COMPLAINT

The Center for Science in the Public Interest (CSPI) filed a complaint concerning a television advertisement for Coors Light beer that aired on ABC on June 21, 2005. CSPI asserted that the advertisement violated the following standard in Coors’ advertising pledge:

*We will not condone illegal activity of any kind.*

The advertisement depicts a crowded, lively bar scene. An exceptionally industrious busboy rapidly clears Coors beer bottles from tables by picking up some bottles and sweeping others into the tub he is carrying. A co-worker remarks to the bar manager (or owner) about how hard the new busboy is working. The manager responds that he did not hire a new busboy, and the busboy is then seen running out of the bar with an overflowing tub of Coors beer bottles. Right after the busboy runs out of the bar, a voice-over says “This summer grab some Coors or Coors Light”, and urges viewers to purchase specially marked packages of Coors for a chance to win music downloads in Coors’ “Taste the Cold, Get the Music” sweepstakes. A superimposed script appears on certain frames of the advertisement stating that multiple purchases/codes do not increase the odds of winning, and also that complete sweepstakes rules are available on the Coors’ website.

The complaint alleges that the advertisement portrays a young man stealing beer and running off with an excessive quantity, and argues that the advertisement condones illegal activity by suggesting that anything goes to get a beer, even stealing.

Coors responded to the complaint by stating that the advertisement was intended to be humorous and introduce consumers to Coors’ “Taste the Cold, Get the Music” sweepstakes. Coors asserts that the busboy was collecting empty Coors beer bottles that are normally bussed and thrown away, and that the busboy was taking the bottles not for the beer but rather to download music by using the sweepstakes codes that are included on the bottle labels. Coors asserts that no illegal activity is portrayed, and thus none could be condoned.

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1 The complaint also alleges a violation of the Beer Institute’s voluntary advertising code. However, this decision will only address violations of Coors’ pledge made as part of the Advertising Pledge Program.

2 Coors asserts that the advertisement was designed to show that the bottles were empty in that (1) the busboy asks patrons in the bar if they are finished with the beer and no one tries to stop him from clearing the bottles; (2) the soundtrack to the advertisement includes empty clinking bottle sound effects, and (3) the scenes do not show any beer spilling from bottles, including bottles that are swept from a table or turned at angles where any beer would spill.
In response, the complainant disputes that the advertisement showed the bottles were empty. The complainant asserts that the advertisement shows the busboy clearing off beer bottles in a rapid and furtive manner without waiting for a response from the customers, and that his “whispered requests” to clear the bottles go unnoticed by customers. The complainant also points out that, in one instance, a bottle is grabbed from the hands of a customer, and further notes that in leaving the bar the busboy is carrying not only a tub filled with beer bottles but also a single upright beer bottle in one hand.

In response to Coors’ statement that the advertisement was intended to depict the busboy taking empty beer bottles in order to use the sweepstakes codes included on the labels, the complainant alleges that this would demonstrate another illegal act – taking beer bottles from customers who may have purchased them in part for the codes used to enter the sweepstakes. The complainant also alleges that the busboy could be taking these bottles for the value of bottle refunds that would have been owed to the bar.

The complainant asserts that the empty clinking sounds and the absence of beer spilling from the bottles are “subtle aspects of the ad” that would likely be missed by most viewers. The complainant also expresses concern that the target audience for the advertisement, as expressed by Coors, is “young legal drinking age adults, who are known for loving music and downloading song,” since it believes that the audience for music downloading also includes millions of underage persons.

FINDINGS

In order to address the issues raised by this complaint, it is necessary to determine (1) whether the advertisement at issue portrays illegal activity, and (2) if so, whether the advertisement indicates that such illegal activity is condoned.

In making these determinations, we need to consider the messages conveyed by the advertisement, including those messages that Coors intended and also other messages that were not intended but would be reasonably perceived by a significant number of consumers.

The first question is whether illegal activity is portrayed in the advertisement. This question turns in part on whether or not the bottles being cleared and removed from the bar are empty or have any value.

While it is clear from Coors’ submission that it intended the advertisement to depict the clearing of bottles that are empty, the rapid fire pace of the commercial makes it difficult for consumers to notice and/or appreciate the significance of the signs intended by Coors to indicate this. There are also a number of factors that could reasonably lead to the impression that the busboy is taking bottles that are not empty -- the busboy is removing bottles without engaging the bar patrons or waiting for a response to his questions, and at least one consumer has a beer taken from his hand. And, while many of the bottles are shown in a position where beer would spill unless the bottles are empty, other bottles -- including one in the busboy’s hand as he leaves the bar – are shown in an upright position.

Coors also asserts that the bottles are “throwaways.” However, that is not clear from the advertisement. We take notice of the fact that a number of states with significant population require that beer bottles carry a refund value, and that consumers in at least those states may reasonably perceive that the bottles have a refund value.

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3 However, complainant does not allege that the placement of the advertisement violates other parts of Coors’ pledge relating to placement of advertisements to ensure that Coors advertisements target adults 21 years and older.
Coors asserts that the advertisement depicts the busboy taking the bottles for the codes on their labels. While we accept Coors’ explanation that this was the intent of the advertisement, unfortunately the advertisement does not provide sufficient details for most consumers to reach that conclusion. The advertisement does not clearly indicate that sweepstake codes are on individual bottles; in fact, the voice-over urges consumers to look for “specially marked packages” for a chance to win. While the words “Multiple purchases/codes do not increase odds of winning” are briefly superimposed, they do not indicate that codes are on individual bottles; in any event, those words are likely to be missed in a single viewing of the advertisement.

During the course of this proceeding, Coors confirmed that “... the music downloads in our promotion are free to the consumer and proof of purchase is not required. Multiple purchases do not increase chances of winning. A consumer can use the same code, day-after-day and have the same chance each day of getting free music downloads.” Coors provides this information to demonstrate that a consumer only needs one bottle to enter and that “... an assignment of value is only pertinent to each respective consumer.” However, given that a single code on one empty bottle of the product is the only requirement to enter the promotion multiple times, it could suggest that the busboy is collecting several dozen bottles for some other purpose.

In trying to determine whether the advertisement portrays illegal activity, we are guided by what we determine to be reasonable consumer perception of the advertisement. Despite Coors’ intention to depict the bottles as empty and as throwaways, reasonable consumers could perceive the advertisement as depicting that some bottles have beer in them and also that the bottles have a refund value. While it is impossible to state with certainty whether the busboy is engaging in an illegal activity, since this may vary according to state and local laws, we believe that one reasonable consumer interpretation of the advertisement is that the busboy is engaging in illegal activity – albeit a relatively minor one -- as a result of taking beer under false pretense and/or taking bottles with a refund value that would otherwise benefit the owner of the bar. While we cannot make a determination as to whether taking the codes constitutes a crime, since we have not reviewed the specifics of the label and the sweepstakes rules, it is certainly another possible interpretation for those who view the advertisement as depicting the removal of empty bottles for their codes.

In making the above determination, we do not mean to imply that Coors intended to depict illegal activity. Indeed, we accept Coors’ expressed intention to create an advertisement where no illegal activity was shown. However, as with any advertisement, we believe Coors is responsible for even unintended messages that will be perceived by reasonable consumers.

Having determined that the advertisement can be reasonably perceived as depicting illegal activity, we must determine whether the advertisement “condones” such activity. We recognize that the advertisement was intended to be humorous, and believe that many consumers would view it that way. However, we must also examine whether other messages are possible and may be reasonably perceived by consumers.

The definition of “condone” includes “to pardon or overlook voluntarily” and “to treat as if trivial, harmless, or of no importance.” While many consumers would likely view the advertisement as a humorous portrayal that does not condone illegal activity, we believe that a significant number of consumers would view the commercial as trivializing illegal activity. We note that the actors and bar scene are portrayed in a very realistic fashion, and that there was nothing in the advertisement to counteract the portrayal of potentially illegal activity or affirmatively indicate that the advertiser does not condone it. We view our role as making a determination based on those messages that would be reasonably perceived by a significant number of consumers, and believe that a significant number would view the commercial as portraying illegal activity in a manner that treats it as trivial or harmless.

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CONCLUSIONS AND RECOMMENDATION

Based on our determination that one of the messages received by reasonable viewers of the challenged advertisement is that illegal activity has been condoned, we therefore recommend that the advertisement be discontinued.

ADVERTISER’S STATEMENT
Submitted: August 5, 2005

“We acknowledge CBBB recognized the Coors Brewing Company did not intend to condone illegal activity, but respect its conclusion that some consumers might get a different impression. Consistent with our ACE Pledge, we will immediately withdraw the Bus Boy spot from all media and commit to not place the ad again in its current form.”