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7 ATTORNEYS FOR PLAINTIFF
8 STONE BREWING CO., LLC

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10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA

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STONE BREWING CO., LLC,

Plaintiff,

v.

MOLSON COORS BREWING COM-
PANY, MILLERCOORS LLC, and
DOES 1 through 25, inclusive,

Defendants.

Case No. '18CV0331 BEN JMA

COMPLAINT FOR:

- (1) Trademark Infringement
- (2) False Designation of Origin
- (3) Trademark Dilution
- (4) Unfair Competition
- (5) Declaratory Relief

JURY TRIAL DEMANDED

1 Plaintiff Stone Brewing Co., LLC (hereinafter, “Stone,” “Plaintiff,” or
2 “Gargoyle”) brings this Complaint against Defendants Molson Coors Brewing
3 Company and MillerCoors LLC (collectively, “MillerCoors” or “Defendants”) and
4 alleges, on personal knowledge as to its own actions and on information and belief as
5 to the actions of others, as follows:

6 **INTRODUCTION**

7 1. Plaintiff Stone Brewing brings this trademark action to halt Defendant
8 MillerCoors’s misguided campaign to steal the consumer loyalty and awesome repu-
9 tation of Stone’s craft brews and iconic STONE® trademark. MillerCoors recently
10 decided to rebrand its Colorado Rockies-themed “Keystone” beer as “STONE” – sim-
11 ultaneously abandoning Keystone’s own heritage and falsely associating itself with
12 Stone’s well-known craft brews.

13 2. Since 1996, the incontestable STONE® mark has represented a promise
14 to beer lovers that each STONE® beer, brewed under the Gargoyle’s watchful eye, is
15 devoted to craft and quality. Like all Gargoyles, it is slow to anger and seeks a re-
16 spectful, live-and-let-live relationship with peers and colleagues – even those purvey-
17 ing beers akin to watered-down mineral spirits. But Stone and the Gargoyle cannot
18 abide MillerCoors’s efforts to mislead beer drinkers and sully (or steal) what STONE®
19 stands for.

20 3. STONE® beer is beloved by millions of beer drinkers across America.
21 Resolute and fearless, the brewery has always stood for a philosophy and approach
22 that defies the watered-down orthodoxy of “Big Beer” companies and their fizzy yel-
23 low offerings. As Big Beer has stumbled in recent years, the Gargoyle has thrived.
24 STONE® is one of the most recognizable and popular craft beer brands in the U.S.
25 and the global standard bearer for independent craft beer, with sales in all fifty U.S.
26 States and across five continents.

27 4. Stone’s rise has not gone unnoticed by the largest beer company in
28 America, MillerCoors. MillerCoors has long coveted the STONE® mark, but has

1 been blocked from using STONE-centric branding because of Stone's incontestable
2 federal registration. In 2007, the U.S. Patent and Trademark Office forced Mil-
3 lerCoors to admit that using the mark "STONES" to sell Keystone would infringe the
4 STONE® trademark. Yet in 2017, MillerCoors marketing executives decided to try
5 again. Not long after Stone cofounder Greg Koch publicly announced that the Gar-
6 goyle would never sell out, MillerCoors began plotting to rebrand "Keystone" as
7 "STONE" or "THE STONE." MillerCoors has since followed-through on that plan
8 by recently relabeling its products and launching "STONE"-centric advertising.

9 5. The Gargoyle does not countenance such misdirection of consumers; nor
10 does it support those who would disavow their own Colorado mountain heritage to
11 misappropriate another's ancestry. Stone accordingly brings this action to help usher
12 Keystone back to the Rockies. Should Keystone not willingly return, Stone intends to
13 seek expedited discovery in aid of a preliminary injunction, as well as permanent in-
14 junctive relief, declaratory relief, damages, costs and attorneys' fees, among other rem-
15 edies.

16 THE PARTIES

17 6. Plaintiff Stone Brewing Co., LLC ("Stone" or "Plaintiff") is a pioneer-
18 ing craft brewery with its principal place of business at 2120 Harmony Grove Road,
19 Escondido, California. Stone is a duly registered limited liability company organized
20 under California law. Prior to 2016, Stone was organized as a California corporation
21 named Koochen Vagners Brewing Co., d/b/a Stone Brewing Co. Stone is the regis-
22 tered owner of the incontestable trademark registration for STONE®.

23 7. Stone is informed and believes that Defendant Molson Coors Brewing
24 Company ("Molson Coors") is a multinational beer conglomerate that owns the *Key-*
25 *stone*, *Coors*, *Miller*, and *Molson* beer brands, among others. Molson Coors is a Del-
26 aware Corporation with its principal places of business at 1801 California Street, Suite
27 4600, Denver, Colorado.

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1 8. Stone is informed and believes that Defendant MillerCoors LLC (“Mil-
2 lerCoors”) is the United States operating arm of Molson Coors. MillerCoors is a Del-
3 aware limited liability company with its principal place of business at 250 S. Wacker
4 Drive, Suite 800, Chicago, Illinois. Upon information and belief, MillerCoors is a
5 wholly-owned subsidiary of Molson Coors that markets the *Keystone* and *Keystone*
6 *Light* beer brands in the United States.

7 9. Upon information and belief, Defendants operate under a unified man-
8 agement structure controlled and directed by Defendant Molson Coors Brewing Com-
9 pany. Each Defendant acted in concert with the other Defendants and aided, abetted,
10 directed, approved, or ratified each act or omission alleged in this Complaint to have
11 been performed by Defendants.

12 10. The true names of the Defendants sued as Does 1 through 25, inclusive,
13 are unknown to Stone, who therefore sues these Defendants by such fictitious names.
14 Stone will amend this Complaint to allege the true names and capacities of these De-
15 fendants when they are ascertained. Upon information and belief, these fictitiously
16 named Defendants were involved in the design, implementation, approval, and fur-
17 therance of the conduct complained of herein or received benefits from those transac-
18 tions.

19 **JURISDICTION AND VENUE**

20 11. This action arises and is brought under the Trademark Act, known as the
21 Lanham Act, 15 U.S.C. §§ 1050, *et seq.*, and the Declaratory Judgment Act, 28 U.S.C.
22 §§ 2201-2202.

23 12. This Court has subject matter jurisdiction pursuant to 15 U.S.C. § 1121
24 and 28 U.S.C. §§ 1331, 1338.

25 13. This Court possesses personal jurisdiction over Defendant Molson Coors
26 because Molson Coors regularly and continuously transacts business in the State of
27 California by advertising and selling its products within the State and this District,
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1 including but not limited to sales of infringing Keystone products at numerous loca-
2 tions in the City and County of San Diego and this District.

3 14. This Court possesses personal jurisdiction over Defendant MillerCoors
4 because MillerCoors regularly and continuously transacts business in the State of Cal-
5 ifornia by advertising and selling its products within the State and this District, includ-
6 ing but not limited to sales of infringing Keystone products at numerous locations in
7 the City and County of San Diego and this District.

8 15. Additionally, this Court possesses personal jurisdiction over Defendants
9 Molson Coors and MillerCoors because, on information and belief, Defendants have
10 targeted their tortious conduct at the State of California and this District by selling or
11 distributing infringing Keystone products in this District and elsewhere. Defendants
12 either expected or reasonably should have expected that their activities would cause
13 harm to Stone in this District.

14 16. Venue is also proper in this district pursuant to 28 U.S.C. § 1391(b) be-
15 cause a substantial part of the events or omissions giving rise to this action occurred
16 in this district. The Gargoyle's primary abode is in this District, where Plaintiff Stone
17 has its headquarters and regularly conducts business. Additionally, infringing Key-
18 stone products are offered for sale to consumers at numerous locations in the City and
19 County of San Diego and this District.

20 **FACTUAL BACKGROUND**

21 **A. Foundations of STONE®**

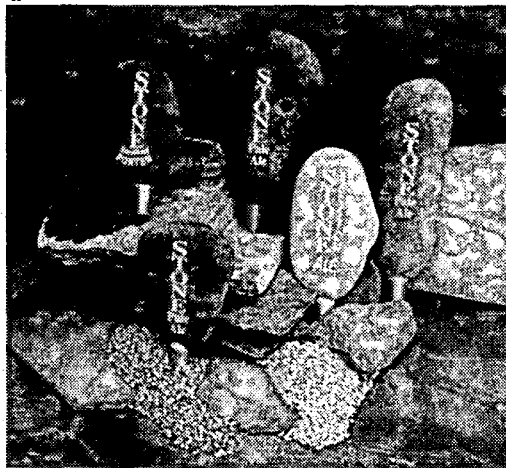
22 17. Before it grew into an internationally recognized craft beer brand, Stone
23 had its origins in the creative fermentation of California in the 1980s and '90s. Found-
24 ers Steve Wagner and Greg Koch first crossed paths in the effervescent Los Angeles
25 rock-and-roll music scene of the 1980s. Years later, they raised a glass at brewing
26 mecca U.C. Davis in Northern California, where both had enrolled to channel their
27 creative energies into brewing. In a series of conversations, the future founders of
28

1 STONE® discovered that they shared a love of bold, interesting beers and fiery obses-
2 sion with being a part of the craft beer revolution.

3 18. After a few years commiserating on the bleak state of the American beer
4 market, the pair decided to take matters into their own hands. Greg and Steve made
5 plans to open a brewery that would be defined by an unwavering commitment to qual-
6 ity and sustainability, holding true to the art of brewing bold, flavorful beers.
7 STONE® was born.

8 19. Over the course of the next four years, Stone signed a lease on a small
9 warehouse that it turned into a brewery, went from kegging its beers to having two
10 bottling lines, and released its most popular beer, STONE IPA®. From Stone's earliest
11 bottles to its first website and delivery trucks, the STONE® mark has signified Stone's
12 rebel culture of creativity, quality, and independence.

13 **Stone's First Year of Production**



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23 20. From the start, Stone assiduously developed and maintained its trademark
24 and brand. Every Stone beer proudly bears the registered incontestable trademark
25 STONE®, which has been registered with the U.S. Patent and Trademark Office since
26 June 23, 1998 under U.S. Registration No. 2168093.
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1 **B. STONE® Rolls On**

2 21. Sprinting into the 2000s, Stone grew in size and reach, overflowing its
3 first facility. Stone entered a new phase when it planned a custom-built brewhouse
4 tailored to fit Stone's commitment to quality, sustainability, and craft.

5 22. The new brewery opened in Escondido, California in 2005, just before
6 Stone's ten-year anniversary. In a stroke of innovation, Stone also opened the first
7 *Stone Brewing World Bistro & Garden*™, which shattered the "brewpub" mold with
8 local, organic ingredients and a seasonal menu constantly inspired by fresh, worldly
9 cuisine and the Slow Food movement.

10 23. The stage was set for a craft brewing revolution. Throughout the 2000s,
11 Stone continued to win converts with its bold, unorthodox beers and artisan philoso-
12 phy. Other brewers joined the fray, transforming the tastes of millions of beer drinkers
13 who had not known what they were missing. In droves, Americans began turning
14 away from incumbent Big Beer standards sold by the likes of MillerCoors in favor of
15 craft beers with more compelling brands and flavors.

16 24. The strength of Stone's brand kept pace with its commercial success. On
17 or about June 28, 2008, the USPTO accepted Stone's Combined Declaration of Use
18 and Incontestability for STONE®, rendering the mark incontestable as a matter of law.

19 **C. STONE® Today**

20 25. Today, Stone is the ninth-largest independent craft brewer in the United
21 States. Presiding over a rapid expansion of the craft brewing industry from 800 brew-
22 eries in 1996 to more than 5,000 today, Stone has maintained its commitment to true
23 independent craft and sustainability.

24 26. STONE® beers are sold in thousands of stores, bars, and restaurants
25 throughout the country, including at major grocery stores and retailers. Instantly rec-
26 ognized by the STONE® name, STONE® enjoys exceptional customer loyalty and
27
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1 engagement, with a devoted fan base unrivalled by other brewers. A sampling of pop-
2 ular STONE® beers appears thus:



13 27. Stone and its products have been widely lauded by national and interna-
14 tional press, as well as connoisseurs and critics. In 2010, Stone Brewing was named
15 the “**All-Time Top Brewery on Planet Earth**” by *Beer Advocate* magazine. Numer-
16 ous national and international publications have recognized STONE® as an industry
17 leader, including *The New York Times*, *The Wall Street Journal*, *The Economist*, *USA*
18 *Today*, and *Time* magazine, to name a few.

19 28. Even as Stone has expanded its range of offerings with bold new flavors
20 and numerous seasonal beers, the STONE® mark has remained constant, an unchang-
21 ing identifier of STONE®’s reputation for quality and commitment to its craft.

22 29. By virtue of these efforts, STONE® is uniquely beloved among Ameri-
23 can and international beers, with a passionate and loyal following among consumers
24 and critics alike. STONE® enjoys exceptional consumer engagement ratings on social
25 media, with scores nearly double the nearest craft brewer. Loyal customers have even
26 been known to commission tattoos of STONE® in homage – and then travel to the
27 Escondido brewery to proudly show off their ink.

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1 30. STONE®'s brand and commitment to producing innovative artisan beer
2 have helped it defy the status quo and disrupt the American beer industry. In 2016,
3 Stone produced more than 10.6 million gallons of beer for sale to customers in all fifty
4 U.S. States.

5 31. STONE®'s rise has placed it into direct competition with MillerCoors
6 and its Big Beer associates in the U.S. beer market. In 2017, STONE®'s U.S. sales
7 exceeded \$70 million, placing it among the ten best-selling craft brewers in the country
8 – including erstwhile “craft” breweries now operating under MillerCoors and other
9 beer conglomerates.

10 32. Stone also has taken its beer brewing passion abroad. STONE® is now
11 the first American craft brewer to independently build, own and operate a brewery in
12 Europe – in the heartland of Germany where serious beer has been enjoyed for over a
13 thousand years. Doing so has strengthened Stone's already diverse international fan
14 base, who happily drink STONE® hops throughout the European Union and China,
15 plus Canada, Australia, Singapore, Taiwan, Puerto Rico, Panama and Brazil, among
16 other nations. It is fair to say that STONE® has become an inherently distinctive and
17 internationally recognized standard-bearer for American craft beer.

18 **D. MillerCoors and Keystone's Origins**

19 33. Defendant Molson Coors is a multinational beer conglomerate formed af-
20 ter a series of mergers involving Coors, Miller, and Canadian brewing giant Molson.
21 In the United States, Molson Coors operates through its subsidiary, Defendant Mil-
22 lerCoors. (Collectively, Molson Coors and MillerCoors are referred to hereinafter as
23 “MillerCoors”). Among dozens of brands in its portfolio, MillerCoors sells domestic
24 lager brands Keystone and Keystone Light.

25 34. Since its inception, MillerCoors and its predecessors have sold its “Key-
26 stone” sub-premium beer brand in cans with a primary KEYSTONE mark and promi-
27 nent imagery of the Colorado Rocky Mountains. The name “Keystone” is the name
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1 of a popular ski resort town founded in the 1970s in Colorado. The mountain range
2 depicted on the can is styled after the Wilson Peak located in the Rockies.



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10 35. In doing so, the "Keystone" name served to remind consumers of the
brand's Colorado roots and ties to its parent brand, Coors.

11 36. Those ties apparently no longer bind so tight. After a series of corporate
12 mergers and relocations, Keystone no longer is headquartered in its ancestral home in
13 the Rocky Mountains. The brand is now part of a large "portfolio" of beers under the
14 Molson-Miller-Coors conglomeration, with its U.S. base in Chicago, Illinois. This
15 may explain the company's new insistence on dropping the "Key-" from its brand in
16 favor of "STONE" – in an effort to chase the craft market and Stone in particular.

17 **E. MillerCoors's "Big Beer" War Against Craft Beer**

18 37. MillerCoors' "Big Beer" brands like Keystone have suffered most from
19 the rise of tasty brews like STONE®. As craft beer was on the rise from the late 1990s
20 throughout the 2000s—celebrating double-digit growth each year—Big Beer increas-
21 ingly lost market share. From 2011 to 2016, Keystone Light sales dropped more than
22 25%. *USA Today* recently, dubbed Keystone one of the "**Beers Americans No Longer**
23 **Drink**" in a December 2017 article.

24 38. To stem these losses, MillerCoors has embarked on a plan to wrestle back
25 market share. In addition to rebranding Keystone to emulate STONE® (discussed
26 below), MillerCoors recently acquired Stone's San Diego neighbor and former inde-
27 pendent craft brewery, Saint Archer Brewing. MillerCoors itself has explained that
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1 this expansion is aimed to eliminate competition from independent brewers like Stone
2 – efforts that the conglomerate attempts to disguise by using a supposed “craft” beer
3 holding entity, Tenth and Blake Beer Company.

4 39. Nothing about such activity is benign. Upon these acquisitions, Mil-
5 lerCoors drops prices to supra-competitive rates and ramps up production and distri-
6 bution. In doing so, it aims to undermine independent craft brewers’ ability to compete
7 while deceptively continuing to advertise its mass-produced brands as “craft” beers.

8 **F. Keystone’s Rebranding as “STONE”**

9 40. MillerCoors’ renaming of “Keystone” as “STONE” marks an aggressive
10 second phase of the company’s pincer move against craft beer and Stone in particular.

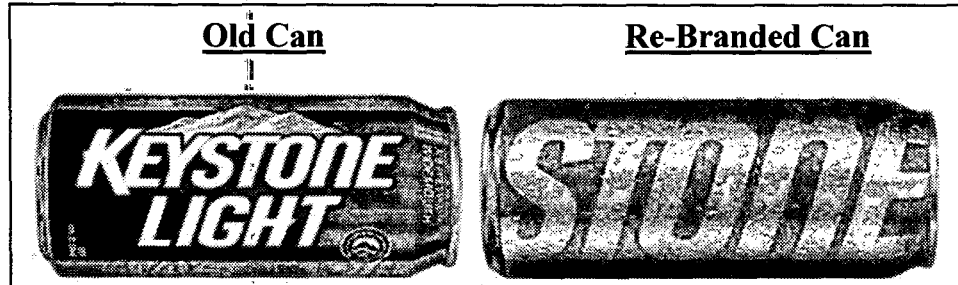
11 41. In April, 2017, the company quietly announced that Keystone was to be
12 rebranded as “STONE”. New cans, boxes and logos were formulated to emphasize
13 “STONE” as a primary mark.

14 42. Since the release of the new design, MillerCoors has launched a viral
15 marketing campaign that touts Keystone’s self-proclaimed new name of “STONE.”
16 In recent months, the brand’s Facebook and Instagram pages have been scrubbed of
17 the word “key” and filled with posts strategically placing Keystone beer cans so that
18 only “STONE” is prominently displayed to viewers, with accompanying videos to
19 match. These changes point unmistakably to a concerted effort by MillerCoors to cap-
20 italize on the goodwill and recognition associated with the STONE® mark and brand.

21 **1. Removing “KEY” from Keystone’s Can and Packaging**

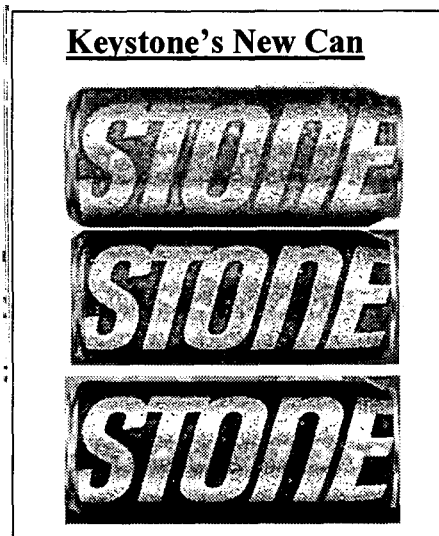
22 43. In a glaring departure from Keystone’s traditional brand, MillerCoors has
23 redesigned the label of Keystone cans and cases to emphasize its shift to “STONE.”
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1 44. The new can abandons the high ground by dropping Keystone's signature
2 mountain imagery. In its place, the can now lacks any imagery at all and relies entirely
3 on a large display of the new name, "STONE." The result would be unrecognizable
4 to Keystone drinkers of yore. In effect, MillerCoors has abandoned the KEYSTONE
5 mark and heritage in favor of a brand centered entirely on one word: "STONE":

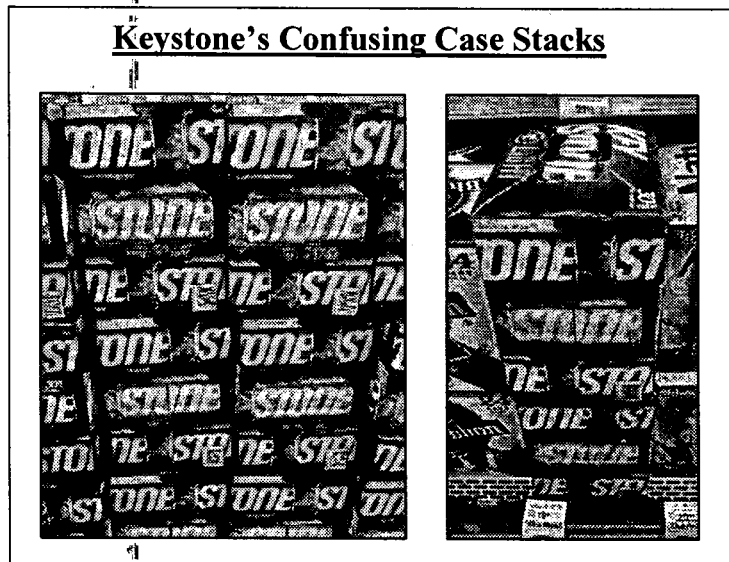


11 45. Keystone's new can design overtly copies and infringes the STONE®
12 trademark. Indeed, MillerCoors has effectively admitted that this copying is inten-
13 tional. Before the cans hit shelves, MillerCoors announced in an official blog post that
14 it was launching "a can that plays up the "Stone" nickname." (<http://www.mil->
15 [lercoorsblog.com/news/keystone-light-new-look-15-pack/](http://www.millercoorsblog.com/news/keystone-light-new-look-15-pack/)). A new, self-proclaimed
16 "nickname," that is.

17 46. The new Keystone can displays STONE® as its primary brand identifier,
18 with no apparent hint of the traditional KEYSTONE brand or its signature mountain
19 theme:



1 47. The rest of the new Keystone packaging conspicuously copies the
2 STONE® mark. Indeed, the new Keystone 30-packs omit virtually any reference to
3 “Keystone” at all. Instead, the packaging is designed to create a “wall of STONE”
4 when displayed in stores:



15 48. Packaging and labels are critical to beer marketing, ensuring that brands
16 stand out to consumers perusing the beer aisles in stores. The overwhelming emphasis
17 of “STONE” on the new Keystone packaging is a declaration that Keystone has aban-
18 doned its roots in an effort to simply become “STONE” to consumers. But there is
19 already one – and only one – true STONE® in the market.

20 **2. Keystone’s Deceptive Social Media Campaigns**

21 49. At the same time, MillerCoors has also launched an escalating advertising
22 and social media attack to establish STONE® as a new name for Keystone.

23 50. MillerCoors has instituted a social media blitz on its publicly available
24 sites where it solely refers to Keystone as “STONE” and strategically places its product
25 so that “STONE” is the most prominent, if not the only, graphic visible to viewers.

26 51. On Facebook, virtually every post on Keystone’s page now refers to
27 Keystone as STONE®, confirming that there is nothing coincidental about the cam-
28 paign. In the last several weeks, MillerCoors has sharply escalated its use of

1 STONE® on Keystone’s social media accounts, with near-daily posts during the hol-
2 iday season. These social media posts feature cans deliberately positioned to empha-
3 size the terms “STONE” and “STONE LIGHT.”

Keystone’s Misleading Facebook Posts



14 52. On Instagram, Keystone continues its misappropriation with posts that
15 take every opportunity to emphasize the word “STONE,” including taglines such as:
16 “The ‘Stone that keeps on giving”; “Come bearing ‘Stones”; “Season’s greetings
17 from the ‘Stone family”; and “‘Stone sweet ‘Stone.” The emphasis on this new name,
18 “STONE,” is accompanied by images displaying the Keystone can with “STONE” as
19 the most prominent graphic.

Keystone’s Deceptive Instagram Taglines

