

MEMORANDUM

TO: Beer Institute’s Code Compliance Review Board (CCRB)
FROM: U.S. Senate Commerce Committee Ranking Member Ted Cruz
DATE: June 14, 2023
RE: Complaint – Anheuser-Busch’s Marketing Partnership with Dylan Mulvaney

INTRODUCTION

For the past two months, independent beer distributors and their employees across America, from truck drivers to salespeople, have suffered the negative consequences of the decision by Anheuser-Busch, which is owned by the global beer conglomerate AB InBev, to partner with social media influencer Dylan Mulvaney.¹ Mulvaney’s April 1st Instagram post² on behalf of Bud Light sparked a backlash from customers, who slammed the brewer’s controversial new marketing approach. Beer distributors and their employees have been economically harmed by a decision outside their control.

On May 17, 2023, Senators Ted Cruz and Marsha Blackburn sent a letter to Brendan Whitworth in both his capacity as U.S. CEO of the Anheuser-Busch Companies (“Anheuser-Busch”) and as Chairman and Senior Director of the Beer Institute.³ The senators’ letter raised concerns about Anheuser-Busch’s marketing partnership with Mulvaney. Sens. Cruz and Blackburn alleged that Anheuser-Busch had violated the Beer Institute Advertising and Marketing Code’s (the “Ad Code”) prohibition on marketing to minors. The letter included multiple examples of online content by Mulvaney that was used to target, market to, and attract an audience of young people who are well below the legal drinking age in the United States. These examples, with accompanying screenshots, are included in the appendix to this memorandum. The senators requested documents from Anheuser-Busch and called for a review by the Code Compliance Review Board (“CCRB”).

On May 19, 2023, Anheuser-Busch sent a letter responding to the complaint, which did not provide any of the documents that the senators requested.⁴ Sen. Cruz was dissatisfied with the response since it was not signed by Whitworth or any other representative of Anheuser-Busch, failed to comply with the senators’ reasonable request for documents in furtherance of their congressional oversight responsibilities, and provided no corroborating data to show that Mulvaney’s posts complied with the Ad Code. Sen. Cruz’s staff relayed his dissatisfaction with

¹ See, e.g., Max Zahn, ‘*Thrown in their faces*’: Bud Light salespeople say boycott is hurting commission, ABC NEWS (June 3, 2023), <https://abcnews.go.com/Business/thrown-faces-bud-light-salespeople-boycott-hurting-commission/story?id=99798063>.

² Dylan Mulvaney (@dylanmulvaney), *Happy March Madness!!*, INSTAGRAM (Apr. 1, 2023), <https://www.instagram.com/p/CqgTftujqZc/>.

³ A copy of the senators’ May 17th letter is attached as Exhibit A. Sen. Cruz is the Ranking Member of the Senate Commerce Committee and Sen. Blackburn is the Ranking Member of the Committee’s subcommittee on Consumer Protection, Product Safety, and Data Security. Both the Committee and this subcommittee have jurisdiction over consumer products, including beer, and consumer protection matters.

⁴ A copy of Anheuser-Busch’s May 19th response letter to Sens. Cruz and Blackburn is attached as Exhibit B.

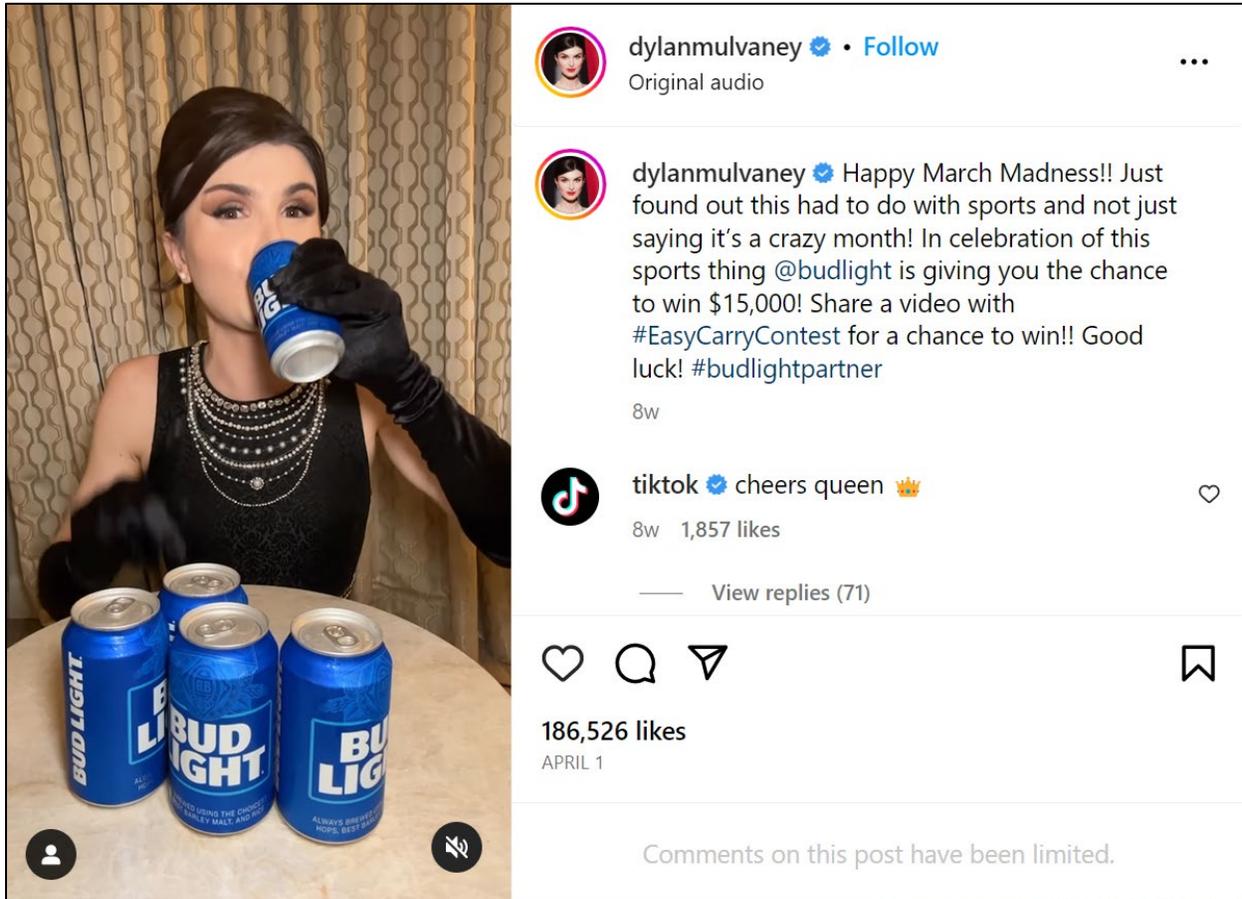
the response in an email to Anheuser-Busch on May 20, 2023. His staff reiterated the request for CCRB review on a call with counsel for the Beer Institute on May 23, 2023.

While the May 17th letter focused on an Instagram post dated April 1, 2023, Sen. Cruz is challenging *all* advertising and marketing materials stemming from Anheuser-Busch’s partnership with Mulvaney. This memorandum supplements the senator’s arguments and draws the CCRB’s attention to additional facts that bolster the initial May 17th complaint letter.

SUPPLEMENTAL FACTS

Mulvaney’s February 11, 2023, Instagram Post for Bud Light

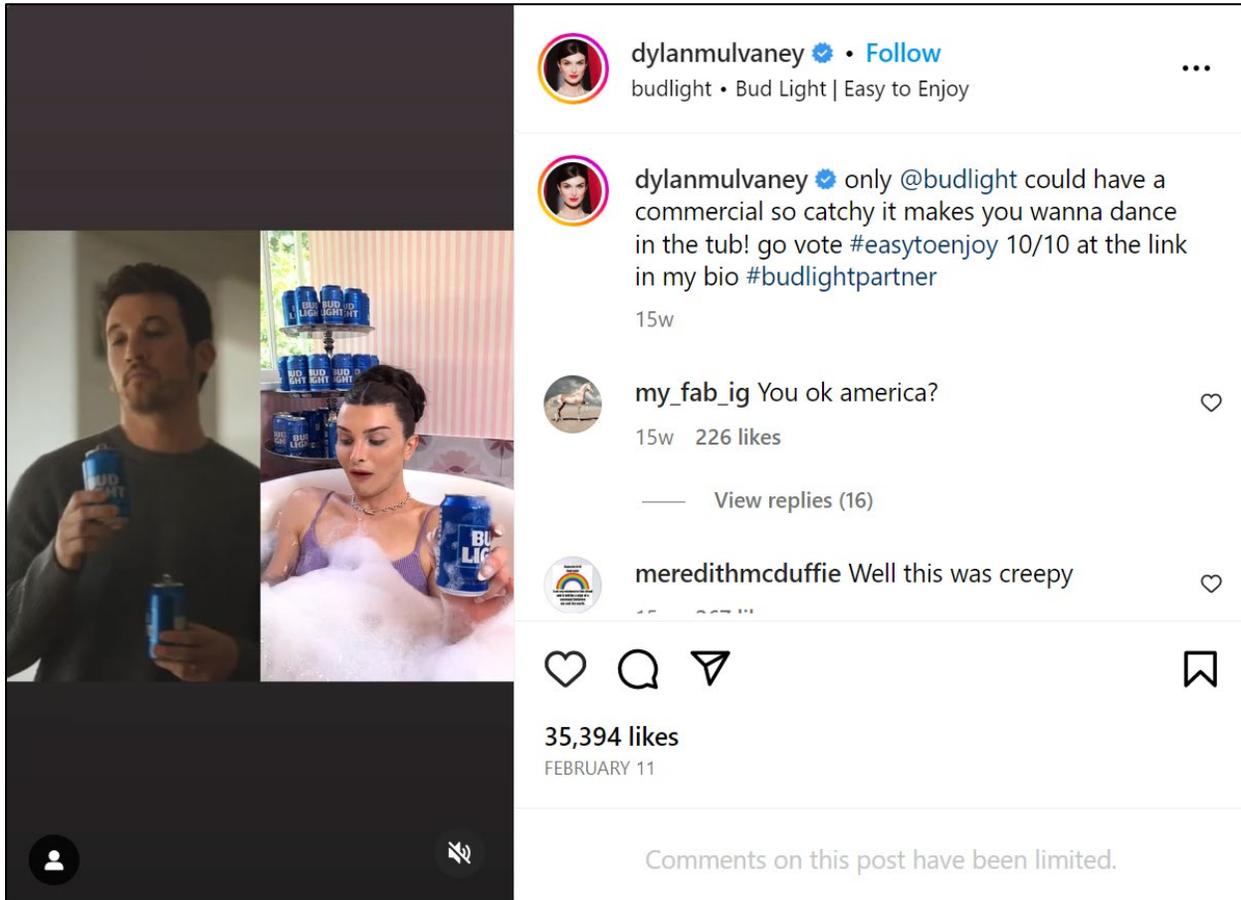
The May 17th letter stated that “[o]n April 1, 2023, Mulvaney announced on Instagram that he had recently inaugurated a partnership with Bud Light.” Here is a screenshot of that post⁵:



As a result of a *Wall Street Journal* article published on May 21, 2023, Sen. Cruz has now learned that Mulvaney’s partnership with Anheuser-Busch began months prior to the April 1st

⁵ Dylan Mulvaney (@dylanmulvaney), *supra* note 2.

Instagram post.⁶ On February 11, 2023, Mulvaney posted a video on Instagram with the caption #budlightpartner.⁷ The video showed Mulvaney dancing in a bathtub with an open can of Bud Light, a stack of Bud Light cans in the background. Here is a screenshot of that post:



This earlier February 11th post disproves AB InBev CEO Michel Doukeris’s statement on a May 4, 2023, earnings call that the company’s partnership with Mulvaney consisted of “one can, one influencer, one post and not a campaign.”⁸ In fact, Anheuser-Busch employed Mulvaney to advertise and market Bud Light on multiple occasions.

Bud Light’s Failure to Ensure Individuals Under the Legal Drinking Age Could Not Access Mulvaney’s April 1st Bud Light Instagram Post

The senator has also learned that Mulvaney and Bud Light violated Instagram policies on age gating. Instagram requires creators to block all U.S. users under the age of 21 from viewing

⁶ See Jennifer Maloney, *How Bud Light Blew It*, THE WALL STREET JOURNAL (May 21, 2023), <https://www.wsj.com/articles/bud-light-boycott-sales-dylan-mulvaney-6c23bb86>.

⁷ Dylan Mulvaney (@dylanmulvaney), *Only @budlight*, INSTAGRAM (Feb. 11, 2023), <https://www.instagram.com/p/CoiTxPFjU2N/>.

⁸ 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/>.

branded content promoting or referencing alcohol.⁹ But, as *Washington Post* columnist Philip Bump has reported, Bud Light and Mulvaney failed to appropriately age gate the April 1st post to prevent underage individuals from accessing the post.¹⁰ Bump created a “new account for someone age 16” but saw that the “content was visible both when linked directly and on Mulvaney’s page,” in violation of site policy.

Bump’s experiment also illustrates how easy it is for users to lie about their age when signing up for a new Instagram account. As the *Wall Street Journal* has reported, “Instagram doesn’t verify the age a user declares when creating an account.”¹¹ Rather, it employs “an honor system, and one that isn’t always followed.” According to a 2021 survey by the Social Institute cited by the *Journal*, 47% of high schoolers reported creating social-media accounts before age 13, in violation of Instagram rules.

Further Evidence of Mulvaney’s Appeal to Underage Persons

Sen. Cruz asks the CCRB to note the following additional examples of Mulvaney’s appeal to those under the age of 21:

- In a June 2022 feature in *Los Angeles Magazine*, Mulvaney discussed targeting those below the legal drinking age: “I didn’t have that open and vulnerable creator, or role model growing up. . . . **Four-year-old, eight-year-old, 15-year-old Dylan, they didn’t have a ‘me’ to go on TikTok. . . . But I want to be that for my younger self.**”¹² Why, the magazine asked, was Mulvaney’s video series titled “Days of Girlhood” rather than “Days of *Womanhood*”? “I didn’t get to have girlhood growing up on time as everyone else, and I’m now learning all the things that *little girls* got to learn so long ago,” Mulvaney replied. “I am going through many of the experiences of a *child* or a young adult. . . .” (emphasis added)
- When asked in a September 2022 interview with *Observer* about getting started online, Mulvaney replied, “I downloaded TikTok, assuming it was a *kids’ app*.”¹³ TikTok is Mulvaney’s primary social media platform. (emphasis added)
- In November 2022, Mulvaney posted a TikTok video directed “to all the queer and trans *kids and teens* out there who have been following along on my journey.”¹⁴ “I’m kind of

⁹ *Branded Content Policies*, META, <https://www.facebook.com/business/help/221149188908254> (last visited June 14, 2023).

¹⁰ Phillip Bump, *Ted Cruz figures out a way to guzzle new Bud Light headlines*, THE WASHINGTON POST (May 19, 2023), <https://www.washingtonpost.com/politics/2023/05/19/ted-cruz-bud-light-trans/>.

¹¹ Maddie Ellis, *Instagram Tests Child Age Verification, but Falls Short of Full ID Checks*, THE WALL STREET JOURNAL (Jun. 23, 2022), <https://www.wsj.com/articles/instagram-tests-child-age-verification-but-falls-short-of-full-id-checks-11655953547>.

¹² Julius Miller, *Dylan Mulvaney on Transitioning and Becoming a TikTok ‘Trailblazer’*, LOS ANGELES MAGAZINE (June 1, 2022), <https://www.lamag.com/culturefiles/dylan-mulvaney-on-transitioning-and-becoming-a-tiktok-trailblazer/>.

¹³ Rachyl Jones, *TikTok Watched Dylan Mulvaney Become a Woman One Day at a Time*, OBSERVER (Sept. 10, 2022), <https://observer.com/2022/09/tiktok-watched-dylan-mulvaney-become-a-woman-one-day-at-a-time/>.

¹⁴ Dylan Mulvaney (@dylanmulvaney), *Day 249*, TIKTOK (Nov. 15, 2022), <https://www.tiktok.com/@dylanmulvaney/video/7166411646657760554?lang=en>.

honored that you've accepted me as one of your own," Mulvaney stated. "It feels like we're all just kind of still *kids* trying to figure it out." (emphasis added)

- When asked about posting on TikTok in a March 2023 interview with *Variety*, Mulvaney stated, "I thought it was a *kids app* that you dance on."¹⁵ (emphasis added)
- In a March 13, 2023, appearance on *The Drew Barrymore Show*, Mulvaney spoke about deciding what content to share with fans: "I think back to my *childhood self* and I think about if I was following myself on TikTok as like a *young kid*, what would I want to hear?... you know *so much of my audience is a younger demographic*. . . ."¹⁶ (emphasis added)
- In a live performance at Rockefeller Center that evening, March 13, 2023, to celebrate Day 365 of "Girlhood," Mulvaney thanked parents who were watching "for letting me be a character in your *children's lives*."¹⁷ Mulvaney, a former Broadway performer, then sang the following lyrics from Stephen Sondheim's *Into the Woods*: "Careful the things you say / *Children* will listen / Careful the things you do / *Children* will see and learn / *Children* may not obey / But *children* will listen / *Children* will look to you / For which way to turn / To learn what to be." (emphasis added)
- In an April 27, 2023, feature in *Bustle*, Mulvaney stated, "I actually think it's very special that parents are allowing their *kids* to follow me, so *I want to maintain that relationship as much as I can*."¹⁸ (emphasis added)
- In an Instagram video posted that same day, April 27, 2023, Mulvaney told followers, "You might want to grab a beverage; this is going to be a longer one."¹⁹
- Mulvaney recently partnered with Lionsgate to promote the coming-of-age, teen film "Are You There God? It's Me, Margaret", which is a film adaptation of a famous, bestselling book for young readers by Judy Blume. In a TikTok video advertising the movie, Mulvaney asked Blume what advice she had for "young creatives."²⁰ No wonder, for the novel on which the film is based remains popular with young audiences. It's

¹⁵ Marc Malkin, *TikTok Star Dylan Mulvaney Recalls Coming Out as Trans at Age 4, Tells Trans Youth: 'There Is a Light at the End of the Tunnel'*, VARIETY (Mar. 9, 2023), <https://variety.com/2023/digital/podcasts/tiktok-dylan-mulvaney-transgender-1235547512/>.

¹⁶ The Drew Barrymore Show, *Dylan Mulvaney asks "What Would Laverne Cox Do?"*, YOUTUBE (Mar. 13, 2023), <https://www.youtube.com/watch?v=6RmyhD4crwI>.

¹⁷ *Dylan Mulvaney's Day 365 Live!* (online livestream Mar. 13, 2023), <https://365daysofgirlhood.com/>.

¹⁸ Harron Walker, *Dylan Mulvaney Wanted To Be An Actor, Not An Activist*, BUSTLE (Apr. 27, 2023), <https://www.bustle.com/entertainment/dylan-mulvaney-tiktok-days-of-girlhood-bud-light-nike>.

¹⁹ Dylan Mulvaney (@dylanmulvaney), *Love ya*, INSTAGRAM (Apr. 27, 2023), <https://www.instagram.com/reel/Crjsy11rkn7/>.

²⁰ Dylan Mulvaney (@dylanmulvaney), *Chatting with one of my heroes, Judy Blume!!*, TIKTOK (May 12, 2023), <http://www.tiktok.com/@dylanmulvaney/video/7232377894104861994>.

currently the #1 bestselling children’s book on girls’ & women’s issues on Amazon.com.²¹

- When Mulvaney recently posted a TikTok video celebrating the beginning of Pride Month, the official Barbie TikTok account commented “Slavy.”²²

ARGUMENT

Anheuser-Busch’s marketing partnership with Mulvaney violated Section 3 of the Beer Institute Ad Code. Section 3 states that “[a]dvertising or marketing materials should avoid elements that appeal primarily to persons below the legal drinking age,” meaning that “they have special attractiveness to such persons beyond their general attractiveness for persons of legal drinking age.”²³

The February 11th and April 1st Instagram posts violate Section 3 for three reasons:

Mulvaney Appeals Primarily to Underage Persons (Section 3(a))

First, considered holistically, the challenged posts appeal primarily to persons below the legal limit. Section 3(a) of the Ad Code states that “[i]n considering whether beer advertising and marketing materials appeal primarily to persons below the legal drinking age, Brewers should take into account the following elements among others. . . . Entertainers or celebrities.”²⁴

Mulvaney is an entertainer or celebrity with “special attractiveness” to persons below the legal drinking age. As noted in the May 17th letter, Mulvaney’s “Days of Girlhood” video series includes clips of the influencer employing children’s characters like Barbie and Eloise, a fictional six-year-old girl who is the main character in a well-known children’s book series; giving away merchandise to young teenage girls at the mall; and discussing teen developmental issues such as the “first kiss as a girl.” These videos were all posted on TikTok, a platform that Mulvaney considered to be “a kids app” and where the influencer spoke to “kids and teens out there,” saying, “I’m kind of honored that you’ve accepted me as one of your own.” In addition, in multiple interviews and settings, Mulvaney not only expressed the *desire* to be a role model for children, stating that “I want to be that” and “I want to maintain that relationship as much as I can,” but also acknowledged this was *already in fact the case*. Mulvaney thanked parents “for letting me be a character in your children’s lives” and said it was “very special that parents are allowing their kids to follow me.”

Mulvaney’s public persona is relevant to whether the February 11th and April 1st Instagram posts “appeal primarily to person below the legal drinking age.” When considering a Section 3 claim based on the presence of an entertainer or celebrity, the CCRB, in the past, has looked beyond

²¹ *Amazon Best Sellers*, AMAZON, https://www.amazon.com/gp/bestsellers/books/3068/ref=pd_zg_hrsr_books (last visited June 14, 2023).

²² Dylan Mulvaney (@dylanmulvaney), *June 1st Has Me Feelin Good*, TIKTOK (June 1, 2023), <https://www.tiktok.com/t/ZTRo7P98J/>.

²³ Beer Institute, *Advertising/Marketing Code and Buying Guidelines*, 4, <https://www.beerinstitute.org/wp-content/uploads/2023/06/Beer-Institute-Advertising-and-Marketing-Code-2023.pdf>.

²⁴ *Id.*

the challenged advertising or marketing materials to consider the entertainer or celebrity's image and audience in a broader context. For example, in its April 29, 2014, decision regarding the Anheuser-Busch television commercial "Epic Night," which featured the band OneRepublic and the actors Arnold Schwarzenegger and Don Cheadle, the CCRB looked to the percentage of OneRepublic's fans under the legal drinking age and whether the band had special attractiveness to people under the age of 21.²⁵ The CCRB also evaluated the presence of Arnold Schwarzenegger and Don Cheadle in the commercial. It considered their age, recognition rate among various age demographics, viewing audience for recent films, and, in the case of Mr. Cheadle, the content rating of a television show in which he starred, which was rated TV-MA for mature audiences.²⁶ Taken together, in this particular case, the CCRB concluded that these factors demonstrated that the commercial appealed primarily to adults of legal drinking age.²⁷

Here, in contrast, 26-year-old Mulvaney has a young fan base, employs themes that are especially attractive to girls and young teens, and is most easily recognized by young people, especially those on TikTok, Instagram, and other forms of social media. Unlike Cheadle's television show, Mulvaney's posts have no content rating.

The Bud Light-Mulvaney April 1st Post Failed to Confirm Instagram Users Were of Legal Drinking Age (Section 3(c)(ii))

Second, the April 1st placement violated Section 3(c)(ii) of the Ad Code because it initiated dialogue between Instagram users and Anheuser-Busch without confirming that users were of legal drinking age.

Section 3(c)(ii) states "[p]acements made by or under the control of the Brewer in digital media in which there is a dialogue between a user and a Brewer may only be made where a user confirms that he or she is of legal drinking age."²⁸ For placements involving dialogue, age confirmation can occur in one of two ways: "1) disclosure of a user's full birth date or other method of active confirmation prior to viewing an advertisement by or communicating with a Brewer; or, 2) restriction of the site to users of legal drinking age through registration."²⁹

The April 1st placement involved "dialogue" between users and Anheuser-Busch. The video received over 12,000 comments, 40,000 shares and 185,000 likes from Instagram users. Moreover, the post included specific instructions for users, asking them to "[s]hare a video with #EasyCarryContest."³⁰ Users responded to these instructions by creating new posts and reels with the recommended hashtag, tagging the Bud Light Instagram account. As noted, the April 1st post was not age gated and did not require "active confirmation" of a user's age prior to viewing. Nor is Instagram restricted to persons of legal drinking age.

²⁵ Beer Institute Code Compliance Review Board, "Epic Night," 5–6 (April 29, 2014), <https://www.beerinstitute.org/wp-content/uploads/2016/11/Epic-Night.pdf>.

²⁶ *Id.*

²⁷ *Id.* at 6.

²⁸ Beer Institute, *supra* note 23 at 5.

²⁹ *Id.*

³⁰ Dylan Mulvaney (@dylanmulvaney), *supra* note 2.

Less than 73.6% of the Audience of the Bud Light-Mulvaney Posts Were of Legal Drinking Age (Section 3(c)(i))

Third, even assuming the posts in question did not involve dialogue, they violated Section 3(c)(i) of the Ad Code because less than 73.6% of the expected audience was of legal drinking age.

Section 3(c)(i) applies to “digital media in which there is no dialogue between a Brewer and user.”³¹ An advertising or marketing placement complies with Section 3(c)(i) “if the audience composition data reviewed prior to placement meets the percentage set forth above.”³² The Beer Institute Buying Guidelines separately specify that all placements must be legal drinking age compliant, which is “[w]hen Audience Measurement Service demographic data for the Rating Period confirms that adults of legal drinking age (LDA) comprise at least 73.6% of the audience for the Placement or a Consumer Data Source confirms with reasonable certainty that the individual(s) to whom the Placement will be delivered are 21 years of age or older.”³³ Brewers may choose an Audience Measurement Service like Nielsen or a Consumer Data Source like Instagram to assess audience demographics, but they must “use the best available data.”³⁴

The May 17th letter from Sens. Cruz and Blackburn cited statistics showing that the Instagram audience skews younger and that internet users aged 16 to 24 prefer it to other social platforms. For now, this is the extent of their knowledge based on public information. A brewer like Anheuser-Busch, on the other hand, is required to review audience composition data *prior* to placement. The Ad Code therefore directs a brewer whose advertising or marketing has been challenged “to provide for the CCRB’s review, a copy of the advertising or marketing materials at issue as well as any data, material or documentation to support their response to the complaint.”³⁵

Here, Anheuser-Busch stated in its May 19th letter that “[a]t the time of the engagement, available data indicated that Mulvaney’s Instagram audience complied with the Beer Institute’s standards.”³⁶ However, the brewer has refused to provide Sens. Cruz and Blackburn with any data to support this claim. Anheuser-Busch has refused to comply with the document requests outlined in the senators’ May 17th letter, including the request for any material “showing the age demographics of Dylan Mulvaney’s audience, including but not limited to the platforms of Instagram and TikTok.”³⁷ Anheuser-Busch also failed to specify when its engagement with Mulvaney began—a notable omission given the now-discovered February 11th post. CCRB should therefore seek Instagram Insights audience data—which is a Consumer Data Source—for Mulvaney’s account, as well as for the February 11th and April 1st posts.

Indeed, CCRB should seek *all* documentation responsive to the eight requests outlined in the senators’ May 17th letter. (Those requests are listed in the appendix to this memorandum.) Such

³¹ Beer Institute, *supra* note 23 at 5.

³² *Id.*

³³ Beer Institute, *Buying Guidelines*, 11, <https://www.beerinstitutione.org/wp-content/uploads/2023/06/Beer-Institute-Advertising-and-Marketing-Code-2023.pdf>.

³⁴ *Id.*

³⁵ Beer Institute, *supra* note 23 at 9.

³⁶ See Exhibit B.

³⁷ See Exhibit A.

documentation would include demographic information in Anheuser-Busch’s control or possession concerning Mulvaney’s audience on TikTok and other social media platforms. Anheuser-Busch has obstinately refused to produce this material to the senators. Mulvaney’s audience demographics on social media sites other than Instagram, including TikTok, are relevant to the Section 3(c)(i) analysis due to the well-documented marketing spillover effect. Although Bud Light initiated its campaign on Instagram, versions of the posts circulated on TikTok and similar social media sites where they were likely viewed by minors.³⁸

Finally, the CCRB should critically assess any audience metrics submitted by Anheuser-Busch and determine whether the brewer truly used the “best available data” to confirm audience demographics with “reasonable certainty,” as the Beer Institute’s Buying Guidelines require. Neither of the Mulvaney-Bud Light posts in question included a “paid partnership” label for branded content, in violation of Instagram rules.³⁹ And, as a result, Mulvaney and Anheuser-Busch might not have access to the granular data they otherwise would have, especially if the posts in question had been run as “partnership ads,” which would have allowed the creator and business to target users under the age of 21.⁴⁰ Instead, Mulvaney’s Instagram account may currently only show Instagram Insights audience demographics for the last 90 days⁴¹—well after the date of the engagement.

In addition, as noted above, Instagram’s lack of sufficient age verification measures means that official metrics may not account for young people who lied about their age when making an Instagram account; the data could overstate the percentage of viewers above the legal drinking age. Instagram also groups persons between the ages of 18 and 24 into a single demographic category, which elides the percentage of viewers who are above and below the legal drinking age of 21. The public debate surrounding Bud Light’s partnership with Mulvaney may have shifted the age demographic of the current audience, skewing the February 11th and April 1st posts’ viewership—as well as the viewership for Mulvaney’s account—toward older users who sought out the primary sources after the outbreak of the controversy. Accordingly, CCRB must look to historical data on Mulvaney’s reach audience, including from spillover sites, that was reviewed by Anheuser-Busch prior to the placement of the February 11th and April 1st posts. CCRB must then determine whether this data confirmed the 73.6% audience threshold with “reasonable certainty” and whether it was the “best available data” at the time.

CONCLUSION

For the above reasons, Sen. Cruz asks the CCRB to find that Anheuser-Busch’s partnership with Dylan Mulvaney—and particularly the Instagram posts dated February 11, 2023, and April 1, 2023—violated the Ad Code’s prohibition on marketing to minors.

³⁸ See, e.g., Daily Mail (@dailymail), *Cheers to a milestone anniversary*, TIKTOK (Apr. 3, 2023), <https://www.tiktok.com/t/ZTRo7XfuN/>.

³⁹ See *About Branded Content Policies*, INSTAGRAM, <https://help.instagram.com/616901995832907> (last visited June 14, 2023).

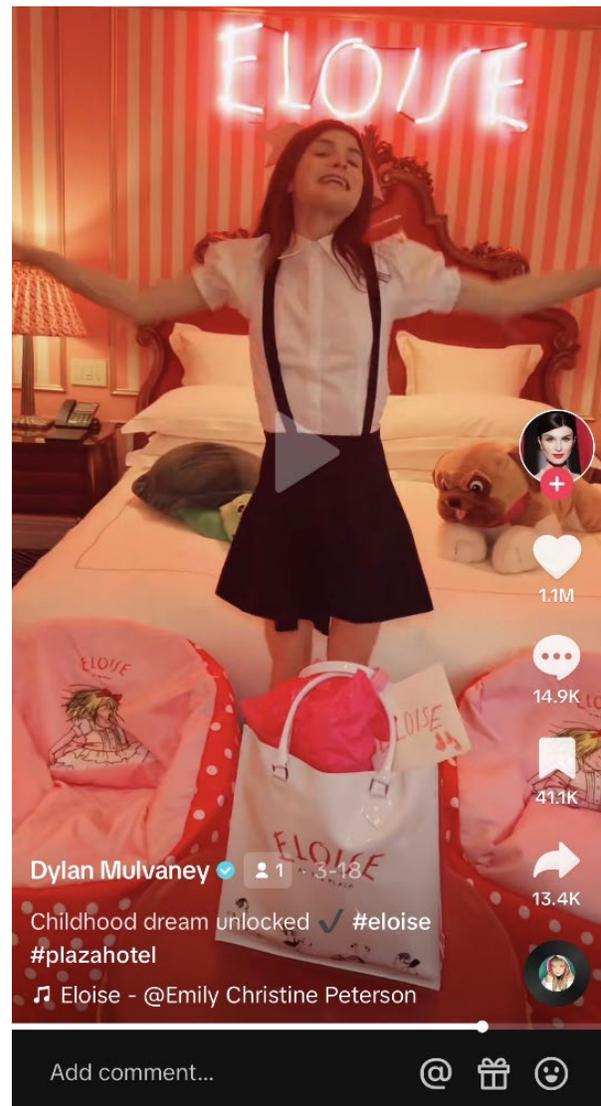
⁴⁰ See *How Instagram decides which ads to show young people*, INSTAGRAM, <https://help.instagram.com/1079023176238541> (last visited June 14, 2023).

⁴¹ See *About Instagram Insights*, INSTAGRAM, <https://help.instagram.com/788388387972460> (last visited June 14, 2023).

APPENDIX

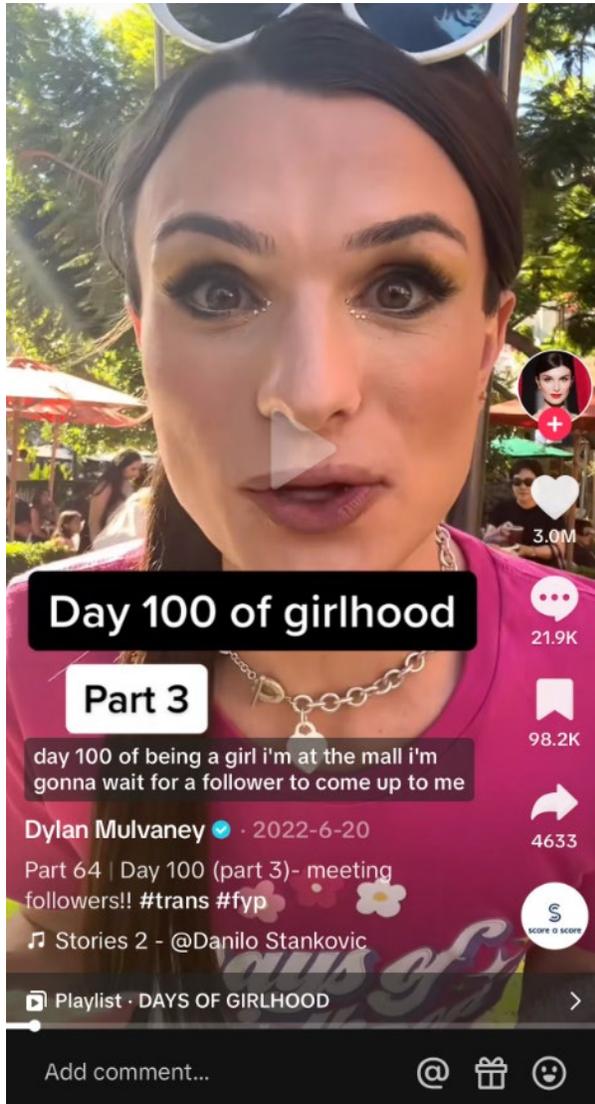
The senators' May 17th letter included the following examples of online content by Mulvaney that was specifically used to target, market to, and attract an audience of young people well below the legal drinking age in the United States. This appendix includes screenshots of that content.

- Dylan Mulvaney lip-syncing “I am Eloise, I am six” while dressed as a small child. This video gathered 7.1 million views.⁴² It aired thirteen days before Mulvaney’s April 1st Instagram post promoting Bud Light. Here are screenshots of that post, which is captioned “[c]hildhood dream unlocked”:



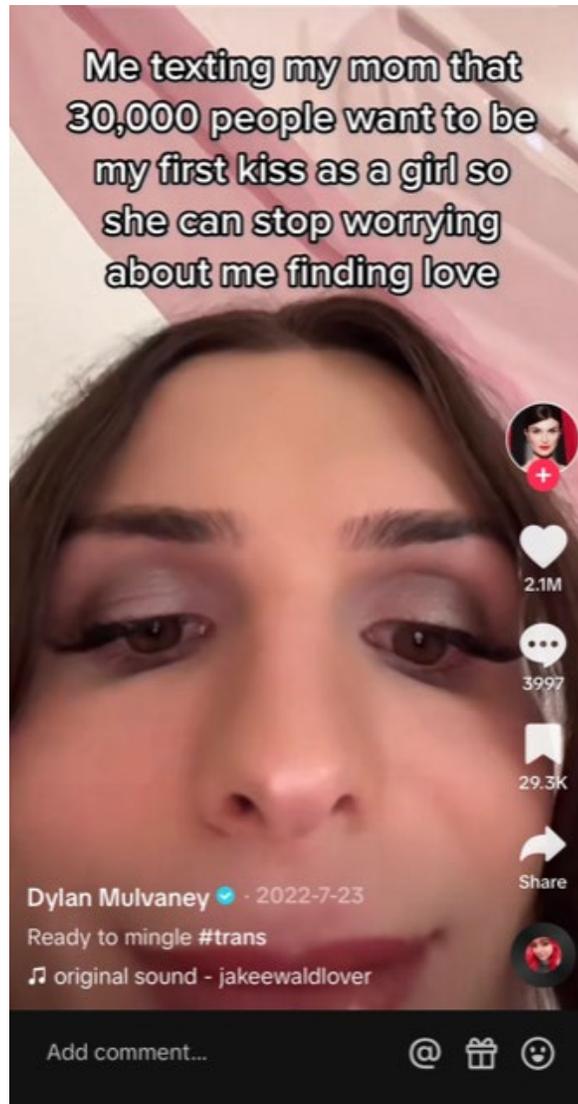
⁴² Dylan Mulvaney (@dylanmulvaney), *Childhood dream unlocked*, TikTok (Mar. 18, 2023), <https://www.tiktok.com/@dylanmulvaney/video/7212043896430415147>

- Dylan Mulvaney during “Day 100 of being a girl” “at the mall” giving away merchandise and cash to teenage girls, at least one of whom was still in braces.⁴³ That video garnered over 11 million views. Here are screenshots of that post:



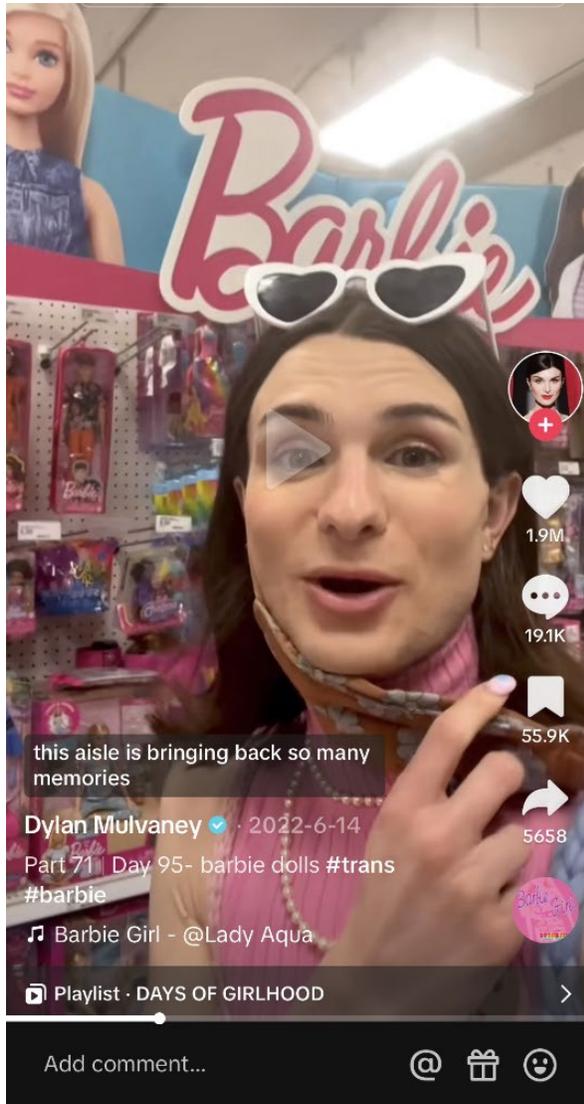
⁴³ Dylan Mulvaney (@dylanmulvaney), *Part 64 | Day 100*, TikTok (June 20, 2022), <https://www.tiktok.com/@dylanmulvaney/video/7111457500167228714?lang=en>.

- Dylan Mulvaney pandering to teen developmental issues when he recorded a TikTok pining about how “30,000 people want to be my first kiss as a girl.”⁴⁴ That video received 9.6 million views. Here is a screenshot of that post:



⁴⁴ Dylan Mulvaney (@dylanmulvaney), *Ready to mingle*, TikTok (July 23, 2022), <https://www.tiktok.com/@dylanmulvaney/video/7123736509467004206>.

- Another video of Dylan Mulvaney in Target shopping for Barbie dolls that garnered 8.3 million views.⁴⁵ According to market analysis, “the Barbie Toy market primarily targets[s] young children aged 3–9 years.”⁴⁶ Here are screenshots of that post:



⁴⁵ Dylan Mulvaney (@dylanmulvaney), *Part 71 | Day 95*, TIKTOK (June 14, 2022), <https://www.tiktok.com/@dylanmulvaney/video/7109259848784776494>.

⁴⁶ *Barbie Doll Market Share and Size 2023 to 2030: A Comprehensive Market Research Report with 9.8% CAGR*, MARKETWATCH, <https://www.marketwatch.com/press-release/barbie-doll-market-share-and-size-2023-to-2030-a-comprehensive-market-research-report-with-98-cagr-2023-04-15>.

The senators' May 17th letter requested that Anheuser-Busch provide copies of the following documents by no later than May 31, 2023, so that Congress could exercise its oversight responsibilities. Anheuser-Busch has failed to comply with this reasonable oversight request.

- All documents or communications between or among any employees of Anheuser-Busch regarding the partnership between Anheuser-Busch and Dylan Mulvaney.
- Copies of all scripts, including any and all drafts, reviewed by Anheuser-Busch for social media content from Dylan Mulvaney.
- Copies of any guidance or requests provided by Anheuser-Busch, or its agents, directing, encouraging, or soliciting content from Dylan Mulvaney related to Bud Light or any other Anheuser-Busch products.
- All documents or communications between Dylan Mulvaney, his agents, including at Dylan Mulvaney's talent representation firm CAA, and staff or representatives of Anheuser-Busch, including any advertising placement agents retained by Anheuser-Busch.
- Copies of any after-the-fact audits conducted in relation to Anheuser-Busch's advertising partnership with Dylan Mulvaney.
- Copies of all materials in the possession of Anheuser-Busch showing the age demographics of Dylan Mulvaney's audience, including but not limited to the platforms of Instagram and TikTok.
- Copies of Anheuser-Busch's corporate policy for advertising on social media platforms, including but not limited to, TikTok and Instagram.
- Copies of all documents provided to the Beer Institute related to Anheuser-Busch's response to this complaint.

EXHIBIT A

MARIA CANTWELL, WASHINGTON, CHAIR

AMY KLOBUCHAR, MINNESOTA
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TAMMY DUCKWORTH, ILLINOIS
JON TESTER, MONTANA
KYRSTEN SINEMA, ARIZONA
JACKY ROSEN, NEVADA
BEN RAY LUJAN, NEW MEXICO
JOHN HICKENLOOPER, COLORADO
RAPHAEL WARNOCK, GEORGIA
PETER WELCH, VERMONT

TED CRUZ, TEXAS
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DEB FISCHER, NEBRASKA
JERRY MORAN, KANSAS
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MARSHA BLACKBURN, TENNESSEE
TODD YOUNG, INDIANA
TED BUDD, NORTH CAROLINA
ERIC SCHMITT, MISSOURI
J.D. VANCE, OHIO
SHELLEY MOORE CAPITO, WEST VIRGINIA
CYNTHIA LUMMIS, WYOMING

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

United States Senate

COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION

WASHINGTON, DC 20510-6125

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

May 17, 2023

Mr. Brendan Whitworth
Anheuser-Busch Companies, LLC
United States Chief Executive Officer
One Busch Place
St. Louis, MO 63118

Mr. Brendan Whitworth
Beer Institute
Chairman & Senior Director
440 First Street NW, Suite 350
Washington, DC 20001

Dear Mr. Whitworth:

We are writing to you today in both your capacity as the United States Chief Executive Officer of the Anheuser-Busch Companies (“Anheuser-Busch” or “your company”) and as the Chairman and Senior Director of the Beer Institute, the beer industry’s self-regulatory body with authority over the advertising of beer. Our requests are two-fold.

First, we write to ask that the Beer Institute’s Code Compliance Review Board open an investigation to review Anheuser-Busch’s recent and ongoing marketing partnership with Dylan Mulvaney. The Beer Institute must examine whether your company violated the Beer Institute’s Advertising/Marketing Code and Buying Guidelines prohibiting marketing to individuals younger than the legal drinking age.

The evidence detailed below overwhelmingly shows that Dylan Mulvaney’s audience skews significantly younger than the legal drinking age and violates the Beer Institute’s Advertising/Marketing Code and Buying Guidelines. We would urge you, in your capacity at Anheuser-Busch, to avoid a lengthy investigation by the Beer Institute by instead having Anheuser-Busch publicly sever its relationship with Dylan Mulvaney, publicly apologize to the American people for marketing alcoholic beverages to minors, and direct Dylan Mulvaney to remove any Anheuser-Busch content from his social media platforms.

Second, we believe that Anheuser-Busch’s clear failure to exercise appropriate due diligence when selecting online influencers for its marketing efforts warrants detailed oversight by Congress. To that end, this letter includes a series of document requests that will help clarify how Anheuser-Busch vets its partnerships and how Anheuser-Busch failed in assessing the propriety of a partnership with Dylan Mulvaney. Our document requests can be found at the end of this letter.

BACKGROUND

On April 1, 2023, Dylan Mulvaney announced on Instagram that he had recently inaugurated a partnership with Bud Light, one of Anheuser-Busch's brands.¹

As you and your Anheuser-Busch colleagues are aware, Dylan Mulvaney is a prominent social media influencer with 1.8 million followers on Instagram and 10.8 million followers on TikTok.² As Mulvaney's talent agency CAA notes, he is infamous for the "series titled '*Days of Girlhood*'" which "received over 750 million views in less than 100 days."³ (emphasis added) Mulvaney's "*Days of Girlhood*" series should have been the first red flag to Anheuser-Busch that it was entering into a partnership with an individual whose audience skews impermissibly below the Beer Institute's proscribed guidelines.

The use of the phrase "Girlhood" was not a slip of the tongue but rather emblematic of a series of Mulvaney's online content that was specifically used to target, market to, and attract an audience of young people who are well below the legal drinking age in the United States. Examples include:

- Dylan Mulvaney lip-syncing "I am Eloise, I am six" while dressed as a small child. This video gathered 7.1 million views.⁴ It aired thirteen days before the Bud Light partnership.
- Dylan Mulvaney during "Day 100 of being a girl" "at the mall" giving away merchandise and cash to teenage girls, at least one of whom was still in braces.⁵ That video garnered over 11 million views.
- Dylan Mulvaney pandering to teen developmental issues when he recorded a TikTok pining about "30,000 people want to be my first kiss as a girl."⁶ That video received 9.6 million views.
- Another video of Dylan Mulvaney in Target shopping for Barbie dolls that garnered 8.3 million views.⁷ Mattel, the maker of Barbie, has, according to market analysts, a "clearly demarcated target market for [the] Barbie doll [consisting of] young girls of 3-12 years of age...."⁸

An objective survey of Dylan Mulvaney's content clearly presents a faux, pre-pubescent girl persona that is created and presented to specifically appeal to young viewers.

¹ https://www.instagram.com/reel/CqgTftujqZc/?utm_source=ig_web_copy_link

² <https://www.instagram.com/dylanmulvaney/>; <https://www.tiktok.com/@dylanmulvaney?lang=en>

³ <https://www.caa.com/caaspeakers/dylan-mulvaney>

⁴ <https://www.tiktok.com/@dylanmulvaney/video/7212043896430415147>

⁵ <https://www.tiktok.com/@dylanmulvaney/video/7111457500167228714?lang=en>

⁶ <https://www.tiktok.com/@dylanmulvaney/video/7123736509467004206>

⁷ <https://www.tiktok.com/@dylanmulvaney/video/7109259848784776494>

⁸ <https://www.researchomatic.com/mattel-barbie-doll-target-market-156300.html>

AUDIENCE DEMOGRAPHICS

Publicly available data indicates that both the Instagram and TikTok platforms skew heavily toward younger audiences. As Hootsuite, a leading social media marketing platform pointed out recently, if you want to reach children—Instagram, which is where Anheuser-Busch rolled out the Mulvaney/Bud Light partnership—is the ideal social media platform.⁹ Hootsuite noted that “overall, Instagram is Gen[eration] Z’s favorite social media platform. Global internet users aged 16 to 24 prefer Instagram to other social platforms. . . even ranking it above TikTok.”¹⁰ For marketing professionals seeking to reach the age 16 to 24 year old cohort, Instagram is an ideal platform.¹¹

TikTok users also skew equally young. A leaked presentation about TikTok user demographics showed that 17% of the TikTok user base is 13 to 17 years old and 42% of the audience is between the ages of 18 and 24 years of age.¹² While Anheuser-Busch appears to have targeted its rollout of the Mulvaney/Bud Light partnership on Instagram, it is obvious, given Dylan Mulvaney’s significant social media following on TikTok, that this influencer campaign would spill over to TikTok as well.

PROHIBITED ADVERTISING

The Mulvaney/Bud Light campaign is starkly similar to the discredited and now illegal marketing campaigns of cigarette manufacturers that used youth-favored advertising tools such as “Joe Camel” in an attempt to develop early brand loyalty with children who were legally prohibited from smoking cigarettes.¹³ In fact, your VP of Marketing has said as much stating, “I’m a businesswoman. I had a really clear job to do when I took over Bud Light, and it was ‘This brand is in decline, it’s been in a decline for a really long time, and **if we do not attract young drinkers** to come and drink this brand there will be no future for Bud Light.’”¹⁴ (emphasis added) Unfortunately, Anheuser-Busch has a history of inappropriately marketing beer to individuals younger than the legal drinking age. In 2009, the Federal Trade Commission and dozens of colleges strongly criticized Anheuser-Busch for marketing Bud Light to underage college students.¹⁵

Marketing to minors is prohibited under the Beer Institute’s Advertising/Marketing Code and Buying Guidelines. Section 3.c.i specifically states:¹⁶

⁹ <https://blog.hootsuite.com/instagram-demographics/>

¹⁰ *Id.*

¹¹ *Id.*

¹² <https://www.businessinsider.com/tiktok-pitch-deck-shows-new-e-commerce-ads-2021-4#the-company-says-17-of-its-audience-is-ages-13-to-17-while-42-is-18-to-24-3>

¹³ <https://www.ftc.gov/news-events/news/press-releases/1997/05/joe-camel-advertising-campaign-violates-federal-law-ftc-says>

¹⁴ <https://nypost.com/2023/04/10/bud-lights-marketing-vp-was-inspired-to-update-fratty-out-of-touch-branding/>

¹⁵ <https://www.wsj.com/articles/SB125116535930755741>

¹⁶ <https://www.beerinstitute.org/policy-responsibility/responsibility/advertising-marketing-code/>

Placements made by or under the control of the Brewer in magazines, in newspapers, on television, on radio, and in digital media in which there is no dialogue between a Brewer and user, may only be made where at least 73.6% of the audience is expected to be adults of legal drinking age. A placement will be considered compliant if the audience composition data reviewed prior to placement meets the percentage set forth above.

The general demographics of Instagram and TikTok, combined with the pre-pubescent content for girls pushed by Dylan Mulvaney, and informed by comments from Anheuser-Busch's VP for Marketing regarding young drinkers, should have provided *overwhelming* evidence to the Beer Institute that Anheuser-Busch's sponsored social media influencer advertising had both the design and effect of marketing an adult beverage product to an audience whose composition was less than 73.6% individuals of legal drinking age, thus violating the standards required by the Beer Institute. With that in mind, we ask Anheuser-Busch to: (1) immediately review all of their influencer relationships and sever any and all relationships with persons whose online personas violate the Beer Institute's marketing standards, as Dylan Mulvaney's clearly does, and (2) to ask that Dylan Mulvaney and all similarly inappropriate persons used by Anheuser-Busch in its marketing remove all Anheuser-Busch content from their online accounts. If your company fails to do so, we ask the Beer Institute to find Anheuser-Busch in violation of the Advertising/Marketing Code and Buying Guidelines and order them to sever their relationship with Mulvaney.

DOCUMENT PRODUCTION

In addition to requesting Beer Institute oversight of the advertising partnership with Dylan Mulvaney, Anheuser-Busch shall respond by providing copies of the following documents by not later than May 31, 2023 so that Congress can exercise its oversight responsibilities.

1. All documents or communications between or among any employees of Anheuser-Busch regarding the partnership between Anheuser-Busch and Dylan Mulvaney.
2. Copies of all scripts, including any and all drafts, reviewed by Anheuser-Busch for social media content from Dylan Mulvaney.
3. Copies of any guidance or requests provided by Anheuser-Busch, or its agents, directing, encouraging, or soliciting content from Dylan Mulvaney related to Bud Light or any other Anheuser-Busch products.
4. All documents or communications between Dylan Mulvaney, his agents, including at Dylan Mulvaney's talent representation firm CAA, and staff or representatives of Anheuser-Busch, including any advertising placement agents retained by Anheuser-Busch.
5. Copies of any after-the-fact audits conducted in relation to Anheuser-Busch's advertising partnership with Dylan Mulvaney.

6. Copies of all materials in the possession of Anheuser-Busch showing the age demographics of Dylan Mulvaney's audience, including but not limited to the platforms of Instagram and TikTok.
7. Copies of Anheuser-Busch's corporate policy for advertising on social media platforms, including but not limited to, TikTok and Instagram.
8. Copies of all documents provided to the Beer Institute related to Anheuser-Busch's response to this complaint.

We look forward to your prompt response to our concerns.

Sincerely,



Ted Cruz
Ranking Member
Committee on Commerce, Science,
and Transportation



Marsha Blackburn
Ranking Member
Subcommittee on Consumer Protection,
Product Safety, and Data Security

cc: Gavin Hattersley, Vice Chairman & Senior Director, Beer Institute and CEO, Molson
Coors Beverage Company

Brian Crawford, President & CEO, Beer Institute

EXHIBIT B



May 19, 2023

The Honorable Ted Cruz
Ranking Member
Committee on Commerce, Science, and
Transportation
U.S. Senate
254 Russell Senate Building
Washington, DC 20510

The Honorable Marsha Blackburn
Ranking Member
Subcommittee on Consumer Protection,
Product Safety, and Data Security
Committee on Commerce, Science, and
Transportation
U.S. Senate
254 Russell Senate Building
Washington, DC 20510

Dear Ranking Member Cruz and Ranking Member Blackburn,

Anheuser-Busch Companies (“Anheuser-Busch”) appreciates the opportunity to respond to your letter of May 17, 2023 regarding Bud Light and social media influencer Dylan Mulvaney, and to provide additional background on the importance we place on marketing alcohol beverages only to people of legal drinking age.

As an initial matter, this social media influencer was not engaged to post on TikTok, and in fact did not make any such posts on that platform. Rather, this influencer was engaged to post on Instagram only.

We complied with all provisions of the Beer Institute Advertising and Marketing Code. This is true even under the general principles and guidelines that govern traditional advertising placements. At the time of the engagement, available data indicated that Mulvaney’s Instagram audience complied with the Beer Institute’s standards. In fact, Instagram as a platform predominantly consists of adults, with data indicating that almost 80% of users are over the age of 21.

Anheuser-Busch does not market its products to people below the legal drinking age. The Ad Code dates back almost 90 years and contains detailed procedures for the placement of advertising. We have long adhered to these rigorous requirements, and in each case, our marketing is directed to our consumers – adults of legal drinking age.

Anheuser-Busch is deeply committed to the responsible advertisement of its products and we take our role as a responsible marketer very seriously. Since 1985, Anheuser-Busch and its wholesaler partners have invested more than \$1 billion in responsible drinking initiatives and community-based programs to prevent underage drinking, impaired driving, and other harmful activities. In addition to our support for programs that seek to prevent underage drinking such as We I.D., TIPS alcohol training, and the FTC’s “We Don’t Serve Teens” initiative, we created

Sens. Cruz and Blackburn

May 19, 2023

Page 2

“Family Talk About Drinking,” which gives parents tools for discussing and setting expectations about drinking with their family.

We are proud of our record of industry leadership and ongoing efforts to promote responsible drinking behaviors. Together with our wholesaler partners, we employ more than 8,200 people across Texas and Tennessee, and the beer industry in total contributes more than \$33 billion to your states’ economies.

Thank you again for the opportunity to respond to your letter.

ANHEUSER-BUSCH COMPANIES