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Manager - Application Assessments
Food Standards Australia New Zealand
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Dear Sir/Madam

SUBMISSIONS - PROPOSAL P293 NUTRITION, HEALTH & RELATED CLAIMS.

Please find **attached** Red Bull Australia's submissions to FSANZ's call for public commentary on Proposal P293 *Nutrition, Health & Related Claims*.

By way of background, Red Bull has a proud history of working with regulators in the 163 countries where our product is sold. Our product has been sold for over 20 years around the world, and 13 years in Australia.

We would like to request a meeting with FSANZ prior to your April report, in order to obtain clarity around the issues raised in our submissions.

Yours sincerely

RED BULL AUSTRALIA PTY LTD


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RED BULL AUSTRALIA SUBMISSION TO FSANZ CALL FOR PUBLIC COMMENTARY
PROPOSAL P293 – NUTRITION, HEALTH AND RELATED CLAIMS
30 MARCH 2012

Overview of submissions

1. Having reviewed the consultation paper of 17 February 2012, and having considered its potential impact on Red Bull's capacity to market and sell its product in Australia, it is our view that the proposed Standard 1.2.7 (the Standard) presents an unreasonable impost on our business, and on those of similar distributors of both domestic and international brands.
2. As an overview of our concerns, it is Red Bull's contention that the Standard suffers from:
 - being too general, in seeking to cover such a broad range of issues within a single Standard;
 - the specific risk of interference in the energy drinks market, due to a definition of 'energy' which is inconsistent with consumer understanding of its application in the branding of these products;
 - the unattractive prospect of retrospectivity, where – despite the phase-in period – the Standard may prohibit well-recognised brand descriptors, due to their resemblance to actual health claims; and,
 - an overall failure to distinguish what is an authentic health or nutrition claim, from what we believe would be better classified as a functional or transitory claim.
3. We believe that a revision of the Standard should be recommended in the FSANZ April report, which seeks a narrower application through the better definition of health and nutrition claims, with specific focus on:
 - products which make a clear long-term health claim, such as products which have embedded pharmaceuticals, or which promise to lower cholesterol or other similar outcomes;
 - products which make explicit claims of health outcomes as understood by an average consumer, but which have questionable nutritional content; and,
 - marketing which relies on actual health claims, for example claims of low-fat status for products which may contain high sugar levels.
4. We believe that this focus would be more consistent with the aim of the Standard, and the agenda of Government, and would address the concerns expressed above, without excessively limiting the reach of the Standard.
5. In the main, this is a matter of tightening drafting to remove the elements of ambiguity of the currently proposed standard.
6. In making this submission, Red Bull recognises that there are other specific concerns within Government about caffeinated energy drinks. We believe these will be addressed via the review of the Policy Guideline on The Addition of Caffeine to Foods, announced on 6 May 2011, with specific reference to energy drinks.

7. Nonetheless, we would welcome the opportunity to meet with FSANZ over the next month, to clarify your expectations of the application of 1.2.7 to our product category, and to respond to any questions you may have in relation to our products.

Claims and Product Descriptors: Interaction with the Standard

8. As well as being present on the packaging of our products, visitors to the Red Bull website and other marketing points both locally and internationally, may variously encounter claims that Red Bull will:
 - increase performance;
 - increase concentration and reaction speed;
 - improve vigilance; and,
 - stimulate metabolism.
9. Each of these is in the manner a claim of transactional or transitory benefit, and each is backed up by third-party studies. Critically, these are the type of studies which are typically undertaken to ensure accuracy in marketing claims, not the type which may be fairly required for a TGA-approved product, or a claim of long-term health outcomes.
10. These are the types of claims which, as noted in relation to other matters on Page 3 of the consultation paper, can be effectively addressed by Australian and New Zealand consumer law.
11. We do not believe that any of these claims might be interpreted as either High-level or General-level health claims. Notably, while we claim that the amino acid Taurine – a key ingredient of Red Bull – is an active participant in delivering the type of ‘energy’ that consumers expect from our product, we do not make any claims around the well-recognised health function of Taurine in the development of skeletal muscle.
12. This said, we note that claims of functional impact, improved physical and mental performance, biochemical processes, and physiological outcomes, sit under the definition of health effect.
13. This appears to group pharmaceutical and other long-term ‘health claims’ – as understood by consumers, with transitory functional effects. We believe this definition is the source of all ambiguity and unnecessary cost to industry within the Standard, and will do nothing for consumer benefit, unless limited to foods which make authentic health claims.
14. We believe the inclusion of nutrition content claims, defined as claims which:

“... describe or indicate the presence or absence of energy, a nutrient or biologically active substance in food”,

is burdensome in its breadth, and its ambiguity. While we appreciate that FSANZ now provides a fee-based interpretation service, we trust that a goal of drafting is to make Standards as clear as possible, to obviate the need for such expense.
15. We note in relation to nutrition content claims, that all claims would need to be substantiated, and we are confident of these, within the parameters noted above. Nonetheless, pre-approval, as opposed to self-substantiation within a scientific framework (as envisaged in the 2008 Standard) presents worryingly unclear outcomes.

16. We further note, however, that the Standard anticipates prescribing forms of words for any such claims. This has the potential to present three unreasonable burdens, viz.:
- the requirement to rework our packaging, which is expensive, not least because Red Bull is a global product manufactured in Austria for multiple markets;
 - taking away valuable marketing ‘real estate’ on our cans, which already devote a substantial amount of area to ingredient information and recommended use advice; and,
 - potentially presenting a conflict between preferred FSANZ descriptors, and our global claims and descriptors.
17. These concerns noted, it is our view that clarification which puts the types of claims made by Red Bull and its peers within the criterion of ‘biologically active substance’ under the definition of nutrition content claims, would be much more manageable than the current approach of shifting all functional claims into the general health definition.
18. Further to this, we believe there is a critical problem with the understanding of ‘energy’ as described in the draft Standard as outlined in Schedule 2, Part 3, which refers to energy purely as a matter of kilojoules. This does not in any way whatsoever accommodate the energy drink category.
19. In relation to this, we would seek amendment to any final version of the standard, to recognise the alternative, and well-understood use of the word ‘energy’, as it is vernacularly applied in the energy drink category.

Sugar and the NPSC

20. Red Bull manufactures an alternative version of our product, Red Bull Sugarfree, which meets the requirements of the Standard for 0% sugar content, so we have no concerns with this.
21. This product makes similar claims of functional effect, and therefore raises the same concerns as outlined above.
22. This will in turn meet the requirements of the NPSC in Schedule 4, as scoring less than 1 for any beverage.
23. By comparison, a can of Red Bull Energy Drink, which requires more than 420 kJ per serve in order to make any health claim to the effect 'provides energy for normal metabolism' (Schedule 2 to the draft Standard), is excluded from making even such low level health claims by virtue of clause 17(1)(a) because it provides more than 335kJ of 'energy' from sugar.
24. This seems a palpable nonsense and is a classic 'catch-22': in order to make even the most modest of Schedule 2 claims for energy, you are required to have more than the level of energy that, under clause 17, precludes you from making such claims at all.
25. We presume this interaction falls into the realm of unintended consequences: otherwise it potentially amounts to a prohibition of our core product.
26. We appreciate that the NPSC is a reworked model of the UK approach, but we note that these scores in the UK were initially developed as a gatekeeper to children's television, not as a restriction of access for adults.
27. We would seek a meeting with FSANZ prior to your April report, to obtain clarity around this problem.

EU Approvals

28. We note the expectation of FSANZ that it will likely adopt EU approvals for similar claims as these are approved.
29. In relation to Red Bull's products, currently approved claims under the Article 13(1) Claims List of EC No.1924/2006 apply to our inclusion of:
- Pantothenic Acid;
 - Niacin;
 - Vitamin B6; and,
 - Vitamin B12.
30. Between them, these meet the requirements of the various claims we make around the products, which in turn substantiate our broader marketing descriptors. In particular, Article 13(1) provides that these vitamins contribute to the reduction of tiredness and fatigue.
31. Caffeine is currently awaiting approval, and we regard this delay as stemming from some of the same political concerns leading to the review of the Australian Standard for caffeine addition.
32. We support adoption of EU claims as early as possible.

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