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June 21, 2016

### Perkins Coie Crafts Victory for MillerCoors

On June 16, 2016, Evan Parent's claims fell flat for the second time in a closely watched consumer class action alleging that MillerCoors falsely represents that Blue Moon beer is brewed by a small, independent microbrew. In October 2015, U.S. District Judge Gonzalo P. Curiel dismissed Parent's original complaint accusing MillerCoors of deceptively representing Blue Moon beer as a "craft beer" on the basis that California's safe harbor exception to its consumer protection laws applied to claims alleging that MillerCoors hid its ownership of Blue Moon by not including its name on the bottle or outer packaging of the beer. In the same decision, the Court also found that no reasonable consumer would be deceived based on the fact MillerCoors is not referenced on the Blue Moon Brewing Company website, especially because Blue Moon is featured prominently on MillerCoors' website. Additionally, the Court ruled that Blue Moon's use of the "Artfully Crafted" trademark was non-actionable puffery, and that the price of a product does not constitute a representation or statement about the product such to state a claim for deceptive advertising. The Court, however, allowed Parent the opportunity to amend his claims. In November 2015, Parent filed an amended complaint and pointed to a series of video advertisements posted on the Blue Moon Brewing Company website and YouTube channel in support of his contention that MillerCoors falsely portrayed Blue Moon as being founded by brewmaster Kevin Villa and brewed by an independent brewer in a small limited capacity brewpub known as The SandLot Brewery. Plaintiff claimed these representations were false and misleading because Blue Moon beer is generally brewed in "60,000 to 80,000 gallon tanks" and Keith Villa is actually an employee of MillerCoors. Judge Curiel, however, was not persuaded by the new allegations and held that the video advertisements made no affirmative misrepresentations that all Blue Moon beer is brewed by a small, independent brewery, and therefore, the statements were the type of vague and generalized assertions that constitute nonactionable puffery that a reasonable consumer cannot rely upon. The Court emphasized that although the videos do contain images of "comparatively small brewing tanks, nowhere in the video is it stated that the brewery is the only place in which Blue Moon is produced." The Court also noted that the depiction of Keith Villa as the brewmaster and "formulator" of Blue Moon's flagship recipe is undisputedly true. In addition, Parent's amended complaint also asserted that MillerCoors furthered its alleged deception by directing third parties to stock Blue Moon in the craft beer section and allowing retailers, restaurants and concert venues to advertise Blue Moon as a craft beer, which Parent sought to have the Court define as a beer made by a small, independent brewery. Again, the Court was not swayed and went on to dismiss the claims based on representations made by third-party retailers, restaurant and concert venues. The Court found Parent did not "plead any specific features of the alleged agreements between MillerCoors and the distributors" that would indicate MillerCoors exercised the necessary "personal participation" and "unbridled control" necessary to state a claim based on third-party conduct. Likewise, the Court concluded that third-party use of the Blue Moon trademark did not establish that MillerCoors endorsed the third parties' advertisements such that it could be liable for their representations. Because the Court determined that any additional attempt to cure the noted deficiencies would be futile, Parent was denied leave to amend. [Order](#). The Perkins Coie team of [Julie Hussey](#), [David Biderman](#), [Julie Schwartz](#), [Lauren Cohen](#) and [Alexa Austin](#) are happy that the Court recognized the weakness of Parent's claims and are proud to achieve such a great result for a great client.

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