



CITY ATTORNEY DENNIS HERRERA NEWS RELEASE

FOR IMMEDIATE RELEASE
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Herrera demands answers on safety, marketing claims of Monster Energy Drinks

City Attorney employs tough consumer protection provision of California law to seek substantiation for health-based claims

SAN FRANCISCO (Nov. 2, 2012)—City Attorney Dennis Herrera is demanding answers from the makers of Monster Energy Drinks to substantiate marketing claims that the large dosages of caffeine contained in the popular beverages are “completely safe” for consumption by adolescents and adults, and that Monster Energy drinkers “can never get too much of a good thing!”

The company has come under heightened scrutiny in recent days following reports last week to the U.S. Food and Drug Administration that the product may be linked to as many as five deaths since 2009. Herrera issued the letter under provisions of California’s Unfair Competition Law that empower city attorneys to demand evidence for purportedly fact-based advertising claims. A similar demand by Herrera to Kellogg Company three years ago was credited with that company’s decision to reverse its prominently marketed health claims during the H1N1 “Swine Flu” scare that Cocoa Krispies and other sugary breakfast cereals “support your child’s immunity.”

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DENNIS J. HERRERA
City Attorney

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October 31, 2012

Mr. Rodney C. Sacks
Chief Executive Officer
Monster Beverage Corporation
550 Monica Circle, Suite 201
Corona, CA 92880

Re: **Monster Energy**
Request for Evidence Supporting Advertising Claim

Sent via fax and USPS

Dear Mr. Sacks:

I am writing to express my concerns about Monster Beverage Corporation's advertising and marketing of Monster Energy drinks, which are sold in the City and County of San Francisco. Although you claim that Monster Energy drinks are "completely safe,"¹ there is increasing evidence that the high caffeine levels in your products are dangerous, particularly for the youth whom you target with your advertising.

As numerous scientific studies have concluded, consuming large amounts of caffeine can have serious health consequences, particularly for adolescents. Caffeine increases heart rate, blood pressure, and can cause seizures, heart arrhythmias, and, in some cases, death.² Indeed, as the consumption of energy drinks has skyrocketed in recent years, the number of emergency room visits related to energy drink consumption increased *tenfold* from 2005-2009.³ Most troubling, the federal Food and Drug Administration ("FDA") has received reports of five deaths allegedly related to the consumption of Monster Energy drinks in the last twelve months. Indeed, in December 2011, 14-year old Anais Fournier died after consuming two 24 oz. cans of Monster and suffering cardiac arrhythmia. In addition, the FDA has received 37 "adverse event reports" since 2004 concerning Monster Energy drinks for symptoms including increased heart rate, cardiac arrest, respiratory arrest, dizziness, and abdominal pain; many of these events resulted in hospitalization.⁴

The FDA has stated that a *healthy adult* can consume up to 400 mg of caffeine daily. But for adolescents, the safe level is much lower. The American Academy of Pediatrics recommends that adolescents consume no more than 100 mg of caffeine per day. Consistent with these

¹ Michelle Castillo, *Consumer Reports: Energy Drinks May Mislabeled Caffeine Amounts*, CBS News, October 25, 2012.

² See e.g., *Sports Drink and Energy Drinks for Children and Adolescents: Are They Appropriate?*, 127 *Pediatrics* 1183 (2011); *Health Effects of Energy Drinks on Children, Adolescents and Young Adults*, *Pediatrics* 511 (2011); *Energy Beverages: Content and Safety*, *Mayo Clin. Proc.* 85(11):1033-1041 (2011).

³ *Emergency Department Visits Involving Energy Drinks*, The DAWN Report (November 22, 2011).

⁴ Department of Health & Human Services, FOI 12-6462, "CAERS Reports Allegedly Related to Monster Energy Drink."

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guidelines, the FDA has determined that it is safe for cola-type beverages (*i.e.*, sodas) to have caffeine levels of up to 71 mg per 12-oz. serving (or 200 parts per million). Sodas such as Coca-Cola Classic (“Coke”) contain approximately 35 mg of caffeine per 12 oz. can.

Although Monster does not disclose caffeine amounts on its product labeling, Monster Beverage Corporation has stated publicly that a 16 oz. can of Monster Energy contains 160 mg of caffeine (the equivalent of more than four cans of Coke), and a 24 oz. can of Monster contains 240 mg of caffeine (the equivalent of nearly seven cans of Coke).⁵ A single 16 oz. can of Monster thus exceeds the daily caffeine limit for teenagers set by the American Academy of Pediatrics. And a single 24 oz. can exceeds that limit by 2.5 *times*. Because energy drinks like Monster far exceed the safe caffeine levels for adolescents, the American Academy of Pediatrics has concluded that energy drinks “should never be consumed” by adolescents.⁶

Despite these exceedingly high caffeine levels, Monster Beverage Corporation encourages unsafe and irresponsible consumption of Monster Energy products. Monster’s labeling recommends that individuals consume no more than three 16 oz. cans or two 24 oz. cans per day, which amounts to a total of 48 oz. of Monster per day. But 48 oz. of Monster contains 480 mg of caffeine, nearly *five times* the caffeine that is safe for adolescents to consume in an entire day, and more than the 400 mg per day the FDA has indicated is safe for healthy adults.⁷ Rather than warning consumers to exercise constraint or caution, Monster’s marketing states that “bigger is always better” and “you can never get too much of a good thing.” Monster urges consumers to “chug it down,” or “throw [it] back.” Monster states that its product has a “smooth flavor you can really pound down,” and that one of its products has “the biggest chugger friendly wide mouth we could make.”

We note that Monster Beverage Corporation has chosen to label Monster Energy as a “dietary supplement” rather than as a conventional food or beverage, perhaps in an attempt to circumvent the safety standards required for food and beverage additives. But Monster Energy drinks do not meet the definition of a “dietary supplement.” As the FDA has explained, “the packaging of liquid products in bottles or cans similar to those in which single or multiple servings or beverages like soda, bottled water, fruit juices, and iced tea are sold, suggests that the liquid product is intended for use as a conventional food.”⁸ Monster is marketed in a single serving can similar in size, shape and appearance to conventional beverages. The fact that your own company refers to its products as “Monster Energy *drinks*,”⁹ and states that Monster Energy

⁵ Press Release, *Monster Stands by the Safety of its Products*, October 23, 2012, available at http://files.shareholder.com/downloads/HANS/2140933914x0x607799/97702817-af35-4f21-816d-8d699d91da07/MNST_News_2012_10_23_General_Releases.pdf.

⁶ *Sports Drink and Energy Drinks for Children and Adolescents: Are They Appropriate?*, 127 *Pediatrics* 1183 (2011).

⁷ Letter from Jeanne Ireland, Assistant Comm’r for Legislation, Food and Drug Admin., to Hon. Richard J. Durbin, U.S. Senate (Aug. 10, 2012).

⁸ Food and Drug Administration, “Draft Guidance for Industry: Factors that Distinguish Liquid Dietary Supplements from Beverages, Considerations Regarding Novel Ingredients, and Labeling for Beverages and Other Conventional Foods,” December 2009, available at <http://www.fda.gov/food/GuidanceComplianceRegulatoryInformation/GuidanceDocuments/ucm192702.htm>

⁹ Press Release, *Monster Stands by the Safety of its Products*, *supra* fn 5.

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delivers “twice the buzz of a regular energy *drink*,”¹⁰ also belies any notion that your products are not beverages.¹¹

Given Monster’s high caffeine levels and the scientific evidence of serious health risks these levels may pose for youth, it is particularly troubling that Monster’s marketing is expressly targeted to adolescents, as illustrated by the promotions for extreme sports, music and the Monster Girls on Monster’s website, Facebook page, and sponsorships. Your company selected the name “Monster Energy” after consulting with a focus group of teenage males.¹² Indeed, the “Monster Music” and “Monster Gaming” Facebook pages are most popular with persons ages 13-17. The Monster Army website invites “13-21” year-old action sports athletes to apply for sponsorships, and ages 13-24 is the most popular age group of those who “Like” the “Monster Army” on Facebook. Those advertising efforts appear to be working. Indeed, recent reports suggest that 30% to 50% of adolescents and young adults consume energy drinks.¹³

The San Francisco City Attorney hereby requests that you provide evidence concerning the safety of your products for consumption by adolescents. Pursuant to California Business and Professions Code Section 17508, which empowers city attorneys to request substantiation of purportedly fact-based advertising claims, I hereby request that you provide evidence of the facts upon which the following claims are based:

Claims on the Can Labels for Monster and Monster Mega

- Monster and Monster Mega are “Dietary Supplements” under federal law
- “[B]igger is better”
- “[Y]ou can never get a too much of a good thing!”
- “3 cans per day” of 16 oz. Monster is “responsible” or safe consumption by adolescents and adults
- “2 cans per day” of 24 oz. Monster is “responsible” or safe consumption by adolescents and adults
- Monster and Monster Mega are safe for consumption except for “children, pregnant women or people sensitive to caffeine.”

Statements in October 23, 2012 Press Release

- “Monster Energy drinks generally contain approximately 10 milligrams of caffeine from all sources per ounce.”
- Monster’s “products are and have always been safe”

Claims on the Monster Website (www.monsterenergy.com)

- Monster Rehab “hydrates like a sports drink”
- Monster Energy “delivers twice the buzz of a regular energy drink”

¹⁰ See “*The Monster Energy Dub Edition is more than just another energy drink.*”

(<http://www.monsterenergy.com/us/en/products/monster-energy/#!/products%3Adub-edition-3.>)

¹¹ FDA Warning Letter (12-ATL-04), December 8, 2011 to Revolt Distribution Inc., available at <http://bevnet-download-files.s3.amazonaws.com/12-8-11-warning-letter-to-revolt-distribution.pdf>.

¹² Matthew Boyle, *An Energy Drink With a Monster of a Stock*, Fortune/CNN Money (Dec. 15, 2006, 3:59 PM), available at

http://money.cnn.com/magazines/fortune/fortune_archive/2006/12/25/8396769/index.htm.

¹³ *Heath Effects of Energy Drinks on Children, Adolescents and Young Adults*, *supra* fn 2.

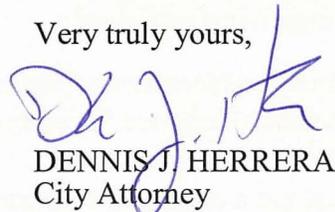
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To the extent your claims are based on scientific studies or research, please include full reports of experiments, methods, results, and outcomes, in addition to the CVs and biographies of the individuals who performed the research.

Please provide the requested information within 30 days of the date of this letter. Please forward responsive documents to Deputy City Attorneys Francesca Gessner and Tara Steeley, Office of the City Attorney, City Hall, 1 Dr. Carlton B. Goodlett Place, Room 234, San Francisco, CA 94102-4682. Failure to respond within this time permits the City Attorney to seek an immediate termination or modification of the advertising claims in accordance with Section 17535 of the California Business and Professions Code. In addition, the City Attorney may pursue any cause of action available under Business and Professions Code Section 17200 *et seq.*

Should you have any questions, please contact Ms. Gessner or Ms. Steeley at 415-554-4700. I appreciate your prompt attention to this matter.

Very truly yours,



DENNIS J. HERRERA
City Attorney

cc: Judith Fiorenti, California Attorney General's Office