

A Communication From the Chief Legal Officers
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August 20, 2007

The Honorable John J. Manfreda, Administrator
Alcohol and Tobacco Tax and Trade Bureau
1310 G Street, NW
Room 300
Washington, D.C. 20220

Re: **Alcoholic Energy Drinks**

Dear Mr. Manfreda:

We, the undersigned attorneys general, write to express our serious concerns about the formulation and marketing of alcoholic beverages that contain caffeine and other stimulants. We ask that the Alcohol and Tobacco Tax and Trade Bureau (TTB) expand its efforts to prevent misleading health-related statements from being made in connection with these beverages. We further request that TTB investigate the formulation of alcoholic energy drinks and other flavored malt beverages to determine whether these drinks are properly classified as malt beverages under federal law.

Nonalcoholic energy drinks containing high levels of caffeine constitute a rapidly growing segment of the beverage market. These beverages are particularly popular with teens and young adults. Unfortunately, alcoholic beverage manufacturers have taken advantage of the youth appeal of these drinks by engaging in aggressive marketing campaigns for pre-mixed alcoholic energy drinks. These campaigns claim that such beverages increase a person's stamina or energy level. However, they do not mention the potentially severe, adverse consequences of mixing caffeine or other stimulants and alcohol.

We believe that alcoholic energy drinks constitute a serious health and safety risk for America's youth. According to evidence cited by TTB in a final rule issued in 2003, "Alcohol is the nation's number one drug problem among youth, and it is involved in teen automobile crashes, homicides and suicides, the three leading causes of teen death."¹ The Surgeon General recently reported that approximately 5,000 people under the age of twenty-one die each year from alcohol-related injuries. Alcohol also contributes to risky sexual behavior, poor school performance, and other psychological and sociological dysfunctions among youth.²

¹ Health Claims and Other Health-Related Statements in the Labeling and Advertising of Alcohol Beverages, 68 Fed. Reg. 10,076, 10,083 (June 2, 2003) (testimony of Dr. David Satcher).

² *The Surgeon General's Call to Action To Prevent and Reduce Underage Drinking*, U.S. Department of

Adding caffeine and other stimulants to alcohol may increase risk to young consumers because those additives tend to reduce the perception of intoxication and make greater quantities of alcohol palatable. Moreover, most alcoholic energy drinks are categorized as malt beverages even though their alcohol by volume is significantly greater than that of beer. This classification renders alcoholic energy drinks more readily available to young people, because malt beverages can be purchased in many more places, and at significantly lower prices, than distilled spirits.

We commend TTB for having voiced its concern about misleading health-related statements made by advertisers of malt beverages and distilled spirits that contain caffeine and other additives typically found in nonalcoholic energy drinks. In its announcement of May 18, 2005, TTB warned manufacturers that advertisements for such malt beverages may not “imply that consumption of certain alcoholic beverages will have a stimulating or energizing effect, or will enable consumers to drink more of a product without feeling the effects of the alcohol.”³ TTB issued a similar announcement regarding advertisements for distilled spirits on August 2, 2005.⁴ In both instances, TTB advised that the agency would take appropriate enforcement action if it found that advertisements contained misleading health-related statements in violation of the Federal Alcohol Administration Act or its implementing regulations.

Since TTB issued those announcements, new medical research has reconfirmed the risks of combining alcohol and energy drinks. A recent study testing the interaction of alcohol and energy drinks on human subjects found that energy drinks did nothing to ameliorate alcohol’s negative effects on participants’ motor coordination skills and visual reaction times, but did reduce participants’ subjective perception of alcohol intoxication.⁵ As a result of consuming alcoholic beverages containing stimulants, intoxicated persons may falsely believe that they can continue to drink and function without impairment, even behind the wheel of a car.

TTB announced last month that it had sanctioned a wholesaler, McKenzie River Corporation, for publishing print advertisements which claimed that its alcohol beverage product had a stimulating or energizing effect on the consumer.⁶

Marketing Claims that State or Imply an Energizing or Stimulating Effect

We list below examples of specific advertisements that warrant investigation and possible enforcement action by TTB because they contain misleading health-related claims regarding the products’ effects, in violation of federal regulations.⁷ We emphasize that these examples are merely representative, not exhaustive. While we trust that TTB will take all necessary and

Health and Human Services, Office of the Surgeon General, 2007, pp. 10 -12.

³ “Advertising Malt Beverages Containing Ingredients Associated with Non-Alcohol Energy Drinks,” http://www.ttb.gov/announcements/051805energy_beer.pdf.

⁴ “Advertising Distilled Spirits Containing Ingredients Associated with Non-Alcohol Energy Drinks,” <http://www.ttb.gov/announcements/080205energydsgenericletter.pdf>.

⁵ Ferreira, et al., “Effects of Energy Drink Ingestion on Alcohol Intoxication,” *Alcoholism: Clinical and Experimental Research*, April 2006.

⁶ “TTB Suspends McKenzie River Permit,” <http://www.ttb.gov/press/index.shtml>.

⁷ 27 C.F.R. § 7.54(a)(1) and (e)(2).

appropriate action concerning the examples given, the purpose of this letter is to request that the agency review the entire category of alcoholic energy drinks in a systematic way to discover and act upon misleading claims.

Sparks and Sparks Plus

The advertising scheme for these beverages, which are manufactured by Miller Brewing Company, centers on providing energy. Both the individual cans and the cases in which they are packaged are designed to look like batteries. The advertising slogan for these drinks is “Powered by Sparks.”

Bud Extra

Anheuser-Busch markets this drink (formerly known as “B-to-the-E”) with claims about the product’s stimulating effect and its power to enable the consumer to continue to drink more. The Bud Extra website boasts, “Bud Extra is infused with more of everything you never knew to expect. It’s flavored with ginseng, powered by caffeine and charmed with...guarana? Some call this tropical fruit a magical herb; the Guarani tribe in Brazil believe it’s a way to regain strength.”⁸ Promotional statements for this beverage include “Who’s up for staying out all night,” “Say hello to an endless night of fun,” “Stay around for every twist of the ride,” and “You can sleep when you’re 30.”⁹

Liquid Charge and Liquid Core

Charge Beverages produces two alcoholic energy drinks, Liquid Charge and Liquid Core. In addition to the stimulating effect implied by its name, Liquid Charge advertises that it is “a new power source for the 21st century” and that it employs “the most powerful formula available using only premium standardized herbals.”¹⁰ Its website displays a mock video of a can of Liquid Charge rising up out of a crumbling nuclear power plant, while lightning bolts shoot from the top of the can. Liquid Core was introduced with a promotional message that extolled its capacity to increase stamina: “Whether you are working a nine to five, pulling an all-nighter or just need a little extra help to keep you going after a long day on the slopes, Liquid Core provides you that charge.”¹¹

We ask that TTB investigate the promotional claims made by all alcoholic energy drink manufacturers and take appropriate enforcement action against manufacturers who make misleading health-related statements in connection with these beverages.

Distilled Alcohol Content of Alcoholic Energy Drinks and Flavored Malt Beverages

Another issue that warrants TTB investigation is the type and amount of distilled spirits flavorings added to alcoholic energy drinks and flavored malt beverages. In 2005, TTB made

⁸ <http://www.btothee.com/landing.html> (accessed July 23, 2007).

⁹ Id.

¹⁰ <http://www.liquidcharge.com/home> (accessed July 11, 2007).

¹¹ “Liquid Core is Charge Beverages’ Newest Energy Cocktail” (February 2006), accessed from www.cpwire.com/artman/publish/article_1248.htm (August 10, 2006).

permanent a rule that limited the amount of distilled spirits to 1.5% of total volume for any malt beverage above 6% alcohol by volume.¹² The agency's rationale for this rule was that "any ... liberalization [of the 1.5% rule for malt beverages with more than 6% alcohol by volume] would raise serious questions as to whether the finished product was appropriately classified as a malt beverage or as a distilled spirits product."¹³

The products discussed in this letter are marketed as malt beverages and all have an alcohol content of 6% or greater. Most alcoholic energy drinks and flavored malt beverages bear little resemblance to beer in taste or appearance. We question whether these products should be classified as malt beverages under federal law. We therefore urge you to request that any company that manufactures a malt beverage containing more than 6% alcohol by volume promptly provide TTB with adequate information to verify that the composition of that beverage complies with the requirements of 27 C.F.R. § 25.15.

Thank you for your consideration of these important issues and your prompt response. Please do not hesitate to contact us if there is any aspect of these issues that you would like to discuss, or if there is any additional information that we can provide.

Sincerely,



G. Steven Rowe
Attorney General of Maine



Richard Blumenthal
Attorney General of Connecticut



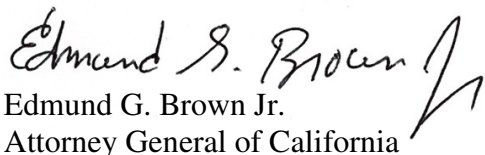
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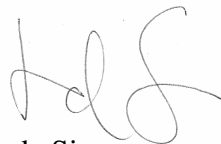
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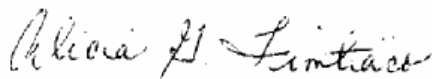
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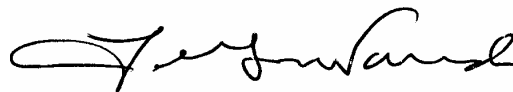
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¹² 27 C.F.R. § 25.15

¹³ Flavored Malt Beverage and Related Regulatory Amendments, 70 Fed. Reg. 193, 231 (January 3, 2005).

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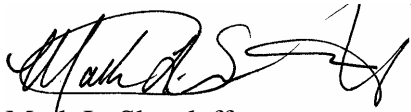
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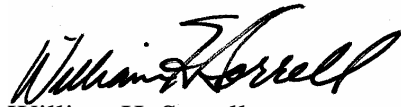
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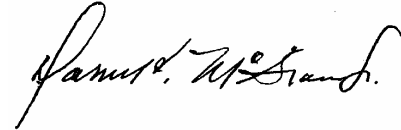
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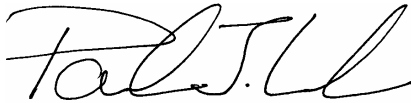
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