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AOR 2003-33

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2003 NOV -3 P 3:10

Via Hand Delivery

Lawrence H. Norton, Esq.
General Counsel
Federal Election Commission
999 E Street, NW
Washington, D.C. 20463

RE: Advisory Opinion Request on Charitable Matching Program

Dear Mr. Norton:

We are submitting this advisory opinion request ("AOR") pursuant to the Federal Election Campaign Act of 1971, as amended, ("FECA") on behalf of Anheuser-Busch Companies, Inc. and its subsidiaries ("A-B"), which operate businesses in the areas of beer, adventure park entertainment, and packaging. In particular, A-B offers a charitable matching program ("Matching Program") in connection with administering its federally registered political action committee, Anheuser-Busch Companies, Inc. Political Action Committee ("AB-PAC"). A-B also maintains a separate United Way fundraising program ("United Way Program") under which A-B provides nominal prizes to employees who give a certain amount to the United Way.

If an eligible employee chooses, under the Matching Program, to designate the United Way as the recipient of his or her charitable matches, then those charitable matches may qualify the employee to receive the nominal prizes under the United Way Program. We request that the Federal Election Commission ("Commission" or "FEC") confirm that such prizes are permitted under 11 C.F.R. § 114.5(b)(2), which expressly authorizes the use of such prizes.

I. Description of the Facts

A-B has operated the AB-PAC for the last 25 years. Since approximately 1989, A-B decided to institute the Matching Program under 11 C.F.R. § 114.5 in an attempt to properly encourage a higher level of AB-PAC participation among its eligible employees. Under the Matching Program, if an eligible employee makes a contribution to the AB-PAC, A-B matches that contribution, dollar-for-dollar, by making a donation to a charity in the same amount as the PAC contribution and in the name of the eligible employee. Other than the requirement that the charity be exempt from federal income taxes under Section 501(c)(3) of the Internal Revenue Code, the eligible employee is free to choose the charity to which the matching donation is to be made. Indeed, since the implementation of the Matching Program, A-B has, at the designation of its eligible employees, made matching donations to nearly 800 different charitable organizations, unrelated to the United Way.

Because of its sense of civic responsibilities, A-B has maintained the United Way Program at its St. Louis Headquarters for at least 25 years. Under this Program, A-B provides nominal prizes to employees who donate a certain amount to the United Way. Specifically, if an employee donates $100 or more to the United Way, the employee is provided a beer ticket entitling him or her to a free case of beer. The case of beer typically costs A-B no more than $10.[1] Moreover, if an employee donates a certain percentage of his or her salary to the United Way, the employee is considered as a "Fair Share" participant and is provided an item such as a beer stein, plaque or wall print with a cost ranging from $30 to $52, including packing and shipping.[2] Under no circumstances does the portion of the cost of any of these prizes, that is attributable to the matching donations made under the Matching Program, exceed one-third of the PAC contributions that are matched. Please note that the A-B employees who administer the United Way Program are not involved in administering the AB-PAC or the Matching Program, and the employees

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1 Please note that A-B provides all of its employees with two free cases of beer every month just for being an employee and regardless of whether they donate to the United Way.

2 The percentage at which an employee qualifies as a "Fair Share" participant is determined based on a sliding scale depending on the employee's salary level. For example, for employees who are eligible to contribute to the PAC, the threshold for "Fair Share" participation ranges from 1.1% to 1.8% of the employee's salary.

who administer the AB-PAC and the Matching Program are not involved in developing or administering the United Way Program.

Prior to 2002, there was no interaction whatsoever between the Matching Program and the United Way Program. Indeed, if an employee contributing to the PAC directed his or her charitable match donation to go to the United Way, that matching donation did not count toward the employee's thresholds for qualifying for the prizes under the United Way Program (i.e., the free case of beer and the stein or wall print). However, in 2002, A-B started to count such matching donations made to the United Way, along with the employee's direct donations to the United Way, toward those prize thresholds. Please note that A-B does not provide prizes in connection with donations to any charity, other than the United Way, as described above. Moreover, a contributor to the AB-PAC is not permitted to take a tax deduction or realize any other financial benefit as a result of a matching donation made by A-B to a charity, including, but not limited to, the United Way.

II. The United Way Program Prizes Should Be Permitted

The Commission has in past advisory opinions approved charitable matching programs, similar to the one described above, as long as neither the company, the PAC, nor the charity provides the PAC contributor "a financial, tax, or other tangible benefit." FEC, AO 2003-4. See also FEC AOs 1994-7, 1994-6,1994-3, 1990-6, 1989-9,1989-7, 1988-48,1987-18, and 1986-44. There is no tax or financial benefit at issue in this case. As for whether there is a "tangible benefit," the Commission has not interpreted the meaning of that term nor has it had the opportunity to apply the term to any facts.

However, the Commission has made clear that the above prohibition on "tangible benefits" is based on the FEC rule prohibiting a corporation from exchanging its treasury funds for voluntary PAC contributions. See, e.g., FEC AO 2003-4 (citing 11 C.F.R. § 114.5(b)). In particular, that Rule prohibits a corporation from paying an employee "for his or her contribution through a bonus, expense account, or other form of direct or indirect compensation." 11 C.F.R. § 114.5(b)(1). The Rule does not contemplate prohibiting nominal prizes such as those provided indirectly under the separate United Way Program. Indeed, the Rule goes on to expressly permit a corporation to use a fundraising device for its PAC which involves a prize as long as the prize is not disproportionately valuable, i.e., the cost of the prize does not exceed one-third of the contributions raised (the "One-Third Exemption"). 11 C.F.R. § 114.5(b)(2). See also FEC AO 1981-40 (The Commission opined that prizes may be provided to employees in exchange for their contributions to the PAC as long as the cost of those prizes does not exceed one-third

of the contributions raised). Thus, in determining whether a prohibited "tangible benefit" has been provided in connection with a charitable matching program, FEC rules mandate that prizes falling within the One-Third Exemption be permitted.

This conclusion is also consistent with the purpose of the FEC Rule. Indeed, as described above, the purpose of 11 C.F.R. § 114.5(b) is to prohibit a corporation from essentially converting its corporate funds into individual employee contributions. As recognized by the FEC in its promulgation of the One-Third Exemption, nominal prizes (such as the United Way Program prizes) are not valuable enough to either directly or indirectly compensate an employee for his or her PAC contribution. Rather, they are merely tokens of appreciation from the corporation for an employee's donation to the charity.[3] Moreover, if the Commission were to conclude otherwise, it would lead to the anomalous result that a corporation may provide employees with a prize directly in exchange for a PAC contribution (under the One-Third Exemption) but may not provide such prize indirectly through a charitable matching program. Such contradictory application of the law is unjustifiable under either the language or purpose of the FEC rules.

In the present case, the portion of the cost of any United Way Program prize that is attributable to the donations made under the Matching Program, is well within the One-Third Exemption. A-B would like to continue maintaining the Matching Program and United Way Program for its eligible employees. A proper reading of the applicable Commission rule and its purpose should not warrant a change in either of those Programs. Nevertheless, out of an abundance of caution, A-B has, pending the outcome of this AOR, ceased its practice of counting the Matching Program donations to the United Way toward the thresholds for qualifying an employee for the United Way Program prizes. Thus, we request that the Commission issue an advisory opinion confirming the permissibility of these prizes.

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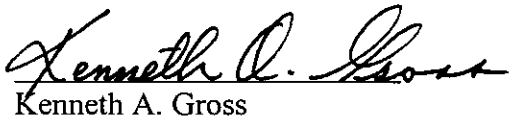
[3] Please note that of the over 2,800 A-B employees who contributed to the AB-PAC in 2002, less than 20% designated the United Way under the Matching Program. This further illustrates the proper purpose, intent and separation of the two programs.

Please call with any questions regarding this letter or if you need any further information.

Sincerely,



Kenneth A. Gross
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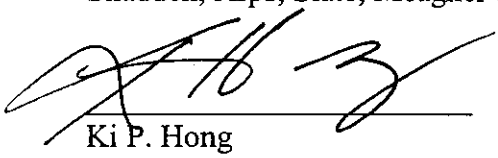

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Attorneys for Anheuser-Busch Companies, Inc.

cc: Rosemary C. Smith, Esq.