

ARBITRATION PROCEEDING

In the Matter of Arbitration)
between)
SCREEN ACTORS GUILD-FEDERATION OF)
TELEVISION AND RADIO ARTISTS) OPINION AND AWARD
and)
WIEDEN & KENNEDY, INC.)
RE: "BUD LIGHT" (Motorcade) TM 11335)

The Undersigned was selected by the parties, SAG-AFTRA (Union) and Wieden & Kennedy (Company) to hear and decide a grievance filed on behalf of five performers in a "Bud Light" commercial referred to as the Motorcade. Sonja Augustine, Esq. represented the Union. The Company was represented by Howard Rubin, Esq., Howard Weingrad, Esq., and Nicholas Joseph, Esq. A hearing was held on February 6 & 7, and February 19¹, 2019 at the Union's offices in Los Angeles. At the conclusion of the hearing both parties elected to submit final arguments in writing. The matter was considered fully submitted upon my receipt of the post-hearing briefs.

¹ By telephone

During the course of the hearing both parties were afforded a full and complete opportunity to present evidence, to cross-examine witnesses and to develop argument. All witnesses were duly sworn. A transcript of the proceeding was prepared by Lori Gross, CSR.

ISSUES

The Issues presented for decision were:

1. Did the Company violate the 2013 Agreement in the Motorcade shoot on March 19, 2016?
2. If so, what is the appropriate remedy?

STATEMENT OF RELEVANT FACTS

The Company, a signatory to the Union's 2013 collective bargaining agreement (Agreement), was retained to produce a commercial for Bud Light. One scene of the commercial, shot on March 19, 2016, was a VIP-type motorcade that consisted of two performers riding motorcycles side-by-side, followed by two performers driving SUVs side-by-side and then one performer driving a truck. The claimed upon segment lasted 4 seconds in the dailies and about 2½ seconds in the final product after the film was speeded up.

There is no dispute that the scene was shot on a closed and dry roadway, during daylight hours and after several practice

runs. There is no dispute that the motorcade was on an inside lane with clear lanes and some shoulder on either side of it. There is dispute on how fast the motorcade was going and on how close the vehicles were to each other.

The Company shot the commercial with experienced drivers paid as Extras but it did not handle the shoot as stunt-driving under the Agreement. The Union claims on behalf of all five performers that the scene was, in fact, stunt-driving.

RELEVANT PROVISION OF THE 2013 AGREEMENT

SCHEDULE A, SECTION EE.9(g):

A vehicle driver shall qualify as a stunt performer...:
Whenever high speed or close proximity of any vehicle creates conditions dangerous to the driver...or the vehicle [it constitutes an identifiable stunt].

I note that if this was stunt driving, other terms and conditions apply which were not met in this shoot.

DISCUSSION

The Union argues that this was stunt driving due to the speed and close proximity both between the pairs of vehicles and between following vehicles creating dangerous conditions for the drivers and vehicles. The Company counters that this was fairly

slow speed driving in conditions that obviated any dangers either to the drivers or to their vehicles.

Although the performers' estimates were varied, in its brief the Union claims the speed during this four seconds was about 30-35 mph while the Company claims it was about 23-25 mph. Even assuming that the Union's estimate is more accurate, the driving speed alone does not in the circumstances of this shoot create a dangerous condition as this is a common surface street speed limit.

The Union further argues that, even at these speeds, there was not adequate stopping distance between the vehicles which justifies a finding of a dangerous condition. No doubt in some circumstances that would be true, but in this shoot there was at minimum one clear lane on either side of the motorcade for a following driver to turn into if stopping was not a viable option. There were no dangerous conditions caused by the following distance at the speeds these vehicles were traveling.

Finally, the Union argues that the paired vehicles were instructed to drive in close parallel proximity to each other creating a dangerous condition. Although they were driving closer than they might normally, there is no evidence they were ever less than a couple of feet apart. Given the reasonably slow speed and perfect conditions of the roadway, there is no reason to believe that this was a dangerous condition.

After carefully viewing the dailies, reviewing the other evidence of speed, distance and parallel proximity, I find that the performers driving in these four seconds were not in any dangerous conditions and there was not a stunt as contemplated by the provisions of the Agreement.

AWARD

Having carefully considered the evidence presented and the arguments made, it is the Award of the Arbitrator that:

The Company did not violate the 2013 Agreement

On March 19, 2016.

DATED: May 9, 2019

Respectfully submitted,

A handwritten signature in cursive script that reads "Sara Adler".

Sara Adler, Arbitrator