COMMITTEES

NATURAL RESOURCES
RANKING DEMOCRAT

ENERGY AND COMMERCE

EDWARD J. MARKEY
7TH DISTRICT, MASSACHUSETTS

2108 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–2107
(202) 225–2836

DISTRICT OFFICES:

5 HIGH STREET, SUITE 101
MEDFORD, MA 02155
(781) 396–2900

188 CONCORD STREET, SUITE 102
FRAMINGHAM, MA 01702
(508) 875–2900

http://markey.house.gov

Congress of the United States
House of Representatives
Washington, DC 20515–2107

November 30, 2012

The Honorable Jon Leibowitz
Chairman
Federal Trade Commission
600 Pennsylvania Ave. NW
Washington, DC 20001

Dear Chairman Leibowitz:

Energy drinks have come under increased public scrutiny recently, with an alarming number of deaths reported to the Food and Drug Administration (FDA) that are potentially associated with these beverages. Last week, the *The New York Times* reported the FDA had received reports of thirteen deaths allegedly linked to a popular product known as 5-hour ENERGY. These reports are the most recent, raising questions about both the safety and efficacy claims made by this class of beverages. The advertising claims made by energy drink manufacturers are particularly alarming in light of the increase in advertisements targeted primarily to children and teenagers. Accordingly, I believe an investigation of the claims made by these companies would fall within the Federal Trade Commission's (FTC) mandate as stipulated in Section 5 of the Federal Trade Commission Act (FTCA) with respect to protecting Americans from "unfair or deceptive acts or practices."

Many energy drinks including 5-hour ENERGY, Monster Energy and Rockstar Energy are sold as dietary supplements. As a result, these products do not fall under the same federal caffeine limitations that the FDA has issued for beverages such as soda. While the FDA currently allows sodas to contain 71 milligrams of caffeine in a typical 12-ounce can, energy drinks contain on average between 160 to 500 milligrams of caffeine per serving. Additionally, if the supplement contains caffeine as a part of a proprietary blend, there is no requirement that the amount of caffeine be listed on the product label or disclosed to the consumer in any way.

Furthermore, there are no requirements for FDA to review supplement claims made by energy drinks before they are introduced onto the market. Some frequent claims made by energy drinks are that they will "fix the feeling of tired", "allow you to do more", make the consumer "sharper and more alert" and provide "hours and hours of energy." The FDA has not substantiated these health or function claims.

PRINTED ON RECYCLED PAPER

While safe limits of caffeine consumption are still being studied, on average the U.S. population consumes approximately 300 milligrams per day[1] a dose considered by most medical professionals to be safe for healthy adults.[2] It is unknown, however, whether these levels are also safe for children and teens to whom energy drinks are frequently marketed. Along with caffeine, energy drinks typically contain other ingredients such as high levels of certain B vitamins, taurine and other amino acids that may have additional stimulating impacts on the body. The additive impacts and safety of these and other stimulative ingredients in energy drinks have not been determined.

As you know, the FTC has in the past successfully investigated and took action against claims made by alcohol-containing energy drinks found to be engaging in unsafe, deceptive marketing claims. I believe an investigation into energy drinks that do not contain alcohol and are often targeted at children may be warranted at this time. I request responses to the following questions no later than close of business on December 14, 2012.

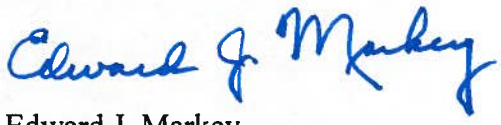
1. Does the FTC believe that the varied health, function and safety claims made by manufacturers of energy supplements constitutes a violation of Section 5 of the FTCA, which outlaws unfair or deceptive trade acts or practices? If yes, how? If not, why not?

2. If the Commission does believe that such trade practices may constitute potential violations of the Act, what actions, if any, is the FTC taking in response to this matter?

3. Please describe the manner in which the FTC coordinates its efforts with the FDA or other federal agencies that share jurisdiction or responsibilities in this area. To the extent that such coordination efforts are formalized, please also provide copies of any relevant memoranda of understanding or other similar documents.

Thank you for your assistance and cooperation in responding to this request. Should you have any questions, please have your staff contact Dr. Avenel Joseph in my office at 202-225-2836.

Sincerely,



Edward J. Markey

---

[1] Caffeine Intake by the U.S. Population, September 2009, revd. August 2010, by Laszlo P. Somogyi, Ph.D.
[2] http://www.mayoclinic.com/health/caffeine/NU00600