United States Senate

WASHINGTON, D.C. 20510

September 25, 2013

John Lennon, President
Xenergy
1335 E. Sunset Road, Suite J
Las Vegas, NV 89119

Dear Mr. Lennon:

We write to ask Xenergy to voluntarily commit to taking specific steps in marketing and promoting your energy drink products to young consumers. As was explored in a hearing on July 31, 2013, before the United States Senate Commerce, Science, and Transportation Committee, medical professionals and public health officials have raised serious concerns about the potential risks associated with the consumption of energy drink products by children and teenagers. Their testimony discussed the impact caffeine and other energy drink ingredients can have on the health of young people, trends in the consumption of energy drinks, and confusion among consumers about the differences between energy drinks and sports drinks. The hearing also included specific examples of energy drink companies marketing their products to very young children.

One of the major themes of the hearing was an exploration of the marketing and promotion strategies used by some energy drink companies to encourage consumption of these products by children and teenagers. The hearing included representatives from three popular energy drink companies--Red Bull, Monster, and Rockstar Energy. These companies discussed their marketing strategies, usage of social media as a means of product promotion, and the voluntary steps and commitments the companies have taken regarding labeling and marketing to address some of the concerns raised about energy drink products. As members of the American Beverage Association (ABA), all three companies have agreed to institute the ABA Guidance for the Responsible Labeling and Marketing of Energy Drinks as a means to recognize the public discussions about energy drink marketing and to address the appropriate consumption of energy drink products. [1] At the hearing, additional commitments were pledged that would, among other things, help clarify the status of energy drinks in the marketplace and ensure that their marketing practices take into account the concerns that have been raised about the consumption by youth of excessive caffeine.

The companies present at the hearing agreed to the following voluntary commitments that we believe will, if widely adopted by the energy drink industry, provide parents and their children with information that will allow them to make fully-informed decisions when determining whether to consume energy drinks. We respectfully request a written response from your company as to whether you will agree to these same commitments as to your energy drink products. In the questions below, the term "energy drink" is intended to encompass energy shots.

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[1] See: http://www.ameribev.org/files/339_Energy%20Drink%20Guidelines%20(final).pdf

1. Will your company agree not to market your energy drink products to (a) children, defined in the ABA's Guidance for the Responsible Labeling and Marketing of Energy Drinks as individuals under the age of 12 or (b) children or minors, under the age of 18? If so, on what date will that commitment take effect?

2. Will your company agree that in the future, you will not promote, encourage, or condone rapid or excessive consumption of energy drink products? If so, on what date will that change take effect?

3. Will your company commit to removing any past social media posts or other promotional messages or images that promote, encourage, or condone excessive or rapid consumption of your energy drink products, and, if so, by what date? Will your company commit to regularly monitoring your social media sites to ensure that in the future such messages and images are not posted?

4. Will your company agree that in all future marketing and promotional messages, you will not use language implying that consumption of larger volumes of energy drinks or energy drinks with higher concentration of caffeine produces a more desirable effect? If so, on what date will that commitment take effect?

5. Will your company agree to not promote, encourage, or condone mixing energy drinks with alcohol? Similarly, will your company agree to not make any claim that the consumption of alcohol together with an energy drink counteracts or otherwise positively impacts the effect of alcohol consumption? If so, on what date will that commitment take effect?

6. Will your company agree to not promote, encourage, or condone the mixing of energy drinks with sleeping pills or other drugs? Similarly, will your company agree not to make any claim that the consumption of an energy drink in any way counteracts or otherwise positively impacts the effect of sleeping pills or other drugs? If so, on what date will that commitment take effect?

7. Will your company agree not to market your energy drink products in K-12 schools, including at any school-related events or activities? If so, on what date will that commitment take effect?

8. Will your company ensure that its energy drink products are not sold in K-12 schools, including in automated vending machines and concession stands? If so, on what date will that change take effect?

9. Will your company agree to not provide samples of your energy drink products in or within the immediate vicinity of K-12 schools? If so, on what date will that change take effect?

10. Will your company include binding contractual language in future contracts with distributors, promoters, or other third party entities prohibiting them from marketing, promoting, selling,

or sampling to children and teenagers in K-12 schools? If so, on what date such language be inserted into new contracts?

11. Will your company commit to including on the product label of your energy drinks a clear declaration of the total amount of caffeine present by serving and per container, and, if so, by what date will those labels be included?

12. Will your company commit to voluntarily report to the FDA any serious adverse events associated with the consumption of your energy drink products of which you become aware? If so, on what date will that commitment take effect?

In addition to these commitments made during the Senate Commerce Committee hearing, we believe that there are additional measures that could be taken by your company and other energy drink producers to further protect young consumers. Please provide responses to the following questions:

13. Will your company commit to putting restrictions in place for any social media sites owned, managed, or operated by your energy drink product lines or managers that would restrict access for users under the age of 18, if such social media site has the capability to impose age restrictions? If not, is there an age under 18 for which you would commit to such restrictions? If so, what age and on what date would the restriction take effect?

14. Will your company restrict any advertising buys or purchases for TV, radio, print, internet, or mobile devices that directly target audiences that are more than 35% under the age of 18, and, if so, by what date will this restriction be adopted?

15. Will your company agree to label any of your products that include caffeine in excess of the FDA's approved GRAS standard for caffeine in cola with either of the following statements:
    "This product is not intended for individuals under 18 years or age, pregnant or nursing women, or for those sensitive to caffeine"
    If you will agree to include either statement on your energy drink product(s), by what date will such statement be included?

16. Will your company commit to not feature, recruit, or sponsor children under the age of 18 in energy drink marketing campaigns, including promotion on social media? If not, is there an age under 18 for which you would commit to not feature, recruit, or sponsor in energy drink marketing campaigns? If so, what age and on what date will such commitment take effect?

17. The National Collegiate Athletic Association and the National Federation of State High School Associations has advised student athletes to avoid energy drinks and other stimulants because they may be detrimental and are not effective forms of fuel or hydration. The American Beverage Association has drawn a functional difference between energy drinks and sports drinks. Does your company commit to not market its energy drinks as sports drinks or in a manner that could confuse its energy drink products with that of a typical sports drink, which contains electrolytes and other ingredients intending to hydrate the body, and if so by what date will that commitment take effect?

Please provide a written response to these questions by October 14, 2013. Should you have any questions, please have your staff contact Dr. Avenel Joseph with Sen. Markey at 202-224-2742, Ms. Jennifer Epperson with Sen. Rockefeller at 202-224-0411, Dr. Binta Beard with Sen. Durbin at 202-224-2152, or Mr. Joel Kelsey with Sen. Blumenthal at 202-224-2823.

Sincerely,

Edward J. Markey
U.S. Senator

John D. Rockefeller IV
U.S. Senator

Richard J. Durbin
U.S. Senator

Richard Blumenthal
U.S. Senator