

IN RE: MillerCoors

ASSURANCE OF VOLUNTARY COMPLIANCE
AND VOLUNTARY DISCONTINUANCE

WHEREAS, the Attorneys General of Arizona, California, Connecticut, Idaho, Illinois, Iowa, Maine, Maryland, Mississippi, New Mexico, New York, Ohio, and Oklahoma and the City Attorney of San Francisco have expressed ongoing concerns regarding the health and safety risks to consumers from caffeinated alcohol beverages and remain committed to pursuing the removal of these unsafe products from the marketplace;

WHEREAS, this Assurance of Voluntary Compliance and Voluntary Discontinuance (hereinafter "Assurance") is entered into between the Attorneys General of Arizona, California, Connecticut¹, Idaho, Illinois, Iowa, Maine, Maryland, Mississippi, New Mexico, New York, Ohio, and Oklahoma and the City Attorney of San Francisco ("Signatory Jurisdiction Attorneys"), acting pursuant to their respective consumer protection and trade practice statutes, and MillerCoors LLC ("MillerCoors"), as successor in interest to Miller Brewing Company, in order to resolve disputed claims with respect to MillerCoors' marketing and sale of caffeinated alcohol beverages, including Sparks Original, Sparks Light and Sparks Plus;

WHEREAS, the states, political subdivisions and departments identified above are hereinafter collectively referred to as the "Signatory Jurisdictions";

WHEREAS, Respondent MillerCoors was and is engaged in the business of making and selling alcohol beverages, with principal places of business located at Milwaukee, WI and Golden, CO;

WHEREAS, from August of 2006 and continuing through the present, MillerCoors has marketed and sold caffeinated alcohol beverages, including Sparks brand products, in the Signatory Jurisdictions;

¹ With regard to Connecticut, the Assurance is entered into on behalf of the State of Connecticut Department of Consumer Protection.

WHEREAS, MillerCoors contends that it has been and remains committed to advertising and marketing its alcohol beverages to consumers of legal drinking age;

WHEREAS, the Signatory Jurisdiction Attorneys allege that MillerCoors has produced, marketed, and sold Sparks brand products in violation of their respective consumer protection and trade practice statutes² by, among other practices, making, expressly or by implication, false or misleading health-related claims about the energizing effects of Sparks brand products; failing to disclose to consumers the effects and consequences of drinking alcohol beverages that are combined with caffeine and/or other stimulants; providing Sparks for free at private parties and other events attended by individuals under the age of 21; and directing advertisements of Sparks brand products to consumers under the age of 21;

WHEREAS, MillerCoors alleges that it obtained all necessary federal and state regulatory approvals for its caffeinated alcohol beverages, including Sparks brand products, and the company contends that its sale and marketing of these beverages in the Signatory Jurisdictions and elsewhere complied with all applicable laws and that its advertising is and has always been directed to people age 21 and over;

WHEREAS, MillerCoors contends that Sparks was developed with reasonable care and contains less alcohol and caffeine per volume than caffeinated distilled spirits and distilled spirits mixed with caffeinated beverages; and

WHEREAS, the parties, having consented to the entry of this Assurance for the purposes of settlement only, and without trial of any issue of fact or law, and without this Assurance constituting any finding of fact or adjudication, and without this Assurance constituting either evidence against any party or an admission by any party, excepting that this Assurance shall be

² ARIZONA - Consumer Fraud Act, A.R.S. § 44-1521 *et seq.*; CALIFORNIA - Bus. & Prof. Code §§ 17200 *et seq.*, and 17500 *et seq.*; CONNECTICUT – Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. § 42-110b, *et seq.*]; IDAHO - Consumer Protection Act, Idaho Code § 48-601 *et seq.*; ILLINOIS - Consumer Fraud and Deceptive Business Practices Act, 815 ILCS § 505/1 *et seq.* (2006); IOWA - Iowa Consumer Fraud Act, Iowa Code Section 714.16; MAINE – Unfair Trade Practices Act, 5 M.R.S.A. section 205-A *et. seq.*; MARYLAND - Consumer Protection Act, Maryland Commercial Law Code Annotated § 13-101 *et seq.*; MISSISSIPPI-Consumer Protection Act, Miss. Code Ann.§§ 75-24-1 *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); OHIO - Consumer Sales Practices Act, R.C. § 1345.01 *et seq.*;OKLAHOMA-15 O.S. 2001,§§ 751 *et seq.*

admissible as evidence in any action by any Signatory Jurisdiction to enforce this Assurance; moreover, nothing in this paragraph constitutes an abrogation or waiver by the Signatory Jurisdiction Attorneys of the provisions of their respective state laws relating to Assurances;

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

I. DEFINITIONS

Unless otherwise specified, the following definitions shall apply:

- A. “Caffeinated alcohol beverages” means malt-based or distilled spirits-based alcohol beverages to which are added caffeine and/or other stimulants that are metabolized as caffeine, such as guarana.
- B. “Effective Date” means December 18, 2008, by which date all parties have executed this Assurance.
- C. “Sparks” means caffeinated alcohol beverages sold as “Sparks Original”, “Sparks Light,” and “Sparks Plus” and a designed product that has not been sold named “Sparks Red.”

II. ASSURANCE

MillerCoors and its successors, assigns, and subsidiaries, hereby voluntarily agree to cease manufacturing, marketing, and selling caffeinated alcohol beverages as follows:

1. MillerCoors will stop manufacturing, marketing, and providing to wholesalers and distributors any and all caffeinated alcohol beverages, including all Sparks brand products as currently formulated, by January 10, 2009.
2. MillerCoors intends to reformulate the Sparks brand products without caffeine, guarana, ginseng, or taurine. Until Sparks products are reformulated, MillerCoors specifically agrees (a) to eliminate from its promotional materials, if any, all references to mixing Sparks brand products in their current caffeinated formulation with any other alcohol based product, and (b) not to produce or provide to wholesalers any point of sale or other promotional materials for Sparks brand products in their current caffeinated formulation.

3. When Sparks is reformulated, MillerCoors agrees not to promote Sparks as a mixer for any products containing caffeine and/or other stimulants that are metabolized as caffeine, such as guarana. MillerCoors will eliminate the plus (+) and minus (-) symbols from the product label and marketing materials and will not use batteries, rockets, on/off switches, lightning bolts, Sparks depicted as powering objects like snowboards and elevators, or the terms “powered by” or “ignite” in any marketing materials for the reformulated Sparks brand products.
4. MillerCoors agrees to immediately remove the content at the current Sparks website (www.sparks.com) without hyperlinking or directing visitors to a new site. MillerCoors may launch new content on the Sparks website, but may do so only to promote the reformulated Sparks.
5. In the future, MillerCoors will not, except as provided by its current contract agreements to brew alcohol beverages for other manufacturers, produce for itself, or brew for another manufacturer, any alcohol beverages that contain caffeine or other stimulants metabolized as caffeine like guarana, except that nothing in this agreement shall prohibit MillerCoors from producing for itself, and brewing for other manufacturers, alcohol beverages containing flavoring ingredients, such as chocolate, that contain de minimis amounts of naturally occurring caffeine, provided that the total caffeine amounts from all added flavorings and sources must be de minimis.
6. In relation to marketing the reformulated Sparks, MillerCoors will not use photos or other depictions of orange tongues in its marketing for Sparks and will not renew the Sparks sponsorship of William Ocean. MillerCoors will not distribute free Sparks products for sampling at private parties and events at venues open to attendance by persons under the age of 21 unless recipients show proper identification to a MillerCoors employee or representative and unless the MillerCoors employee or representative controls access to the product at the event. To the extent that MillerCoors advertises or markets Sparks on any social networking sites, MillerCoors will not post notices to groups on these sites to promote private parties and events at locations open to attendance by persons under the age of 21. If MillerCoors continues to employ “Sparkitects” or other agents to market the reformulated Sparks brand products, MillerCoors will provide training and enforce

contractual obligations requiring that such agents distribute Sparks brand products only to consumers of legal drinking age.

7. MillerCoors will inform distributors and retailers that reformulated Sparks contains alcohol and does not contain caffeine, and will continue to advise retailers to display and sell Sparks in displays and coolers separate and apart from non-alcoholic energy drinks.

Unless otherwise specified, MillerCoors must comply with the terms of this Assurance by the Effective Date.

III. PAYMENT TO THE SIGNATORY JURISDICTIONS

Within five (5) business days after the Effective Date, Respondent shall pay the Signatory Jurisdiction Attorneys the total sum of \$550,000.00 to such accounts and addresses as the Signatory Jurisdiction Attorneys may direct. Such sum is to be divided among the Signatory Jurisdiction Attorneys as they may agree and is to be used for attorneys fees, and costs of investigation, or it shall be placed in or applied to consumer education, public protection, or local consumer aid funds, including implementation of programs designed to prevent illegal underage drinking, or for any other purpose authorized by state law, at the sole discretion of each Attorney General, the City Attorney or as otherwise required by law.

IV. RELEASE

This Assurance constitutes a complete settlement and release of any and all of the Signatory Jurisdiction Attorneys' civil consumer protection and trade practice claims – whether statutory, equitable, *parens patriae*, or common law (but excluding any tax or antitrust claims) – that may have existed prior to or on the Effective Date and which arise out of or relate to the development, advertising, marketing, or sale of caffeinated alcohol beverages³ by MillerCoors, Miller Brewing Company, and each of their respective affiliates, subsidiaries, successors, and assigns.

³ These include all of the Sparks brand products and Mickey's Stinger.

V. OTHER SETTLEMENT TERMS AND OBLIGATIONS

1. Upon thirty (30) days prior written notice, any duly authorized representative of the Signatory Jurisdiction Attorneys may request, and MillerCoors shall provide, copies of such records as may be reasonably necessary to determine whether MillerCoors is in compliance with this Assurance.

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

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

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

5. The parties agree that MillerCoors may ask the Signatory Jurisdiction Attorneys to amend or terminate provisions of this Assurance in light of new or evolving technologies, business models, emerging science, settlements, laws, regulations, interpretations, the passage of time, or other relevant changes in circumstances, and the Signatory Jurisdiction Attorneys shall reasonably consider such requests.

6. The Signatory Jurisdiction Attorneys are authorized to monitor compliance with this Assurance by all lawful means.

7. Any notices to be sent to a Signatory Jurisdiction or to MillerCoors under this Assurance shall be sent by nationally recognized overnight courier service or certified Mail (return receipt requested), or personal delivery to the named party at the address below:

If to MillerCoors:

Karen A. Ripley, Chief Legal Officer
MillerCoors
3939 W. Highland Blvd.
Milwaukee, WI 53201

If to the State of Arizona:

Dena Rosen Epstein
Assistant Attorney General
Consumer Protection and Advocacy Section
1275 West Washington Street
Phoenix, AZ 85007

If to the State of California:

Alan Lieberman
Deputy Attorney General
Office of the Attorney General
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Sacramento, CA 95814

If to the State of Connecticut:

Phillip Rosario
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Assistant Attorneys General
110 Sherman Street
Hartford, CT 06105

If to the State of Idaho:

Brett T. DeLange
Deputy Attorney General
Consumer Protection Division
Office of the Attorney General
Len B. Jordan Building
650 W State Street, Lower Level
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If to the State of Illinois:

Joshua Orenstein
Assistant Attorney General
Consumer Fraud Bureau
Office of Illinois Attorney General
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Chicago, IL 60601

If to the State of Iowa:

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Director – Consumer Protection Division
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If to the State of Maryland:

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Special Assistant to the Attorney General
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If to the State of Mississippi:

Meredith M. Aldridge
Director, Consumer Protection Division
Special Assistant Attorney General
Mississippi Attorney General's Office
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If to the State of New Mexico:

Lawrence Otero
Assistant Attorney General
Office of the Attorney General
P.O. Drawer 1508
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If to the State of New York:

Joy Feigenbaum
Bureau Chief
Bureau of Consumer Frauds and Protection
120 Broadway
New York, NY 10271

If the State of Ohio:

Chief, Consumer Protection Section
Ohio Attorney General's Office
30 E. Broad St., 14th Floor
Columbus, OH 43215

If the State of Oklahoma:

Julie A. Bays
Assistant Attorney General
Consumer Protection Unit
313 N.E. 21st Street, Suite 1065
Oklahoma City, OK 73105

If to the City of San Francisco:

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San Francisco, CA 94102-4682

[Signature pages omitted.]