

1 Terry Goddard  
Attorney General  
2 (Firm State Bar No. 14000)

3 Jennifer Boucek  
Assistant Attorney General  
4 State Bar No. 016129  
Consumer Protection & Advocacy  
5 1275 W. Washington  
Phoenix, Arizona 85007  
6 Telephone: (602) 542-7714  
Attorneys for Plaintiff

7  
8 **ARIZONA SUPERIOR COURT**  
9 **COUNTY OF MARICOPA**

10 In the Matter of:

11 ANHEUSER-BUSCH, Inc.

12 Respondent.  
13

Case No: \_\_\_\_\_

14 **ASSURANCE OF DISCONTINUANCE**

15 **ASSURANCE OF VOLUNTARY DISCONTINUANCE**

16 **WHEREAS**, this Assurance of Voluntary Compliance/Assurance of Discontinuance  
17 (hereinafter "Assurance") is entered into between the Attorneys General of Arizona, California,  
18 Connecticut, Idaho, Illinois, Iowa, Maine, Maryland, New Mexico, and New York ("Signatory  
19 Attorneys General"), acting pursuant to their respective consumer protection statutes, and  
20 Anheuser-Busch, Inc. ("A-B") in order to resolve disputed claims with respect to A-B's  
21 marketing and sale of caffeinated alcohol beverages, including the Tilt and Bud Extra brands;

22 **WHEREAS**, the states identified above are hereinafter collectively referred to as the  
23 "Signatory States";

24 **WHEREAS**, Respondent A-B was and is engaged in the business of making and  
25 selling alcohol beverages, with its principal place of business located at One Busch Place,  
26 202-6, St. Louis, MO 63118;

1       **WHEREAS**, from approximately January 1, 2005 and continuing through the present, A-  
2 B has marketed and sold Bud Extra and Tilt in the Signatory States;

3  
4       **WHEREAS**, the Signatory States allege that A-B marketed and sold Bud Extra and Tilt  
5 in violation of their respective consumer protection and trade practice statutes<sup>1</sup> by, among  
6 other practices, making express and implied false or misleading health-related statements  
7 about the energizing effects of Bud Extra and Tilt, failing to disclose to consumers the effects  
8 and consequences of drinking alcohol beverages that are combined with caffeine and/or other  
9 stimulants, and directing advertisements of Tilt and Bud Extra to consumers under the age of  
10 21. The health-related statements include, but are not limited to, the following:

11  
12       A.     Statements regarding Guarana and its strengthening effects (see Exhibit A  
13               attached hereto); and

14  
15       B.     Statements regarding being able to stay up all night after drinking the products  
16               (see Exhibits B and C attached hereto).

17       **WHEREAS**, A-B alleges that it obtained all necessary federal and state regulatory  
18 approvals for Tilt and Bud Extra and the company contends that its sale and marketing of  
19 these beverages in the signing states complied with all applicable laws and that its advertising  
20 was directed to people age 21 and over;

21  
22       

---

<sup>1</sup> ARIZONA - Consumer Fraud Act, A.R.S. § 44-1521 *et seq.*; CALIFORNIA - Bus. & Prof. Code §§ 17200 *et seq.*, and 17500  
23 *et seq.*; CONNECTICUT – Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. § 42-110b, *et seq.*; IDAHO - Consumer  
24 Protection Act, Idaho Code § 48-601 *et seq.*; ILLINOIS - Consumer Fraud and Deceptive Business Practices Act, 815 ILCS §  
25 505/1 *et seq.* (2006); IOWA - Iowa Consumer Fraud Act, Iowa Code Section 714.16; MAINE – Unfair Trade Practices Act, 5  
26 M.R.S.A. section 205-A *et seq.*; MARYLAND - Consumer Protection Act, Maryland Commercial Law Code Annotated § 13-101  
*et seq.*; NEW MEXICO - Unfair Trade Practices Act, NMSA § 57-12-1 *et seq.* (1978); NEW YORK - N.Y. Gen. Bus. Law §§ 349  
& 350 and Executive Law § 63(12).

1       **WHEREAS**, A-B contends that it exercised reasonable care in developing Bud Extra  
2 and Tilt which it contends have only 54 mg. and 71 mg of caffeine per 10 oz. and 16 oz.  
3 container respectively, and that these products have much less alcohol per volume than  
4 prepackaged caffeinated distilled spirits approved by TTB and sold in many of the signing  
5 states; and

6       **WHEREAS**, the parties, having consented to the entry of this Assurance for the  
7 purposes of settlement only, and without this Assurance constituting evidence against or as an  
8 admission by any party, and without trial of any issue of fact or law;

9       **NOW THEREFORE**, the parties agree to the following terms and conditions to settle the  
10 differences between them:

#### 11                                   **I. DEFINITIONS**

- 12       **1.** Unless otherwise specified, the following definitions shall apply:
- 13       **A.** "Caffeinated alcohol beverages" means a malt-based or distilled spirits-based  
14 alcohol beverage to which is added caffeine and/or other stimulants that are  
15 metabolized as caffeine, such as Guarana.
- 16       **B.** "*Bartexter*" is a text messaging service that provides cocktail recipes for A-B  
17 products.
- 18       **C.** "Bud Extra" means a caffeinated alcohol beverage sold as Bud Extra and B to  
19 the E.
- 20       **D.** "Effective Date" means July 15, 2008, by which date all parties have executed  
21 this Assurance.
- 22       **E.** "Tilt" means caffeinated alcohol beverages sold as Tilt and Tilt 8.0%.

#### 23                                   **II. ASSURANCE**

24       A-B and its successors, assigns, and subsidiaries, hereby voluntarily agree to cease  
25 manufacturing and selling caffeinated alcohol beverages as follows:  
26

- 1 1. A-B will stop manufacturing, marketing, and providing to wholesalers any and  
2 all caffeinated alcohol beverages, including Bud Extra and Tilt as currently  
3 formulated, immediately upon its execution of this Assurance.
- 4 2. A-B intends to reformulate both products without caffeine or other stimulants  
5 that are metabolized as caffeine, such as Guarana. Until the products are  
6 reformulated, A-B specifically agrees to (a) eliminate Bud Extra and Tilt in their  
7 current caffeinated formulation from any *Bartexter* recipes, (b) eliminate  
8 from its promotional materials, if any, all references to mixing Bud Extra and  
9 Tilt in their current caffeinated formulation with any other A-B product or  
10 alcohol based product, and (c) not produce or provide to wholesalers any  
11 point of sale promotional materials for Bud Extra or Tilt in their current  
12 caffeinated formulation. When Bud Extra and Tilt are reformulated, A-B  
13 agrees not to promote Bud Extra or Tilt as a mixer for any products containing  
14 caffeine and/or other stimulants that are metabolized as caffeine, such as  
15 Guarana. With respect to websites for the two products, A-B specifically  
16 agrees to immediately discontinue the current Tilt website  
17 ([www.tiltthenight.com](http://www.tiltthenight.com)) without hyperlinking or directing visitors to a new site.  
18 A-B may immediately launch a new Tilt website at a new URL address, but  
19 may do so only to promote the reformulated Tilt without caffeine. A-B also  
20 agrees to take down the Bud Extra website for at least 30 days and, upon its  
21 re-launch to use the website only to promote the reformulated product  
22 without caffeine.
- 23 3. In the future, A-B will not produce any alcohol beverage that contains  
24 caffeine or other stimulants that are metabolized as caffeine, such as  
25 Guarana.  
26

1 **III. PAYMENT TO THE STATES**

2 Within three (3) business days after the Effective Date, Respondent shall pay the  
3 Signatory Attorneys General the total sum of \$200,000 to such accounts and addresses as the  
4 Signatory Attorneys General may direct. Such sum is to be divided among the Signatory  
5 Attorneys General as they may agree and is to be used for attorneys fees, and costs of  
6 investigation, or it shall be placed in or applied to consumer education, public protection, or  
7 local consumer aid funds, including implementation of programs designed to prevent illegal  
8 underage drinking, or for any other purpose authorized by state law, at the sole discretion of  
9 each Attorney General or as otherwise required by law.

10 **IV. RELEASE**

11 This Assurance constitutes a complete settlement and release of all of the Signatory  
12 Attorneys General's civil consumer protection claims – whether statutory, equitable, parens  
13 patriae or common law (but excluding any tax or antitrust claims) – that may have existed prior  
14 to or on the Effective Date which arise out of or relate to A-B's development, advertising,  
15 marketing, or sale of caffeinated alcohol beverages.

16 **V. OTHER SETTLEMENT TERMS AND OBLIGATIONS**

17 1. Upon reasonable prior written notice, any duly authorized representative of the  
18 Signatory Attorneys General may request, and A-B shall provide, copies of such records as  
19 may be reasonably necessary to determine whether A-B is in compliance with this Assurance.

20 2. Nothing in this Assurance shall be construed as relieving A-B of its obligation to  
21 comply with all applicable state and federal laws, regulations, or rules, or granting it permission  
22 to engage in any acts or practices prohibited by such law, regulation, or rule.

23 3. A Signatory Attorney General may assert any claim that A-B has violated this  
24 Assurance in a separate civil action to enforce this Assurance, or seek other relief for such  
25 violation provided by law.

1           **4.**     The Attorneys General agree to notify A-B of any intended action to enforce this  
2 Assurance ten (10) days prior to filing to give the parties an opportunity to confer, provided  
3 however, that a Signatory Attorney General may take immediate action where the Signatory  
4 Attorney General concludes that, because of the specific practice, a threat to the health and  
5 safety of the public requires immediate action. A Signatory Attorney General who takes such  
6 immediate action will give A-B an opportunity to confer within three (3) days from such filing.

7           **5.**     The parties agree that A-B may ask the Signatory Attorneys General to amend or  
8 terminate provisions of this Assurance in light of new or evolving technologies, business  
9 models, emerging science, settlements, laws, regulations, interpretations, the passage of time,  
10 or other relevant changes in circumstances, and the Signatory Attorneys General shall  
11 reasonably consider such requests.

12           **6.**     The Signatory Attorneys General are authorized to monitor compliance with this  
13 Assurance by all lawful means.

14           **7.**     Any notices to be sent to a Signatory State or to A-B under this Assurance shall  
15 be sent by nationally recognized overnight courier service or certified Mail (return receipt  
16 requested), or personal delivery to the named party at the address below:

17 If to A-B:

18                   Lisa A. Joley, Vice President and General Counsel  
19                   Anheuser-Busch Companies, Inc.  
20                   One Busch Place, 202-6  
21                   St. Louis, MO 63118

22 If to the State of Arizona:

23                   JENNIFER BOUCEK, Asst. Attorney General  
24                   Arizona Attorney General's Office  
25                   1275 West Washington  
26                   Phoenix, AZ 85007

**VI. SIGNATURES**

FOR ANHEUSER BUSCH, INC.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Lisa A. Joley, V.P. and General Counsel  
Anheuser-Busch Companies, Inc.  
One Busch Place, 202-6  
St. Louis, MO 63118

FOR THE STATE OF ARIZONA

TERRY GODDARD  
ARIZONA ATTORNEY GENERAL

Dated: \_\_\_\_\_

\_\_\_\_\_  
JENNIFER BOUCEK, Asst. Attorney General  
Arizona Bar No. 016129  
Arizona Attorney General's Office  
1275 West Washington  
Phoenix, AZ 85007