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9 Attorneys for Defendant Anheuser-Busch, Inc.

10  
 11 IN THE UNITED STATES DISTRICT COURT  
 12 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

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13 UNITED BRANDS COMPANY, INC. )  
 14 )  
 15 Plaintiff )  
 16 v. )  
 17 ANHEUSER-BUSCH, INC. )  
 18 )  
 19 Defendant )  
 20 )  
 21 )  
 22 )  
 23 )  
 24 )  
 25 )

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Civil Action No. 3:10-cv-02281- BEN (WMc)

**DEFENDANT’S NOTICE OF MOTION  
 AND MOTION TO DISMISS PLAINTIFF’S  
 CLAIMS FOR FEDERAL TRADEMARK  
 INFRINGEMENT, FEDERAL  
 TRADEMARK DILUTION, CALIFORNIA  
 STATUTORY TRADEMARK DILUTION,  
 FEDERAL TRADE DRESS  
 INFRINGEMENT, COPYRIGHT  
 INFRINGEMENT, CALIFORNIA  
 STATUTORY TRADEMARK  
 INFRINGEMENT, CALIFORNIA  
 STATUTORY UNFAIR COMPETITION,  
 COMMON LAW TRADEMARK  
 INFRINGEMENT, AND COMMON LAW  
 UNFAIR COMPETITION**

Hearing Date: January 18, 2011  
 Time: 10:30am  
 Courtroom No.: 3

1 Please take notice that on January 18, 2011, at 10:30 am, or as soon thereafter as the matter  
2 may be heard, Defendant Anheuser-Busch, Inc. (“A-B”) will respectfully move this Court pursuant to  
3 Rule 12(b)(6) Fed. R. Civ. P. to dismiss the entirety of the complaint filed by Plaintiff United Brands  
4 Company, Inc. (“UBC”) on the ground that each of the claims asserted fail to state a claim upon which  
5 relief can be granted. More specifically, the grounds for this motion are as follows:  
6

7 (1) UBC’s assertion of trademark infringement under § 32(1) of the Federal Trademark  
8 Act, 15 U.S.C. § 1114(1), fails to state a claim upon which relief can be granted because  
9 the only two federal registrations owned by UBC pleaded in the complaint cover the  
10 marks JOOSE and JOOSE & Design which are so fundamentally different from A-B’s  
11 mark TILT & Design that there cannot be any likelihood of confusion which is a critical  
12 prerequisite for a finding of liability for infringement under § 32(1).  
13

14 (2) To the extent that UBC’s § 43(c) and § 14247 dilution claims rely on its purported trade  
15 dress rights in the packaging of UBC’s “Dragon Joose” beverage, it fails to state a claim  
16 upon relief can be granted because UBC has not alleged sufficient facts to establish that  
17 such trade dress is “widely recognized among the general consuming public,” which is  
18 the definition of a famous mark as set forth in § 43(c)(2)(A) of the Federal Trademark  
19 Act, 15 U.S.C. § 1125(c)(2)(A), and applied under Calif. Bus. & Prof. Code § 14247.  
20

21 (3) To the extent that UBC’s allegations of trademark dilution under § 43(c) of the Federal  
22 Trademark Act, 15 U.S.C. § 1125(c), and Calif. Bus. & Prof. Code § 14247 rely on the  
23 pleaded federal registrations identified in ¶ 16 of the complaint, UBC has failed to state  
24 a claim upon which relief can be granted because the trademarks JOOSE and JOOSE &  
25 Design, which are the subject of those registrations, are so fundamentally different from  
26 A-B’s TILT & Design mark that there cannot be any likelihood of dilution which is a  
27 critical prerequisite for a finding of liability for dilution under § 43(c) and § 14247.  
28

- 1 (4) UBC’s assertion of trade dress infringement and false designation of origin under §  
2 43(a) of the Federal Trademark Act, 15 U.S.C. § 1125(a), fails to state a claim upon  
3 which relief can be granted because UBC has failed to allege facts establishing that  
4 consumers recognize the “Dragon Joose” packaging as a separate indication of origin  
5 apart from the JOOSE brand name and/or that the elements comprising the respective  
6 trade dress of the parties are confusingly similar.  
7
- 8 (5) UBC’s assertion of copyright infringement under 17 U.S.C. §§ 101 and 501 fails to  
9 state a claim upon which relief can be granted because the designs covered by UBC’s  
10 pleaded copyright registrations and the allegedly infringing can designs used by A-B are  
11 not “substantially similar” in protected expression, which is a critical prerequisite for a  
12 finding of liability for infringement under § 501.  
13
- 14 (6) UBC’s assertion of California statutory trademark infringement under Calif. Bus. &  
15 Prof. Code § 14245 fails to state a claim upon which relief can be granted because UBC  
16 has not pleaded ownership of any California state registration, which is a fundamental  
17 prerequisite for relief under § 14245.  
18
- 19 (7) UBC’s assertion of California statutory unfair competition under Calif. Bus. & Prof.  
20 Code. § 17200 and common law unfair competition and trademark infringement fail to  
21 state claims upon which relief can be granted for the same reasons that require dismissal  
22 of UBC’s federal trademark infringement claims pursuant to Rule 12(b)(6).  
23
- 24 (8) Additionally, UBC’s assertion of California statutory unfair competition under Calif.  
25 Bus. & Prof. Code. § 17200 and common law unfair competition must be dismissed  
26 because those claims are preempted by the Copyright Act, 17 U.S.C. § 101 *et seq.*  
27  
28

1 This motion is based upon this notice of motion and motion, the concurrently filed  
2 memorandum of points and authorities, the exhibits annexed hereto for which A-B has asked the Court  
3 to take judicial notice, matters and pleadings that may be presented to the Court, and oral argument.

4 Pursuant to Local Rule 7.1(d)(1), A-B requests oral argument unless the Court deems it  
5 unnecessary.

6  
7 Dated: December 10, 2010

Respectfully submitted,

8 /s/ Bobby A. Ghajar

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24 Attorneys for Defendant  
25 Anheuser-Busch, Inc.  
26  
27  
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1 Certificate of Service

2 I hereby certify that on December 10, 2010, I electronically filed the following documents with  
3 the Clerk of the Court for the United States District Court for the Southern District of California by  
4 using the CM/ECF system:

5 (1) Defendant's Notice Of Motion And Motion To Dismiss Plaintiff's Claims For Federal  
6 Trademark Infringement, Federal Trademark Dilution, California Statutory Trademark Dilution,  
7 Federal Trade Dress Infringement, Copyright Infringement, California Statutory Trademark  
8 Infringement, California Statutory Unfair Competition, Common Law Trademark Infringement, And  
9 Common Law Unfair Competition

10 (2) Memorandum In Support Of Defendant's Motion To Dismiss Plaintiff's Claims For  
11 Federal Trademark Infringement, Federal Trademark Dilution, California Statutory Trademark  
12 Dilution, Federal Trade Dress Infringement, Copyright Infringement, California Statutory Trademark  
13 Infringement, California Statutory Unfair Competition, Common Law Trademark Infringement, And  
14 Common Law Unfair Competition

15 The participants listed below in the case who are "active" registered CM/ECF users will be  
16 served by the CM/ECF system:

17 Nancy O. Dix, Esq.  
18 DLA Piper LLP (US)  
19 401 B. Street, Suite 1700  
20 San Diego, California 92101-4297

21 I declare that I am employed by a member of the Bar of this Court, at whose direction this  
22 service was made.

23 Dated: December 10, 2010

24 /s/ Bobby A. Ghajar

25 Bobby A. Ghajar