



CASE REPORT

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| 1. Complaint reference number | 477/09 |
| 2. Advertiser | Red Bull Aust |
| 3. Product | Food & Beverages |
| 4. Type of advertisement | Internet |
| 5. Nature of complaint | Food and Beverage Code – untruthful/dishonest
Food and Beverage Code – undermines healthy lifestyle |
| 6. Date of determination | Wednesday, 11 November 2009 |
| 7. DETERMINATION | Upheld – discontinued or modified |

DESCRIPTION OF THE ADVERTISEMENT

Website page marketing of the product Red Bull. The website itemises and describes the benefits of Red Bull under the heading:

"FAQ"

What are the effects of a Red Bull energy drink?

Red Bull energy drink: increases performance, increases concentration and reaction speed, improves vigilance, stimulates metabolism

What proof is there that Red Bull energy drink does what it says it does?

Numerous scientific studies in the fields of sports medicine, internal medicine and psychology confirm the effects described for Red Bull Energy Drink. All scientific studies are peer-reviewed, published and can be found in public databases.

When should Red Bull energy drink be consumed?

Whenever you need to boost your energy or concentration! To best feel its effects, you should drink it at times of increased mental and physical strain, for example, on long sleep inducing motorways, during intensive working days. It is recommended to drink one can of Red Bull energy Drink before the start of a race or game in sports.

Since Red Bull energy drink has not been formulated to deliver re-hydration, we encourage people who engage in sports to also drink lots of water during intense exercise.

THE COMPLAINT

A sample of comments which the complainant/s made regarding this advertisement included the following:

I would like to make a complaint regarding the Red Bull Energy Drink Website in the product section which provides the list of Ingredients, Benefits and FAQs in particular with tabs titled "Benefits" and 'FAQ'. The Red Bull website is in breach of a number of codes (AANA Code of Ethics, S21. And Food & Beverage Advertising and Marketing Communications Code 2.1, 2.2,2.3,2.4 and 2.6.

The website makes a wide range of unsubstantiated claims for health & well being benefits. The website does not provide information on possible side effects or adverse consequences (eg, from caffeine & sugar) and the benefits that are listed are misleading to the average consumer. For example, under the section in FAQ – When should red Bull Energy Drink Be Consumed? The

website advised "Whenever you need to boost your energy or concentration!" To best feel its effects, you should drink it at times of increased mental and physical strain, for example, on long sleep-inducing motorways, during intensive working days, prior to demanding athletic activities or before tests and exams.

The website breaches the advertising codes and is seriously misleading in its portrayal of the health and nutrition benefits of the product.

THE ADVERTISER'S RESPONSE

Comments which the advertiser made in response to the complaint/s regarding this advertisement included the following:

As previously stated, the complaint is expressed in very nebulous terms. It appears to be an allegation that the entire site "undermines healthy lifestyle" or is "untruthful/dishonest", but this seems to be mere allegation, with no supporting evidence, reasoning or even specific complaint. For the most part, it is too vague to enable us to provide any specific response. In broad terms:

** in relation to the "undermines healthy lifestyle" complaint, the website and product label makes it clear that the product is intended for consumption "at times of increased mental and physical strain" (as acknowledged in the complaint itself) and the product is clearly labelled with all regulatory advisory statements including that the product contains caffeine, is not suitable for children, pregnant or lactating women or others who are sensitive to caffeine, and that it should be consumed within specific maximum limits (eg 2 cans per day maximum for the standard 250ml can). The whole website is based on activities and sports, and so it is more accurate to say that the site encourages an active and healthy lifestyle.*

** in relation to the "untruthful / dishonest", as stated by Linda Rychter in her response below, information on the ingredients of Red Bull Energy Drink is available on can (quantitatively per serve and per 100ml) and also at <http://www.redbull.com.au/#page=ProductPage.Ingredients>.*
Specific Issues

The complaint makes the allegation that website does not provide information on possible side effects or adverse consequences. In response, it must be remembered that the product is highly regulated - in fact, every ingredient in the food except water and sugars is specifically regulated in the Food Standards Code after having undergone rigorous toxicity and safety examination by food regulators (see http://www.foodstandards.gov.au/srcfiles/A394_full_report.pdf). The product is as safe to consume in accordance with directions as any other food, and there is no general obligation in the Code or elsewhere to include in consumer communications information as to possible consequence of abuse, as distinct from recommended use. Red Bull Energy Drink is a food, not a therapeutic good, and warnings of side effects and adverse consequences is simply not required or appropriate in food communications. It must be remembered that the caffeine content of a can of RED BULL® energy drink, for example, is roughly that of a cup of coffee, and yet there appears to be no calls for the "possible side effects and adverse consumption" of coffee to be highlighted in advertisements for coffee products.

The complaint makes just one specific reference to the website contents, in relation to the FAQ on when the product should be consumed. In full, this answer reads

Whenever you need to boost your energy or concentration! To best feel its effects, you should drink it at times of increased mental and physical strain, for example, on long sleep-inducing motorways, during intensive working days, prior to demanding athletic activities or before tests and exams. It is recommended to drink one can of Red Bull® Energy Drink before the start of a concentration task, the start of a race or game in sports. Since Red Bull® Energy Drink has not been formulated to deliver re-hydration, we encourage people who engage in sports to also drink lots of water during intense exercise.

In our submission, this full answer is appropriately balanced and informs people what the product can do and what it doesn't do. It does not encourage over-consumption ("drink one can") and emphasizes that the product does not re-hydrate.

Recommendation

Red Bull remains of the view that the complaint should be dismissed on the basis that it does not

relate to any advertising or marketing communication that is regulated under the Code.

Alternatively, the complaint should be dismissed on the basis that it discloses no contravention of the Code.

Finally, the complaint should be dismissed because nothing in the impugned areas of the website encourage an unhealthy lifestyle, not is there any evidence that the information is untruthful or dishonest.

The Advertiser provided additional scientific information in support of its claims.

SCIENTIFIC EVIDENCE OBTAINED BY ASB

As the advertisement and complaint raise technical issues outside the expertise of the Board, the Advertising Standards Bureau obtained independent advice on the claims made in the advertisement. The advice concluded:

EXECUTIVE SUMMARY

The purpose of this review is to provide an opinion on the scientific substantiation provided to ASB in support of the claimed benefits of the product about which a complaint has been made.

In considering the evidence base for the claims, particular attention was paid to the quality of the design of the human intervention trials, especially the study population. It is important that the evidence supports the use of the product in the demographic for which the product is intended. Equally important is that the intended serve size delivers the claimed active ingredients in an amount that supports the claimed benefit.

The evidence is weak for the role of some of the ingredients in delivering some of the claimed benefits. However the test applied is of the whole drink as constituted ie does Red Bull drink deliver the claimed health benefits about which a complaint has been made?

CLAIM - INCREASES PERFORMANCE

Red Bull contains one constituent (caffeine) that has strong evidence for the claimed health benefit. However the evidence is not convincing for other components (taurine and glucuronolactone). The vitamins contained in Red Bull contribute to normal performance.

Only certain population groups have been tested - young healthy individuals. In those with the best evidence, 2 serves (500ml) were consumed by exercise trained individuals. Less convincing is the evidence for untrained healthy young people consuming 1 serve (250ml).

Recommendation:

The evidence is convincing for the claimed benefit - Red Bull increases performance - when the equivalent of 2 cans of red bull are consumed by an exercise trained population of healthy young people.

The evidence is probably true for the claimed benefit - Red Bull increases performance - when the equivalent of one can of Red Bull is consumed by an untrained healthy population of young people.

CLAIM - INCREASES CONCENTRATION AND REACTION SPEED; IMPROVES VIGILANCE

Red Bull contains one constituent (caffeine) that has strong evidence for the claimed health benefits "increases concentration and reaction speed; improves vigilance".

Only certain population groups have been tested - young healthy individuals. The evidence supports an effect at 1 can equivalent intake.

Recommendation:

The evidence is convincing for the claimed benefits - Red Bull increases concentration and reaction speed; improves vigilance - when the equivalent of 1 or 2 cans of Red Bull are consumed by a population of healthy young people.

CLAIM - STIMULATES METABOLISM

Red Bull contains one constituent (caffeine) that has strong evidence for the claimed health benefit

"stimulates metabolism".

The evidence for the vitamins in Red Bull supports a role for Niacin, vitamin B6, Pantothenic acid and Vitamin B12 in normal metabolism. The evidence for taurine in red Bull stimulating metabolism is not convincing. Only certain population groups have been tested - young healthy individuals.

Recommendation:

The evidence is convincing for the claimed benefits - Red Bull stimulates metabolism - when the equivalent of 1 can of red bull is consumed by a population of healthy young people

COMMENTS OUTSIDE THE SCOPE OF THIS COMPLAINT

While not part of this review, on the Red Bull website, there are other comments about the ingredients that could cause concern should they become the subject of complaint.

The statement "Taurine acts as an antioxidant" is not supported by a recent EFSA evaluation which states: "On the basis of the data available, the Panel concludes that cause and effect relationship has not been established between the consumption of taurine and the protection of DNA, proteins or lipids from oxidative damage".

The statement "B vitamins are also shown to support mental and physical performance" is not supported by a recent EFSA evaluation which does not mention evidence for these functions for three of the B vitamins contained in Red Bull - vitamins B6, B12, and niacin.

ADVERTISER RESPONSE TO SCIENTIFIC EVIDENCE

The Advertiser was provided with a copy of the ASB independent advice and made the following comments in reply:

'We acknowledge the additional concerns over taurine as an antioxidant, and will remove the claim pending further investigation. The EFSA evaluation on B-vitamin claims to which Dr Roberts refers is shown does not deal with mental and physical performance claims: these claims are in fact being considered by a separate EFSA evaluation which is currently tagged on the EFSA website as being "in progress". Red Bull is monitoring the EFSA work and will review its claims once any report is finalised.'

THE DETERMINATION

The Advertising Standards Board ("Board") considered whether this advertisement breaches Section 2 of the Advertiser Code of Ethics (the "Code") and section 2 of the AANA Food & Beverages Advertising & Marketing Communications Code ("the FBAMC Code").

The Board noted the complainant's concern that the advertisement is in breach of a number of codes because it makes a number of unsubstantiated claims for health and wellbeing benefits and does not provide information on the possible side effects or adverse consequences (eg: from caffeine or sugar) and that the benefits that are listed in the website are misleading to the average consumer.

The Board viewed the advertiser's response and substantiation for RedBull Energy Drink claims. The Board then considered the Evidence Review which had been independently undertaken by Dr C K Roberts PhD on behalf of the Board. The Board also noted that the advertiser has voluntarily removed reference to the effect of Taurine.

The Board considered whether the information published on the website was in breach of section 2.1 of the FBAMC Code. Section 2.1 of the FBAMC Code states:

"Advertising or Marketing Communications for Food or Beverage Products shall be truthful and honest, shall not be or be designed to be misleading or deceptive or otherwise contravene Prevailing Community Standards, and shall be communicated in a manner appropriate to the level of understanding of the target audience of the Advertising or Marketing Communication with an accurate presentation of all information including any references to nutritional values or health benefits."

The Board noted that the website depicted a picture of a can of RedBull and the attributes of each

ingredient. The Board considered the advertiser's information and the report from Dr Roberts. In the Board's view the claims relating to the effects of the product are mostly substantiated.

The Board noted the comments from the advertiser and the independent advice in relation to Taurine. The Board noted that the advertiser has now removed reference to Taurine from the website. The Board noted that it is required to consider the website at the time of the complaint and on that basis concluded that at the time of the complaint the advertiser's website contained information in relation to the effect of Taurine that is not supported by scientific advice and on that basis the advertisement is not truthful and is in breach of section 2.1.

The Board noted that the the statement B vitamins are also shown to support mental and physical performance is not supported by a recent EFSA evaluation which does not mention evidence for these functions for three of the B vitamins contained in RedBull vitamins B6, B12 and niacin or at best that these issues are still under consideration by international organisations.

The Board noted that in relation to the stated benefits of vitamins B6, B12 and niacin there appears to be a lack of scientific consensus about the effect of B Vitamins. The Board considered that it was not possible for the Board to determine the truth or accuracy of the claims in relation to these vitamins. The Board considered the overall impression of the advertisement and considered that the advertisement was not misleading in relation specifically to the effect of the B vitamins, noting that there is support for the product to have the overall effect claimed.

The Board noted the complainant's concern that the website does not provide information on possible side effects or adverse consequences. The Board noted that the product is labelled in accordance with the Food Standards Code. The Food Standards Code requires that the product is labelled with advisory statements 'to the effect that: (a) the food contains caffeine; and (b) the food is not recommended for (i) children; and (ii) pregnant or lactating women; and (iii) individuals sensitive to caffeine.' (Standard 2.6.4, SubClause (3)(3), Food Standards Code) and also noted that the Food Authority had not required these statements in advertising.

The Board noted that the advertised product is a food and is therefore safe for consumption, with full ingredient listing and any cautions appropriately identifiable on the label. The Board noted that the product is marketed as a caffeinated beverage and that the website contains the specific statement that 'The consumption of Red Bull® Energy Shot should therefore correspond to a person's intake of caffeine.' The Board noted that there is a level of community education and understanding about the consumption of caffeine products (particularly by pregnant women and children) and that there is not an expectation in the community that advertisements should contain general information about the health effects of consumption of particular nutrients. The Board determined that the advertisement did contain a statement about caffeine consumption and not breach community standards by omitting to include information about the health effects of particular nutrients.

The Board then considered section 2.2 of the FBAMC Code. Section 2.2 of the FBAMC Code states:

"Advertising or Marketing Communications for Food or Beverage Products shall not undermine the importance of healthy or active lifestyles nor the promotion of healthy balanced diets, or encourage what would reasonably be considered as excess consumption through the representation of product/s or portion sizes disproportionate to the setting/s portrayed by means otherwise regarded as contrary to Prevailing Community Standards."

The Board did not consider there to be a breach of section 2.2 of the FBAMC Code as there was no suggestion of excess consumption.

The Board then considered section 2.3 of the FBAMC Code. Section 2.3 of the FBAMC Code states:

"Advertising or Marketing communications for food or beverage products that include what an average consumer, acting reasonably might interpret as health or nutrition claims shall be supportable by appropriate scientific evidence meeting the requirements of the ANZFS Code."

The Board noted that based on the findings in Dr Roberts report, there were no unsubstantiated claims made save and except for Taurine and it was not currently able to determine whether the claims in relation to vitamin B6, B12 or niacin were scientifically accurate.

The Board then considered sections 2.4 and 2.5 of the FBAMC Code. The Board considered in this instance that these sections were not relevant to the complaints raised.

The Board then considered the application of section 2.6 of the FBAMC Code. Section 2.6 of the FBAMC Code states:

"Advertising or Marketing Communications for food or beverage products including claims relating to material characteristics such as taste, size, content, nutrition and health benefits shall be specific to the promoted products and accurate in all representations."

The Board noted that all claims are relevant to the particular product and that there was no breach of section 2.6.

The Board then considered the application of part 3 of the FBAMC Code - Advertising and Children. The Board considered that this part of the FBAMC Code was not relevant as the product is not aimed or directed to people 14 years or younger.

Finding that the advertisement breached section 2.1 of the FBAMC Code in relation to the statement about Taurine, the Board upheld the complaint.

ADVERTISERS RESPONSE TO THE DETERMINATION

Comments which the advertiser made in response to the determination regarding this advertisement included the following:

The Advertiser notes that the single issue upheld in this complaint, after having all its claims examined in minute detail, arose from not the complainant, but as a result of the report by the ASB's independent scientific adviser, and related to recent scientific reviews by regulators in Europe. The Advertiser has already removed this one statement from its website pending further investigation. It seems very odd, in these circumstances, for the matter to be listed as "Complaint Upheld" given that the matters raised by the complainants were in fact all dismissed.