

BUZZ KILL



**A Survey of Popular Energy Drinks Finds
Majority of the Market Unwilling to Make
Commitments to Protect Adolescents**

**A report written by the staff of Senator Edward J. Markey (D-Mass.) in coordination
with the staff of Senators Richard J. Durbin (D-Ill.), and Richard Blumenthal (D-Conn.)**

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EXECUTIVE SUMMARY

The term “energy drinks” generally represents a class of beverages that contain high levels of caffeine combined with other stimulants and specialty ingredients. These drinks contain higher concentration levels of caffeine than that of other beverages such as soda. The US market for energy drinks has recently exploded—60 percent growth from 2008 to 2012—and is on track to become a \$21 billion business by 2017.¹ Energy drinks are increasingly used by young people, with approximately 30 percent of adolescents under 18 years old reporting regular use.²

Energy drink marketing often associates the products with increased performance, focus, concentration, and speed. However, the benefits and safety of these products, particularly for youth, have been called into question by reports of serious adverse events associated with their consumption^{3,4,5} including cases of sudden death among young people with heart conditions.^{6,7} Possible interactions between energy drink consumption and neurodevelopment among adolescents raise concerns about decreased school performance⁸ and increased risk behaviors.⁹

The American Academy of Pediatrics (AAP) states “caffeine and stimulant-containing energy drinks have *no place* in the diet of children and adolescents,”¹⁰ and the American Medical Association (AMA) supports a ban on the marketing of energy drinks to adolescents under the age of 18.¹¹ Further, a summary of material presented at a Institute of Medicine (IOM) workshop in 2013 notes that, while caffeine is among the most heavily studied food ingredients, “a wealth of unanswered questions remains about exposure to caffeine in food and dietary supplements and the health consequences of that exposure especially in certain potentially vulnerable populations” such as children and adolescents.¹² To date, the U.S. government has not set a level of safe consumption of caffeine for young people.

In light of growing concerns about energy drinks, on July 31, 2013, the United States Senate Committee on Commerce, Science and Transportation held a hearing where medical professionals and public health officials warned against the potential health risks associated with the consumption of energy drinks by children and teenagers. The hearing reviewed the marketing techniques utilized by energy drink manufacturers, including the use of online tools and social networking sites, video games, event sponsorship, and celebrity endorsements that used messages that appeal to youth and in many cases featured children or promoted excessive consumption of energy drinks. In response to concerns raised at the hearing, the participating energy drink companies, Monster, Red Bull, and Rockstar, agreed to a number of voluntary commitments to cease advertising activities focusing on the youth market.

Senators Edward J. Markey (D-Mass.), John D. Rockefeller (D-WV), Richard J. Durbin (D-Ill.), and Richard Blumenthal (D-Conn.) followed up on this hearing with letters to 16 companies that produce major energy drink brands to assess the extent to which the energy drink industry as a whole will commit to voluntary measures that will better protect young consumers and prevent misuse.¹³ This report presents the information gathered from the 12 companies that responded and provides additional information about what is currently known about the health concerns of energy drinks and how these products are marketed.

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- 1 Energy Drink Sales will Skyrocket to \$21 billion by 2017. <http://www.foodproductdesign.com/news/2013/02/energy-drink-sales-will-skyrocket-to-21-billion-b.aspx>
 - 2 Seifert, S. M., Schaechter, J. L., Hershorin, E. R., & Lipshultz, S. E. (2011). Health effects of energy drinks on children, adolescents, and young adults. *Pediatrics*, 127(3), 511-528.
 - 3 “Adverse Event Reports Allegedly Related to 5-hour ENERGY, Monster, and Rock Star.” <http://www.fda.gov/downloads/AboutFDA/CentersOffices/OfficeofFoods/CFSAN/CFSANFOIAElectronicReadingRoom/UCM328270.pdf>
 - 4 “Adverse Event Reports Allegedly Related to Red Bull.” <http://www.fda.gov/downloads/AboutFDA/CentersOffices/OfficeofFoods/CFSAN/CFSANFOIAElectronicReadingRoom/UCM328525.pdf>
 - 5 Energy Drinks: Use caution with energy drinks. <http://www.aapcc.org/alerts/energy-drinks/>
 - 6 <http://www.cbsnews.com/news/monster-energy-drink-linked-to-another-teens-death-lawsuit-filed/>
 - 7 <http://www.dailymail.co.uk/news/article-2551392/Teenage-rugby-player-dies-boosting-workouts-using-high-caffeine-energy-drink.html>
 - 8 A Smith, “Caffeine, Performance, and Well-being.” IOM Workshop Report, Chapter 6. <http://iom.edu/Reports/2014/Caffeine-in-Food-and-Dietary-Supplements-Examining-Safety.aspx>
 - 9 Y. Terry-McElrath, et al. “Energy drinks, soft drinks, and substance use among United States Secondary School Students.” *Journal of Addiction Medicine*: January/February 2014, 8:1, p 6-13.
 - 10 “Sports drinks and energy drinks for children and adolescents: are they appropriate?” *Pediatrics*. 2011 Jun; 127(6):1182-9
 - 11 <http://www.ama-assn.org/ama/pub/news/news/2013/2013-06-18-new-ama-policies-annual-meeting.page>
 - 12 IOM Caffeine Workshop Summary.
 - 13 Original press release stated letters were sent to 17 companies. Because of various overlaps between companies and brands, the letters ultimately covered 16 companies and 18 brands.

FINDINGS IN BRIEF

- FINDING #1:** While energy drink companies have repeatedly claimed that their target consumers are adults, only four of the 12 responding companies — AriZona Beverages USA, Celsius, Inc. , XYIENCE, and The Coca-Cola Company — committed that they would not market to youth under age 18. The companies that declined to make this commitment — Red Bull North America, Inc., Monster Energy Company, Rockstar, Inc., and Dr. Pepper Snapple Group — constitute more than 90 percent of the energy drink market. All companies committed that they would not target marketing to youth under age 12.
- FINDING #2:** Only one company — XYIENCE — committed to all specific measures proposed in the Senators' letters concerning age restrictions on marketing and sales activity. These steps included: (1) labeling products as not intended for youth under age 18; (2) restricting advertising buys to media where no more than 35 percent of the audience is under age 18; (3) restricting social media access for youth under age 18; and (5) avoiding featuring youth under age 18 in energy drink marketing campaigns.
- FINDING #3:** While all but one of the responding companies said they would not market, sample, or sell their products in K-12 school settings, two companies did not commit to including contractual language that holds distributors and other contractual partners accountable for this policy.
- FINDING #4:** Six of 10 companies not currently required to report adverse events concerning their brands to the Food and Drug Administration (FDA), stated willingness to voluntarily do such reporting; three of the 10 would consider reporting under specified conditions, and one said it was not willing to report.
- FINDING #5:** Although the American Beverage Association (ABA) and its members previously committed to not market energy drinks as sports drinks, three energy drink companies who are ABA members (Monster, Rockstar and Coca Cola) have caffeinated products marketed for rehydration and/or with electrolytes, similar to marketing of sports drinks. This marketing could cause confusion and lead consumers to consume large quantities for rehydration while unwittingly receiving large doses of caffeine.
- FINDING #6:** While not uniformly implemented, most responding companies have adopted some measures to support more informed consumption of energy drinks and to discourage misuse of these beverages. Measures include labeling caffeine content on their products, and commitments against promoting rapid or excessive consumption or the mixing of energy drinks with drugs or alcohol.
- FINDING #7:** Overall, four out of 12 responding energy drink companies (Dr. Pepper Snapple, Red Bull, Monster, and Rockstar) demonstrated significant gaps in making commitments to protect adolescents from targeted marketing campaigns. These four companies represent approximately 90 percent of US energy drink sales. Four other energy drink companies (Arizona, Celsius, XYIENCE, and SK Energy) demonstrated high commitments to policies that would protect adolescents from potentially harmful advertising messages and promote informed use.



RECOMMENDATIONS

Immediate steps should be taken to ensure that information about adverse events associated with the consumption of energy drinks is disclosed, to further improve transparency and representation of energy drink products in the marketplace, and ensure that children and teens are adequately protected from deceptive and potentially harmful advertising practices:

1. To protect youth, all energy drink manufacturers should cease marketing of energy drink products to children and teens under the age of 18 and sales of these products in K-12 school settings. Companies should engage with distributors and other third-party entities to ensure all contractual partners are bound by this commitment. Additionally, companies should put in place social media and online restrictions, and cease online appeals and marketing to children and teens.
2. To empower parents and consumers to make better-informed decisions on overall caffeine consumption, the FDA should develop and release suggestions for daily caffeine consumption limits for children and adolescents, as well as rules requiring the labeling of caffeine content for all products with added caffeine.
3. To improve our understanding of the consumption and health effects associated with energy drinks, the FDA should immediately develop and release guidance to industry on the voluntary reporting of adverse events associated with energy drinks and all energy drink companies should commit to providing this information to the FDA.
4. To ensure clarity and informed choice for the consumer and to avoid arbitrary and inconsistent definitions by individual manufacturers, the FDA should define what constitutes an energy drink, a sports drink, or other “functional” beverages.
5. To reduce misuse, all energy drink manufacturers should cease marketing caffeinated energy drinks as intended to be consumed for hydration or rehydration following rigorous physical activity. As previous American Beverage Association (ABA) guidance has stated, energy drinks, which contain caffeine, are functional beverages that differ from traditional sports drinks and should not be marketed as sports drinks. The confusion between these product categories could promote overconsumption and rapid exposure to high levels of caffeine, which could be dangerous, particularly for adolescents and people with underlying health conditions.
6. To further support the industry commitment expressed by ABA guidance to not sell in K-12 school settings and pre-empt new brands from ignoring that guidance in the future, federal agencies should look to include restrictions in school-based programs for the sales of energy drinks. For example, the USDA could add energy drink restrictions to “Smart Snacks in Schools” standards for high school students.



BACKGROUND

Over the past several years, the U. S. market for energy drinks has exploded—60 percent growth from 2008-2012—and is on track to become a \$21 billion business by 2017.¹⁴ The term “energy drinks”¹⁵ generally represents a class of products in liquid form that contain high concentrations of caffeine and are combined with sugars, other stimulants, and specialty ingredients such as B-vitamins, ginseng, guarana, and taurine. Energy drinks are increasingly consumed by young people, with approximately 30 percent of adolescents under 18 years old reporting regular use.¹⁶ The safety of these products, particularly for youth, has been called into question by reports of serious adverse health events,^{17,18,19} including cases of sudden death among young people with heart conditions.^{20,21}

The Food and Drug Administration (FDA), the agency with primary responsibility over safety, labeling, and ingredients present in food, has expressed concern about the shifting landscape for caffeine consumption—from products with naturally-occurring caffeine generally consumed by adults to products with added caffeine that may appeal to more vulnerable populations such as children and adolescents—and what this might mean for health risks. In 2013, the FDA requested that the Institute of Medicine (IOM) convene a workshop to review the available science on safe levels of caffeine consumption in foods, beverages, and dietary supplements.²² The workshop report, released in January 2014, suggests a dearth of data regarding use of new caffeinated products, exposure levels, and health outcomes, especially for vulnerable populations, which is needed to fully examine and make recommendations for safe use.²³

Adverse Event Reporting is one way that the FDA can gather information about a specific product or category of products, such as energy drinks, and to determine whether those products are associated with adverse health effects.²⁴ However, this system is complicated in the context of energy drinks because not all energy drink manufacturers are required to report to the FDA adverse events associated with their product. And even for those adverse event reports that are made, incomplete reports and the absence of additional information like the health condition of the individual(s) affected makes it difficult for the FDA to determine the cause of the event.²⁵ The FDA also has noted that caffeine is unlike other food additives that the agency regulates, in that it allows foods and beverages to serve as a delivery mechanism for a neural stimulant, stating:

“Caffeine is not an ordinary food additive. It is a central nervous system stimulant, a drug with multiple effects in the human body. It is different than virtually everything else that FDA regulates as added ingredients in food because consumers seek it out for its pharmacologic effect.”

Mike Taylor, FDA Deputy Commissioner for Foods and Veterinary Medicine

¹⁴ *Energy Drink Sales will Skyrocket to \$21 billion by 2017*, Food Product Design (Feb. 4, 2013).

¹⁵ “Energy drinks” is intended to encompass energy shots, which are small volume drinks with high concentrations of caffeine.

¹⁶ Seifert, S. M., Schaechter, J. L., Hershorin, E.R., & Lipshultz, S. E. (2011). Health effects of energy drinks on children, adolescents, and young adults. *Pediatrics*, 127(3), 511-528.

¹⁷ “Adverse Event Reports Allegedly Related to 5-hour ENERGY, Monster, and Rock Star.” <http://www.fda.gov/downloads/AboutFDA/CentersOffices/OfficeofFoods/CFSAN/CFSANFOIAElectronicReadingRoom/UCM328270.pdf>

¹⁸ “Adverse Event Reports Allegedly Related to Red Bull.” <http://www.fda.gov/downloads/AboutFDA/CentersOffices/OfficeofFoods/CFSAN/CFSANFOIAElectronicReadingRoom/UCM328525.pdf>

¹⁹ Energy Drinks: Use caution with energy drinks. <http://www.aapcc.org/alerts/energy-drinks/>

²⁰ <http://www.cbsnews.com/news/monster-energy-drink-linked-to-another-teens-death-lawsuit-filed/>

²¹ <http://www.dailymail.co.uk/news/article-2551392/Teenage-rugby-player-dies-boosting-workouts-using-high-caffeine-energy-drink.html>

²² Remarks by Dr. Margaret Hamburg, FDA Commissioner to a meeting on the Institute of Medicine, Food and Nutrition Board and Board on Health Sciences Policy. August 5, 2013 and NuSee: <http://www.fda.gov/NewsEvents/Speeches/ucm363925.htm>

²³ *Caffeine in Food and Dietary Supplements, a Workshop Summary*, Institute of Medicine (Jan. 14, 2014) [hereafter referred to as “IOM Caffeine Workshop Summary”].

²⁴ “Energy Drinks and Supplements: Investigations of Adverse Event Reports.” <http://www.fda.gov/Food/NewsEvents/ucm328536.htm>

²⁵ Id.

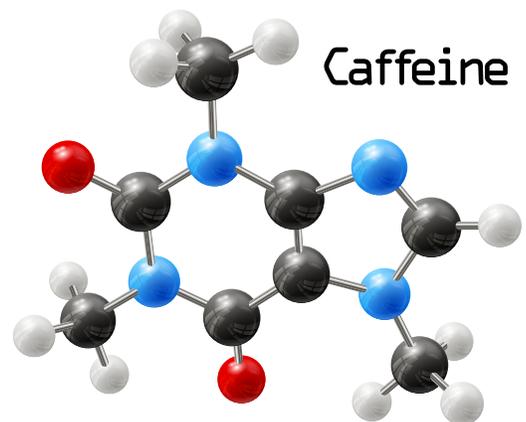
ADOLESCENT CONSUMPTION

Early research on energy drink consumption presents cause for concern. Perhaps most pervasive, yet subtle, are the possible interactions between energy drink use and neurodevelopment in adolescents. Long-term structural and functional changes in the brain of adolescents have been observed for other neuro-active substances, including nicotine and alcohol, suggesting it is reasonable to question the possible effects of caffeine on brain development. Additionally, caffeine impacts sleep and sleep quality, deficits of which have been linked to poor school performance and learning.^{26,27} Consumption of energy drinks by teens could exacerbate sleep issues, especially if it results in increased caffeine quantities and use of caffeinated products later in the day. Preliminary data show that secondary school students who often consumed energy drinks were more likely to have low attendance, receive a sanction, and receive lower grades.²⁸ Another recent study found that teens who consume energy drinks also report higher rates of risk behaviors including alcohol, cigarette, or drug use.²⁹

Adolescent brains are inherently more susceptible to psychoactive substances and the rewarding properties of these substances.³⁰ Adolescent boys are particularly responsive to the reinforcing properties of caffeine and the subjective effects of ‘energy’ and ‘feeling a rush.’³¹ Caffeine itself also conditions specific flavor preferences “with initial flavor preferences likely evolving into habitual brand preferences, perhaps lasting a lifetime.”³² The characteristics of adolescent neurodevelopment combined with the distinctive properties of caffeine may allow teen use to drive future adult consumption patterns, providing a long-term commercial interest for establishing brand loyalty early in life. Thus, energy drink marketing approaches that are especially appealing to adolescents—either through content (featuring young teen athletes consuming the product) or medium (unrestricted social media)—may be adapting the approach historically used by tobacco companies of cultivating and sensitizing kids early as a means to grow future markets.³³

MARKETING PRACTICES

Marketing behaviors can be influenced by voluntary professional organizations. The American Beverage Association (ABA) is a trade association representing a broad spectrum of companies that manufacture and distribute non-alcoholic beverages in the United States. For several years, the ABA has published “Guidance for the Responsible Labeling and Marketing of Energy Drinks” to recommend standards on actions such as quantitative caffeine labeling, voluntary advisory statements, and marketing to children.³⁴ The most recent ABA guidance was adopted on April 30, 2014 and includes a new commitment by ABA to engage a third-party validator to monitor progress on implementation of these commitments annually.³⁵ Most of the energy drink companies whose responses are included in this report are ABA members.³⁶



- ²⁶ Carskadon, M. A. “When Worlds Collide: Adolescent Need for Sleep Versus Societal Demands,” *Phi Delta Kappan*, Vol. 80, No. 05, Jan. 1999, pp. 348-353
- ²⁷ See for example: Ladato, F., et al. Caffeine intake reduces sleep duration in adolescents. *Nutr Res.* 2013 Sep;33(9):726-32
- ²⁸ A Smith, “Caffeine, Performance, and Well-being.” IOM Workshop Report, Chapter 6. <http://iom.edu/Reports/2014/Caffeine-in-Food-and-Dietary-Supplements-Examining-Safety.aspx>
- ²⁹ Y. Terry-McElrath, et al. “Energy drinks, soft drinks, and substance use among United States Secondary School Students.” *Journal of Addiction Medicine*: January/February 2014, 8:1, p 6-13.
- ³⁰ *Caffeine in Food and Dietary Supplements: Examining Safety: Workshop Summary*, Institute of Medicine at p. 111 (2014).
- ³¹ Temple, Jennifer, “Developmental and Psychopharmacological Effects of Caffeine, IOM Workshop Report, supra n 12 at p, 101.
- ³² R Griffiths. “Addictive properties of caffeine.” IOM Workshop Report, Chapter 6.
- ³³ See, e. g. “Camel Cigarettes: A long history of targeting kids.” http://www.tobaccofreekids.org/microsites/camel/Camel_History.pdf (explain what brief says about methods Camel used to attract kids).
- ³⁴ ABA Guidance for the Responsible Labeling and Marketing of Energy Drinks. <http://www.ameribev.org/nutrition-science/energy-drink-guidance/>
- ³⁵ ABA Guidance for the Responsible Labeling and Marketing of Energy Drinks. <http://www.ameribev.org/files/resources/2014-energy-drinks-guidance-approved-by-bod-43020.pdf>
- ³⁶ The following companies referenced in this report are ABA members: Celsius Inc, CocaCola, PepsiCo, Dr Pepper Snapple Group, Red Bull North America, Monster Energy Company, Rockstar Inc. ABA members comprise ~95% of sales in the energy drink market.

INVESTIGATION AND METHODOLOGY

This report seeks to assess gaps in voluntary industry efforts to protect consumers and promote informed use of energy drink products. It reflects the latest step in ongoing congressional oversight to address the growing concern over energy drinks and their safety for young consumers.

In 2012, then-Representative Edward J. Markey (D-Mass.), Richard J. Durbin (D-Ill.) and Richard Blumenthal (D-Conn.) launched an initial investigation into the marketing practices of fourteen commonly sold energy drinks, with findings reported in April 2013.³⁷ The report documented various and inconsistent practices surrounding labeling and ingredient disclosures, clear evidence of unconventional marketing practices combined with product design and placement that appeal to children and teens, and questionable advertising claims and ingredient safety determinations.

In July 2013, Chairman John D. Rockefeller (D-WV) held a hearing before the Senate Committee on Commerce, Science, and Transportation to review marketing techniques used by energy drink companies that appeal to youth and concerns of health experts regarding the effect of excessive caffeine consumption by young people. During the hearing, participating energy drink brands Monster, Red Bull, and Rockstar were presented with evidence of social media marketing techniques that featured children or promoted excessive consumption of energy drinks. At the hearing, all three companies agreed to a number of voluntary commitments regarding their marketing practices to take into account the concerns that have been raised about the consumption by youth of excessive caffeine.

Following the hearing, Senators Markey, Rockefeller, Durbin, and Blumenthal sent letters to companies that produce 18 major energy drink brands asking for their commitment to voluntary steps in the marketing and promotion of energy drink products that would, if widely adopted, help provide parents and their children with information about the consumption of energy drinks. Twelve of the questions related directly to commitments made at the July 2013 hearing, and five related to additional measures that could be taken to further protect young consumers. (See an example of the letter in [Appendix A](#)).

Each company was asked to respond to a series of 17 questions seeking commitments to:

- Not market energy drinks to children under 12 and adolescents under the age of 18, including: restricting advertising buys and social media access for these audiences; not featuring children and adolescents in marketing campaigns; and clearly labeling the product as not intended for their use
- Not market, sample or sell energy drinks in K-12 school and activity settings
- Voluntarily report to the FDA any serious adverse events associated with the consumption of energy drinks
- Not market energy drinks in a way as to be confused with sports drinks
- Include on the product label clear declaration of caffeine content from all sources
- Not promote rapid or excessive consumption of energy drinks and not promote the ideas that “more (larger volume) is better” or “stronger (higher caffeine concentration) is better”
- Not promote the mixing of energy drinks with alcohol or other drugs

³⁷ “What’s all the Buzz about? A Survey of Popular Energy Drinks Finds Inconsistent Labeling, Questionable Ingredients, and Targeted Marketing to Adolescents.” <http://www.markey.senate.gov/documents/04-10-13%20-%20Energy%20Drink%20report%20FINAL.pdf>

Twelve of 16 companies, representing 14 energy drink brands, responded. Clif Shots, Crunk Energy, Jamba, and Sambazon did not respond.

| Responding energy drink companies and brands | |
|---|---------------------------|
| Company | Brand |
| AriZona Beverages USA LLC | AriZona |
| Celsius, Inc. | Celsius |
| Coca-Cola Company | NOS |
| Coca-Cola Company | Full Throttle |
| Dr. Pepper/Snapple Group | Venom |
| Living Essentials, LLC | 5-hour Energy |
| Monster Energy Company | Monster |
| PepsiCo | AMP |
| Red Bull North America, Inc. | Red Bull |
| Rockstar, Inc. | Rockstar |
| SK Energy / PureGrowth | SK Energy |
| Target Corporation | Archer Farms Energy Drink |
| Target Corporation | up&up Energy Drinks |
| XYIENCE | Xenergy |

The report summarizes and analyzes company responses to the Senators' letters. In instances where the responding companies did not provide complete or consistent responses to specific questions or commitments, additional information was gathered from publically available sources, including company websites and product labeling. Responses were considered to reflect a commitment if the company made a firm commitment either through its explicit response or through confirmatory information readily available upon web search, and the commitment was consistent with other information provided. Responses were considered to decline a commitment if they explicitly stated so or did not address the question.

To assess the overall commitment individual companies had to the responsible marketing and sales of energy drinks, three areas were reviewed: (1) commitment to not promoting use, misuse, or overuse among adolescents under 18; (2) commitment to not promote use by children under 12 and in K-12 settings; and (3) commitment to safety monitoring, promoting appropriate and informed use, and discouraging misuse. Based on the review of these areas, each company was issued a summary assessment (see Table 4) that reflects their willingness to make specific voluntary commitments.

FINDINGS

Commitments Regarding Marketing to Children and Teens

FINDING #1: While energy drink companies have repeatedly claimed that their target consumers are adults, four of the 12 responding companies—constituting over 90 percent of the energy drink market—refused to commit to not marketing to youth under age 18.

[See **TABLE 1: Commitments to not promote use/misuse/overuse among adolescents under 18 years old.**]

- All 12 responding companies agreed not to market to children under age 12 and all but one—Target Corporation regarding their Archer Farms Energy Drinks Brand committed to label their products as not intended for this age group.
- Dr. Pepper Snapple Group, Rockstar, Inc., Monster Energy Company, and Red Bull North America, Inc., all declined to commit against marketing to youth under age 18. A fifth company—SK Energy—committed that they would not market to youth under age 16.

Current voluntary guidelines that apply to the energy drink industry do not restrict directing marketing at teenagers. The ABA Guidance for the Responsible Labeling and Marketing of Energy Drinks states that energy drinks shouldn't be marketed to "children," defined as individuals under the age of 12.³⁸ This is similar to the Council of Better Business Bureau's Children's Food and Beverage Advertising Initiative (CFBAI) Uniform Nutrition Criteria.³⁹

At the July 2013 hearing and in repeated other public statements, energy drink companies have insisted that their target market is adults. However, when pressed to take specific action to limit marketing to youth, many companies confine their commitments to the under-12 age group identified in the current industry guidelines.

In the responses to the Senators' letters, all 12 responding brands explicitly agreed to not market to children under 12 years old. However, with respect to youth under age 18, only AriZona, Celsius, XYIENCE, and the Coca-Cola Company provided explicit assurances that they would not to market to this age group.⁴⁰ In addition, SK Energy made this commitment for adolescents under age 16, rather than 18, which has been the company's stated standard practice since 2011.

In stark contrast, Dr. Pepper Snapple Group, Monster Energy Company, Red Bull North America, Inc., and Rockstar, Inc., which together constitute over 90% of the U.S. energy drinks market, declined to commit to restricting advertising and marketing to adolescents under 18.

³⁸ See: <http://www.ameribev.org/files/resources/2014-energy-drinks-guidance-approved-by-bod-43020.pdf>

³⁹ CFBAI's Category-Specific Uniform Nutrition Criteria Fact Sheet. <http://www.bbb.org/storage/16/documents/cfbai/CFBAI%20Uniform%20Nutrition%20Criteria%20Fact%20Sheet%20FINAL.pdf>

⁴⁰ The following companies report that their labels are currently transitioning to include "not intended for those under 18": Celsius (by January, 2015); AriZona, (will replace as existing labels are exhausted, projected for October, 2014).

In addition to seeking general commitments from companies regarding limiting marketing to adults, the Senators' letters also asked for several basic steps to set age limits on marketing, promotion, and sales activities. These measures include: (1) labeling products as not intended for youth under age 18; (2) labeling products as not intended for youth under age 12; (3) restricting advertising buys to where no more than 35% of the audience is under age 18; (4) restricting social media access to youth under age 18; and (5) avoiding featuring youth under age 18 in energy drink marketing campaigns. Companies varied regarding the extent of specific steps they agreed to take to limit marketing to youth.

FINDING #2: Only one company—XYIENCE—would commit to all specific measures proposed in the Senators' letters concerning age restrictions on marketing and sales activity. These steps included: (1) labeling products as not intended for youth under age 18; (2) restricting advertising buys to where no more than 35% of the audience is under age 18; (3) restricting social media access for youth under age 18; and (4) avoiding featuring youth under age 18 in energy drink marketing campaigns.

[See **TABLE 1:** Commitments to not promote use/misuse/overuse among adolescents under 18 years old.]

- Four of the 12 companies – AriZona Beverages, Celsius, Inc., XYIENCE, and The Coca-Cola Company—agreed to label their products as not intended for age 18 and under.
- Five of the 12 companies—AriZona Beverages, Celsius, Inc., XYIENCE, The Coca-Cola Company, and PepsiCo –agreed they would not feature, recruit, or sponsor youth under age 18 in their marketing campaigns.
- Seven companies—AriZona Beverages, Celsius, Inc., XYIENCE, The Coca-Cola Company, PepsiCo, Red Bull North America, Inc., and Living Essentials, LLC—agreed to restrict advertising buys to audiences where no more than 35% are under age 18.
- XYIENCE was the only company to agree to restrict social media access to youth under age 18.

Labeling

Consistent with the general commitments companies made regarding marketing to youth under age 12, all companies except Archer Farms Energy Drinks agreed to specifically label their product “not intended for children.”⁴¹ Several companies said they will institute labeling changes as they replenish their label stock—therefore, some products not currently labeled such, but are projected to have fully transitioned to new labeling by January 2015.

However, only Arizona Beverages USA, Celsius, Inc., XYIENCE, and The Coca-Cola Company agreed to label their products as not intended for youth under age 18.

⁴¹ Target (Archer Farms Energy Drinks) did not respond with their specific labeling language, nor is a warning label readily available to examine on their website.

Social Media

Social media is particularly relevant to marketing outreach and appeal to young people. Ninety-five percent of youth aged 12 to 17 report connecting to the Internet,⁴² and the vast majority—81 percent—of “online” teens use social media.⁴³ Social media photo postings have been shown to influence teen risk behaviors with regards to smoking and alcohol use.⁴⁴

Given that most youth are online and engaged in social media, one common sense measure to limit youth exposure to energy drink marketing is to limit access to website and social media for those brands. Age restrictions for social media and websites are certainly possible and, in fact, are already employed by some energy drink companies. For example, the Xenergy brand websites require users to indicate that they are 18 before they can access a website. Other approaches to restricting website and social media access include: setting age restrictions for being able to ‘like’ a page on Facebook; requesting date of birth information in order to sign up for notices and special offers; requesting name and date of birth information to move into a website and explore. These restrictions provide notice to teens and parents that the product being marketed is not intended for teens.

Only one company, XYIENCE, was willing to fully restrict website and social media access for individuals under age 18. The other 13 responding energy drink companies declined to restrict access for those under 18 to social media sites owned, managed, or operated by their company.⁴⁵ Various reasons were given: AriZona, NOS, Full Throttle and Celsius claimed that they were unaware that such restrictions are feasible; others, notably Red Bull and Venom, stated that restrictions of any type would leave an incorrect impression that their products are dangerous.⁴⁶ See, for example, the shaded box below.

On restricting adolescents’ access via social media:

“Blocking a product site gives the impression that the product is dangerous when it is not... we do not believe that blocking sites or banning any exposure is necessary or appropriate.”

Dr. Pepper/Snapple, Venom

Promotions Featuring Youth

Five of the responding companies—AriZona Beverages USA, LLC, Celsius, Inc., XYIENCE, The Coca-Cola Company, and PepsiCo—agreed to refrain from featuring adolescents under 18 in promotion or marketing campaigns. In contrast, the three market leaders—Monster Energy Company, Red Bull North America, Inc., and Rockstar, Inc. refused to make this commitment. SK Energy made this commitment for youth under age 16.

Further, Dr. Pepper Snapple said that it does not have a formal policy prohibiting use of adolescents in marketing, although states it “would not purposefully” use them. However, a simple web search of “Venom Energy Drinks and Teens” easily finds a YouTube video posted by a marketing company, titled “Teenagers enjoying venom Energy Drinks” that appears to be a formal marketing event, with Venom truck and representatives engaging exclusively with young teens.⁴⁷

⁴² Pew Research Internet Project: Teen Fact Sheet. <http://www.pewinternet.org/fact-sheets/teens-fact-sheet/>

⁴³ Ibid.

⁴⁴ Peer influences: the impact of online and offline friendship networks on adolescent smoking and alcohol use. Huang GC, et al. Journal of Adolescent Health. 2014 May;54(5):508-14.

⁴⁵ Note: for Facebook, we did not consider referencing the default policy of Facebook that those under 13 cannot register as a brand action unless they took additional actions, such as restricting the age of those able to ‘like’ their site.

⁴⁶ Monster stated that its “Army” website prohibits any individual under the age of 13 from becoming a member, though not from browsing the site. SK Energy committed to imposing age restrictions for those under the age of 16 for any site that has the capability to impose such age restrictions, though its website requires no age verification or other age restrictions. Rockstar stated its willingness to provide restrictions on some ages and that its website states it “is not designed or intended for children under the age of 13” and that “those under the age of 13 cannot register.” However, those statements and restrictions are not readily apparent/identifiable on its website.

⁴⁷ Teenagers enjoying venom Energy Drinks, ZoomMediaTV, <http://www.youtube.com/watch?v=VIGF09zpZM>

Audience Age for Ad Buys

Six of the 12 responding companies said they would restrict advertising buys for audiences to where 35 percent or more of the audience is age 18 or older. Companies that refused to make these commitments or did not address the question include Dr. Pepper Snapple Group, Monster Energy Company, Rockstar, Inc., Target Corporation, and Living Essentials. SK Energy made this commitment for youth under age 16.

Discussion

Companies justified their opposition to marketing restrictions and labeling for children under the age of 18 by defending the “safety” of limited caffeine consumption by adolescents, without addressing the issue of potential misuse or overuse in this population. Labels on Dr. Pepper Snapple’s brand Venom do include warnings to “consume responsibly,” but they do not define responsible consumption limits. Monster stated, “there is no scientific grounds for safety concerns regarding consumption of Monster Energy drinks by teenagers,” and that therefore the company is unwilling to make any voluntary commitments that would restrict targeted marketing to this age demographic.

Although many of these energy drinks contain caffeine levels well above what has been generally recognized as safe (GRAS) by FDA for soda beverages (approximately 71mg caffeine per 12 ounces), some manufacturers have self-determined their own GRAS thresholds for energy drinks. One such published safety review by an energy drink company,⁴⁸ while extensive, does not take into account the specific vulnerabilities of adolescent neurodevelopment or potential drivers of misuse or overuse—claiming safety “under the conditions of intended use” without defining what constitutes “intended use.” That report points out that the American Academy of Pediatrics (AAP) has not established a daily limit for caffeine in adolescents, but fails to note that the AAP Committee on Nutrition and Council on Sports Medicine concluded that “caffeine and stimulant-containing energy drinks have *no place* in the diet of children and adolescents.”⁴⁹ The American Medical Association (AMA) policy also supports a ban on the marketing of energy drinks to adolescents under the age of 18, due to the health and safety concerns these drinks pose to youth.⁵⁰

Given that these same manufacturers state that adolescents under 18 are not their target demographic and do not account for a large share of the current market, it should not be necessary to specifically market or directly appeal to adolescents. Refusal to cease marketing practices that appeal to youth under age 18 raises questions about whether some energy drink companies are attempting to build brand loyalty among teens in order to secure a future market for their products.

Commitments Regarding K-12 School Settings

FINDING # 3: While all responding companies said they would not market, sample, or sell their products in K-12 school settings, two did not commit to including contractual provisions that holds third party distributors and other partners accountable to these policies.

[See TABLE 2: Commitments to not promote use by kids under 12 & in K-12 school settings.]

- Dr. Pepper Snapple Group and PepsiCo both referenced global marketing policies for themselves and their distributors, but did not address whether they would hold distributors and other contractual partners to these policies through contractual language.
- Living Essentials did not address the question of whether they would limit promotions in the K-12 setting or enforce such limitations with third party contractual partners.

⁴⁸ Scientific White Paper: Summary of Data Supporting the Safety of Rockstar Energy Drinks. Intertek Cantox. February 13, 2013.

⁴⁹ “Sports drinks and energy drinks for children and adolescents: are they appropriate?” *Pediatrics*. 2011 Jun;127(6):1182-9

⁵⁰ <http://www.ama-assn.org/ama/pub/news/news/2013/2013-06-18-new-ama-policies-annual-meeting.page>

The investigative report issued in March 2013 by then-Representative Markey and Senators Durbin and Blumenthal⁵¹ found clear evidence that energy drink companies were promoting their products at school events. For example, Monster had a practice of awarding outstanding high school athletes “Monster Energy Drink Player of the Game,” and Red Bull sponsored high school sports events such as the “Red Bull Game Breakers” and the “Red Bull Rookies Cup.” This was happening despite the fact that ABA⁵² Guidance for the Responsible Labeling and Marketing of Energy Drinks⁵³ states “energy drinks should not be sold nor marketed in schools (K-12).”

The ABA guidance in place prior to the March 2013 report did not make explicit that ‘in schools’ includes school events or other activities on K-12 premises, nor did it reference efforts to ensure compliance by third party distributors. Updated guidance issued by the ABA in April 2014 does include these more explicit standards.

In their response to the Senators’ September 2013 letters, 11 of the 12 responding companies agreed not to market, sample, or sell their energy drink products at K-12 schools, K-12 events, and in K-12 vicinities. Living Essentials did not address this commitment in its response.

The Senators’ letters also asked whether the companies would include explicit contractual language ensuring that distributors and third party entities are prohibited from the marketing, sampling, or distribution of energy drinks in K-12 settings. All except one of the companies with external distributors⁵⁴ responded that they agree to include either policy or contractual language for their distributors. Living Essentials did not address this question.

Discussion

While Dr. Pepper Snapple Group and PepsiCo both reference explicit global policies for themselves and their distributors, the company responses do not make clear whether these policies are fully enforced by contract. However, even in cases where companies offer up contractual language for distributors and other third party entities to adopt policies restricting marketing in schools, the degree to whether these contractual terms would be accepted by third-parties or enforced by the parent company is unclear. As one example, Coca Cola Company, which agreed to include binding contractual language prohibiting marketing in schools, stated that it “cannot guarantee (distributors and third parties) will accept our contractual language.”

The Healthy, Hunger-free Kids Act of 2010 provides authority for US Department of Agriculture (USDA) to set standards for access to food and beverages in school. It applies to the more than 100,000 schools that accept the National School Lunch Program. Its “Smart Snacks in School” Rule, in effect as of July 2014,⁵⁵ applies to “competitive foods,” which are snacks sold in vending machines, a la carte lunch lines and in student stores in schools.

However, this rule contains no specific energy drink restrictions and no caffeine restrictions for beverages sold in high schools, despite specific concerns about energy drinks raised during the comment period.⁵⁶ Low calorie and calorie-free energy drinks are permissible under the current rule. This is a missed opportunity to ensure the current industry commitment is supported in regulation and prevent future energy drink companies or third-party distributors from taking advantage of this gap.



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- ⁵¹ “What’s all the Buzz about? A Survey of Popular Energy Drinks Finds Inconsistent Labeling, Questionable Ingredients, and Targeted Marketing to Adolescents.” <http://www.markey.senate.gov/documents/04-10-13%20-%20Energy%20Drink%20report%20FINAL.pdf>
- ⁵² The following companies referenced in this report are ABA members: Celsius Inc, CocaCola, PepsiCo, Dr Pepper Snapple Group, Red Bull North America, Monster Energy Company, Rockstar Inc.
- ⁵³ ABA Guidance for the Responsible Labeling and Marketing of Energy Drinks. [http://www.ameribev.org/files/339_Energy%20Drink%20Guidelines%20\(final\).pdf](http://www.ameribev.org/files/339_Energy%20Drink%20Guidelines%20(final).pdf)
- ⁵⁴ Target distributes through its own infrastructure, not through 3rd party distributors, thus the question was not applicable.
- ⁵⁵ Smart Snacks in School <http://www.fns.usda.gov/school-meals/smart-snacks-school> and FNS comment and coding analysis. http://www.fns.usda.gov/cnd/governance/legislation/allfoods_commentssummary.pdf
- ⁵⁶ Ibid

Commitments to Adverse Event Reporting, Informed Use, and Discouraging Misuse

FINDING # 4: Six of 10 companies that are not currently required to report adverse events to the Food and Drug Administration stated willingness to voluntarily do such reporting; three of these companies would consider reporting under specified conditions; and one said it was not willing to report.

[See **TABLE 3:** Commitments to safety monitoring, promoting appropriate and informed use, and discouraging misuse.]

- AriZona Beverages USA, LLC, Celsius, Inc., XYIENCE, Dr. Pepper Snapple Group, Monster Energy Company, and Rockstar, Inc., said they were willing to voluntarily report adverse events to the Food and Drug Administration.
- PepsiCo and Target for its Archer Farms Energy Drinks brand said they will *consider* reporting adverse events *only after* further FDA guidance or findings. Red Bull North America will only agree to report if manufacturers of *all* caffeinated beverages—including coffee and soda—do so.
- The Coca-Cola Company would not commit to voluntarily report adverse events for either of its energy drink brands.

FDA maintains a system for post-market reporting of adverse events associated with the use of many products, including dietary supplements (mandatory reporting) and foods and beverages (voluntary reporting). Reportable adverse events include observed or suspected side effects, product use errors, and quality problems. Manufacturers, health professionals, and consumers may also report adverse events to the FDA online through the Safety Reporting Portal or MedWatch.⁵⁷ Although the adverse event reporting system is not designed to provide incidence or long-term outcome data for populations, it can provide critical safety signals that lead to further investigations or regulatory actions.

For energy drinks, FDA has stated that it has limited ability to draw safety conclusions from the current data due to incomplete information.⁵⁸ To date, FDA has not provided direct outreach to energy drink companies or the ABA to clarify the content most useful for adverse reporting related to energy drinks or to encourage full reporting by manufacturers and consumers. Thus, even companies who may be willing to voluntarily report may not be doing so for lack of information and encouragement.

Of the 12 respondent energy drink companies, ten have brands that are classified as beverages and, therefore, are not required to report adverse events associated with their products. Of these ten companies, six committed to voluntarily report adverse events to FDA and an additional three would consider reporting under some conditions. Specifically, Celsius, Inc., AriZona Beverages USA, LLC, Dr. Pepper Snapple Group, Monster Energy Company, and Rockstar, Inc. agreed to continue or commence reporting by early 2014, and XYIENCE agreed to report but expressed desire to receive guidance from FDA on what and how to report.

PepsiCo and Target noted that a decision to start reporting would depend on additional FDA advice, guidance, or directives. Red Bull North America, Inc. stated that they would only report if “other producers of caffeine-containing beverages do the same.” Other producers of caffeine-containing beverages include all coffee and soda beverage products. The Coca-Cola Company’s two energy drink brands, NOS and Full Throttle, are not willing to voluntarily report adverse events for energy drinks.

Products of three companies—Target Corporation’s up & up Energy Shots brand, SK Energy’s SK Energy, and Living Essentials’ 5-Hour Energy—are considered to be dietary supplements and therefore adverse event reporting is required

⁵⁷ Safety Reporting Portal <https://www.safetyreporting.hhs.gov/fpsr/WorkflowLoginIO.aspx?metinstance=4D1CE64BDFBC1F89C2B50F04EE9E4E7B862F15F1>; MedWatch, the FDA Safety Information and Adverse Event Reporting System <http://www.fda.gov/Safety/MedWatch/default.htm>

⁵⁸ “Energy Drinks” and Supplements: Investigations of Energy Drink Adverse Event Reports. <http://www.fda.gov/Food/NewsEvents/ucm328536.htm>

for these brands. Companies remain sharply divided on the utility and implications of adverse event reporting (see shaded box below).

On voluntary adverse event reporting to the FDA:

“...this standard would give rise to unfounded public concerns about energy drink safety.”

Coca-Cola

“...we have no issue reporting Serious Adverse Events...We believe that the reporting will further support its (Venom’s) safety.”

Dr. Pepper/Snapple Group

Discussion

FDA should provide specific instructions for energy drink manufacturers that detail critical relevant information needed in reports such as: both the brand and the specific product consumed; contact information that is full and correct to allow for follow-up; and any complicating factors such as medical conditions, misuse of the product, or concurrent use of other medications. By providing an online posting of detailed guidance and instructions, reaching out directly to energy drink companies and the ABA, FDA could improve the usefulness of reports received, encourage voluntary industry reporting, and facilitate consumer reporting for products whose manufacturers refuse to voluntarily report.

FINDING #5: Although the American Beverage Association (ABA) and its members previously committed to not market energy drinks as sports drinks, three energy drink companies who are ABA members (Monster, Rockstar and Coca-Cola) have caffeinated products marketed for rehydration and/or with electrolytes similar to marketing of sports drinks.

[See TABLE 3: Commitments to safety monitoring, promoting appropriate and informed use, and discouraging misuse.]

- Six of 12 energy drink companies (AriZona, XYIENCE, The Coca-Cola Company for its brand Full Throttle, PepsiCo, Dr. Pepper Snapple Group, and Red Bull, Inc.) fully commit to not marketing their caffeinated products as “sports drinks.”
- Three companies (Monster, Rockstar, and The Coca-Cola Company for its brand NOS) have caffeine-containing products that they market for rehydration or as containing electrolytes similar to many ‘sports drinks’. The Coca-Cola Company with respect to its brand NOS said it is willing to clarify on the label that the product is not intended to be consumed in high quantities for hydration.
- Two companies (Celsius, Inc. and SK Energy) have caffeine-containing products specifically marketed as athletic performance “boosting” drinks, although not for rehydration or electrolyte supplementation.

A report written by the staff of Senator Edward J. Markey (D-MA) in coordination with the staff of Senators Richard J. Durbin (D-IL), and Richard Blumenthal (D-CT).

Sports drinks have traditionally been understood to contain electrolytes and are used for rehydration in lieu of drinking plain water.⁵⁹ However, what constitutes a “sports drink” is not well defined by any formal body, and concepts are evolving.

The National Collegiate Athletic Association (NCAA) and the National Federation of State High School Associations (NCFSHA) have advised student athletes to avoid energy drinks and other stimulants because they may be detrimental to players’ health and are not effective forms of fuel or hydration.⁶⁰ NCAA regulations prohibit institutions from distributing energy products that contain caffeine and other stimulants to student-athletes, as products with questionable value and potentially harmful effects.⁶¹

NCAA Sports Medicine Handbook, on use of energy drinks by athletes:

“Fluids containing electrolytes and carbohydrates are a good source of fuel and rehydration... Fluids (e.g., energy drinks) containing questionable supplement ingredients and high levels of caffeine or other stimulants...may be detrimental to the health of the competitive athlete and are not effective forms of fuel or hydration.”

Guideline 2f

“Student-athletes should be aware that nutritional supplements are not limited to pills and powders; “energy” drinks that contain stimulants are popular. Many of these contain large amounts of either caffeine...or other stimulants, both of which can result in a positive drug test.”

Guideline 2g

The ABA traditionally drew a functional distinction between sports drinks and energy drinks, noting in their original energy drink guidance that “energy drinks are functional beverages which differ from sports drinks and therefore should not be marketed as sport drinks.”⁶² However, the updated 2014 ABA guidance on energy drinks has removed its earlier restriction on the marketing of energy drinks as sports drinks.⁶³

There appears to be a growing niche market of ‘athletic performance’ boosting drinks, for use before, during, or immediately after sports and that contain a myriad of ingredients sometimes including caffeine. The overlap between the marketing of “sports drinks” and “energy drinks,” is growing, creating potential for confusion and unintended misuse among consumers. For example, a consumer may purchase a drink for rehydration based on thirst and unwittingly consume a higher-than-intended dose of caffeine.

The responses of energy drink companies to the Senators’ questions regarding the distinction between “energy drinks” and “sports drinks” underscores that consumers are receiving differing and potentially confusing messages regarding what these drinks offer.

Six of 12 energy drink companies (AriZona, XYIENCE, The Coca-Cola Company for its Full Throttle brand, PepsiCo, Inc., Dr. Pepper Snapple Group, and Red Bull) committed to not marketing their caffeinated products as “sports drinks.” Of note—XYIENCE does have a product marketed as a ‘sports drink’ for hydration, Xenergy + Hydration, that specifically does not contain caffeine. Three companies have caffeine-containing products marketed for rehydration and/or as products containing electrolytes (Monster, Rockstar, Coca-Cola). Two companies have caffeine-containing products specifically marketed as athletic performance ‘boosting’ drinks (Celsius, SK Energy), although not for rehydration or electrolyte supplementation.

⁵⁹ See for example: <http://www.mayoclinic.org/healthy-living/fitness/in-depth/health-tip/art-2004911>

⁶⁰ NCAA Sports Medicine Handbook:Guideline 2f: Nutrition and Athletic Performance; Guideline 2g: Dietary Supplements.NCFSHA Position Statement and Recommendations for the Use of Energy Drinks by Young Athletes <http://www.nfhs.org/search.aspx?searchtext=energy%20drinks>.

⁶¹ NCAA Bylaw 16.5.2.g restricts the provision of certain types of supplement products to student athletes.

⁶² ABA Guidance for the Responsible Labeling and Marketing of Energy Drinks. [http://www.ameribev.org/files/339_Energy%20Drink%20Guidelines%20\(final\).pdf](http://www.ameribev.org/files/339_Energy%20Drink%20Guidelines%20(final).pdf)

⁶³ ABA Guidance for the Responsible Labeling and Marketing of Energy Drinks, released April 30, 2014. <http://www.ameribev.org/files/resources/2014-energy-drinks-guidance-approved-by-bod-43020.pdf>

The Coca-Cola Company has internal guidelines that prohibit it from marketing beverages with caffeine content above 80mg/8 fl oz as 'sports drinks'. The company's brand NOS does market a product line called "NOS Active," which contains 220mg of caffeine per 22oz container, and is prominently displayed with a label highlighting "electrolytes." This type of labeling could cause significant consumer confusion as it blurs the lines between what one conventionally considers a sports drink for rehydration and electrolyte replenishment and a typical energy drink product.

As recently as 2013, corporate leadership at Coca Cola, referring to the energy drink hybrid product, was quoted "We think this fits well into that space for consumers in an active, healthy lifestyle, the hydration space."⁶⁴ In their response to the Senators' letter, Coca-Cola states clearly that, while they do see a role for caffeinated beverages in connection with physical activity, they do not intend their "active" energy drink products to be used for rehydration. The company stated that it will consider, though has not committed to, adding the following statement to the NOS Active label, "This product is intended for active lifestyles, but is not intended to be consumed in high quantities for rehydration," similar to statements used on certain Coca-Cola caffeinated beverages in other countries.

Discussion

FDA currently provides no regulatory definitions of "sports drinks" or "energy drinks" or even "hydration" or "electrolytes." Thus, companies are free to use these terms and the ideas they convey through marketing as an advantage to target consumers. Both the ABA and FDA play key roles in clarifying what constitutes an energy drink, a sports drink, or other "functional" beverages. The FDA should issue clear definitions and guidance in order to ensure clarity and informed choice for the consumer and to avoid arbitrary and inconsistent definitions by individual manufacturers. Additionally, energy drink manufacturers should cease marketing caffeinated energy drinks as intended to be consumed for hydration or rehydration following rigorous physical activity.

FINDING #6: While not uniformly implemented, most companies have adopted some measures to support more informed use and to discourage misuse of energy drinks. These measures include actions such as labeling of caffeine content and commitments to not promote rapid or excessive consumption and to not promote the mixing of energy drinks with drugs or alcohol.

[See **TABLE 3:** Commitments to safety monitoring, promoting appropriate and informed use, and discouraging misuse.]

- Target Corporation's brand "up&up Energy Shots" and Living Essentials do not explicitly label caffeine content.
- Monster and Rockstar refuse to refrain from promoting bigger volumes or higher concentrations as "better."
- Red Bull and The Coca-Cola Company NOS and Full Throttle brands are commonly sold in adult establishments such as bars and liquor stores. Neither company would explicitly commit to not promoting or to actively discourage mixing of their product with alcohol.

⁶⁴ 2013 Beverage Report, Part 4: Energy Drinks. Mel Landis, chief customer officer at Coca-Cola quoted. <http://www.cspnet.com/category-management-news-data/beverages-news-data/articles/2013-beverage-report-part-4-energy-drinks>

Supporting Informed Use: Labeling Caffeine Content

Ten of the 12 respondent companies indicated willingness to include caffeine amounts per serving and total caffeine content per packaging in their labeling. For five—AriZona, XYIENCE, Dr. Pepper Snapple Group, Monster Energy Company, and Red Bull—this is a recent or current transition, also noted in the March 2013 report by Senators Markey, Durbin, and Blumenthal.⁶⁵ ABA guidance supports the explicit labeling of caffeine content per serving and per container from all sources. Of note, dietary supplements (as opposed to beverages) are not governed by the ABA guidance. Of the energy shots/dietary supplements included here, SK Energy is the only one to include total caffeine content in their label—up&up Energy Shots and 5-hour ENERGY do not, giving imprecise reference to containing caffeine “comparable to a cup of leading premium coffee.”

To make use of accurate labeling data, consumers must have information on what caffeine levels mean—especially guidance on ‘how much is too much.’ While FDA does cite 400mg as a maximum daily caffeine intake level not associated with dangerous effects in healthy adults, it does not currently provide suggestions for maximum daily consumption for vulnerable groups including children, adolescents, and pregnant women. The comparable FDA of Canada, known as Health Canada, suggests no more than 2.5 mg/kg/day of caffeine for adolescents 13 years and older, this works out to be approximately 1/4 of the FDA recommended level for adults. Estimated US daily caffeine consumption from beverages varies by age:⁶⁶

| Age group | Mean Caffeine Intake (mg/day) | 90th Percentile Intake (mg/day) | Health Canada Suggestions | FDA Suggestions |
|-------------|---|--|-----------------------------|-----------------|
| 6-12 years | 37 | 94 | 45-85 mg/day (based on age) | - |
| 13-17 years | 83 (1.3 mg/kg/day) | 183(2.9 mg/kg/day) | (2.5 mg/kg/day) | - |
| ≥18 years | 122-226 (highest among 50-64 year olds) | 286-467(highest among 50-64 year olds) | 400 mg/day | 400 mg/day |

FDA suggestions on daily caffeine consumption limits, as well as rules requiring the labeling of caffeine content for all products (beverages or supplements) with added caffeine would support both industry practice and also consumer use.⁶⁷

⁶⁵ “What’s all the Buzz about? A Survey of Popular Energy Drinks Finds Inconsistent Labeling, Questionable Ingredients, and Targeted Marketing to Adolescents.” <http://www.markey.senate.gov/documents/04-10-13%20-%20Energy%20Drink%20report%20FINAL.pdf>

⁶⁶ Beverage Caffeine Intakes in the US. (Population estimates based on Kantar Worldpanel (KWP) Beverage Consumption Panel Survey, 2010-11.) D.C. Mitchell et al. / Food and Chemical Toxicology 63 (2014) 136–142.

⁶⁷ Health Canada, caffeine in food. <http://www.hc-sc.gc.ca/fn-an/securit/addit/caf/food-caf-ailmrnts-eng.php>

Discouraging Misuse: Not Promoting Rapid or Excessive Consumption

Overall, most companies made commitments to not promote overuse or misuse through marketing that encourages rapid or excessive consumption. Eleven of the twelve respondent companies agreed not to promote rapid or excessive consumption, including through social media, while one did not address the issue. Further, eight companies specifically agreed to monitor and remove social media posts that promote rapid or excessive consumption.⁶⁸

However, a more nuanced way to promote excessive consumption is to state that bigger (more volume) is better or stronger (more concentrated) is better. Both container volumes and caffeine concentrations vary across products, even within the same brand. [See table below,⁶⁹ with reference point to a cola soft drink.] Seven of 12 companies explicitly committed to not promoting more volume or higher concentrations as better. Two companies, Monster and Rockstar, explicitly refused to refrain from such promotions. Monster stated that it is legitimate to promote “added values that may be inherent in larger or more concentrated products.” Monster further suggested that requests to limit this promotion stems from the “self-serving, anti-competitive motive” by Red Bull, which sells smaller volume containers.

| Product | Amount of Caffeine in One Can | Can Size | Caffeine Concentration |
|---------------------------|-------------------------------|-----------|------------------------|
| Rockstar X Durance | 240 mg | 16 fl. oz | 15 mg/oz |
| Rockstar Energy Water | 200mg | 20 fl. oz | 10 mg/oz |
| Mega Monster Energy Drink | 240 mg | 24 fl. oz | 10 mg/oz |
| Monster Energy Drink | 160 mg | 16 fl. oz | 10 mg/oz |
| Red Bull | 80 mg | 8.5fl. oz | 9.4 mg/oz |
| Coca-Cola Classic | 34 mg | 12 fl. oz | 2.8 mg/oz |

In contrast, SK Energy maintains a distinction between “regular strength” (250 mg) and “extra strength” (280 mg) products based on caffeine content that is clearly labeled, but they have priced the products identically and make no claim that either is “better” than the other. Rather, they encourage consumers to pick the product that suits their needs. While a range of product characteristics is to be expected, marketing efforts to encourage consumers to prefer and choose “more” caffeine, through bigger volumes or higher concentrations, could potentially drive excessive consumption.

⁶⁸ The Coca-Cola Company did not specifically comment on a commitment to monitoring social media going forward; and Dr. Pepper Snapple Group, although stating it promotes moderation and does not promote “chugging,” would not agree to “blocking” or interfering with social media postings regardless of content.

⁶⁹ www.caffeineinformer.com

Discouraging Misuse: Not Promoting Mixing with Drugs and Alcohol

Consumption of beverages with both added caffeine and alcohol is associated with increased risk of serious injury, drunken driving, sexual assault, and other risk behaviors, as well as poor ability to assess one's own level of intoxication.⁷⁰ In 2010, FDA issued warnings to the manufacturers of combined malt beverage-caffeine products that the addition of caffeine to alcoholic beverages was an "unsafe food additive," resulting in the removal of these combined products.⁷¹ To avoid dangerous use, energy drink marketing must not promote, and ideally should discourage, self-mixing with alcohol.

All 12 energy drink companies committed to not promoting use of their energy drinks specifically to counteract the effects of alcohol or other drugs, an observed practice at the time of the earlier investigative report and congressional hearing. However, only ten of 12 specifically committed to *not promoting, encouraging, or otherwise condoning* mixing with alcohol. Two companies (Red Bull, and The Coca-Cola Company for its brands NOS and Full Throttle) that sell in adult establishments such as bars and liquor stores stop short of explicitly committing to not promoting or to actively discourage mixing.

Coca-Cola's internal standards for sales of energy drinks in these establishments do state that "point of sales materials for energy drinks will include a responsible consumption message. Example: 'The consumption of Energy Drinks does not counteract the effects of beverage alcohol.'" The company did not give an example of a message that suggests consumption in combination with alcohol carries health risks. However, their policies also state, "Marketing of (The Coca-Cola Company) Energy Drink brands *with* beverage alcohol will be confined to locations that serve consumers of legal drinking age." This leaves open marketing combined consumption, something that is unwarranted for any age given the documented risks. Given less than one percent of their sales volume comes from the bar and tavern channel, we recommend that Coca-Cola make it explicit that they do not condone mixing with alcohol, even among those over 21 years.

⁷⁰ AM Arria, MC O'Brien. The "High" Risk of Energy Drinks. JAMA. 2011 January 25; 305(6): 600–601.

⁷¹ <http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm234109.htm>

FINDING # 7: Overall, 4 out of 12 (Dr. Pepper Snapple, Red Bull, Monster, and Rockstar) responding energy drink companies demonstrated significant gaps in making commitments to protect adolescents from targeted marketing campaigns. These four companies represent approximately 90% of US energy drink sales. Four other energy drink companies (Arizona, Celsius, XYIENCE, and SK Energy) demonstrated high commitments to policies that would protect adolescents from potentially harmful advertising messages and promote informed use.

[See **TABLE 4:** *Summary and Overall Commitment*]

- Dr. Pepper Snapple, Red Bull, Monster, and Rockstar showed significant gaps in commitments—largely driven by refusal to commit to not promote or market to adolescents under 18.
- Arizona, Celsius, XYIENCE, and SK Energy demonstrated high commitment across evaluated categories.

Unfortunately, the four brands scoring the lowest, overall, dominate the market, representing approximately 90 percent of energy drink sales, while those scoring highest and those scoring in the middle, combined, represent less than ten percent of sales.⁷² Given the market dominance of the four low-scoring brands—all of whom are members of the ABA—it may be no surprise that industry has failed to govern itself with regards to expanding labeling and marketing guidance to limit use by adolescents under 18 and by removing previously established guidance that energy drinks not be marketed as sports drinks due to their functional differences.

⁷² Top 15 Energy Drink Brands.<http://www.caffeineinformer.com/the-15-top-energy-drink-brands>

CONCLUSION

The energy drink industry, represented by the 12 companies presented in this report, have made great progress in terms of eliminating marketing and promotion activities that target children under the age of 12 and children in K-12 school settings. In April 2014, the American Beverage Association (ABA) updated its guidance for the Responsible Labeling and Marketing of Energy Drinks, solidifying the actions of many of its members, by making specific commitments to limit distribution, marketing, sampling or selling of energy drinks in K-12 settings. The guidance also states that companies should use commercially reasonable efforts to encourage third party distributors to comply with these restrictions in K-12 school settings and commits to using a third party validator to monitor compliance on an annual basis. This inclusion of an external compliance process is a promising step as even voluntary commitments require ongoing vigilant oversight. For example, after two companies, Red Bull and Rockstar, pledged to comply with previous ABA guidelines and not market to children under the age of twelve, examples of apparent targeted marketing of products to children through child-focused toys was identified.⁷³ These products included toy cars emblazoned with these energy drink company logos and a label indicating that the products were intended for those as young as three years of age and served as yet another example of unconventional marketing strategies employed by these companies that appeal to children.

Unfortunately, a minority of companies who drive the majority of energy drink sales has refused to make any commitments that would protect teenagers (ages 13-18) from potentially dangerous marketing and promotion activities. As such, the ABA guidance is silent on policies that would affect teenagers. Unfortunately, as long as early development of brand loyalty is seen as a competitive market advantage, energy drink companies will continue with the practice of marketing to teens in the absence of regulation that prohibits it. Voluntary commitments that limit marketing and promotion to teenagers is unlikely, since the companies with the majority of sales for energy drinks are members of the ABA and therefore drive decisions on the industry's guidance.

Additionally troubling, is the fact that the in the ABA's most recent 2014 update of its guidance it specifically removed a previous commitment to not market energy drinks as sports drinks. Previously the ABA's position was that energy drinks and sports drinks are different products used for different purposes and functions. Unfortunately, energy drink companies are now operating in a space that significantly blurs the lines between these two categories producing products that are marketed as helping with rehydration and electrolyte balance, but that also contain high levels of caffeine and other specialty energy drink ingredients. This merging of sports and energy drinks could cause serious confusion for consumers and result in unintentional consumption of large amounts of caffeine, when intending to drink only for hydration.

To improve understanding of the consumption patterns and health effects associated with energy drinks, The Food and Drug Administration (FDA) should provide specific instructions for energy drink manufacturers who are not required by law to report adverse events on the most effective mechanism for such information to be submitted to the FDA. Additionally, to avoid arbitrary and inconsistent delineations by individual manufacturers, the FDA should issue guidance on what constitutes an energy drink and how this differs from traditional sports drinks. This information will be useful for consumers who wish to make an informed and clear choice on beverage consumption.



⁷³ November 14, 2013 Senators Question Energy Drink Manufacturer Over Toys Featuring Rockstar Energy Logo <http://www.markey.senate.gov/news/press-releases/senators-question-energy-drink-manufacturer-over-toys-featuring-rockstar-energy-logo>

TABLES

KEY

- ✓** Made firm commitment, through explicit response or available web data, and commitment consistent with other provided information
- +/-** Degree of commitment conditional, partially responsive, or unclear
- X** Refused, rejected, or demonstrated unwillingness to make this commitment
- ??** Unable to fully assess due to missing, incomplete, or unclear answers

TABLE 1: Commitments to not promote use/misuse/overuse among adolescents under 18 years old(ages 12-17 years)

| Manufacturer [Product] | Explicitly commit to not marketing to those <18 | Label as not intended for those <18 | Restrict advertising buys for audiences where 35% of the audience is <18 | Restrict access to social media sites for those <18 | Not feature, recruit, or sponsor children <18 in energy drink marketing campaigns, including through social media | COMPOSITE ✓ 4 or more X 2 or more |
|--|---|---|--|---|---|--|
| AriZona Beverages USA LLC | ✓ | ✓ | ✓ | X | ✓ | ✓ |
| Celsius, Inc [Celsius] | ✓ | ✓ | ✓ | X | ✓ | ✓ |
| XYIENCE [Xenergy] | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| The Coca-Cola Company [NOS] | ✓ | ✓ | ✓ | X | ✓ | ✓ |
| The Coca-Cola Company [Full Throttle] | ✓ | ✓ | ✓ | X | ✓ | ✓ |
| PepsiCo [AMP] | ✓ | +/- | ✓ | +/- | ✓ | +/- |
| Dr Pepper Snapple Group [Venom] | X | X | X | X | +/- | X |
| Red Bull North America, Inc | X | X | ✓ | X | X | X |
| Monster Energy Company | X | X | X | X | X | X |
| Rockstar, Inc | X | X | X | X | X | X |
| Target Corporation [Archer Farms Energy Drinks] | ✓ | ?? | ?? | ?? | ?? | ?? |
| Shots (All below are classified as supplements) | | | | | | |
| Target Corporation [up&up Energy Shots] | ✓ | X | ?? | ?? | ?? | ?? |
| SK Energy | +/- | +/- | +/- | +/- | +/- | +/- |
| Living Essentials, LLC [5-hour ENERGY] | ✓ | X | ✓ | ?? | ?? | ?? |

A report written by the staff of Senator Edward J. Markey (D-MA) in coordination with the staff of Senators Richard J. Durbin (D-IL), and Richard Blumenthal (D-CT).

TABLE 2: Commitments to not promote use by kids under 12 & in K-12 school settings

| Manufacturer [Product] | Will not market to children under 12 years old | Will specifically label as not intended for children | Will not market, sell, or sample at K-12 schools or events | Will include contractual language for distributors to avoid K-12 | COMPOSITE ✓ 4 X 1 or more |
|--|---|---|---|---|--|
| Arizona Beverages USA LLC | ✓ | ✓ | ✓ | ✓ | ✓ |
| Celsius, Inc[Celsius] | ✓ | ✓ | ✓ | ✓ | ✓ |
| XYIENCE[Xenergy] | ✓ | ✓ | ✓ | ✓ | ✓ |
| The Coca-Cola Company [NOS] | ✓ | ✓ | ✓ | ✓ | ✓ |
| The Coca-Cola Company [Full Throttle] | ✓ | ✓ | ✓ | ✓ | ✓ |
| PepsiCo[AMP] | ✓ | ✓ | ✓ | +/- | +/- |
| Dr Pepper Snapple Group [Venom] | ✓ | ✓ | ✓ | +/- | +/- |
| Red Bull North America, Inc | ✓ | ✓ | ✓ | ✓ | ✓ |
| Monster Energy Company | ✓ | ✓ | ✓ | ✓ | ✓ |
| Rockstar, Inc | ✓ | ✓ | ✓ | ✓ | ✓ |
| Target Corporation [Archer Farms Energy Drinks] | ✓ | ?? | ✓ | n/a | ?? |
| Shots (All below are classified as supplements) | | | | | |
| Target Corporation [up&up Energy Shots] | ✓ | ✓ | ✓ | n/a | ✓ |
| SK Energy | ✓ | ✓ | ✓ | ✓ | ✓ |
| Living Essentials, LLC [5-hour ENERGY] | ✓ | ✓ | ?? | ?? | ?? |

TABLE 3: Commitments to safety monitoring, promoting appropriate and informed use, and discouraging misuse

| Manufacturer [Product] | Willing to report adverse events to FDA | Will not market as a sports drink | Will include caffeine content in labeling | Will not promote rapid or excessive consumption, and will monitor and remove social media posts that do so | Will not promote that more or higher concentration of caffeine is better ("bigger is better" & "stronger is better") | Will not promote mixing with alcohol or drugs | COMPOSITE √ 5 or more X 2 or more |
|--|--|--|--|---|---|--|--|
| Arizona Beverages USA LLC | √ | √ | √ | √ | √ | √ | √ |
| Celsius, Inc[Celsius] | √ | +/- | √ | √ | √ | √ | √ |
| XYIENCE[Xenergy] | √ | √ | √ | √ | √ | √ | √ |
| The Coca-Cola Company [NOS] | X | +/- | √ | +/- | ?? | +/- | +/- |
| The Coca-Cola Company [Full Throttle] | X | √ | √ | +/- | ?? | +/- | +/- |
| PepsiCo [AMP] | +/- | √ | √ | √ | √ | √ | √ |
| Dr Pepper Snapple Group [Venom] | √ | √ | √ | +/- | √ | √ | √ |
| Red Bull North America, Inc | +/- | √ | √ | √ | √ | +/- | +/- |
| Monster Energy Company | √ | X | √ | √ | X | √ | X |
| Rockstar, Inc | √ | X | √ | √ | X | √ | X |
| Target Corporation [Archer Farms Energy Drinks] | +/- | ?? | √ | +/- | ?? | √ | ?? |
| Shots (All below are classified as supplements) | | | | | | | |
| Target Corporation [up&up Energy Shots] | n/a | ?? | X | +/- | ?? | √ | ?? |
| SK Energy | n/a | +/- | √ | √ | √ | √ | √ |
| Living Essentials, LLC [5-hour ENERGY] | n/a | ?? | ?? | ?? | ?? | √ | ?? |

A report written by the staff of Senator Edward J. Markey (D-MA) in coordination with the staff of Senators Richard J. Durbin (D-IL), and Richard Blumenthal (D-CT).

TABLE 4: SUMMARY AND OVERALL COMMITMENT based on composite scores from previous tables

| Manufacturer [Product] | Will not promote use, misuse, overuse by adolescents under 18(12-17 years old) | Will not promote use by children under 12 years old or in K-12 settings | Will support safety monitoring, appropriate and informed use, and will discourage misuse | OVERALL √2 or more X 1 or more |
|--|---|--|---|---|
| AriZona Beverages USA LLC | √ | √ | √ | √ |
| Celsius, Inc[Celsius] | √ | √ | √ | √ |
| XYIENCE[Xenergy] | √ | √ | √ | √ |
| The Coca-Cola Company [NOS] | √ | √ | +/- | +/- |
| The Coca-Cola Company[Full Throttle] | √ | √ | +/- | +/- |
| PepsiCo[AMP] | +/- | +/- | √ | +/- |
| Dr Pepper Snapple Group[Venom] | X | +/- | √ | X |
| Red Bull North America, Inc | X | √ | +/- | X |
| Monster Energy Company | X | √ | X | X |
| Rockstar, Inc | X | √ | X | X |
| Target Corporation [Archer Farms Energy Drinks] | ?? | ?? | ?? | ?? |
| Shots (All below are classified as supplements) | | | | |
| Target Corporation [up&up Energy Shots] | ?? | √ | ?? | ?? |
| SK Energy | +/- | √ | √ | √ |
| Living Essentials, LLC [5-hour ENERGY] | ?? | ?? | ?? | ?? |

A report written by the staff of Senator Edward J. Markey (D-MA) in coordination with the staff of Senators Richard J. Durbin (D-IL), and Richard Blumenthal (D-CT).

APPENDIX A: SAMPLE LETTER TO COMPANIES

Dear [name]:

We write to ask [Company] 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.⁷⁴ 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.

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?

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?

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?

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?

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?

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?

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?

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?

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?

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?

Will your company commit to including on the product label of your energy drinks a clear declaration of the total amount of caffeine

⁷⁴ See: [http://www.ameribev.org/files/339_Energy%20Drink%20Guidelines%20\(final\).pdf](http://www.ameribev.org/files/339_Energy%20Drink%20Guidelines%20(final).pdf)

present by serving and per container, and, if so, by what date will those labels be included?

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:

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?

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?

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 of 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?

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?

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 [staff contacts].

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