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Randy Maniloff: People actually go to court over the Super Bowl ads

RANDY MANILOFF
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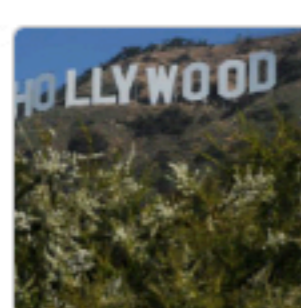
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During last year's Super Bowl, Larry David starred in a commercial for FTX. While enthusiasm for the crypto exchange has now been curbed, the ad lives on. For being a pitchman, the Seinfeld creator is being sued, in a Florida federal court, along with other celebrity "brand ambassadors," for violating securities and consumer protection laws.

Super Bowl commercials are the game's Clydesdale-size side-show. And as in the case with Larry David's foray, the drama sometimes lasts longer than 30 seconds. Maybe befitting the Super Bowl's place in American culture, Super Bowl ads have led to a surprising number of legal squabbles.

An Anheuser-Busch commercial aired during the 2004 Super Bowl depicted two dogs fetching a Bud Light. A citizen feeling responsible for the public interest, seeing the ad as intended to appeal to juveniles who cannot legally purchase alcohol, was unamused. He sought an injunction to stop the beer giant from such things as deceiving the public about the dangers of alcohol consumption.

The Oregon federal court, in *Guglielmi v. Anheuser-Busch Cos.* (2005), after analyzing the claim six ways to Super Bowl Sunday, concluded that the plaintiff was not entitled to relief. It was "conjecture based on speculation that is bottomed on surmise," the judge concluded, that if the court prohibited the airing of the ad, a problem drinker would be less likely to "get into an accident, start a fire, or commit a crime of which Guglielmi would have been a victim."



Greg Mitchell
Greg Mitchell: How Hollywood created the first political attack ads

Delivery Agent, Inc. used a 2014 Super Bowl commercial to show off its technology that enabled viewers, using their television remote control, to purchase clothing seen on screen. It was an epic failure. In response, the company's senior management directed employees to purchase the H&M merchandise themselves. With 585 of the 600 pieces now bought, the company touted the ad as a huge success and its purchasing tool a game-changer for advertising.

Investors learned of the cover-up and filed suit, alleging violation of securities laws. A California federal court, in *Abdo v. Fitzsimmons* (2018), refused to dismiss the complaint.

Pepsi aired a halftime commercial during the 2016 Super Bowl that featured a jukebox selecting a record with the company's logo. This was followed by a singer moving from brightly lit and colorful rooms through different eras.

Betty, Inc. sued for copyright infringement, claiming that the soda maker had taken the idea from the "All Kinds/Living Jukebox" concept that the advertising agency had provided to Pepsi during the ad's pitch process.

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A federal court, in New York's Southern District concluded in *Betty, Inc. v. PepsiCo, Inc.* (2109) that there was no infringement. Unlike the Pepsi ad's upbeat feel, Betty's concept was "darker and moodier." Its setting was a warehouse with musicians outside standing around a trashcan fire. And while Pepsi used pop music, Betty's music called for an acoustic guitar along with metal, rock, classical and doo wop/acapella songs. The Second U.S. Circuit Court of Appeals affirmed.

During the 2019 Super Bowl, Anheuser-Busch ran a commercial touting its Bud Light, by pointing out that MillerCoors using corn syrup in making its Miller Lite and Coors Light brands and they didn't.

In the ad, the Bud Light King, Bud Light Knight and a wizard are discussing that Bud Light is brewed with water, rice, hops and barley. Then a large barrel labeled "corn syrup" is delivered and the king announces: "That's not ours. We don't brew Bud Light with corn syrup." The knight responds, "Miller Lite uses corn syrup," to which the King responds, "Let us take it to them at once."



Laura Malt Schneiderman
Laura Malt Schneiderman: In London, one sees America from a different point of view

Upon arrival at the Miller Lite Castle, its king responds: "That's not our corn syrup. We received our shipment this morning. ... Try the Coors Light Castle. They also use corn syrup."

MillerCoors sought an injunction from a Wisconsin federal court to prevent the King of Beers' continued use of the campaign. Following the protracted bruhaha, the Seventh U.S. Circuit Court of Appeals, in *Molson Coors v. Anheuser-Busch Cos.* (2020), denied Molson Coors's relief for its ails, observing that "if Molson Coors does not like the sneering tone of Anheuser-Busch's ads, it can mock Bud Light in return. Litigation should not be a substitute for competition in the market."

Super Bowl commercials are notoriously expensive. And that doesn't include attorney's fees.

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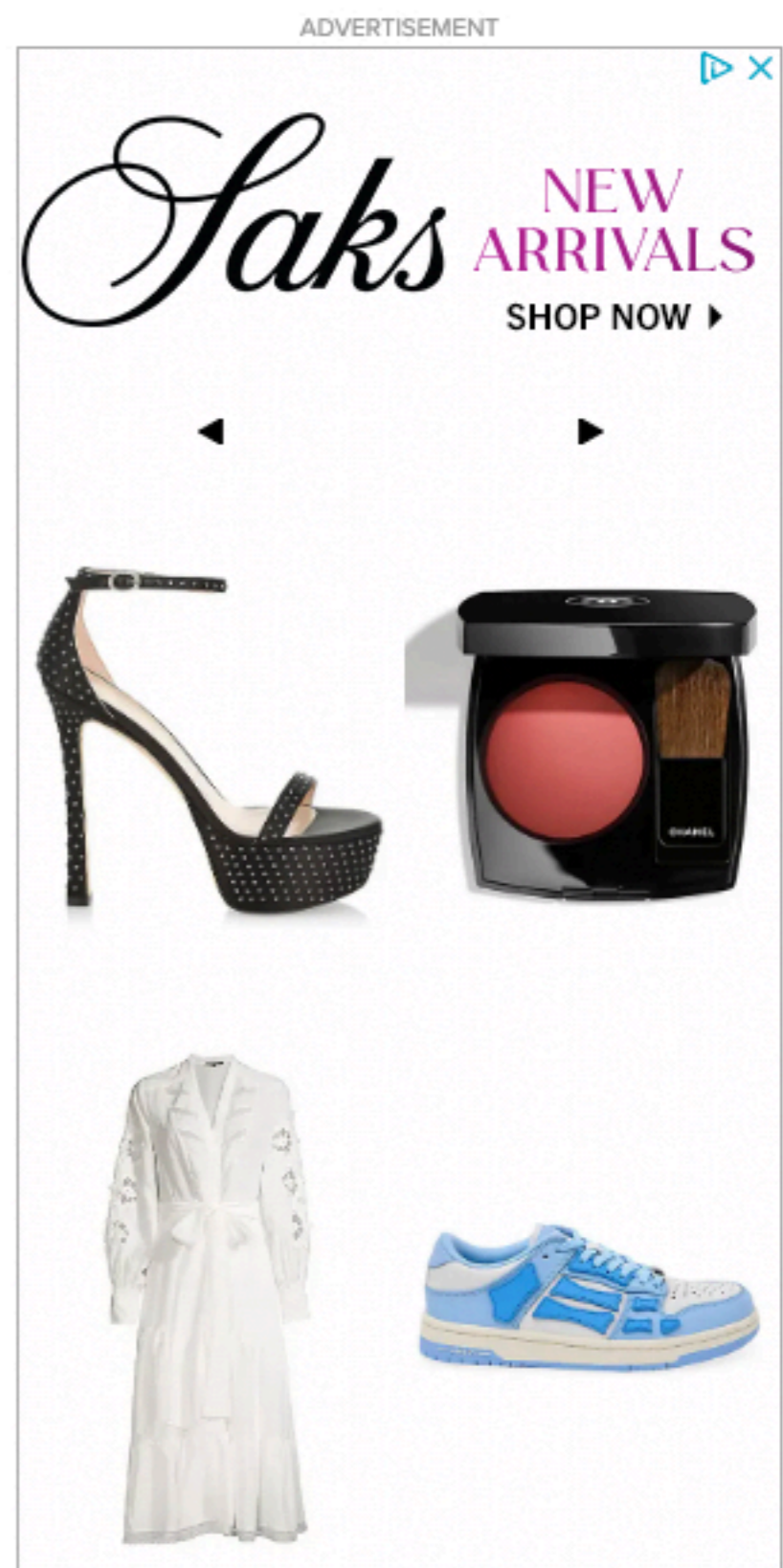


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