

APPENDIX E: Caffeinated Alcoholic Beverages

Federal and State Actions Regarding Caffeinated Alcoholic Beverages

Introduction⁴⁵

Caffeinated alcoholic beverages (CABs) are premixed beverages that combine alcohol, caffeine, and other stimulants. They may be malt- or distilled spirits-based and usually have higher alcohol content than beer (e.g., 5 percent to 12 percent on average for CABs and 4 percent to 5 percent for beer). The caffeine content in these beverages is usually not reported. Some CABs are packaged in cans of up to 23.5 ounces with alcohol content up to 12 percent, resulting in a product that contains between four and five standard servings of alcohol (FTC 2010).⁴⁶ CABs experienced rapid growth in popularity between 2002 (the first year of significant CAB production) and 2008; the two leading brands together experienced a 67-fold increase in sales, from 337,500 gallons to 22,905,000 gallons during this period.

CABs capitalized on the increasingly popular practice (particularly among youth) of mixing nonalcoholic energy drinks with alcoholic beverages. Energy drinks are beverages that typically contain caffeine, other plant-based stimulants, simple sugars, and other additives. They are very popular among youth and are regularly consumed by 31 percent of 12- to 17-year-olds and 34 percent of 18- to 24-year-olds.

The National Institute on Alcohol Abuse and Alcoholism (NIAAA) funded studies in both animals and humans that elucidated the dangers of combining alcohol and caffeine. Based on these and other studies, the CDC (2010) reported:

- When alcoholic beverages are mixed with energy drinks, the caffeine in these drinks can mask the depressant effects of alcohol. At the same time, caffeine has no effect on the metabolism of alcohol by the liver and thus does not reduce breath alcohol concentrations or reduce the risk of alcohol-attributable harms.
- Drinkers who consume alcohol mixed with energy drinks are three times more likely to binge drink (based on breath alcohol levels) than drinkers who do not report mixing alcohol with energy drinks.
- Drinkers who consume alcohol with energy drinks are about twice as likely as drinkers who do not report mixing alcohol with energy drinks to report being taken advantage of sexually, to report taking advantage of someone else sexually, and to report riding with a driver who was under the influence of alcohol.

CABs have been heavily marketed in youth-friendly media (e.g., on web sites with downloadable images) and with youth-oriented graphics and messaging (e.g., connected with extreme sports or other risk-taking behaviors).

⁴⁵ CDC (no date). Caffeinated Alcoholic Beverages Fact Sheet. Available at: <http://www.cdc.gov/alcohol/fact-sheets/cab.htm> (accessed October 21, 2011).

⁴⁶ FTC (2010). FTC sends warning letters to marketers of Caffeinated Alcohol Drinks, November 17, 2010. Available at: <http://www.ftc.gov/opa/2010/11/alcohol.shtm>.

This Appendix describes the actions taken by State and Federal agencies and officials to remove these products from the marketplace.

Action by State Attorneys General

State Attorneys General took the following actions to reduce access of CABs to underage and young adult drinkers.

May 2007: Twenty-nine State Attorneys General sent a letter to the Anheuser-Busch Company urging the company to discontinue the production and distribution of Spykes (a CAB containing 12 percent alcohol and marketed in 2-ounce containers). The Anheuser-Busch Company removed Spykes from the marketplace shortly thereafter in response to the concerns raised by the Attorneys General as well as by other public health, safety, and community groups.⁴⁷

August 2007: Thirty State Attorneys General sent a letter to the Alcohol and Tobacco Trade and Tax Bureau (TTB) requesting that the Bureau investigate the promotional claims made regarding CABs and to take appropriate enforcement action against manufacturers who make misleading health-related statements.⁴⁸

June 2008: Anheuser-Busch Company signed an agreement with 11 State Attorneys General to remove caffeine and other stimulants from Tilt and Bud Extra (the company's AEDs) and refrain from producing or marketing CABs in the future.⁴⁹

December 2008: MillerCoors Company signed a voluntary agreement with 13 State Attorneys General and the City and County of San Francisco to remove caffeine and other stimulants from Sparks (the market leader at that time) and refrain from marketing CABs in the future. The agreement includes restrictions on marketing the reformulated Sparks brand designed to reduce the product's appeal to underage drinkers.⁵⁰

September 2009: The Co-Chairs of the National Association of Attorneys General Youth Access to Alcohol Committee (on behalf of 17 State Attorneys General, the Attorney General of the Territory of Guam, and the City Attorney of San Francisco) sent a letter to Dr. Margaret A. Hamburg, Commissioner of the Federal Drug Administration (FDA) requesting Federal action to address the marketing and distribution of CABs.⁵¹ A letter to the NAAG Committee from five research scientists was included in the submission to FDA.⁵² The scientists' letter summarized research regarding the health and safety risks associated with CABs. The State Attorneys General letter concluded: "We ask the FDA to use its authority under the Federal Drug and Cosmetics Act to cause the immediate removal of [CABs] from the marketplace."

⁴⁷ Attorneys General letter to August A. Busch IV, President and Chief Executive Officer, Anheuser Busch company, Inc. May 10, 2007. Available at: <http://www.ct.gov/ag/lib/ag/children/attorneysgenerallettertoanheuserbuschrealcoholenergydrinks.pdf>.

⁴⁸ Attorneys General letter to John J. Manfreda, Administrator, Alcohol and Tobacco Tax and Trade Bureau, August 20, 2007. Available at: http://www.doi.state.or.us/releases/pdf/yaa_ttb_letter_final_w_sigs_8172007.pdf

⁴⁹ In re: Anheuser Busch, Inc. Assurance of Voluntary Compliance and Voluntary Discontinuance, June 10, 2008. Available at: <http://www.oag.state.md.us/Reports/A-B%20AVC%20Final.pdf>.

⁵⁰ In re: MillerCoors. Assurance of Voluntary Compliance and Voluntary Discontinuance, December 18, 2008. Available at: http://www.state.ia.us/government/ag/latest_news/releases/dec_2008/MillerCoors_AVC8.pdf

⁵¹ Attorneys General letter to Dr. Margaret A. Hamburg, Commissioner of the Federal Drug Administration, September 25, 2009. Available at: <http://www.fda.gov/downloads/Food/FoodIngredientsPackaging/UCM190371.pdf>

⁵² Caffeinated Alcoholic Beverages Letter to FDA from Scientists (September 21, 2009). Available at: <http://www.fda.gov/downloads/Food/FoodIngredientsPackaging/UCM190372.pdf>

Federal Actions To Remove CABs from the Marketplace

Federal Drug Administration (FDA)

On November 13, 2009, the FDA sent letters notifying nearly 30 CAB producers of FDA's intent to examine the safety and legality of their products.⁵³ The letters requested that the companies submit evidence that the use of caffeine in alcoholic beverages is Generally Recognized as Safe (GRAS) under applicable provisions of the Food, Drug, and Cosmetics Act and FDA regulations. It also alerted them that if FDA determined that the use of caffeine in alcoholic beverages is not GRAS, or subject to a relevant exception, that the FDA would take action to remove the products from the marketplace. A sample of the letters was posted on the FDA website, together with the letters from the State Attorneys General and the research scientists.⁵⁴

On November 17, 2010, FDA, after completing its investigation and review, sent Warning Letters to four producers of malt-based CABs (Phusion Projects, maker of Four Loko; United Brands, producer of Joose; Charge Beverages Corporation, producer of Core; New Century Brewing Company, producer of Moonshot). The letters informed the companies of the FDA's conclusion that their products were adulterated under relevant statutes and regulations and instructing the companies to take appropriate action to correct the violation of law and to insure that there are no recurrences.⁵⁵

Federal Trade Commission (FTC)

On October 6, 2009, following an investigation, the FTC entered into a consent agreement with Constellation Brands, producers of Wide Eye, a distilled spirits-based CAB. The company agreed not to make any representation that the consumers of Wide Eye would remain alert or that the caffeine and other stimulants in the product would counteract the effects of alcohol.⁵⁶

On November 17, 2010, FTC sent notices of potential illegal marketing to the same four companies that received Warning Letters from the FDA. The notices alerted the companies that their marketing of CABs may constitute an unfair or deceptive practice or act under the Federal Trade Commission Act. The letter documented specific incidents involving underage persons who were injured as a result of consuming the companies' products.⁵⁷

Alcohol and Tobacco Tax and Trade Bureau (TTB)

On November 18, 2010, the TTB sent letters to the same four companies producing malt-based CABs that received warning letters from the FDA and FTC. The letters alerted the companies that products that are adulterated under the statutes and regulations enforced by the FDA are mislabeled under the Federal Alcohol Administration Act and requesting the companies to advise TTB of steps taken to correct the violations within 15 days.⁵⁸

⁵³ FDA (2009). FDA to Examine the Safety of Caffeinated Alcoholic Beverages. Consumer Updates, November 13, 2009. Available at: <http://www.fda.gov/ForConsumers/ConsumerUpdates/ucm190364.htm>

⁵⁴ <http://www.fda.gov/downloads/Food/FoodIngredientsPackaging/UCM190371.pdf>

⁵⁵ FDA (2010). Caffeinated Alcoholic Beverages, November 17, 2010. Available at:

<http://www.fda.gov/Food/FoodIngredientsPackaging/ucm190366.htm>

⁵⁶ FTC (2009). In the matter of Constellation Brands, Inc. a corporation. FTC file No. 092 3035, October 6, 2009. Available at: <http://www.ftc.gov/os/caselist/0923035/index.shtm>

⁵⁷ FTC (2010). FTC sends warning letters to marketers of Caffeinated Alcohol Drinks, November 17, 2010. Available at: <http://www.ftc.gov/opa/2010/11/alcohol.shtm>

⁵⁸ TTB (2010). Alcohol beverages with added caffeine, November 18, 2010. Available at: http://www.ttb.gov/main_pages/caffeine-added.shtml

CAB Producers Remove Products from the Marketplace

In response to the FDA, FTC, and TTB letters and notices, the four companies ceased production of CABs. In some States, the CABs were removed from retail outlets and wholesale facilities pursuant to immediate actions taken by State agencies and officials. In other States the producers were allowed to deplete the existing stocks of their products. The producers reformulated their products to remove caffeine and other stimulants and then reintroduced them shortly after the Federal action. Other malt-based CAB producers have followed their lead and ceased production of these products. By the summer of 2011, it appeared that, with few (if any) exceptions, malt-based CABs were no longer available in the United States. However, distilled spirits-based CABs are still available in many locations.

The events leading up to the discontinuance of malt-based CABs in the market place demonstrate the effectiveness of coordinating action between Federal and State officials and among Federal agencies. These potentially dangerous products that posed risks to youth and young adults because of their link to binge drinking are no longer available as a result of this collaboration.