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19 **SUPERIOR COURT OF CALIFORNIA**
20 **COUNTY OF SAN FRANCISCO**

21 WILLIAM NIXON AND MICHAEL
22 O'NEILL, individually and on behalf of all
23 others similarly situated,

24 *Plaintiff,*

25 v.

26 ANHEUSER-BUSCH COMPANIES, LLC, a
27 Delaware limited liability company,

28 *Defendant.*

FILED
Superior Court of California
County of San Francisco

MAR 27 2015

CLERK OF THE COURT

BY: David W. Yuen
Deputy Clerk

Case No: **CGC 15-544985**

COMPLAINT FOR:

1. Violation of Business & Professions Code Section 17533.7 (False "Made in USA" Claim)
2. Violations of California's Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*

DEMAND FOR JURY TRIAL

CLASS ACTION

BY FAX

1 Plaintiffs William Nixon (“Nixon”) and Michael O’Neill (“O’Neill”) (collectively
2 “Plaintiffs”) bring this Class Action Complaint (“Complaint”) against Defendant Anheuser-Busch
3 Companies, LLC (“AB” or “Defendant”) to obtain redress for, and put an end to, Defendant’s
4 violations of California’s Business & Professions Code, specifically its false claim that its Busch
5 beer is a “Product of USA”. Plaintiffs, for their Complaint, allege as follows upon personal
6 knowledge as to themselves and their own acts and experiences and as to all other matters, upon
7 information and belief, including investigation conducted by their attorneys.

8 NATURE OF THE ACTION

9 1. A “Made in America” claim on a product is a powerful thing. To many consumers,
10 such claims signify superior quality, and the opportunity to support American jobs and trumpet
11 patriotism.

12 2. Over five decades ago, California’s legislature engaged Business & Professions
13 Code Section 17533.7 (“Made in USA Law”) to make it “unlawful for any person, firm,
14 corporation or association to sell or offer or sale in this State any merchandise on which
15 merchandise or on its container there appears the words ‘Made in USA,’ ‘U.S.A.’ or similar words
16 when the merchandise or any article, unit, or part thereof, has been entirely or substantially made,
17 manufactured, or produced outside of the United States.”

18 3. The law has endured to this day. As the California Supreme Court held in a 2011
19 decision upholding the Made in USA Law: “Simply stated: labels matter.” *Kwikset Corp. v.*
20 *Superior Court*, 246 P.3d 877, 889 (Cal. 2011)

21 4. Here, Defendant AB has misled consumers and has violated the Made in USA Law
22 by placing the phrase “Product of U.S.A.” on the cans for its Busch beer when, in fact, Busch beer
23 is brewed with imported hops—a crucial component part of beer.

24 5. As a result of Defendant’s violations of California law, consumers such as Plaintiffs
25 have been injured by being misled into paying for something they believed was genuinely a
26 “Product of USA” when in reality it was and is not. Plaintiffs and the Class members are thus
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1 entitled to relief in the form of actual damages, injunctive and declaratory relief, and attorneys'
2 fees.

3 **PARTIES**

4 6. Plaintiff William Nixon is a natural person and citizen of the state of California. He
5 resides in San Francisco, CA.

6 7. Plaintiff Michael O'Neill is a natural person and citizen of the state of California.
7 He resides in Sacramento County, CA.

8 8. Defendant AB is a Delaware limited liability company with its corporate
9 headquarters located at One Busch Place, St. Louis, MO 63118. It is a wholly-owned subsidiary of
10 Anheuser-Busch InBev, the world's largest brewer. AB has an American market share of nearly
11 50%, operates 12 breweries, and owns dozens of beer brands, including Busch.

12 **JURISDICTION AND VENUE**

13 9. This Court has jurisdiction over this matter because Defendant routinely transacts
14 business in San Francisco County and throughout the state of California.

15 10. Venue is proper pursuant to Code of Civil Procedure Section 395 and 395.5,
16 Business & Professions Code Sections 17203 and 17204, and Civil Code Section 1780(c) because
17 Defendant does business in San Francisco County and Plaintiff Nixon's transaction took place in
18 San Francisco County.

19 **FACTS RELATING TO ALL COUNTS**

20 11. AB's Busch beer is the 9th most popular beer in the United States. According to the
21 St. Louis Business Journal, annual sales of Busch beer total more than \$673 million. A significant
22 portion of those sales are in California.

23 12. AB markets and represents to the public that Busch is a "Product of U.S.A." by
24 placing that statement on Busch cans in an effort to evoke feelings of patriotism and images of
25 quality in consumers who see the cans labeled "Product of U.S.A." on the shelf.
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1 13. Despite the “Product of U.S.A.” claim, Busch beer is substantially and/or partially
2 made, manufactured, or produced with foreign component parts. The most notable foreign
3 component part is hops—Busch beer is brewed with imported hops.

4 14. Beer has few ingredients—typically it consists of only water, grains (such as
5 barley), yeast, and hops. By using imported hops, a significant portion of Busch beer is not
6 produced in the United States and AB cannot, under California law, label it with “Product of
7 U.S.A.”

8 15. By doing so, Defendant misleadingly and fraudulently conceals the material facts at
9 issue herein by failing to disclose on Busch cans the true facts regarding the country of origin of
10 the product. The disclosure of this information was is necessary to make AB’s representation not
11 misleading. AB possesses superior knowledge of the true facts, which were not disclosed to
12 Plaintiffs and the other class members.

13 16. California consumers are vulnerable to deceptive and fraudulent practices.
14 Consumers have little to no knowledge of the country of origin of products on the shelf and must
15 rely on labels. Consumers must be able to trust that products, including the component parts, that
16 are claimed to be “Product of U.S.A.” are not in fact made or produced in foreign countries. This is
17 a material fact in many individuals’ buying decisions, as they believe they are supporting
18 American companies or just generally feel good about buying American. Either way, it materially
19 impacts whether or not consumers buy the product.

20 17. Consumers generally believe that made in America products are higher quality than
21 foreign products. Due to AB’s scheme to defraud the market, consumers were fraudulently induced
22 to purchase AB’s Busch beer at inflated prices. On information and belief, and during the entirety
23 of the relevant time period, AB charged inflated prices for beer that was not truly a “Product of
24 U.S.A.” California laws are designed to protect consumers from this type of false representation
25 and predatory conduct. Defendant’s scheme to defraud consumers is ongoing and will victimize
26 consumers each and every day throughout California until Defendant’s conduct is stopped.

1 18. Plaintiff Nixon purchased Busch beer in 2015. Plaintiff O'Neill purchased Busch
2 beer throughout the relevant time period. At the time of each purchase, the Busch cans that
3 Plaintiffs purchased stated "Product of U.S.A." directly on the cans. At the time of each purchase,
4 this label was unlawful under California law because, at the very least, of the use of imported hops.

5 19. In each case when Plaintiffs and Class members bought Busch beer, they relied on
6 the "Product of U.S.A." representation in their purchasing decision, which is typical of most
7 consumers, and they were deceived by AB's actions.

8 20. The purchase decisions were supported by the "Product of U.S.A." representation
9 that is not made by most of AB's competitors. Absent the "Product of U.S.A." representation,
10 Plaintiffs would not have purchased Busch at all or would have purchased it much less frequently,
11 and would have paid less for the beer on the rare occasions they would've bought it.

12 21. Plaintiffs were injured because money was taken by AB as a result of AB's false
13 "Product of U.S.A." claim. Furthermore, Plaintiffs suffered injury by paying for something
14 believed to be genuinely an American product when it wasn't and that was in reality worth less
15 than what it should have been worth had the "Product of U.S.A." claim been true.

16 22. Simply put, Plaintiffs and Class members were falsely induced to purchase a
17 product they otherwise would not have purchased or that they would have paid less money for.
18 Plaintiffs and Class members suffered injury as a result of Defendant's conduct.

19 CLASS ALLEGATIONS

20 23. **Class Definitions:** Plaintiff brings this class action on behalf of himself and a
21 Class of similarly situated individuals, defined as follows:

22 All persons who, on or after March 18, 2011, purchased Busch beer in California
23 where the can, bottle, or package contained the statement "Product of U.S.A."

24 Excluded from the Classes and Subclass are (1) Defendant, Defendant's agents, subsidiaries,
25 parents, successors, predecessors, and any entity in which Defendant or its parent have a
26 controlling interest, and those entities' current and former employees, officers, and directors, (2)
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1 the Judge or Magistrate Judge to whom this case is assigned and the Judge's or Magistrate Judge's
2 immediate family, (3) persons who execute and file a timely request for exclusion, (4) persons who
3 have had their claims in this matter finally adjudicated and/or otherwise released, and (5) the legal
4 representatives, successors, and assigns of any such excluded person.

5 24. **Numerosity:** The exact number of Class members is unknown to Plaintiffs at this
6 time, but it is clear that joinder of each individual member is impracticable. Defendant sells
7 millions of dollars worth of Busch beer each year in California.

8 25. **Commonality:** Common questions of law and fact exist as to all members of the
9 Class for which this proceeding will provide common answers in a single stroke, including:

10 a. Whether AB uses imported hops in its Busch beer and whether doing so
11 violates California's "Made in USA" law, Section 17533.7, and Business & Professions Code
12 Section 17200 *et seq.*;

13 b. Whether imported hops are used to brew Busch beer;

14 c. Whether "Product of U.S.A." is similar to "Made in U.S.A."; and

15 d. Whether Plaintiffs and the Class members are entitled to relief and the
16 nature of such relief.

17 26. **Typicality:** As a result of Defendant's uniform disclosures and conduct, Plaintiffs
18 and the Class members suffered the same injury and similar damages. Thus, Plaintiffs' claims are
19 typical of the claims of the other Class members.

20 27. **Adequate Representation:** Plaintiffs are members of the Class and both they and
21 their counsel will fairly and adequately represent and protect the interests of the Class, as neither
22 has interests adverse to those of the Class members and Defendant has no defenses unique to
23 Plaintiffs. In addition, Plaintiffs have retained counsel competent and experienced in complex
24 litigation and class actions. Further, Plaintiffs and their counsel are committed to vigorously
25 prosecuting this action on behalf of the members of the Class, and they have the financial
26 resources to do so.

1 **28. Injunctive and Declaratory Relief:** In using uniform labeling that violates
2 California law, AB has acted or refused to act on grounds generally applicable to the Class a whole
3 so as to render injunctive and declaratory relief appropriate. Stated differently, Defendant's
4 uniform conduct requires the Court's imposition of uniform relief to ensure compatible standards
5 of conduct toward the Class members, thus making final injunctive and/or declaratory relief
6 appropriate with respect to the Class as a whole. Further, because Defendant's uniform practices
7 result in similar, if not identical, injuries for all Class members, Plaintiffs' challenge of those
8 practices hinges on Defendant's conduct with respect to the Class, not on facts or law applicable
9 only to Plaintiffs.

10 **29. Predominance:** The common questions of law and fact set forth above go to the
11 very heart of the controversy and predominate over any supposed individualized questions.
12 Irrespective of any given Class member's situation, the answer to whether Defendant's "Product of
13 U.S.A." claim is unlawful is the same for each class member and will be proven using common
14 evidence.

15 **30. Superiority and Manageability:** A class action is superior to all other methods of
16 adjudicating the controversy. Joinder of all claims is impractical, and the damages suffered
17 by/available to the individual Class members will likely be small relative to the cost associated
18 with prosecuting an action. Thus, the expense of litigating an individual action will likely prohibit
19 the Class members from obtaining effective relief for Defendant's misconduct. In addition, there
20 are numerous common factual and legal questions that could result in inconsistent verdicts should
21 there be several successive and differing trials. In contrast, a class action will present far fewer
22 management difficulties, as it will increase efficiency and decrease expense. Further, class-wide
23 adjudication will also ensure a uniform decision for the Class members.

24 **31.** Plaintiffs reserves the right to revise the definition of the Class as necessary based
25 upon information learned in discovery.
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1 **FIRST CAUSE OF ACTION**

2 **Violations of Business & Professions Code § 17533.7**
3 **(On behalf of Plaintiffs and the Class)**

4 32. Plaintiffs incorporate by reference the foregoing allegations as if fully set forth
5 herein.

6 33. California Business and Profession Code Section 17533.7 states that:

7 It is unlawful for any person, firm, corporation or association to sell or offer for sale
8 in this State any merchandise on which merchandise or on its container there appears
9 the words "Made in U.S.A." "Made in America," "U.S.A." or similar words when
10 the merchandise or any article, unit, or part thereof, has been entirely or substantially
11 made, manufactured, or produced outside of the United States.

12 34. AB violates Section 17533.7 by selling and offering to sell merchandise—
13 specifically Busch beer—in California labeled "Product of U.S.A." when in fact the beer contains
14 foreign-produced hops.

15 35. AB labeled its beer "Product of U.S.A." with awareness of the fact that the beer
16 contained imported hops, that such labeling was false under California law, and was motivated by
17 increased profits.

18 36. As a direct and proximate cause of AB's violation of Section 17533.7, Plaintiffs and
19 Class members are entitled to restitution of excess monies paid on the false belief that the beer was
20 actually made in the USA consistent with the can's "Product of U.S.A." claim.

21 37. Plaintiffs and Class members were injured by paying for something believed to be
22 genuinely a "Product of U.S.A." when it wasn't and were misled into purchasing Busch beer on
23 false pretenses and into paying more for the beer.

24 38. Accordingly Plaintiffs and the Class seek actual damages, reasonable cost and
25 attorneys' fees, an injunction against further violations, a declaration that Defendant's conduct is
26 unlawful, and a *cypres* payment to a non-profit organization protecting California consumer rights
27 and/or truth in advertising.

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SECOND CAUSE OF ACTION
Cal. Bus. & Prof. Code §§ 17200, *et seq.*
(On Behalf of Plaintiffs and the Class)

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3 39. Plaintiffs incorporate by reference the foregoing allegations as if fully set forth
4 herein.

5 40. California's Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*
6 ("UCL"), protects both consumers and competitors by promoting fair competition in commercial
7 markets for goods and services.

8 41. The UCL prohibits any unlawful, unfair, or fraudulent business acts or practices. A
9 business practice need only satisfy one of the three prongs to be considered a violation of Section
10 17200.

11 42. AB has violated the "unlawful" prong of the UCL. As set forth above, Defendant's
12 conduct violates California law, specifically the Made in USA Law. Plaintiffs have suffered
13 damages as a result of such unlawful conduct as described herein.

14 43. AB has also violated the "unfair" prong of the UCL by placing the statement
15 Product of U.S.A. on its cans when in fact the beer contains imported hops. The injuries caused by
16 AB's unfair conduct are not outweighed by any countervailing benefits, and they could not
17 reasonably have been avoided by consumers.

18 44. AB's unlawful and unfair conduct occurred in the course of the AB's business
19 practices.

20 45. Plaintiffs and the Class members have suffered harm in the form of actual monetary
21 damages as a proximate result of Defendant's unlawful and unfair conduct.

22 46. Plaintiff seeks an order (i) enjoining Defendant from continuing to engage in the
23 unlawful and unfair conduct described herein, (ii) awarding Plaintiff and the Class members all
24 appropriate damages, and (iii) awarding them reasonable costs and attorneys' fees pursuant to Cal.
25 Code Civ. Proc. § 1021.5.
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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs William Nixon and Michael O'Neill, on behalf of themselves
3 and the Class, respectfully requests that this Court issue an order:

4 A. Certifying this case as a class action on behalf of the Class defined above,
5 appointing Plaintiffs as class representatives and appointing their counsel as class counsel;

6 B. Declaring that Defendant's actions, as set out above, constitute violations of
7 California law;

8 C. Awarding damages, including punitive damages where applicable, to Plaintiffs and
9 the Class in amounts to be determined at trial;

10 D. Awarding injunctive and other equitable relief as is necessary to protect the
11 interests of the Class, *inter alia*: (i) an order prohibiting Defendant from engaging in the wrongful
12 and unlawful acts described herein; and (ii) requiring Defendant to correct its false labeling and
13 implement a correct advertising campaign;

14 E. Awarding Plaintiffs and the Class their reasonable litigation expenses and
15 attorneys' fees;

16 F. Awarding Plaintiffs and the Class pre- and post-judgment interest, to the extent
17 allowable;

18 G. Providing such other injunctive and/or declaratory relief as is necessary to protect
19 the interests of Plaintiffs and the Class;

20 H. Requiring Defendant to make a *cy pres* payment to a consumer rights non-profit
21 organization dedicated to the education of consumers and truth in advertising; and

22 I. Awarding such other and further relief as equity and justice may require.
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DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury for all claims so triable.

* * *

Respectfully submitted,

Dated: March 26, 2015

WILLIAM NIXON AND MICHAEL O'NEILL,
individually and on behalf of all others similarly
situated,

By: Matthew J. O'Connor

One of Plaintiff's Attorneys

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**Pro hac vice application to be filed*