

Seventh Circuit Decision in Corn Syrup Beer Advertising Battle – Ingredient List is Key to Decision

May 21, 2020 – The TMCA
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A lot has happened since we last checked in on the Corn Syrup battle between the parent companies of Bud Light, Miller Lite, and Coors Light. The Seventh Circuit Court of Appeals, in a split opinion, issued an intervening order on October 18, 2019, finding that the District Court failed to properly issue the injunction as a standalone document, as required by Federal Rule of Civil Procedure 65(d)(1)(C). The dissent to that opinion argued that there is no requirement that an injunction be a separate document as long as

it is clear, and that there is no reason to remand just to require a district court to copy and paste the injunction on a separate page. On remand, the District Court re-issued the same injunction, as predicted by the Seventh Circuit dissent, and the parties again cross-appealed to the Seventh Circuit. Finally, on May 1, 2020, the Seventh Circuit issued an opinion addressing the merits of the injunction, and tore it apart.

The basic facts of this case are relatively straightforward. Bud Light uses rice as a source of sugar in the brewing process, Miller Lite and Coors Light use corn syrup as their source of sugar. In 2019, Bud Light began advertising that Bud Light is not brewed with corn syrup. As Bud Light's advertising campaign evolved, they dropped the "brewed with" qualifier and advertised that Bud Light contains no corn syrup or simply used "No Corn Syrup" on their packaging and in advertisements. Bud Light also ran comparative advertisements wherein "No Corn Syrup," "100% Less Corn Syrup," and similar slogans were displayed next to Bud Light and "Yes Corn Syrup" and similar slogans were displayed next to Miller Lite and Coors Light.

As you may recall from our prior post, the District Court for the Western District of Wisconsin grappled with the issue of whether Bud Light's "No Corn Syrup" advertisements, while factually accurate, would mislead consumers into thinking that Miller Lite and Coors Light contain corn syrup in the final product. When issuing the injunction, the Court determined that advertisements that do not make it clear that they are referring to the brewing process are likely to deceive consumers into believing that the finished products, Miller Lite and Coors Light, contain corn syrup in the beer itself. It was on this basis, and to those advertisements, that the court issued the preliminary injunction.

The Seventh Circuit agreed that Bud Light "has made statements from which some consumers doubtless infer that some corn syrup. . . makes it into the beer." However, the Seventh Circuit reasoned that because MolsonCoors lists corn syrup in its list of "ingredients" for both Miller Lite and Coors Light, "their statements yield the same inference." According to the Court, MolsonCoors brought this problem on itself" by choosing such a word as "ingredients" with multiple meanings, and if Anheuser-Busch has led consumers to believe that an ingredient is in the finished product, "it is hard to see why those statements can be enjoined." The injunction against Bud Light's packaging and advertisements was removed because, according to the opinion, it is not false or misleading "for a seller to say or imply, of a business rival, something that the rival says about itself."

It appears that the Seventh Circuit's opinion did not fully consider whether Bud Light's advertising was misleading by implication. There was never any dispute that Miller Lite and Coors Light use corn syrup as an ingredient in the brewing process and that Bud Light's advertisements were factually correct. The Seventh Circuit's opinion boils down to an assertion that because the statements were factually correct and MolsonCoors made a similar factual statement via its ingredient lists, the factually true statements in Bud Light's advertising is not deceptive or misleading. But this ignores the differing context of each company's mention of corn syrup, and the full context in which advertising claims

appear is critical to determining whether a consumer will be misled. It is entirely possible that consumers were likely to be misled by Bud Light's "No Corn Syrup" ads whereas they were not by a mention of corn syrup in Miller Lite and Coors Light ingredient lists.

The Seventh Circuit's invitation to MolsonCoors to release similar ads—"If MolsonCoors does not like the sneering tone of Anheuser-Busch's ads, it can mock Bud Light in return"—can be used to test the limits of the Seventh Circuit's reasoning. Because Bud Light lists rice in its ingredient list, what if MolsonCoors ran an ad campaign saying "No Rice" or "100% Fewer Grains of Rice" in relation to Miller Lite and Coors Light? The District Court and the Seventh Circuit seem to agree that some consumers might think Bud Light contains rice in the final product. But, if Bud Light loses customers who don't like the idea of rice in their beer, the Seventh Circuit's reasoning wouldn't allow them any recourse.



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