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UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

SUZIE'S BREWERY COMPANY, an Oregon  
corporation,

Plaintiff,

v.

ANHEUSER-BUSCH COMPANIES, LLC, a  
Delaware limited liability company,  
ANHEUSER-BUSCH INBEV WORLDWIDE,  
INC., a Delaware corporation,

Defendants.

Case No.

**COMPLAINT (False Advertising (28  
U.S.C. § 1125) and Unfair Competition)**

DEMAND FOR JURY TRIAL

Plaintiff Suzie's Brewery Company ("Suzie's Brewery") alleges as follows:

**INTRODUCTION**

1. Using the bully-pulpit its massive national advertising budget allows, Anheuser-Busch has premiered a new false and misleading advertising campaign aimed at convincing health-conscious drinkers that its new organic hard seltzer is a unique, one-of-a-kind product. To be clear, it is not. And Anheuser-Busch will continue to pursue its strategy of unfairly squeezing out its smaller competitors in the organic hard seltzer market (like Suzie's Brewery) unless this court puts a stop to its misconduct.

## JURISDICTION AND VENUE

2. This action arises under the Lanham Act, 15 U.S.C. §§ 1051, *et seq.*, and the laws of the State of Oregon.

3. This court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1338(a), and 15 U.S.C. § 1121 because it arises under the Lanham Act, 15 U.S.C. §§ 1051, *et seq.* Jurisdiction over the common-law claim is also appropriate as the claim for unfair competition is so related to the Lanham Act claim that it forms part of the same case and controversy, and therefore falls within the scope of this court’s supplemental jurisdiction pursuant to 28 U.S.C. § 1338(b) and 1367.

4. Venue is proper in the District of Oregon pursuant to 28 U.S.C. § 1391(b) and (c).

## THE PARTIES

5. Suzie’s Brewery is an Oregon corporation with its principal place of business in Pendleton, Oregon. Since June, 2020, Suzie’s Brewery has been manufacturing and selling Suzie’s Organic Hard Seltzer (“Suzie’s Seltzer”).

6. Defendant Anheuser-Busch Companies, LLC, is a Delaware limited liability company with its U.S. headquarters located in St. Louis, Missouri. Anheuser-Busch Companies, LLC is, upon information and belief, a wholly-owned subsidiary of Defendant Anheuser-Busch Inbev Worldwide, Inc. Defendants are referred to collectively herein as “Anheuser-Busch”. Anheuser-Busch is one of the world’s largest breweries and beverage manufacturers.

7. Anheuser-Busch has for many years done a substantial amount of business in Oregon, including by advertising, shipping, offering for sale, and selling various products in Oregon. In doing so, Anheuser-Busch has directed its activities towards the citizens of Oregon and has invoked the benefits and protections of Oregon’s laws. A related company, Anheuser-

Busch, LLC, is registered to do business with the Oregon Secretary of State. Suzie's Brewery is an Oregon company that is suffering and will continue to suffer harm in Oregon as a result of the false and misleading advertisements Anheuser-Busch has and continues to direct toward Oregon consumers.

### **ANHEUSER-BUSCH'S FALSE ADVERTISING AND UNFAIR COMPETITION**

8. In the fall of 2019, Suzie's founders saw an opportunity. Both the "hard seltzer" and the "better-for-you" beverage markets were rapidly growing. In an effort to combine those two growth areas, Suzie's Brewery was born with the goal of brewing and selling a USDA certified organic hard seltzer. In June 2020, Suzie's Seltzer received its "USDA Organic" certification. In July 2020, Suzie's Seltzer hit the market. Suzie's Seltzer is the company's only product currently. Suzie's Seltzer's growing national footprint presently includes distribution in Oregon, Washington, Idaho, Wyoming, and New Jersey with introduction in other states following shortly.

9. The USDA Organic certification is a primary part of Suzie's Brewery's marketing of its Suzie's Seltzer. More specifically, Suzie's Brewery markets its Suzie's Seltzer to those who participate in an active and health-conscious lifestyle. Suzie's Brewery has found that its USDA Organic certification is a central part of its brand identity and that, for a certain set of consumers, USDA organic certification is material to their decision to purchase products.

10. Anheuser-Busch brews, markets, and sells dozens of different varieties of beverages under multiple brands. One of the Anheuser-Busch products is the "Michelob ULTRA" line of beverages. In January 2021, Anheuser-Busch introduced Michelob ULTRA Organic Seltzer ("ULTRA Seltzer").

11. According to Anheuser-Busch, ULTRA Seltzer is a USDA Organic certified

product. However, in introducing ULTRA Seltzer, Anheuser Busch did not stop with simply touting its organic certification. Instead, Anheuser-Busch made multiple false and misleading statements about ULTRA Seltzer on TV, Out of Home advertising (billboards, posters, etc.), digital, radio, and social media, including statements that that ULTRA Seltzer is the:

- “First-of its-kind organic option to the hard seltzer category”;
- “First USDA-certified organic hard seltzer”;
- “First National USDA Certified Organic Hard Seltzer”; and
- “First-ever national USDA certified organic hard seltzer”.

12. On January 24, 2021, during the nationally televised division championship NFL playoff games, Anheuser-Busch ran a television advertisement which prominently stated that ULTRA Seltzer is the “only national USDA organic certified seltzer.” Suzie’s Brewery has since learned that Anheuser-Busch intends to run this advertisement during the upcoming NFL Super Bowl (which will be seen by approximately 100 million viewers in the U.S.).

13. Anheuser-Busch’s statements regarding ULTRA Seltzer, and in particular its statements that it is the “first” and “only” USDA organic certified hard seltzer are false. Suzie’s Seltzer, also has a national USDA organic certification, and was available on the market well-before ULTRA Seltzer. In addition, there are several other hard seltzer brands on the market that have USDA organic certification.

14. After the January 24, 2021, television advertisement, Suzie’s Brewery was contacted by multiple consumers and product distributors regarding the ULTRA Seltzer advertising. Many expressed confusion about Anheuser-Busch’s statements that ULTRA Seltzer was the “first” or “only” USDA Organic certified hard seltzer. Others questioned the veracity of Suzie’s Brewery’s statement that it was USDA Organic certified after hearing Anheuser-Busch

(a large and trusted company) state that Ultra Seltzer was the “only” organic hard seltzer on the market. These reactions show the deceptive and confusing nature of Anheuser-Busch’s advertising of its ULTRA Seltzer.

15. On January 27, 2021, Suzie’s Brewery sent Anheuser-Busch a letter demanding that Anheuser-Busch cease and desist its false advertising related to ULTRA Seltzer. Anheuser-Busch has failed and refused to do so.

### **FIRST CLAIM FOR RELIEF**

#### **(False Advertising – 15 U.S.C. § 1125(a))**

16. Suzie’s Brewery realleges and incorporates by reference the allegations contained in paragraphs 1 through 15 above.

17. Anheuser-Busch’s misrepresentations and false and misleading statements of fact regarding ULTRA Seltzer were made in connection with the marketing, promotion, and sale of ULTRA Seltzer as part of a national ad campaign, including nationally televised commercials and media distributed through the internet. Accordingly, Anheuser-Busch’s misrepresentations and false and misleading statements were made in a commercial advertisement.

18. Anheuser-Busch’s misrepresentations and false and misleading statements of fact regarding ULTRA Seltzer have deceived and/or are likely to deceive a substantial segment of consumers.

19. Anheuser-Busch’s misrepresentations and false and misleading statements of fact regarding ULTRA Seltzer have deceived or are likely to deceive a substantial segment of consumers.

20. Anheuser-Busch’s misrepresentations and false and misleading statements of fact regarding ULTRA Seltzer are material to consumers and will improperly draw current and

prospective customers to Anheuser-Busch and away from Suzie's Brewery and other companies that offer organic hard seltzer.

21. By making its misrepresentations and false and misleading statements of fact regarding ULTRA Seltzer in a national ad campaign, including nationally televised commercials and media distributed through the internet, Anheuser-Busch caused its false statement to enter interstate commerce, in violation of the Lanham Act, 15 U.S.C. § 1125(a).

22. As a result of Anheuser-Busch's willful and deliberate misrepresentations and false and misleading statements of fact regarding ULTRA Seltzer, Suzie's Brewery is likely to be injured, either by a direct diversion of sales from Suzie's Brewery to Anheuser-Busch or by a lessening of the goodwill associated with Suzie's Brewery's products, entitling Suzie's Brewery to damages in an amount to be proven at trial.

23. Suzie's Brewery has no adequate remedy at law because Anheuser-Busch's misrepresentations and false and misleading statements regarding ULTRA Seltzer have damaged, and will continue to damage, Suzy's Brewery's ability to compete fairly in the market, such that damages alone cannot fully-compensate Suzie's Brewery for Anheuser-Busch's misconduct. Unless enjoined by this court, Anheuser-Busch will continue to make misrepresentations and false misleading statements of fact in connection with the marketing, promotion, and sale of ULTRA Seltzer (including, but not limited to during the NFL Super Bowl scheduled for February 7, 2021) that are likely to confuse, mislead, or deceive consumers and improperly draw consumers to Anheuser-Busch to the irreparable injury of Suzie's Brewery. This threat of future injury to the business, goodwill, and reputation of Suzie's Brewery requires preliminary and permanent injunctive relief.

24. Anheuser-Busch knew or should have known that its statements regarding

ULTRA Seltzer were false statements of fact. Under the circumstances and, especially, the relative financial disparity between the parties, Anheuser-Busch's knowing false statements constitute exceptional, willful, and deliberate conduct. Accordingly, Suzie's Brewery is entitled to its attorney fees and costs incurred in connection to this lawsuit under 15 U.S.C. § 1117.

## **SECOND CLAIM FOR RELIEF**

### **(Unfair Competition)**

25. Suzie's Brewery realleges and incorporates by reference the allegations contained in paragraphs 1 through 24 above.

26. Anheuser-Busch's misrepresentations and false and misleading statements of fact regarding ULTRA Seltzer are calculated to and/or likely to confuse, mislead, or deceive consumers as to the nature and qualities of ULTRA Seltzer, and are likely to influence consumers to purchase ULTRA Seltzer as opposed to the similar organic hard seltzers manufactured and distributed by Anheuser-Busch's smaller competitors, including Suzie's Brewery.

27. As a result of Anheuser-Busch's misrepresentations and false and misleading statements of fact regarding ULTRA Seltzer, Suzie's Brewery is likely to be injured, either by a direct diversion of sales from Suzie's Brewery to Anheuser-Busch or by a lessening of the goodwill associated with Suzie's Brewery's products, entitling Suzie's Brewery to damages in an amount to be proven at trial.

28. Suzie's Brewery has no adequate remedy at law because Anheuser-Busch's willful and deliberate misrepresentations and false and misleading statements regarding ULTRA Seltzer have damaged, and will continue to damage, Suzie's Brewery's ability to compete fairly in the market, such that damages alone cannot fully-compensate Suzie's Brewery for Anheuser-

Busch's tortious misconduct. Unless enjoined by this court, Anheuser-Busch will continue to make misrepresentations and false statement of fact in connection with the marketing, promotion, and sale of ULTRA Seltzer (including, but not limited to during the NFL Super Bowl scheduled for February 7, 2021) that are likely to confuse, mislead, or deceive consumers and improperly draw consumers to Anheuser-Busch to the irreparable injury of Suzie's Brewery. This threat of future injury to the business, goodwill, and reputation of Suzie's Brewery requires preliminary and permanent injunctive relief.

29. As a result of Anheuser- Busch's misrepresentations and false and misleading statements of fact, Suzie's Brewery has incurred attorney's fees and costs to which it is entitled to recover from Anheuser-Busch.

#### **PRAYER FOR RELIEF**

WHEREFORE, Suzie's Brewery is entitled to judgment that:

1. Anheuser-Busch and their employees, contractors, agents, servants, officers, and/or members, and all other persons in active concert with Anheuser-Busch, be permanently enjoined and restrained from falsely advertising that ULTRA Seltzer is the "first" or "first-of-its-kind" or "only" national USDA certified organic hard seltzer, or other similarly false and misleading statements in connection with the marketing, promotion, and sale of ULTRA Seltzer;

2. Anheuser-Busch and their employees, contractors, agents, servants, officers, and/or members, and all other persons in active concert with Anheuser-Busch, be directed to remove from interstate and foreign commerce any commercial marketing or promotional materials containing the false and misleading statements that ULTRA Seltzer is the "first" or "first-of-its-kind" or "only" national USDA certified organic hard seltzer, or other similarly false and misleading statements in connection with the marketing, promotion, and sale of ULTRA

Seltzer;

3. Anheuser-Busch be directed to file with this court and serve on Suzie's Brewery's counsel within thirty (30) days of the court's issuance of an injunction, a report setting forth in detail the manner and form in which Anheuser-Busch has complied with the injunction;

4. Anheuser-Busch be required to pay Suzie's Brewery all damages Suzie's Brewery suffered as a result of Anheuser-Busch's misrepresentations, false statements, and unfair competition, in an amount to be proven at trial;

5. Anheuser-Busch be required to pay Suzie's Brewery's reasonable attorney's fees, costs, and expenses; and

6. Suzie's Brewery be granted such other relief as the court deems just and equitable.

DATED: February 2, 2021

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*s/ Daniel C. Peterson*

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