

10-10-13

Hon. Edward Markey  
United States House of Representatives  
2108 Rayburn House Office Building  
Washington, DC 20515  
*Attention: Dr. Avenel Joseph via email to [avenel.joseph@mail.house.gov](mailto:avenel.joseph@mail.house.gov)*

Dear Senator Markey,

This letter is in response to your letter dated September 25, 2013, related to the energy drink industry. We received your letter yesterday 10-9-13. We have responded as best as we can with such short notice. We appreciate your efforts in this area.



Gerry David  
President and CEO

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?

*Yes we agree to abide today 10-10-13. Our target market is the 30-55 year old.*

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?

*Yes we to abide today 10-10-13.*

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?

*We agree to implement today 10-10-13.*

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?

*We agree to implement today 10-10-13.*

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?

*We agree to implement today 10-10-13.*

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 to not 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?

*We agree to implement today 10-10-13.*

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. *We agree to implement today 10-10-13.*

9. 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?

*We agree to implement today 10-10-13.*

10. 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?

*We agree to implement today 10-10-13.*

11. 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?

***We agree to implement today 10-10-13.***

12. 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?

***We agree to implement today 10-10-13.***

13. 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?

***We agree to implement today 10-10-13.***

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:

14. 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?

***I cannot agree to this. There is no available way to accomplish this with current available technology.***

15. 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?

***We agree to implement today 10-10-13.***

16. 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 the following statement:

***"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 this statement on your energy drink product(s), by what date will such statement be included?

***I agree to implement by January 2015 at the latest.***

17. 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?

***We agree to implement today 10-10-13.***

18. 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?

***Our product is marketed as a pre-fitness drink. We have seven studies conducted by major Universities on the finished product. Six of the studies have been published in peer reviewed journals. Our product's science and claims have been reviewed by NAD. Our key message throughout our marketing plays down the energy component, but magnifies the pre-fitness benefits shown in the studies.***