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BEFORE THE PRODUCER-SCREEN ACTORS GUILD
SOLE NEUTRAL ARBITRATOR

In the Matter of the Arbitration Between)
SCREEN ACTORS GUILD, INC., a non-profit)
corporation, on behalf of Affected Performers,)
20 Doe Performers, and the Screen Actors)
Guild-Producers Pension and Health Plans,)
Claimant,)
vs.)
FOOTE, CONE & BELDING ADVERTISING;)
FOOTE, CONE & BELDING WORLDWIDE;)
COORS BREWING CO.,)
Respondents.)
Relating to: "The Real Deal" (Coors Light))

Case No.: 2000-0272
ARBITRATOR'S FINDINGS
AND FINAL AWARD

This matter came on before the undersigned, acting as sole Neutral Arbitrator pursuant to agreement of the parties, on October 11,2001, at the offices of the Arbitrator in Los Angeles, California.

1 "The following qualifications of persons included in the term 'principal
2 performers' and are covered by this contract: . . . C. Anyone whose face
3 appears silent and is identifiable and whose foreground performance
4 demonstrates or illustrates a product or service or illustrates or reacts to the
5 on or off-camera narration or commercial message; persons appearing in the
6 foreground solely as atmosphere and not otherwise covered by the foregoing
7 shall be deemed extra performers."

8 3. Respondents have conceded that Leko is identifiable in the Commercial.

9 4. In the Commercial (which the Arbitrator has viewed both at normal speeds
10 and in slow motion on a number of occasions) Leko appears as a spectator at a wrestling
11 match. In the scenes wherein she appears, Leko is sitting in the stands immediately
12 behind a beer vendor (who is the spokesperson for the Commercial) and is observing a
13 wrestling match. When first seen she appears to be talking to another spectator sitting to
14 her right; she is the only woman among the group of primary spectators and in question,
15 and she is the only on-camera performer other than the spokesperson who is holding a
16 beer. She reacts to the on-camera narration by the spokesperson and the wrestling action
17 by cheering and otherwise reacting to the spokesperson and the wrestling actions including
18 participation along with others in an apparent hand salute to one of the wrestlers "Cyclops."

19 5. Claimant contends that Claimant meets the test applicable to a principal
20 performer in the following regards:

21 (a) First, Claimant contends that Leko is "identifiable" in that she is the
22 only female in a spot aimed at male consumers in which all of the principal performers are
23 male. As I understand Claimant's argument it also contends that her performance stands
24 out in that, unlike other "spectators," she more directly participates in the action with the
25 beer vendor and, of course, is the only person holding a cup of beer. Respondents
26 concede that Leko is identifiable.

1 (b) Claimant further contends that Respondents have conceded that
2 Leko's performance "demonstrates or illustrates a product or service or illustrates or reacts
3 to the on or off-camera narration or commercial message" as required to meet the test of
4 "principal performer" under SAG Commercials Contract. Although it is not clear from
5 Respondents' closing brief that this concession is in fact made, a determination of this
6 particular aspect of the performance is not essential to a determination in this matter.

7 (c) In order to meet the test of "principal performer" Leko must not only
8 be identifiable but must appear in a "foreground performance" which demonstrates or
9 illustrates a product or service or illustrates or reacts to the on or off-camera narration or
10 commercial message. Hence the pivotal issue before this tribunal is the question as to
11 whether or not Leko's performance in this Commercial was a "foreground" performance.

12 6. Claimant properly suggests that "foreground" as the term is used in Section
13 6.(c) of the SAG Commercial Agreement does not necessarily refer to the distance
14 between the performer and the camera, but to the relationship between the performer and
15 the scene and the focus of attention in the scene, citing Arbitrator Kotin in Screen Actors
16 Guild vs. Foote, Cone & Belding (1968) (a commercial dealing with "Master Card"). In the
17 arbitration dealing with the Master Card commercial Arbitrator Kotin, in reference to the
18 issue of "foreground" suggested that a foreground is "where the action is." Claimant
19 argues that Leko's performance in this Commercial is "where the action is."

20 7. In addition to the Commercial in issue here, the parties also presented to the
21 Arbitrator a commercial made for Mennen Speed Stick entitled, "Coach," and the opinion
22 and award of Arbitrator Matthew A. Keller in that matter (the "Mennen commercial") as well
23 as a commercial made on behalf of Magnavox and the award of Arbitrator Herbert Fishgold
24 in that matter (the "Magnavox commercial").

1 In the Mennen commercial, the Arbitrator found that one performer (Jed
2 Gillin) was a principal performer in that, although he appeared in the background, during
3 the course of the commercial he moved from the back ground into a foreground position
4 (in the center of the action) to be one of the players apparently congratulating other players
5 and the coach. By the same token, in the Master Card commercial (which was not
6 submitted for viewing) it would appear that Arbitrator Kotin determined that all of the
7 performers in that commercial (consisting of a front row and a back row of "bankers") were
8 principal performers in that both rows of performers had a similar function in the
9 commercial.

10 Both of these prior awards (and the commercials to which they relate) are
11 instructive here in determining an approach to a "foreground" performance. On the other
12 hand the Magnavox commercial and the award in that matter are not as informative here
13 in that the performer in that case (Mr. Hoffman) did not at any time appear full face on the
14 camera as Leko did in the commercial in question here.

15 8. In comparing the Mennen commercial and the description of the Master Card
16 commercial (as it appears in the Arbitrator's Award), I find that there are distinct differences
17 between the performances in those commercials and those in the Commercial here.
18 Specifically in the Mennen commercial Jed Gillin (the upgraded performer) is more than
19 a mere background spectator in that, as the game apparently concludes, he moves forward
20 and participates directly in the "congratulatory" action that dovetails into the message of
21 the commercial. By the same token, if I correctly understand the description of the Master
22 Card commercial, both rows of bankers (including the front row which was admittedly
23 treated as a row of "foreground" performers and the back row) participated to the same
24 degree in the message of the commercial with the result that their position (i.e. either front
25 or second row) did not detract from the overall performance of each of the performers.

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2 In this instant Commercial Leko appears as a spectator, seated next to
3 another spectator. She is behind both the beer vendor and the performer (in a polka dot
4 shirt) who is standing in the foreground with the beer vendor in front of the other
5 spectators. Her performance in the first part of the Commercial is directed to the man
6 seated next to her; thereafter her performance (such as hitting her head with a clenched
7 fist) parallels that of the performer sitting next to her. In fact, in watching her performance
8 the only distinction between her and the performer seated next to her (for whom no
9 upgrade was sought) is the fact that she has a cup of beer (which is barely visible and her
10 holding of it is not emphasized) and she is a woman. In the Commercial the point where
11 the "action is" is all in front of Leko, i.e. it is the interplay between the beer vendor and the
12 man in the polka dot shirt and of course the wrestling match going on in the ring. Although
13 I ran this Commercial both in normal speed and in slow action, in neither case was I able
14 to discern any distinguishable difference between Leko's role and that of the spectator next
15 to her or for that matter others in the background with her. Accordingly I find that in this
16 Commercial Leko's performance is not that of a principal performer.

17 9. During the hearing there was some testimony by Leko that she had been
18 promised that she would be a principal in the Commercial, but as I indicated at the hearing
19 this testimony was not substantiated. By the same token, although Leko indicated that she
20 had not had other calls for beer commercials, she was unable to substantiate a position
21 asserted by Claimant (in its claim initiating this matter) that she had or would lose income
22 from beer sponsors because of her appearance in this Commercial.

23 AWARD

24 1. Based upon the findings set forth above the upgrade claim made in this
25 matter is hereby denied and the claim is dismissed.

1 2. Each party shall bear its own expenses in this matter. The Arbitrator's fee
2 in this matter is \$1,875.00. Each party shall pay to the Arbitrator one-half of said amount,
3 i.e. \$937.50.

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5 Dated: December 28, 2001



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8 DIXON Q. DERN
Sole Neutral Arbitrator

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