



POWER TO WIN™

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October 14, 2013

The Honorable Edward J. Markey
The Honorable John D. Rockefeller IV
The Honorable Richard J. Durbin
The Honorable Richard Blumenthal

United States Senate
Washington, DC 20510

Dear Senators:

Thank you for your recent letter requesting that energy drink producers voluntarily commit to taking specific measures regarding marketing and promotion of their products to children under 18 years of age. By way of background, XYIENCE launched the Xenergy energy drink brand in 2006. Since the product's inception, XYIENCE's marketing activity for Xenergy has been focused on adult consumers over 18 years of age. Our efforts have been recognized in recent years with several notable Beverage Industry Awards:

- 2013 Liquid Refreshment Company of the Year Honorable Mention, Beverage World Magazine
- 2013 BevStar Gold Medal Award for the Energy Drinks Category, New Products, Beverage World Magazine
- 2013 Retailer's Choice Award Finalist, Convenience Store & Petroleum Magazine
- 2013 Best Energy Drink Finalist, BodyBuilding.com
- 2012 Best Energy Drink Finalist, InterBev Show
- 2011 Best New Product Award for Carbonated Beverages, Convenience Store News
- 2011 Breakout Energy Drink Brand of the Year, Beverage World Magazine

We share your Committee's concern that consumers should be fully informed about energy drinks, and we pride ourselves on being an industry leader when it comes to communicating with consumers about our products. In fact, in a cover article on energy drinks appearing in the January 15, 2013 edition of the highly-regarded Beverage World Magazine, Xyience Xenergy was recognized as being the "silver lining" within the energy drinks category when it comes to "transparency around their formulations or ingredients."

In order to insure that our consumers are as educated as possible about our products, XYIENCE Xenergy was among the first energy drink producers to adopt a Nutrition Facts Panel on our packaging which provides a high degree of transparency about ingredients. In addition, XYIENCE already incorporates a specific warning label on our packaging for Xenergy that includes our beverage's caffeine content per ounce and a warning that the product is not recommended for consumption by children under 18, women who are

pregnant or nursing and people who are sensitive to caffeine. Furthermore, the warning states that mixing or drinking Xenergy with alcohol is not recommended.

We have addressed the specific questions raised in your September 25, 2013 correspondence below:

1. Will your company agree not to market your energy drink product to (a) children, defined in the ABA's Guidance for 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?

This is already our company's practice. We do not market our energy drink products to children under the age of 18.

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?

This is already our company's practice. We do not promote rapid or excessive consumption of our energy drink products.

3. Will your company commit to removing any past social media posts or other promotional message 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?

Because our company does not promote, encourage or condone excessive or rapid consumption of our energy drinks, there are no promotional messages on our website or social media that need to be removed. Our company will commit to regular monitoring of our social media sites to ensure such messages and images are removed in the future.

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?

This is already our company's practice.

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?

Our packaging already includes a warning that: "Mixing or drinking this

product with alcohol is not recommended.”

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

This is already our company’s practice.

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?

This is already our company’s practice.

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

This is already our company’s practice.

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

This is already our company’s practice. We do not provide samples to children under the age of 18 or within the immediate vicinity of K-12 schools.

10. Will your company include binding contractual language in future contracts with distributors, promoters, or other third party entities prohibiting them from marketing, promoting, selling or sampling to children and teenagers in K-12 schools? If so, on what date will such language be inserted into new contracts?

Our distributors, promoters, and other associates do not market, promote, sell or provide samples to children or teenagers in K-12 schools. As contracts are renewed or agreed upon for future distribution or promotional services, we will include language specifying that marketing, promoting, selling or sampling to children and teenagers in K-12 schools is prohibited.

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

Our packaging already includes a warning label and a declaration listing our beverage’s caffeine content per ounce. This is in compliance with the standards for energy drinks set forth by the American Beverage Association. Please refer to the attachment illustrating our Nutrition Facts Label and our voluntary

warning statement regarding Xenergy's caffeine content per ounce. We will amend this statement to include the total amount of caffeine per container the next time we adopt changes to our packaging.

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

We care very much about the feedback we receive from consumers regarding our products, and we are unaware of any "serious adverse events" having ever been associated with the consumption of XYIENCE Xenergy energy drinks. We are willing to discuss with the FDA what type of events would trigger reporting, the type of information that would thereafter be reported, and the reporting methodology the FDA would seek to fulfill this mission.

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

By January 1, 2014, we will place an age verification restriction for those under the age of 18 on the Xenergy energy drink section of our XYIENCE company website. In addition, we will confer with social media sites used by Xyience Xenergy regarding whether such media sites provide the capability for similar restrictions.

14. Will your company restrict any advertising buys or purchase 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?

As expressed in our response to Question 1, we do not market our energy drink products to children under the age of 18. Our advertising is not targeted at audiences that are more than 35% under the age of 18. Our practice has been and will continue to be to reach our target audience and loyal consumers who are over 18. We will make use of syndicated data collection services to guide us in the selection of media vehicles that do not target an audience that is more than 35% under the age of 18.

15. Will your company agree to label any of your products that include caffeine in excess of the FDA's approved GRAS standard for caffeine in cola with 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?

As previously expressed, it is already our company's practice to include a warning on our energy drink products. For instance, our newest packaging contains the following:

"WARNING: This product contains 11 mg of caffeine per oz. It is not recommended for children under 18, women who are pregnant or nursing and people who are sensitive to caffeine. Too much caffeine may cause nervousness, irritability, sleeplessness and occasional rapid heartbeat. Mixing or drinking this product with alcohol is not recommended."

We believe the above warning is significantly stronger than the statement recommended by the Committee. However, if the Committee believes that the requested statement is preferable, we are willing to further discuss the matter.

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

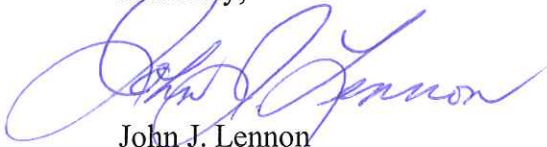
This is already our company's practice.

17. The National Collegiate Athletic Association and the National Federation of State High School Association 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 XYIENCE Xenergy product line includes a non-caffeinated, energy-hydration product identified as Xenergy + Hydration. Unlike hydration beverages produced by some other energy drink brands, Xenergy + Hydration is non-carbonated and does not contain any caffeine, an ingredient that causes dehydration. The product contains electrolytes and other minerals that promote hydration, with energy stimulating ingredients such as B-vitamins, CoQ10 and D-Ribose. Xenergy + Hydration is clearly labeled so that the consumer understands its ingredients. The ingredients and functional benefits of Xenergy + Hydration are differentiated from our other energy drink beverages on the product's packaging. Additionally, marketing of Xenergy + Hydration highlights the fact that this product contains no caffeine, and we take measures to distinguish it from other products within our Xenergy product line.

Please let me know if XYIENCE can provide any additional information related to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "John J. Lennon", is written over the printed name.

John J. Lennon
President
XYIENCE

Nutrition Facts

Serving Size 8 fl oz (237ml)

Servings Per Container 2

Amount Per Serving	Fat Calories 0
Calories 0	% Daily Value*
Total Fat 0g	0%
Saturated Fat 0g	0%
Trans Fat 0g	
Cholesterol 0mg	0%
Sodium 160mg	7%
Potassium 15mg	0%
Total Carbs 2g	1%
Dietary Fiber 0g	0%
Sugars 0g	
Protein 0g	0%
Vitamin A 0% • Vitamin C 0%	
Calcium 0% • Iron 0%	
Niacin 100% • Vitamin B6 250%	
Vitamin B12 80% • Pantothenic Acid 500%	

*Percent Daily Values are based on a 2,000 calorie diet.

WARNING: This product contains 11mg of caffeine per oz. It is not recommended for children under 18, women who are pregnant or nursing and people who are sensitive to caffeine. Too much caffeine may cause nervousness, irritability, sleeplessness and occasional rapid heartbeat. Mixing or drinking this product with alcohol is not recommended.



Cran Razz

INGREDIENTS: CARBONATED WATER, CITRIC ACID, TAURINE, SODIUM CITRATE, NATURAL FLAVORS, FRUIT AND VEGETABLE JUICE FOR COLOR, GLUCURONOLACTONE, CAFFEINE, POTASSIUM SORBATE (PRESERVATIVE), SODIUM BENZOATE (PRESERVATIVE), CALCIUM D PANTOTHENATE (VITAMIN B5), GUARANA EXTRACT, SUCRALOSE, NIACINAMIDE (VITAMIN B3), GINSENG EXTRACT, INOSITOL, L-CARANTINE, ACESULFAME POTASSIUM, PYRIDOXINE HYDROCHLORIDE (VITAMIN B6), CHANOCOBALAMIN (VITAMIN B12).



Blu Pomegranate

INGREDIENTS: CARBONATED WATER, CITRIC ACID, TAURINE, SODIUM CITRATE, NATURAL FLAVORS, FRUIT AND VEGETABLE JUICE FOR COLOR, GLUCURONOLACTONE, CAFFEINE, POTASSIUM SORBATE (PRESERVATIVE), SODIUM BENZOATE (PRESERVATIVE), CALCIUM D PANTOTHENATE (VITAMIN B5), GUARANA EXTRACT, SUCRALOSE, NIACINAMIDE (VITAMIN B3), GINSENG EXTRACT, INOSITOL, L-CARANTINE, ACESULFAME POTASSIUM, PYRIDOXINE HYDROCHLORIDE (VITAMIN B6), CHANOCOBALAMIN (VITAMIN B12).



Cherry Lime

INGREDIENTS: CARBONATED WATER, CITRIC ACID, TAURINE, SODIUM CITRATE, NATURAL FLAVORS, VEGETABLE JUICE FOR COLOR, GLUCURONOLACTONE, CAFFEINE, POTASSIUM SORBATE (PRESERVATIVE), SODIUM BENZOATE (PRESERVATIVE), CALCIUM D PANTOTHENATE (VITAMIN B5), GUARANA EXTRACT, SUCRALOSE, NIACINAMIDE (VITAMIN B3), GINSENG EXTRACT, INOSITOL, L-CARANTINE, GUM ACACIA, ACESULFAME POTASSIUM, GLYCEROL ESTER OF WOOD ROSIN, PYRIDOXINE HYDROCHLORIDE (VITAMIN B6), CHANOCOBALAMIN (VITAMIN B12).



Mango Guava

INGREDIENTS: CARBONATED WATER, CITRIC ACID, TAURINE, SODIUM CITRATE, NATURAL FLAVORS, GLUCURONOLACTONE, CAFFEINE, POTASSIUM SORBATE (PRESERVATIVE), SODIUM BENZOATE (PRESERVATIVE), CALCIUM D PANTOTHENATE (VITAMIN B5), SUCRALOSE, GUARANA EXTRACT, VEGETABLE JUICE FOR COLOR, NIACINAMIDE (VITAMIN B3), GINSENG EXTRACT, INOSITOL, L-CARANTINE, ACESULFAME POTASSIUM, PYRIDOXINE HYDROCHLORIDE (VITAMIN B6), GUM ACACIA, GLYCEROL ESTER OF WOOD ROSIN, CHANOCOBALAMIN (VITAMIN B12).



Melon Mayhem

INGREDIENTS: CARBONATED WATER, CITRIC ACID, TAURINE, SODIUM CITRATE, NATURAL FLAVORS, GLUCURONOLACTONE, CAFFEINE, POTASSIUM SORBATE (PRESERVATIVE), SODIUM BENZOATE (PRESERVATIVE), CALCIUM D PANTOTHENATE (VITAMIN B5), VEGETABLE JUICE FOR COLOR, SUCRALOSE, GUARANA EXTRACT, NIACINAMIDE (VITAMIN B3), GINSENG EXTRACT, L-CARANTINE, INOSITOL, ACESULFAME POTASSIUM, GUM ACACIA, PYRIDOXINE HYDROCHLORIDE (VITAMIN B6), GLYCEROL ESTER OF WOOD ROSIN, CHANOCOBALAMIN (VITAMIN B12).



Tangerine

INGREDIENTS: CARBONATED WATER, CITRIC ACID, TAURINE, SODIUM CITRATE, NATURAL FLAVORS, BETA CAROTENE FOR COLOR, GLUCURONOLACTONE, CAFFEINE, POTASSIUM SORBATE (PRESERVATIVE), SODIUM BENZOATE (PRESERVATIVE), CALCIUM D PANTOTHENATE (VITAMIN B5), GUARANA EXTRACT, GUM ACACIA, NIACINAMIDE (VITAMIN B3), GINSENG EXTRACT, L-CARANTINE, INOSITOL, ACESULFAME POTASSIUM, GLYCEROL ESTER OF WOOD ROSIN, PYRIDOXINE HYDROCHLORIDE (VITAMIN B6), CHANOCOBALAMIN (VITAMIN B12).



Fruit Punch

INGREDIENTS: CARBONATED WATER, CITRIC ACID, TAURINE, SODIUM CITRATE, NATURAL FLAVORS, VEGETABLE JUICE FOR COLOR, CAFFEINE, GLUCURONOLACTONE, POTASSIUM SORBATE (PRESERVATIVE), SODIUM BENZOATE (PRESERVATIVE), CALCIUM D PANTOTHENATE (VITAMIN B5), GUARANA EXTRACT, GINSENG EXTRACT, SUCRALOSE, NIACINAMIDE (VITAMIN B3), L-CARANTINE, INOSITOL, ACESULFAME POTASSIUM, GUM ACACIA, PYRIDOXINE HYDROCHLORIDE (VITAMIN B6), GLYCEROL ESTER OF WOOD ROSIN, CHANOCOBALAMIN (VITAMIN B12).



Frostberry Blast

INGREDIENTS: CARBONATED WATER, CITRIC ACID, TAURINE, SODIUM CITRATE, NATURAL FLAVORS, CAFFEINE, GLUCURONOLACTONE, POTASSIUM SORBATE (PRESERVATIVE), SODIUM BENZOATE (PRESERVATIVE), CALCIUM D PANTOTHENATE (VITAMIN B5), GUARANA EXTRACT, GINSENG EXTRACT, SUCRALOSE, GUM ACACIA, NIACINAMIDE (VITAMIN B3), L-CARANTINE, INOSITOL, ACESULFAME POTASSIUM, GLYCEROL ESTER OF WOOD ROSIN, PYRIDOXINE HYDROCHLORIDE (VITAMIN B6), CHANOCOBALAMIN (VITAMIN B12).