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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

STONE BREWING CO., LLC,

Plaintiff,

v.

MOLSON COORS BREWING COM-
PANY, MILLERCOORS LLC, and
DOES 1 through 25, inclusive,

Defendants.

Case No. **'18CV0331 BEN JMA**

COMPLAINT FOR:

- (1) Trademark Infringement
- (2) False Designation of Origin
- (3) Trademark Dilution
- (4) Unfair Competition
- (5) Declaratory Relief

JURY TRIAL DEMANDED

1 Plaintiff Stone Brewing Co., LLC (hereinafter, “Stone,” “Plaintiff,” or
2 “Gargoyle”) brings this Complaint against Defendants Molson Coors Brewing
3 Company and MillerCoors LLC (collectively, “MillerCoors” or “Defendants”) and
4 alleges, on personal knowledge as to its own actions and on information and belief as
5 to the actions of others, as follows:

6 **INTRODUCTION**

7 1. Plaintiff Stone Brewing brings this trademark action to halt Defendant
8 MillerCoors’s misguided campaign to steal the consumer loyalty and awesome repu-
9 tation of Stone’s craft brews and iconic STONE® trademark. MillerCoors recently
10 decided to rebrand its Colorado Rockies-themed “Keystone” beer as “STONE” – sim-
11 ultaneously abandoning Keystone’s own heritage and falsely associating itself with
12 Stone’s well-known craft brews.

13 2. Since 1996, the incontestable STONE® mark has represented a promise
14 to beer lovers that each STONE® beer, brewed under the Gargoyle’s watchful eye, is
15 devoted to craft and quality. Like all Gargoyles, it is slow to anger and seeks a re-
16 spectful, live-and-let-live relationship with peers and colleagues – even those purvey-
17 ing beers akin to watered-down mineral spirits. But Stone and the Gargoyle cannot
18 abide MillerCoors’s efforts to mislead beer drinkers and sully (or steal) what STONE®
19 stands for.

20 3. STONE® beer is beloved by millions of beer drinkers across America.
21 Resolute and fearless, the brewery has always stood for a philosophy and approach
22 that defies the watered-down orthodoxy of “Big Beer” companies and their fizzy yel-
23 low offerings. As Big Beer has stumbled in recent years, the Gargoyle has thrived.
24 STONE® is one of the most recognizable and popular craft beer brands in the U.S.
25 and the global standard bearer for independent craft beer, with sales in all fifty U.S.
26 States and across five continents.

27 4. Stone’s rise has not gone unnoticed by the largest beer company in
28 America, MillerCoors. MillerCoors has long coveted the STONE® mark, but has

been blocked from using STONE-centric branding because of Stone’s incontestable federal registration. In 2007, the U.S. Patent and Trademark Office forced MillerCoors to admit that using the mark “STONES” to sell Keystone would infringe the STONE® trademark. Yet in 2017, MillerCoors marketing executives decided to try again. Not long after Stone cofounder Greg Koch publicly announced that the Gargoyle would never sell out, MillerCoors began plotting to rebrand “Keystone” as “STONE” or “THE STONE.” MillerCoors has since followed-through on that plan by recently relabeling its products and launching “STONE”-centric advertising.

5. The Gargoyle does not countenance such misdirection of consumers; nor does it support those who would disavow their own Colorado mountain heritage to misappropriate another's ancestry. Stone accordingly brings this action to help usher Keystone back to the Rockies. Should Keystone not willingly return, Stone intends to seek expedited discovery in aid of a preliminary injunction, as well as permanent injunctive relief, declaratory relief, damages, costs and attorneys' fees, among other remedies.

THE PARTIES

6. Plaintiff Stone Brewing Co., LLC (“Stone” or “Plaintiff”) is a pioneering craft brewery with its principal place of business at 2120 Harmony Grove Road, Escondido, California. Stone is a duly registered limited liability company organized under California law. Prior to 2016, Stone was organized as a California corporation named Koochen Vagners Brewing Co., d/b/a Stone Brewing Co. Stone is the registered owner of the incontestable trademark registration for STONE®.

7. Stone is informed and believes that Defendant Molson Coors Brewing Company (“Molson Coors”) is a multinational beer conglomerate that owns the *Keystone*, *Coors*, *Miller*, and *Molson* beer brands, among others. Molson Coors is a Delaware Corporation with its principal places of business at 1801 California Street, Suite 4600, Denver, Colorado.

8. Stone is informed and believes that Defendant MillerCoors LLC (“MillerCoors”) is the United States operating arm of Molson Coors. MillerCoors is a Delaware limited liability company with its principal place of business at 250 S. Wacker Drive, Suite 800, Chicago, Illinois. Upon information and belief, MillerCoors is a wholly-owned subsidiary of Molson Coors that markets the *Keystone* and *Keystone Light* beer brands in the United States.

9. Upon information and belief, Defendants operate under a unified management structure controlled and directed by Defendant Molson Coors Brewing Company. Each Defendant acted in concert with the other Defendants and aided, abetted, directed, approved, or ratified each act or omission alleged in this Complaint to have been performed by Defendants.

10. The true names of the Defendants sued as Does 1 through 25, inclusive, are unknown to Stone, who therefore sues these Defendants by such fictitious names. Stone will amend this Complaint to allege the true names and capacities of these Defendants when they are ascertained. Upon information and belief, these fictitiously named Defendants were involved in the design, implementation, approval, and furtherance of the conduct complained of herein or received benefits from those transactions.

JURISDICTION AND VENUE

11. This action arises and is brought under the Trademark Act, known as the Lanham Act, 15 U.S.C. §§ 1050, *et seq.*, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202.

12. This Court has subject matter jurisdiction pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1338.

13. This Court possesses personal jurisdiction over Defendant Molson Coors because Molson Coors regularly and continuously transacts business in the State of California by advertising and selling its products within the State and this District,

1 including but not limited to sales of infringing Keystone products at numerous loca-
2 tions in the City and County of San Diego and this District.

3 14. This Court possesses personal jurisdiction over Defendant MillerCoors
4 because MillerCoors regularly and continuously transacts business in the State of Cal-
5 ifornia by advertising and selling its products within the State and this District, includ-
6 ing but not limited to sales of infringing Keystone products at numerous locations in
7 the City and County of San Diego and this District.

8 15. Additionally, this Court possesses personal jurisdiction over Defendants
9 Molson Coors and MillerCoors because, on information and belief, Defendants have
10 targeted their tortious conduct at the State of California and this District by selling or
11 distributing infringing Keystone products in this District and elsewhere. Defendants
12 either expected or reasonably should have expected that their activities would cause
13 harm to Stone in this District.

14 16. Venue is also proper in this district pursuant to 28 U.S.C. § 1391(b) be-
15 cause a substantial part of the events or omissions giving rise to this action occurred
16 in this district. The Gargoyle's primary abode is in this District, where Plaintiff Stone
17 has its headquarters and regularly conducts business. Additionally, infringing Key-
18 stone products are offered for sale to consumers at numerous locations in the City and
19 County of San Diego and this District.

20 **FACTUAL BACKGROUND**

21 **A. Foundations of STONE®**

22 17. Before it grew into an internationally recognized craft beer brand, Stone
23 had its origins in the creative fermentation of California in the 1980s and '90s. Found-
24 ers Steve Wagner and Greg Koch first crossed paths in the effervescent Los Angeles
25 rock-and-roll music scene of the 1980s. Years later, they raised a glass at brewing
26 mecca U.C. Davis in Northern California, where both had enrolled to channel their
27 creative energies into brewing. In a series of conversations, the future founders of
28

1 STONE® discovered that they shared a love of bold, interesting beers and fiery obses-
2 sion with being a part of the craft beer revolution.

3 18. After a few years commiserating on the bleak state of the American beer
4 market, the pair decided to take matters into their own hands. Greg and Steve made
5 plans to open a brewery that would be defined by an unwavering commitment to qual-
6 ity and sustainability, holding true to the art of brewing bold, flavorful beers.
7 STONE® was born.

8 19. Over the course of the next four years, Stone signed a lease on a small
9 warehouse that it turned into a brewery, went from kegging its beers to having two
10 bottling lines, and released its most popular beer, STONE IPA®. From Stone's earliest
11 bottles to its first website and delivery trucks, the STONE® mark has signified Stone's
12 rebel culture of creativity, quality, and independence.

Stone's First Year of Production



20. From the start, Stone assiduously developed and maintained its trademark
and brand. Every Stone beer proudly bears the registered incontestable trademark
STONE®, which has been registered with the U.S. Patent and Trademark Office since
June 23, 1998 under U.S. Registration No. 2168093.

1 **B. STONE® Rolls On**

2 21. Sprinting into the 2000s, Stone grew in size and reach, overflowing its
3 first facility. Stone entered a new phase when it planned a custom-built brewhouse
4 tailored to fit Stone’s commitment to quality, sustainability, and craft.

5 22. The new brewery opened in Escondido, California in 2005, just before
6 Stone’s ten-year anniversary. In a stroke of innovation, Stone also opened the first
7 *Stone Brewing World Bistro & Garden™*, which shattered the “brewpub” mold with
8 local, organic ingredients and a seasonal menu constantly inspired by fresh, worldly
9 cuisine and the Slow Food movement.

10 23. The stage was set for a craft brewing revolution. Throughout the 2000s,
11 Stone continued to win converts with its bold, unorthodox beers and artisan philoso-
12 phy. Other brewers joined the fray, transforming the tastes of millions of beer drinkers
13 who had not known what they were missing. In droves, Americans began turning
14 away from incumbent Big Beer standards sold by the likes of MillerCoors in favor of
15 craft beers with more compelling brands and flavors.

16 24. The strength of Stone’s brand kept pace with its commercial success. On
17 or about June 28, 2008, the USPTO accepted Stone’s Combined Declaration of Use
18 and Incontestability for STONE®, rendering the mark incontestable as a matter of law.

19 **C. STONE® Today**

20 25. Today, Stone is the ninth-largest independent craft brewer in the United
21 States. Presiding over a rapid expansion of the craft brewing industry from 800 brew-
22 eries in 1996 to more than 5,000 today, Stone has maintained its commitment to true
23 independent craft and sustainability.

24 26. STONE® beers are sold in thousands of stores, bars, and restaurants
25 throughout the country, including at major grocery stores and retailers. Instantly rec-
26 ognized by the STONE® name, STONE® enjoys exceptional customer loyalty and
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engagement, with a devoted fan base unrivalled by other brewers. A sampling of popular STONE® beers appears thus:



27. Stone and its products have been widely lauded by national and international press, as well as connoisseurs and critics. In 2010, Stone Brewing was named the “**All-Time Top Brewery on Planet Earth**” by *Beer Advocate* magazine. Numerous national and international publications have recognized STONE® as an industry leader, including *The New York Times*, *The Wall Street Journal*, *The Economist*, *USA Today*, and *Time* magazine, to name a few.

28. Even as Stone has expanded its range of offerings with bold new flavors and numerous seasonal beers, the STONE® mark has remained constant, an unchanging identifier of STONE®’s reputation for quality and commitment to its craft.

29. By virtue of these efforts, STONE® is uniquely beloved among American and international beers, with a passionate and loyal following among consumers and critics alike. STONE® enjoys exceptional consumer engagement ratings on social media, with scores nearly double the nearest craft brewer. Loyal customers have even been known to commission tattoos of STONE® in homage – and then travel to the Escondido brewery to proudly show off their ink.

1 30. STONE®’s brand and commitment to producing innovative artisan beer
2 have helped it defy the status quo and disrupt the American beer industry. In 2016,
3 Stone produced more than 10.6 million gallons of beer for sale to customers in all fifty
4 U.S. States.

5 31. STONE®’s rise has placed it into direct competition with MillerCoors
6 and its Big Beer associates in the U.S. beer market. In 2017, STONE®’s U.S. sales
7 exceeded \$70 million, placing it among the ten best-selling craft brewers in the country
8 – including erstwhile “craft” breweries now operating under MillerCoors and other
9 beer conglomerates.

10 32. Stone also has taken its beer brewing passion abroad. STONE® is now
11 the first American craft brewer to independently build, own and operate a brewery in
12 Europe – in the heartland of Germany where serious beer has been enjoyed for over a
13 thousand years. Doing so has strengthened Stone’s already diverse international fan
14 base, who happily drink STONE® hops throughout the European Union and China,
15 plus Canada, Australia, Singapore, Taiwan, Puerto Rico, Panama and Brazil, among
16 other nations. It is fair to say that STONE® has become an inherently distinctive and
17 internationally recognized standard-bearer for American craft beer.

18 **D. MillerCoors and Keystone’s Origins**

19 33. Defendant Molson Coors is a multinational beer conglomerate formed af-
20 ter a series of mergers involving Coors, Miller, and Canadian brewing giant Molson.
21 In the United States, Molson Coors operates through its subsidiary, Defendant Mil-
22 lerCoors. (Collectively, Molson Coors and MillerCoors are referred to hereinafter as
23 “MillerCoors”). Among dozens of brands in its portfolio, MillerCoors sells domestic
24 lager brands Keystone and Keystone Light.

25 34. Since its inception, MillerCoors and its predecessors have sold its “Key-
26 stone” sub-premium beer brand in cans with a primary KEYSTONE mark and promi-
27 nent imagery of the Colorado Rocky Mountains. The name “Keystone” is the name
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1 of a popular ski resort town founded in the 1970s in Colorado. The mountain range
2 depicted on the can is styled after the Wilson Peak located in the Rockies.

3 **Keystone's Brand**



9 35. In doing so, the “Keystone” name served to remind consumers of the
10 brand’s Colorado roots and ties to its parent brand, Coors.

11 36. Those ties apparently no longer bind so tight. After a series of corporate
12 mergers and relocations, Keystone no longer is headquartered in its ancestral home in
13 the Rocky Mountains. The brand is now part of a large “portfolio” of beers under the
14 Molson-Miller-Coors conglomeration, with its U.S. base in Chicago, Illinois. This
15 may explain the company’s new insistence on dropping the “Key-” from its brand in
16 favor of “STONE” – in an effort to chase the craft market and Stone in particular.

17 **E. MillerCoors’s “Big Beer” War Against Craft Beer**

18 37. MillerCoors’ “Big Beer” brands like Keystone have suffered most from
19 the rise of tasty brews like STONE®. As craft beer was on the rise from the late 1990s
20 throughout the 2000s—celebrating double-digit growth each year—Big Beer increas-
21 ingly lost market share. From 2011 to 2016, Keystone Light sales dropped more than
22 25%. *USA Today* recently dubbed Keystone one of the “**Beers Americans No Longer**
23 **Drink**” in a December 2017 article.

24 38. To stem these losses, MillerCoors has embarked on a plan to wrestle back
25 market share. In addition to rebranding Keystone to emulate STONE® (discussed
26 below), MillerCoors recently acquired Stone’s San Diego neighbor and former inde-
27 pendent craft brewery, Saint Archer Brewing. MillerCoors itself has explained that
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1 this expansion is aimed to eliminate competition from independent brewers like Stone
2 – efforts that the conglomerate attempts to disguise by using a supposed “craft” beer
3 holding entity, Tenth and Blake Beer Company.

4 39. Nothing about such activity is benign. Upon these acquisitions, Mil-
5 lerCoors drops prices to supra-competitive rates and ramps up production and distri-
6 bution. In doing so, it aims to undermine independent craft brewers’ ability to compete
7 while deceptively continuing to advertise its mass-produced brands as “craft” beers.

8 **F. Keystone’s Rebranding as “STONE”**

9 40. MillerCoors’ renaming of “Keystone” as “STONE” marks an aggressive
10 second phase of the company’s pincer move against craft beer and Stone in particular.

11 41. In April, 2017, the company quietly announced that Keystone was to be
12 rebranded as “STONE”. New cans, boxes and logos were formulated to emphasize
13 “STONE” as a primary mark.

14 42. Since the release of the new design, MillerCoors has launched a viral
15 marketing campaign that touts Keystone’s self-proclaimed new name of “STONE.”
16 In recent months, the brand’s Facebook and Instagram pages have been scrubbed of
17 the word “key” and filled with posts strategically placing Keystone beer cans so that
18 only “STONE” is prominently displayed to viewers, with accompanying videos to
19 match. These changes point unmistakably to a concerted effort by MillerCoors to cap-
20 italize on the goodwill and recognition associated with the STONE® mark and brand.

21 **1. Removing “KEY” from Keystone’s Can and Packaging**

22 43. In a glaring departure from Keystone’s traditional brand, MillerCoors has
23 redesigned the label of Keystone cans and cases to emphasize its shift to “STONE.”
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1 44. The new can abandons the high ground by dropping Keystone's signature
2 mountain imagery. In its place, the can now lacks any imagery at all and relies entirely
3 on a large display of the new name, "STONE." The result would be unrecognizable
4 to Keystone drinkers of yore. In effect, MillerCoors has abandoned the KEYSTONE
5 mark and heritage in favor of a brand centered entirely on one word: "STONE":



11 45. Keystone's new can design overtly copies and infringes the STONE®
12 trademark. Indeed, MillerCoors has effectively admitted that this copying is inten-
13 tional. Before the cans hit shelves, MillerCoors announced in an official blog post that
14 it was launching "a can that plays up the "Stone" nickname." ([http://www.mil-
15 lercoorsblog.com/news/keystone-light-new-look-15-pack/](http://www.millercoorsblog.com/news/keystone-light-new-look-15-pack/)). A new, self-proclaimed
16 "nickname," that is.

17 46. The new Keystone can displays STONE® as its primary brand identifier,
18 with no apparent hint of the traditional KEYSTONE brand or its signature mountain
19 theme:



47. The rest of the new Keystone packaging conspicuously copies the STONE® mark. Indeed, the new Keystone 30-packs omit virtually any reference to “Keystone” at all. Instead, the packaging is designed to create a “wall of STONE” when displayed in stores:

Keystone's Confusing Case Stacks



48. Packaging and labels are critical to beer marketing, ensuring that brands stand out to consumers perusing the beer aisles in stores. The overwhelming emphasis of “STONE” on the new Keystone packaging is a declaration that Keystone has abandoned its roots in an effort to simply become “STONE” to consumers. But there is already one – and only one – true STONE® in the market.

2. Keystone's Deceptive Social Media Campaigns

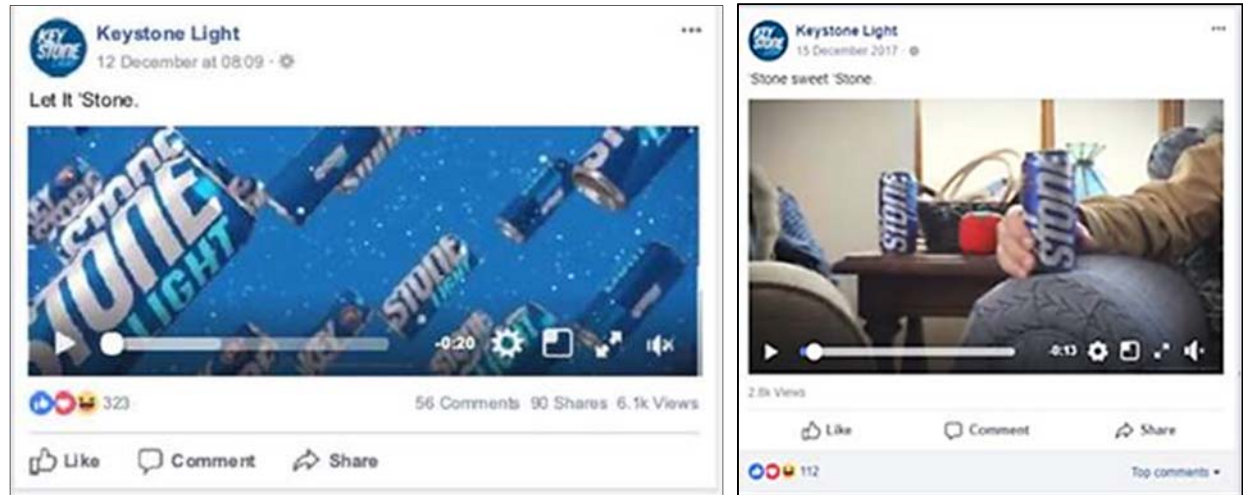
49. At the same time, MillerCoors has also launched an escalating advertising and social media attack to establish STONE® as a new name for Keystone.

50. MillerCoors has instituted a social media blitz on its publicly available sites where it solely refers to Keystone as “STONE” and strategically places its product so that “STONE” is the most prominent, if not the only, graphic visible to viewers.

51. On Facebook, virtually every post on Keystone's page now refers to Keystone as STONE®, confirming that there is nothing coincidental about the campaign. In the last several weeks, MillerCoors has sharply escalated its use of

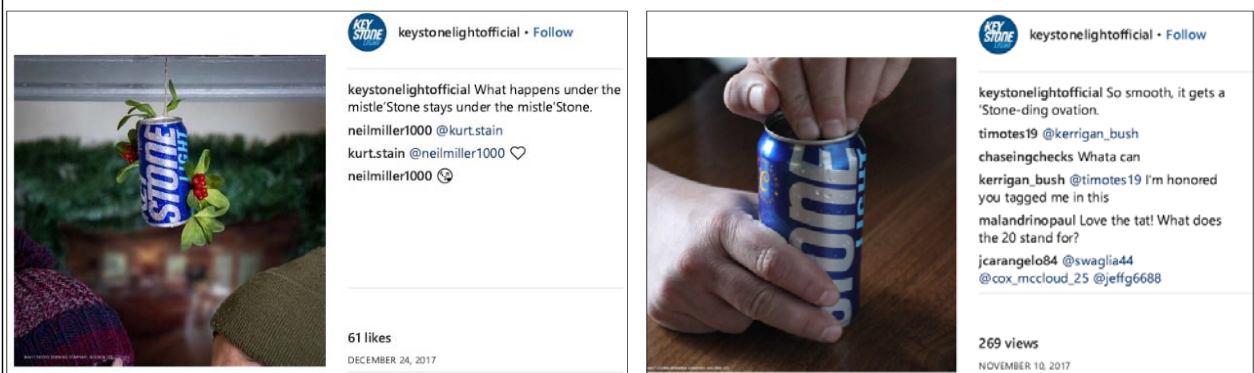
STONE® on Keystone’s social media accounts, with near-daily posts during the holiday season. These social media posts feature cans deliberately positioned to emphasize the terms “STONE” and “STONE LIGHT.”

Keystone’s Misleading Facebook Posts



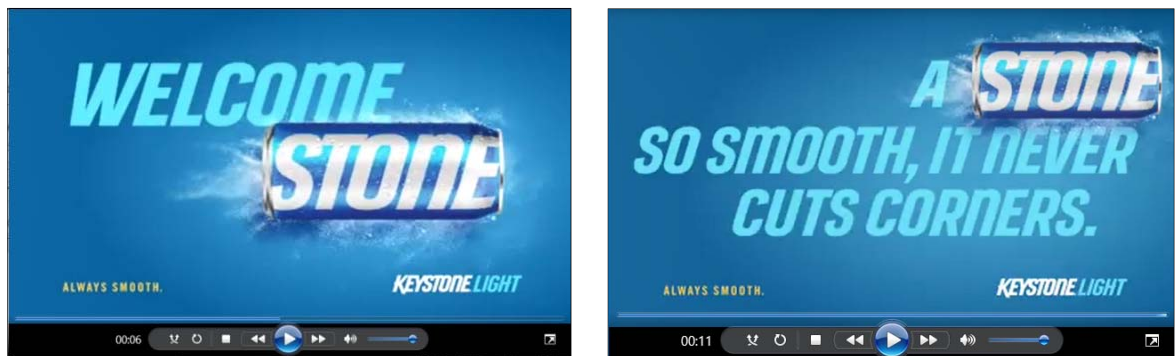
52. On Instagram, Keystone continues its misappropriation with posts that take every opportunity to emphasize the word “STONE,” including taglines such as: “The ‘Stone that keeps on giving’”; “Come bearing ‘Stones’”; “Season’s greetings from the ‘Stone family’”; and “‘Stone sweet ‘Stone.’” The emphasis on this new name, “STONE,” is accompanied by images displaying the Keystone can with “STONE” as the most prominent graphic.

Keystone’s Deceptive Instagram Taglines



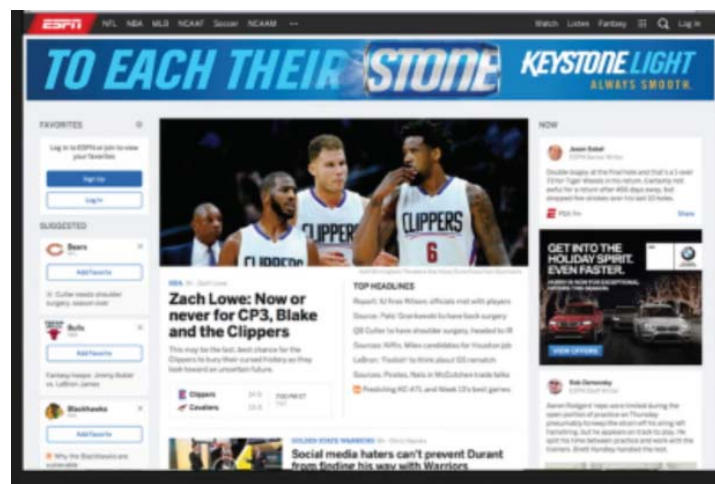
53. The videos that accompany the majority of Keystone's recent Facebook and Instagram posts further evidence Keystone's effort to seize the STONE® mark. The videos themselves use taglines that play up the "STONE" name, continue the strategic placement of the Keystone can so the viewer only notices "STONE," and conclude with STONE-centric messages such as the following:

Keystone's Willful Use Of STONE® Mark in Viral Media



54. Upon information and belief, MillerCoors has also purchased advertising on major websites, such as ESPN.com, referring to Keystone as "STONE". Such mass advertising broadcasts the infringing "STONE" name beyond Keystone's immediate social media audience to the general public at large.

Keystone's Widespread ESPN Ad



55. Further, in recent months, Keystone launched and widely promoted a contest entitled “Hunt the STONE.” This contest has been publicized in physical ads and via social media, showcasing Keystone’s new can design and intent to abandon the name “Keystone” for its beer in favor of “STONE.” These new ads differ drastically from previous ads advertising the contests.



56. It is beyond doubt that any day now, Keystone intends to drop the “Key” prefix altogether.

3. MillerCoors Is Brewing Confusion

57. MillerCoors has long coveted the STONE® mark. For years, Stone’s incontestable registration has stood as an obstacle to Keystone’s marketing efforts, preventing use of “STONE”-centric branding. Now, MillerCoors is willfully infringing the STONE® mark in a calculated attempt to dilute it beyond repair.

58. In September 2007, MillerCoors applied to register the mark “STONES” with the USPTO for use in connection with Keystone Light (U.S. Serial No. 77/284,994). The USPTO refused to register the mark for the obvious reason that “STONES” was likely to be confused with STONE® when used on beer. The USPTO’s office action *explicitly cited* the incontestable STONE® registration as the basis for its refusal, putting MillerCoors on formal notice of Stone’s rights (in the unlikely event it was not aware of them already).

1 59. Tellingly, MillerCoors did not dispute the USPTO’s determination that
2 its “STONES” mark would infringe STONE® when used in connection with Key-
3 stone Light. MillerCoors instead abandoned its application, admitting that confusion
4 with STONE® beer was likely.

5 60. By the time MillerCoors launched its recent deceptive rebranding of Key-
6 stone, it had thus been on notice of Stone’s rights in the STONE® mark for at least a
7 decade.

8 61. MillerCoors and its executives were, and are, keenly aware of the
9 STONE® brand and its rich craft heritage. In fact, MillerCoors has published articles
10 on its own “Behind the Beer” Blog recognizing Stone as a “nationally distributed
11 brewer[]” and one of the “biggest and most well-established craft brewers.” Against
12 this backdrop, Defendants’ current infringement is plainly willful.

13 62. By designing their own campaign to capture the STONE® mark and as-
14 sociated goodwill, MillerCoors seeks to mislead consumers: about the source of Mil-
15 lerCoors’s “Keystone,” the heritage of Stone’s beers, and whether STONE® is just
16 another member of MillerCoors’s craft brew holding company.

17 63. MillerCoors’s deliberate infringement is likely to succeed in causing con-
18 fusion. Not only does MillerCoors’s new “STONE” branding copy the STONE®
19 mark verbatim, but the companies’ beers compete head-to-head in store aisles across
20 the country. In the high-velocity beer market, where consumers make quick decisions
21 between a proliferating array of brands, the effects of even initial confusion are likely
22 to be momentous.

23 64. Confusion is just as likely outside of stores. The two brands use identical
24 distribution and marketing channels, with STONE® and Keystone beers sharing the
25 same distributors in many areas of the country. In the marketing arena, MillerCoors
26 launched its rebranding offensive on social media – precisely the grassroots advertis-
27 ing medium that STONE® has used for years to cultivate support.

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65. Beyond its new “STONE” cans, MillerCoors is admittedly seeking to establish “STONE” as a trademark and source identifier for its “new Keystone” brand. If this gambit succeeds, a bar or restaurant patron asking for a tasty STONE® brew will be just as likely to receive Keystone’s watered-down imitation of beer in its place. The STONE® mark has grown to its present strength because consumers trust that STONE® will never let them down in this manner.

66. In recent weeks, Stone has received consumer inquiries showing that MillerCoors’s escalating infringement is indeed brewing confusion in the marketplace. In December 2017, for example, a consumer reached out to Stone to inquire about the brewery’s new “**STONE LITE**” product – a non-existent beer that appears only in MillerCoors’s deceptive advertising.

67. Even such minor instances can have significant effects undermining Stone's reputation for independence. Stone has earned a reputation for bold, high-quality artisan beers under the STONE® brand. Keystone has not. By copying STONE®, MillerCoors aims now to not only diminish Stone's trademark rights but to capitalize upon STONE®'s artisanal reputation and image.

CLAIMS FOR RELIEF

First Claim for Relief
FEDERAL TRADEMARK INFRINGEMENT – 15 U.S.C. § 1114
(As to All Defendants)

68. Plaintiff incorporates by reference the facts and allegations set forth in each of the preceding paragraphs as though fully set forth herein.

69. Plaintiff owns all right, title, and interest in the registered trademark STONE®, which it has continuously used in commerce since at least 1996.

70. Through the conduct alleged above, Defendants' unauthorized use in commerce of STONE® infringes Plaintiff's rights in the mark and violates 15 U.S.C. § 1114 because it renders Defendants' products confusingly similar to the well-known STONE® mark and beers. Defendants' unauthorized use of STONE® creates the erroneous impression in consumers' minds that Defendants' Keystone products have

1 been manufactured, approved, sponsored, endorsed, or guaranteed by, or are in some
2 way affiliated with Plaintiff and the STONE® mark.

3 71. Defendants' actions are a paradigmatic case of infringement under the
4 factors enunciated in *AMF, Inc. v. Sleekcraft Boats*, 599 F.2d 341 (9th Cir. 1979), for
5 at least the following reasons:

6 a. Defendants' copying of the STONE® mark is intentional. Defend-
7 ants have themselves admitted that "STONE"-centric branding such as "STONES" is
8 likely to confuse consumers when used in connection with Keystone beer.

9 b. The STONE® mark is inherently distinctive, incontestable, fa-
10 mous, and commercially strong.

11 c. Defendants' infringing "STONE" mark is a verbatim copy of
12 Plaintiff's genuine STONE® mark.

13 d. The parties already compete directly in beer aisles, coolers, bars,
14 and restaurants across the country.

15 e. The extent of the parties' competition will only grow as Stone
16 continues its national and international growth.

17 f. The parties share identical marketing and distribution channels.

18 g. The parties compete in a high-velocity market where the impact of
19 initial consumer confusion is likely to be high.

20 h. Plaintiff has received consumer inquiries indicating that confusion
21 is occurring in the marketplace.

22 i. Defendants' intentional copying of Plaintiff's mark is itself strong
23 evidence that the infringing products are confusing consumers across the country.

24 72. Defendants' imitation and unauthorized use of STONE® is causing irrep-
25 arable injury to Plaintiff by, *inter alia*, destroying consumers' unique association of
26 the STONE® mark with Plaintiff's products.

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1 73. Plaintiff has no adequate remedy at law for Defendants’ misconduct. Un-
2 less Defendants are enjoined and restrained from continuing their infringement, con-
3 sumers will continue to be confused and Plaintiff’s injuries will continue to occur.

4 74. Plaintiff also is entitled to recover from Defendants any gains, profits, and
5 advantages as a result of Defendants’ infringement, in an amount to be proven at trial.

6 75. Defendants’ intentional and willful misconduct renders this an “excep-
7 tional case,” entitling Plaintiff to treble damages and attorney’s fees pursuant to 15
8 U.S.C. § 1117.

9 **Second Claim for Relief**
10 **FALSE DESIGNATION OF ORIGIN – 15 U.S.C. § 1125(a)**
 (As to All Defendants)

11 76. Plaintiff incorporates by reference the facts and allegations set forth in
12 each of the preceding paragraphs as though fully set forth herein.

13 77. Plaintiff owns all right, title, and interest in the registered trademark
14 STONE®, which it has continuously used in commerce since at least 1996.

15 78. Through the conduct alleged above, Defendants’ unauthorized use in
16 commerce of STONE® infringes Plaintiff’s rights in the mark and violates 15 U.S.C.
17 § 1114 because it renders Defendants’ products confusingly similar to the well-known
18 STONE® mark and beers. Defendants’ unauthorize use of STONE® creates the er-
19 roneous impression in consumers’ minds that Defendants’ *Keystone* products have
20 been manufactured, approved, sponsored, endorsed, or guaranteed by, or are in some
21 way affiliated with Plaintiff and the STONE® mark. Such use constitutes a false des-
22 ignation of origin within the meaning of 15 U.S.C. § 1125(a).

23 79. On information and belief, Defendants chose to use the STONE® mark
24 on Keystone products with the intent to cause confusion among consumers and to de-
25 ceive them into believing that Defendants’ products are made by, endorsed by, or oth-
26 erwise associated with Plaintiff or STONE® beers.

27 80. Defendants have profited from their unfair competition, and Plaintiff has
28 suffered damages in amount to be proven at trial.

81. Defendants’ intentional and willful misconduct in misleading U.S. consumers renders this an “exceptional case,” entitling Plaintiff to treble damages and attorney’s fees pursuant to 15 U.S.C. § 1117.

82. Defendants' infringement is causing irreparable harm by confusing consumers and enabling Defendants to unlawfully profit by trading off of Plaintiff's STONE® mark. Plaintiff will continue to suffer such harm unless Defendants' infringing conduct is enjoined by this Court.

Third Claim for Relief
TRADEMARK DILUTION – 15 U.S.C. § 1125(c)
(As to All Defendants)

83. Plaintiff incorporates by reference the facts and allegations set forth in each of the preceding paragraphs as though fully set forth herein.

84. The STONE® mark is distinctive and famous in that it is widely recognized by the general consuming public as a designation of the source of Plaintiff's goods.

85. On information and belief, Defendants' unauthorized use of the STONE® mark began after the STONE® mark became famous.

86. Defendants' continued unauthorized use of STONE® mark is likely to cause injury to Plaintiff's business reputation and/or the dilution of the distinctive quality of Plaintiff's famous mark and brand.

87. Defendants' acts have caused, and if not enjoined will continue to cause, irreparable and continuing harm to Plaintiff's STONE® mark, business, reputation, and goodwill. Plaintiff has no adequate remedy at law because monetary damages are inadequate to compensate Plaintiff for the injuries caused by Defendants.

Fourth Claim for Relief
TRADEMARK DILUTION – Cal. Bus. & Prof. Code § 14247, *et seq.*
(As to All Defendants)

88. Plaintiff incorporates by reference the facts and allegations set forth in each of the preceding paragraphs as though fully set forth herein.

89. The STONE® mark is distinctive and famous in that it is widely recognized by the general consuming public of California, including in this District and its environs, and as a designation of the source of Plaintiff's goods.

90. On information and belief, Defendants' unauthorized use of STONE® mark began after the STONE® mark became famous.

91. Defendants' continued unauthorized use of STONE® mark is likely to cause injury to Plaintiff's business reputation and/or the dilution of the distinctive quality of Plaintiff's famous mark and brand.

92. Defendants' acts have caused, and if not enjoined will continue to cause, irreparable and continuing harm to Plaintiff's STONE® mark, business, reputation, and goodwill. Plaintiff has no adequate remedy at law because monetary damages are inadequate to compensate Plaintiff for the injuries caused by Defendants.

Fifth Claim for Relief
UNFAIR COMPETITION – Cal. Bus. & Prof. Code § 17200, *et seq.*
(As to All Defendants)

93. Plaintiff incorporates by reference the facts and allegations set forth in each of the preceding paragraphs as though fully set forth herein.

94. Defendants' unauthorized use of the STONE® mark in a manner that is likely to confuse and deceive consumers is unlawful, unfair, and/or fraudulent and constitutes unfair competition within the meaning of Cal. Bus. & Prof. Code § 17200.

95. Defendants have profited from their unfair competition, and Plaintiff has suffered damages in an amount to be proven at trial.

96. Defendant's infringement is causing irreparable harm by confusing consumers and enabling Defendant to unlawfully profit by trading off of Plaintiff's STONE® mark. Plaintiff will continue to suffer harm unless Defendants' infringing conduct is enjoined by this Court.

Sixth Claim for Relief
DECLARATORY JUDGMENT – 28 U.S.C. §§ 2201-2202
(As to All Defendants)

97. Plaintiff incorporates by reference the allegations contained in the preceding paragraphs as if set forth fully herein.

98. Defendants' ongoing use of "STONE" in connection with its *Keystone* beer products infringes the registered STONE® mark.

99. Defendants are engaged in activities directed towards further unauthorized use of the STONE® Mark in commerce in a manner that is likely to cause confusion among the relevant public that Defendants' *Keystone* beers are affiliated with, or related to, Plaintiff's STONE® beers.

100. As such, there is a substantial, immediate and justiciable controversy between the parties in that Defendants seek to use the STONE® mark in connection with beer, while Plaintiff contends that such use infringes and dilutes Plaintiff's registered marks.

101. Plaintiff accordingly seeks in the alternative a declaratory judgment that further use by Defendants of the STONE® mark in connection with the sale, marketing or distribution of beer would infringe Plaintiff's rights in the STONE® Mark.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Stone Brewing Co., LLC prays that the Court order and/or issue the following relief:

A. Preliminarily and permanently enjoin Defendants from using the STONE® mark in connection with the sale, marketing or distribution of beer.

B. Award Plaintiff its amount of damages and/or the amount of Defendants' profits arising from Defendant's unauthorized use of the STONE® Mark in the United States, pursuant to 15 U.S.C. § 1117 and under other applicable federal and/or state law.

1 C. Award Plaintiff three times its actual damages according to proof, as
2 well as the costs of this action, in accordance with 15 U.S.C. § 1117 and under other
3 applicable federal and/or state law.

4 D. Find this action to be an “exceptional case” such that Plaintiff be
5 awarded its reasonable attorneys’ fees in accordance with 15 U.S.C. § 1117 and
6 under other applicable federal and/or state law.

7 E. Declare that Defendants’ continued unauthorized use of the STONE®
8 Mark in connection with the sale, marketing or distribution of beer would infringe
9 Plaintiff’s rights in the mark.

10 F. Award Plaintiff such other and further relief as this Court deems
11 equitable and proper.

12
13 Dated: February 12, 2018

Respectfully Submitted,

14 BRAUNHAGEY & BORDEN LLP

15
16 By: s/ J. Noah Hagey

17 J. Noah Hagey

18 *Attorneys for Plaintiff*

19 *Stone Brewing Co., LLC*
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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial of all claims and causes of action triable
before a jury.

Dated: February 12, 2018 Respectfully Submitted,
BRAUNHAGEY & BORDEN LLP

By: s/ J. Noah Hagey
J. Noah Hagey

Attorneys for Plaintiff
Stone Brewing Co., LLC