corn syrup and clarifying that Bud Light is not brewed with corn syrup. For example, the [Bud Light website](#) now reads “Hops. Barley. Water. Rice.” where it used to read, “Hops. Barley. Water. Rice. And No Corn Syrup.”



As for the packaging, Anheuser-Busch filed an emergency motion to vacate, modify, or stay the preliminary injunction and the court issued a second [modification](#) to the preliminary injunction. Anheuser-Busch successfully showed that the packaging produced prior to June 6, 2019 was essentially depleted and that if it was only allowed to use packaging created as of June 6, 2019, “an injunction would take effect immediately” causing it significant harm if unable to use packaging produced after that date.

Although the court was “troubled by defendant’s decision to continue to print new packaging containing language that almost certainly violated the spirit of the court’s

earlier injunction with respect to its television and print media, defendant is correct that the court intended to craft an injunction that would not impinge on the orderly production of Bud Light” (thus providing reassurance to consumers preparing for tailgating season!). Anheuser-Busch now has until November 1, 2019 to comply with the court’s injunction, “based on Anheuser-Busch’s representation that it cannot have packaging complying with the court’s injunction until the end of October.”

Stay tuned to TheTMCA.com for further developments in this epic battle between two leading light beer brands.