

From: [redacted]

Sent: 04 February 2020 14:01

To: Diet Policy

Cc: [redacted]; [redacted]

Subject: Scottish Government Energy Drinks Consultation - Submission from
Monster Energy Company

Attachments: Monster Energy Company - Scottish Government - Energy Drinks
Consultation Response.pdf

Dear Diet and Healthy Weight Team,

Please find attached a submission from Monster Energy Company to the Scottish Government consultation, "Ending the sale of energy drinks to children and young people". We are submitting this in parallel through the Scottish Government consultations portal, but want to be sure that you have the benefit of the full version of our submission, including graphs and footnotes.

We remain at your disposal, should you have any questions on the attached.

Kind regards,

[redacted]

[redacted]

Vice President & Legal Director, EMEA
Monster Energy

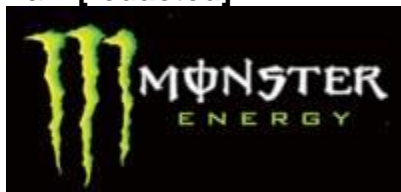
Monster Energy Legal Department
Monster House

[redacted]

Direct: [redacted]

Mob: [redacted]

Fax: [redacted]



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Monster Energy, Attn: Privacy Officer, 1 Monster Way, Corona, CA 92879 USA;
www.monsterenergy.com; 866-322-4466 x6585

We have moved! New Office Address: Monster House, 7 Cowley Business Park, Uxbridge, UB8 2AD. Registered Address: Unit 51, Bristol Road, Metropolitan Park, Greenford, UB6 8UP. Monster Energy Europe Limited is registered in England and Wales under Company No.06394100 VAT No. GB920674920

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From: [redacted]
Sent: 04 February 2020 14:25
To: [redacted]; Diet Policy
Cc: [redacted]; [redacted]
Subject: RE: Scottish Government Energy Drinks Consultation - Submission from Monster Energy Company

Follow Up Flag: Follow up
Flag Status: Completed

Hi [redacted],

Thanks for sharing this, much appreciated. I will look out for your online response and attach this PDF to it.

Many thanks,

[redacted]

[redacted]

Policy Officer, Diet Policy
Population Health Directorate | Health Improvement Division
Scottish Government

[redacted], St Andrew's House, Regent Road EH1 3DG
Tel: [redacted]
Pronouns: [redacted]

From: [redacted]<[redacted]@Monsterenergy.com>
Sent: 04 February 2020 14:01
To: Diet Policy <DietPolicy@gov.scot>
Cc: [redacted] <[redacted]@Monsterenergy.com>; [redacted] <[redacted]@Monsterenergy.com>
Subject: Scottish Government Energy Drinks Consultation - Submission from Monster Energy Company

Dear Diet and Healthy Weight Team,

Please find attached a submission from Monster Energy Company to the Scottish Government consultation, "Ending the sale of energy drinks to children and young people". We are submitting this in parallel through the Scottish Government consultations portal, but want to be sure that you have the benefit of the full version of our submission, including graphs and footnotes.

We remain at your disposal, should you have any questions on the attached.

Kind regards,

[redacted]

[redacted]

Vice President & Legal Director, EMEA
Monster Energy

Monster Energy Legal Department
Monster House
[redacted]

Direct: [redacted]

Mob: [redacted]

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From: [redacted]@lrsuntory.com
Sent: 04 February 2020 18:28
To: Diet Policy
Cc: [redacted]
Subject: Ending the sale of energy drinks to children and young people - Response from LRS 04 02 2020
Attachments: Ending the Sale of Energy Drinks to Children and Young People - Response from LRS 04 02 2020.pdf; Ending the sale of Energy Drinks RIF - LRS.pdf

Dear Sir/Madam,

Please find attached Lucozade Ribena Suntory's response to 'Ending the sale of energy drinks to children and young people – October 2019'.

We hope the response is helpful. Please do let us know if you require any further information.

Yours faithfully,

[redacted]



[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

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ENDING THE SALE OF ENERGY DRINKS TO CHILDREN AND YOUNG PEOPLE CONSULTATION RESPONSE FROM LUCOZADE RIBENA SUNTORY 4 FEBRUARY 2020

1. ABOUT LUCOZADE RIBENA SUNTORY

Lucozade Ribena Suntory (LRS) was formed in 2014 and is part of Suntory Beverage & Food, a core part of Japan's global Suntory Group. We are the third largest branded soft drinks supplier in the UK, and our much-loved brands – including Lucozade Energy, Lucozade Sport, Ribena and Orangina – account for 7% of the UK market¹.

Our business is driven by our 'Yatte Minahare' ('Go for it!') spirit and our role is to have a positive impact on the lives of our consumers, providing them with a responsible choice of great tasting drinks and inspiring them to lead more active lifestyles.

Health and Wellbeing

Lucozade Ribena Suntory is committed to having a positive impact on the lives of our consumers, providing them with a responsible choice of great tasting drinks and enabling them to lead more active lifestyles.

Since March 2018, all of our existing core and new drinks with added sugar contain less than 5g of sugar per 100ml (approximately a teaspoon) – and zero and reduced calorie alternatives are available for every brand. We have also introduced new lower-sugar and less sweet drinks such as Lucozade Sport FitWater, Lucozade Revive, True Nopal Cactus Water and Ribena Frusion. In total, **we have reduced sugar by 50% on average across our core range²** - removing 25,500 tonnes of sugar and 98.1bn calories - while still delivering great tasting drinks.

Alongside changes to our drinks, we **have invested £30 million over three years to help get the nation moving more**. We have so far inspired 1.5 million people to move more with our 'Made to Move' campaign, fronted by unified world heavyweight champion Anthony Joshua OBE.

LRS has also partnered with Active Communities Network (ACN) to **launch 'B Active' programmes in five cities with high levels of health inequality across the UK** – London, Newport, Belfast, Manchester and Hull. The programmes have been designed to help increase physical activity as well as improve the lifestyles and prospects of young people aged 16-24. They include youth-led activity programmes running five days a week, 50 weeks of the year and, in a collaboration with the Open College Network and 1st4Sport, ACN is offering volunteers a range of qualifications (including: enterprise, diversity & inclusion and developing community activities for youth at risk). Since its launch in 2018, nearly 8,000 young people have taken part in B Active – five times as many as originally expected. Nearly a fifth of these young people have volunteered in their local community, and almost 1,000 have gained vocationally-recognised qualifications.

Our Responsible Marketing Code

¹ 6.9% - EXT IRI Marketplace, GB, latest 52-week data ending 27.10.19

² Regular Lucozade Energy, Ribena and Orangina

We are committed to marketing our drinks responsibly and playing our part in helping consumers of all ages make informed choices. Our Responsible Marketing Code³ was created to shape the company's marketing behaviours, and goes above and beyond the UK industry standards. In particular:

- We do not directly market HFSS products to those under the age of 16.
- We do not advertise any products or target marketing communications to any children under 12 years of age. We will not sponsor events or celebrities that are likely to be of particular appeal to children under 12. Any sponsorship which appeals to 12-16 year olds must encourage physical activity and promote a balanced and healthy lifestyle.
- These rules apply online and offline, to television and all other forms of communication. They go further than those operated under UK legislation and the Committee of Advertising Practice.

In addition to compliance with laws and regulations, we require all our employees, partners and agencies to adhere to this code.

2. ENERGY DRINKS

The Scottish Government is currently proposing to “end the sale of energy drinks to children and young people”. Under European Commission Directive 2002/67/EC and EU Regulation 1169/2011, drinks that contain over 150mg of caffeine are considered “high caffeine” and should be labelled “High caffeine content. Not recommended for children or pregnant or breast-feeding women”⁴.

Throughout the Scottish Government's consultation document, the terms “high caffeine energy drinks” and “energy drinks” are used interchangeably. The Scottish Government needs to recognise that there are many energy drinks and energy brands that do not derive their “energy” provision from caffeine. We would urge caution going forward and ask that Government is clearer, particularly in any potential legislation, that it is referring to “high caffeine stimulant drinks”. Otherwise any interventions may unwittingly impact on the sale and reputation of other energy drinks and brands that are not high in caffeine.

Lucozade Energy

It is important to note that whilst Lucozade Energy is an energy brand, the brand's drinks are not high in caffeine⁵ so are not classed as “high caffeine” under current EU definitions. There is no functional benefit delivery from the level of caffeine in the drinks and, consequently, no ‘alertness’ claim on pack. Similarly, there is no requirement to include a high caffeine warning on pack.

In addition to the lower levels of caffeine, we have reduced the levels of sugar by more than 50%. All Lucozade Energy drinks now contain 4.5g of sugar or less per 100ml.

As Lucozade Energy beverages are not classed high in caffeine they have not been subject to retailer's voluntary sales bans to under-16s.

V Energy

V Energy is the only brand in the Lucozade Ribena Suntory portfolio that classifies as high in caffeine under the current EU definition of “high caffeine” and accounts for ████████ of the company's total Retail Sales

³ https://www.lrsuntory.com/dyn/_assets/_pdfs/lrsresponsiblemarketingcodeuk.pdf

⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011R1169&from=EN>

⁵ Lucozade Energy Original contains 124mg of caffeine per litre

Value⁶. Significantly, we reformulated V Energy to 4.5g of sugar per 100ml in March 2018 and we have not activated any consumer marketing support or activity for the brand in 2018 or 2019.

As V Energy is classed as high in caffeine, it has been subject to retailer's voluntary sales bans to under-16s.

BSDA Code of Practice

LRS fully complies with the British Soft Drinks Association's (BSDA) Code of Practice on drinks high in caffeine, which requires members not to undertake any marketing communications concerning high caffeine energy drinks in any media with an audience of which more than 25% is under-16 years of age. The Code also prohibits static outdoor advertising within 100 metres of schools and requires sampling activities are not aimed at or specifically appeal to under-16s⁷.

As we have already outlined, there has been no consumer marketing support or activity in the UK for our sole high caffeine beverage brand, V Energy, in 2018 or 2019.

3. EXECUTIVE SUMMARY

We welcome the Government's decision to introduce an under-16 sales ban for "high caffeine" beverages as defined by European Commission Directive 2002/67/EC. However, we are concerned that a potential sales ban may unwittingly impact energy brands and drinks not classified as high in caffeine. Lucozade Energy, Lucozade Revive and Lucozade Sport beverages are not high in caffeine and will therefore not be subject to the ban as currently proposed. However, there is a risk of retailers accidentally restricting their sale as well as misidentification by consumers.

Retailers have systems and processes in place to manage the sale of under-16 age restricted products such as Lottery tickets, petrol and spray paints. Under-16 bans for drinks high in caffeine are also already being effectively operated by large retailers and managed through staff training, point of sale information, EPOS and till system data, as well as Challenge 21 and Challenge 25 procedures.

However, smaller retailers may require additional support to become aware of the new legislation, the products that are covered, and any changes that may need to be made. Larger retailers will also require time to update their till systems and train staff. To ensure that energy brands and drinks not classed high in caffeine (such as Lucozade Energy, Lucozade Revive and Lucozade Sport) are not negatively impacted by the high caffeine stimulant drinks sales ban, **we would recommend the Scottish Government:**

- 1. Is clear in all legislation and future references to the ban that it is referring to 'high caffeine stimulant drinks'**. Governments are currently using the terms "high caffeine energy drinks" and "energy drinks" interchangeably which is aiding misunderstanding about what is being proposed.
- 2. Require manufacturers to place explicit labelling on the age restricted products** so small retailers and consumers are clear on what is and what is not included in the ban. High caffeine drinks already have the labelling 'High caffeine content. Not recommended for children or pregnant or breastfeeding women'. However, we believe that this wording should be strengthened and an age limit icon should be added to pack on a GB-wide basis empowering rapid choice at point of purchase.

⁶ IRI INT total market 52W to 27.10.19

⁷ <http://www.britishsoftdrinks.com/position-statements/energy-drinks>

- 3. Publish guidance to further support retailers** (particularly small and medium sized retailers) in implementing the ban. This could include providing an indicative list of products that are subject to the sales ban, as well as clear guidance on how to identify products subject to the ban.
- 4. Introduce an implementation period** in order for retailers to understand and adhere to the sales ban. Government should engage closely with retailers and relevant trade bodies to understand how long is required, but we would envisage a minimum of 12 months. This would also be a sufficient time frame for on-pack labelling changes.

In order to minimise consumer and retailer confusion, we also firmly believe any high caffeine stimulant drinks sales ban should be delivered on a GB-wide basis through co-ordination of regulation between Scotland, England and Wales.

Separate regimes across GB will present a significant and unnecessary burden on businesses by fracturing the single market economy we operate in. The financial cost of having to differentiate Scottish SKUs in terms of manufacture, packaging and labelling, transport, warehousing and distribution would be significant and would place huge administrative and resource requirements on business. Separate schemes across GB could prompt decisions on whether to reduce the number of SKUs for individual markets, with a resulting impact on consumer choice.

4. ENDING THE SALE OF ENERGY DRINKS TO CHILDREN AND YOUNG PEOPLE

Q1. Should sales of energy drinks to young people under the age of 16 be banned?

We welcome the Government's decision to introduce an under-16 sales ban for "high caffeine" beverages as defined by European Commission Directive 2002/67/EC.

We remain committed to the responsible sale of high caffeine stimulant drinks. V Energy is the only brand in our portfolio that will be subject to such a sales ban. Given our pre-existing efforts to ensure it does not appeal to under-16s, both through our Responsible Marketing Code and adherence to UNESDA and BSDA's codes of practice, we welcome the clarity the Scottish Government's approach brings for both manufacturers and retailers.

We believe such a ban for under 16s is practical as retailers already have systems and processes in place to manage the sale of under-16 age restricted products such as Lottery tickets, petrol and spray paints. Under-16 bans for high caffeine stimulant drinks are also already being effectively operated by large retailers and managed through staff training, point of sale information, EPOS and till system data, as well as Challenge 21 and Challenge 25 procedures. However, we understand that smaller retailers may require some additional support to become aware of the new legislation, the products that are covered, and any changes that may need to be made.

We would be concerned if the ban was expanded to include under-18s, as we believe this would unfairly put such drinks in the same category as products which cause harm, namely alcohol and tobacco. This would contradict current medical advice and has the potential of trivialising the harms associated with alcohol and tobacco.

Q2. If implemented, are there any places where energy drinks are currently sold, that should be exempt from mandatory age restrictions?

If a prohibition on sales of high caffeine stimulant drinks to under-16s is introduced it should, logically, apply to all retailers in order to ensure a level playing field. We do however acknowledge complexities around

vending machines, and believe work needs to be undertaken to understand how to prevent under-16s from being able to access these drinks whilst at the same time not limiting choice for anyone above the age limit. We believe the Automatic Vending Association is best placed to advise on this point.

Q.3 Please comment on our proposals for enforcing any requirements that are implemented. Please include any practical issues that we should consider to ensure that the enforcement of any policy implementation is done fairly and is not overly burdensome.

Our main concern is that a potential sales ban may unwittingly impact energy brands and drinks not classified as high in caffeine. Lucozade Energy, Lucozade Revive and Lucozade Sport beverages are not high in caffeine and will therefore not be subject to the ban as currently proposed. However, there is a risk of retailers accidentally restricting their sale as well as misidentification by consumers.

This is particularly the case with smaller retailers, who may require additional support to become aware of the new legislation, the products that are covered, and any changes that may need to be made. Even larger retailers will require time to update their till systems and train staff.

To ensure that energy brands and drinks not classed high in caffeine (such as Lucozade Energy, Lucozade Revive and Lucozade Sport) are not negatively impacted by the high caffeine stimulant drinks sales ban, we would recommend the Scottish Government:

1. Is clear in all legislation and future references to the ban that it is referring to 'high caffeine stimulant drinks'. Governments are currently using the terms "high caffeine energy drinks" and "energy drinks" interchangeably which is aiding misunderstanding about what is being proposed.
2. Require manufacturers to place explicit labelling on the age restricted products so small retailers and consumers are clear on what is and what is not included in the ban. High caffeine drinks already have the labelling 'High caffeine content. Not recommended for children or pregnant or breastfeeding women'. However, we believe that this wording should be strengthened and an age limit icon should be added to pack on a GB-wide basis empowering rapid choice at point of purchase.
3. Publish guidance to further support retailers (particularly small and medium sized retailers) in implementing the ban. This could include providing an indicative list of products that are subject to the sales ban, as well as clear guidance on how to identify products subject to the ban.
4. Introduce an implementation period in order for retailers to understand and adhere to the sales ban. Government should engage closely with retailers and relevant trade bodies to understand how long is required, but we would envisage a minimum of 12 months. This would also be a sufficient time frame for on-pack labelling changes.

We broadly support the enforcement measures set out in the consultation document, however would add that any enforcement policy must fully recognise the above risks, to ensure that products out of scope are not inadvertently included in a ban by retailers.

We would stress our view that the Scottish Government should work as closely as possible with the UK and Welsh Governments on the implementation and enforcement of any ban, in order to minimise consumer confusion and any unnecessary regulatory burdens.

Q4. Please comment on our proposals for evaluating any policies that are implemented.

We believe monitoring should include a review of the extent to which any drinks not high in caffeine are inadvertently included in the ban by retailers. Additional guidance and support for retailers may be necessary should monitoring identify this as an issue.

More broadly, the other areas identified by the Scottish Government for monitoring appear appropriate.

Q7. What, if any, impact do you think applying mandatory age restrictions to sales of energy drinks would have on businesses? Please include any anticipated differential impacts, positive and negative, on sellers, distributors and manufacturers of energy drinks.

V Energy is the only brand in the Lucozade Ribena Suntory portfolio that classifies as high in caffeine under the current EU definition of “high caffeine” and accounts for ██████ of LRS total sales⁸. Significantly, we reformulated V Energy to 4.5g of sugar per 100ml in March 2018 and we have not activated any consumer marketing support or activity for the brand in 2018 or 2019.

Given our efforts to ensure it does not appeal to under-16s, both through our Responsible Marketing Code and adherence to UNESDA and BSDA’s codes of practice, we do not believe the sales ban will have an impact on the brand.

As noted in our response to question 3, our main concern is that a potential ban may unwittingly impact energy brands and drinks not classified as high in caffeine, such as Lucozade Energy, Lucozade Revive and Lucozade Sport, and may accidentally result in them being included in the sales restrictions by retailers.

Q9. Please outline any other comments you wish to make.

We would urge the Scottish Government to work as closely as possible with the UK and Welsh Governments on the implementation of any ban.

Any ban should be delivered on a GB-wide basis through coordination of regulation of high caffeine stimulant drinks between Scotland, England and Wales. Separate regimes across GB will present a significant and unnecessary burden on businesses by fracturing the single market economy we operate in. The financial cost of having to differentiate Scottish SKUs in terms of manufacture, packaging and labelling, transport, warehousing and distribution would be significant and would place huge administrative and resource requirements on business. Separate schemes across GB could prompt decisions on whether to reduce the number of SKUs for individual markets, with a resulting impact on consumer choice. They also run the risk of increased consumer confusion, should rules differ between the nations of the UK.

5. FURTHER INFORMATION

If, during the course of this consultation, officials would find it useful, we would be happy to meet and work directly in order to provide any further information that may be helpful. Please contact:

████████ Senior Public Affairs Manager

████████ [@lrsuntory.com](mailto:████████@lrsuntory.com) | ██████████

⁸ IRI INT total market 52W to 27.10.19