



December 12, 2022

VIA EMAIL

Samuel A.A. Levine, Director
Bureau of Consumer Protection
Federal Trade Commission
slevine1@ftc.gov

Ann Oxenham, Director
Office of Compliance, CFSAN
U.S. Food and Drug Administration
ann.oxenham@fda.hhs.gov

Serena Viswanathan, Associate Director
Bureau of Consumer Protection
Federal Trade Commission
sviswanathan@ftc.gov

Cara Welch, Ph.D., Director
Office of Dietary Supplement Programs, CFSAN
U.S. Food and Drug Administration
cara.welch@fda.hhs.gov

Michael Rogers, MS, Director
Office of Human and Animal Food
Operations, ORA
U.S. Food and Drug Administration
michael.rogers@fda.hhs.gov

Steven Tave, Director
Office of Strategic Planning and Operational
Policy, ORA
U.S. Food and Drug Administration
steven.tave@fda.hhs.gov

Re: Deceptive Marketing Campaign for Ghost Energy Drinks and Supplements

Dear FTC and FDA Officials:

We write to you on behalf of Truth in Advertising, Inc. (“TINA.org”)¹ and the UConn Rudd Center for Food Policy & Health (the “Rudd Center”)² regarding numerous deceptive and unfair marketing practices used by Ghost, LLC (“Ghost”), a Nevada-based company that sells energy drinks and supplements.

Specifically, our investigation has found that Ghost:

- markets adult energy drinks and supplements to children despite the fact that the products are not intended for minors and may, in fact, be harmful to them;
- fails to clearly and conspicuously disclose that the products are only intended to be consumed by healthy adults;
- makes unsubstantiated and unapproved health claims about its products, including claims that various products provide “epic focus,” “hormone balance” and help with “anxiety”; and
- uses deceptive social media influencer marketing that fails to adequately disclose the influencers’ material connections to the company.

TINA.org and the Rudd Center sent a letter to Ghost on December 2, 2022 outlining these unfair and deceptive marketing practices.³ Unfortunately, the company has failed to take the necessary steps to rectify its packaging and marketing issues since receiving our letter.⁴

Each of Ghost's unfair and deceptive marketing practices are explained more fully below.

Background: What is Ghost?

Ghost, or Ghost Lifestyle (a name the company uses to help differentiate itself from other "Ghost" entities), was founded in 2016 by Dan Lourenco and Ryan Hughes.⁵ The company sells numerous supplements and energy drinks online and, in grocery stores, convenience stores, and vitamin stores through a distribution agreement it has with Anheuser-Busch InBev SA/NV.⁶ Ghost also partners with Mondelez International and Impact Confections Inc. to sell various candy-flavored products.⁷ The company's marketing, which targets minors, video gamers, and fitness enthusiasts, among others, is primarily comprised of online advertising,⁸ social media influencer marketing,⁹ and various promotional sponsorships.

Ghost's Unfair and Deceptive Marketing Practices

Ghost is engaged in a multifaceted deceptive marketing campaign that has continued unfettered even after being put on notice of its legal violations.

I. Child-Friendly Marketing For Adult-Only Products

Not only is Ghost advertising and packaging its energy drinks and supplements in a manner that appeals to children but it is also targeting children with its kid-friendly marketing. At the same time, minors that see Ghost's marketing on social media, gaming platforms or on the company's website are never informed that these products are only intended for healthy adults who have consulted with a healthcare professional and that the products may cause them harm.

A. Blurring the Distinction Between Child and Adult Products

Ghost currently advertises five candy-inspired energy drinks: Swedish Fish, Sour Patch Kids Redberry, Sour Patch Kids Blue Raspberry, Warheads Sour Watermelon, and Bubblicious Strawberry Splash (in addition to generic flavors Citrus, Tropical Mango, and Orange Cream).¹⁰

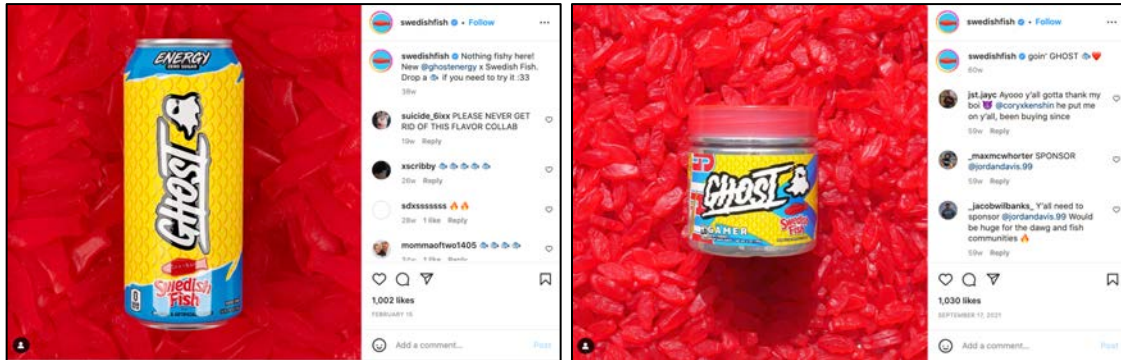
Ghost also advertises various candy-flavored supplements, as well as Welch’s Grape.¹¹

Not only do these products smell and taste like the corresponding candies but the packaging of these products mimic the packaging for the candy.¹² (And to increase the appeal of Ghost’s Swedish Fish energy drink, the can provides the tactile feel of fish scales.)

Candy Energy drink Supplement Candy Energy drink Supplement

Soda and candy Energy drink Supplement Candy Energy drink Supplement

Ghost’s look-a-like products capitalize on these candies’ established branding, which is recognizable and wildly popular with children.¹³ The distinction between the candy products and the Ghost products is further blurred by the fact that Mondelez International integrates the marketing of Ghost products with its candies on its own social media channels, again with no disclosure that the products are not appropriate for minors.¹⁴



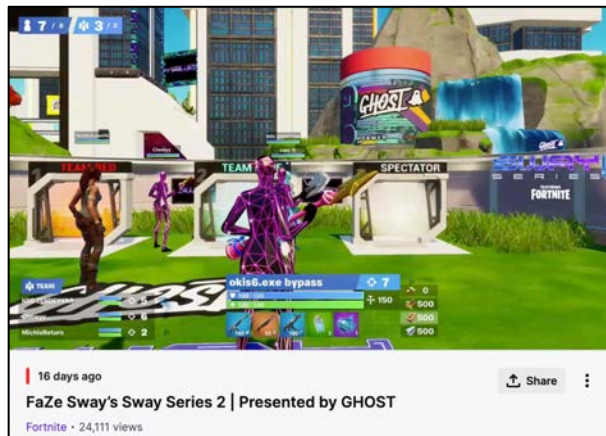
But Ghost doesn’t stop at labeling and flavoring; the company also engages in a multifaceted deceptive marketing campaign specifically directed at minors.

B. Targeting Minors with Ghost’s Marketing

Ghost sponsors and partners with various youth-focused entities and influencers to promote its candy-inspired products to children.

i. Ghost’s partnership with FaZe Clan

Ghost’s partnership with esports and gaming platform FaZe Clan, Inc., in the company’s own words, is “rooted in gaming and youth culture.”¹⁵ The self-described “youth-focused”¹⁶ gaming platform with a following of more than 350 million consumers¹⁷ is so popular among minors that sources report one in five American boys aged 13-17 support FaZe Clan, more than any traditional sports team.¹⁸ And according to a press release published on the Ghost website, the goal of its partnership with FaZe Clan is “to propel GHOST as a household name within gaming and youth culture.”¹⁹



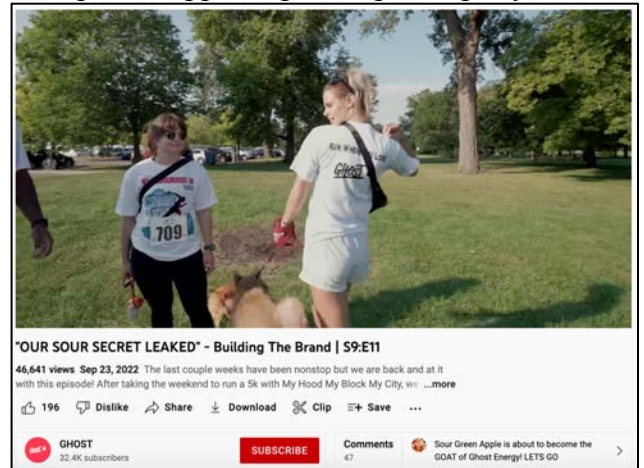
ii. Ghost's sponsorships of youth organizations

Ghost also sponsors various youth organizations, including providing “goods” to a high school football team comprised of more than two dozen freshmen and sophomore students²⁰ and a nonprofit supporting underprivileged youth.²¹

Ghost sponsorship of a high school football team



Ghost sponsorship of a 5K race for a nonprofit supporting underprivileged youth



iii. Ghost's use of kid-friendly influencers

In addition, Ghost uses social media influencers who promote kid-friendly products to market the Ghost brand, and its energy drinks and supplements.

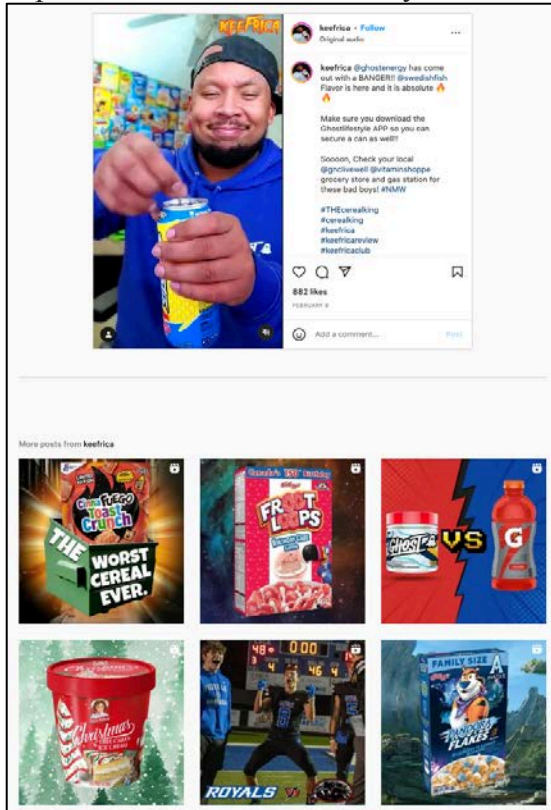
Ghost-sponsored gamer playing Disney Dreamlight Valley, an all-ages game²²



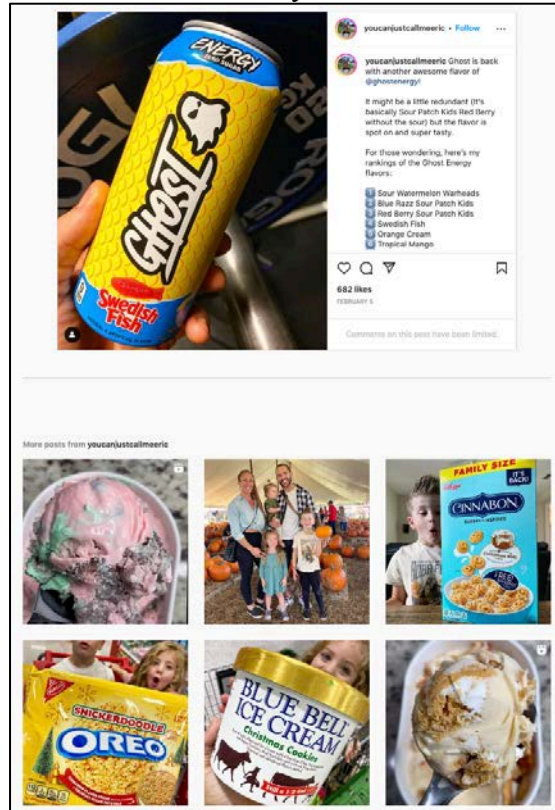
Ghost-sponsored gamer playing teen game Apex Legends²³



Ghost influencer Keefrica, aka THE Cereal King™²⁴, who also promotes various kid-friendly foods²⁵



Ghost influencer and “Family Man,” Eric Koenreich, who also promotes various kid-friendly foods²⁶



A sampling of Ghost’s child-directed and kid-friendly marketing is available at www.truthinadvertising.org/evidence/ghost-kid-friendly-marketing/.

C. Ghost’s Adult Products May be Harmful to Children

While Ghost readily admits that its products are inappropriate for minors and even cautions that adults should not consume these products without first consulting a healthcare professional, the company’s kid-friendly branding and marketing completely lack any clear and conspicuous information or warning that its products should not be consumed by children. In fact, the sole place the company discloses this material information is in illegible fine print inconspicuously placed on its energy drink cans and supplement containers.²⁷



“CAUTION: THIS PRODUCT IS ONLY INTENDED FOR HEALTHY ADULTS, 18 YEARS OF AGE OR OLDER. DO NOT CONSUME IF YOU ARE SENSITIVE TO CAFFEINE, OR IN COMBINATION WITH CAFFEINE OR STIMULANTS FROM OTHER SOURCES. TOO MUCH CAFFEINE MAY CAUSE NERVOUSNESS, IRRITABILITY, SLEEPLESSNESS, AND OCCASIONALLY, RAPID HEART RATE. NOT FOR USE BY WOMEN WHO ARE PREGNANT, NURSING, OR TRYING TO BECOME PREGNANT. CONSULT A LICENSED, QUALIFIED HEALTHCARE PROFESSIONAL BEFORE CONSUMING THIS PRODUCT. DO NOT USE IF YOU ARE TAKING ANY PRESCRIPTION DRUG AND/OR HAVE ANY MEDICAL CONDITION.”



WARNING: THIS PRODUCT IS ONLY INTENDED FOR HEALTHY ADULTS. DO NOT EXCEED RECOMMENDATIONS FOR SUGGESTED USE. Before using this product, consult a licensed, qualified healthcare professional, especially if: you are taking any prescription or over-the-counter medications or other dietary supplements, or if you have, or have been treated for, diagnosed with or have a family history of, any medical condition. Immediately discontinue use and consult a licensed, qualified healthcare professional if you experience any adverse reaction to this product....”

And there is good reason for Ghost's admission. With respect to energy drinks, consumption of such products has been linked to a number of negative health consequences for minors, including risk-seeking behaviors, poor mental health, adverse cardiovascular effects, and metabolic, renal, and dental conditions,²⁸ and in severe cases, energy drinks have led to death when rapidly consumed by young people or in conjunction with other products containing caffeine.²⁹ (Of note, one can of Ghost Energy contains 200 mg of "Natural Caffeine," among other ingredients. According to experts, children between the ages of 12 and 17 should have less than 100 mg of caffeine per day, as caffeine on its own can cause negative health effects including, among other things, anxiety, high blood pressure, increased heart rate, insomnia, heart palpitations, and behavioral issues.³⁰) As such, the American Academy of Pediatrics has stated that "rigorous review and analysis of the literature reveal that caffeine and other stimulant substances contained in energy drinks have no place in the diet of children and adolescents,"³¹ and the American Medical Association adopted a policy supporting a ban on the marketing of energy drinks to children under the age of 18.³²

Less is known about the dangers associated with performance-enhancing supplements, partly because of the varied ingredients, the common use of proprietary blends, and the paucity of long-term safety data.³³ That said, certain ingredients used in Ghost supplements have been associated with negative health consequences and recommendations from experts that children should avoid consumption. For example, creatine, which is in Ghost's Muscle Builder supplements, is a substance that the American Academy of Pediatrics and the American College of Sports Medicine state should not be consumed by those under the age of 18.³⁴

While using candy flavoring for adult-only products is not illegal, branding such products to mimic popular candy wrappers and targeting minors with the marketing of these candy-inspired products is deceptive and unfair.³⁵ Moreover, the serious and potentially dangerous issues associated with Ghost's branding and advertising tactics are exacerbated because Ghost fails to clearly and conspicuously disclose in any of the company's marketing materials or on its products that these products are only intended for healthy adults after they have consulted a healthcare professional.³⁶ Ghost's epic failure to prevent unwarranted health and safety risks to children renders the company's marketing unfair, deceptive, and in violation of Section 5 of the FTC Act, 15 U.S.C. § 45.

II. Ghost's Use of Illegal Health Claims to Market its Energy Drink

Throughout its marketing materials, Ghost deceptively advertises its energy drinks and supplements as providing specific health benefits without the requisite substantiation or FDA approval.

With respect to its energy drinks, Ghost tells consumers that they provide mental focus and a boost to cognitive functioning.³⁷


Ghost Website

FULLY TRANSPARENT ENERGY


No sugar. No artificial colors. No BS. GHOST® ENERGY is the first full disclosure energy drink that delivers on efficacy and the info to ensure you know exactly what you're getting in every can. Combining 200mg of natural caffeine with brain-boosting nootropics to deliver the perfect combo of energy and focus.

- GHOST® Full Disclosure Label
- 200mg Natural Caffeine
- 1000mg Carnipure® L-Carnitine
- 150mg Alpha-GPC
- 100mg NeuroFactor™
- 25mg AstraGin®


COMPLETE PERFORMANCE




LEGENDARY ENERGY



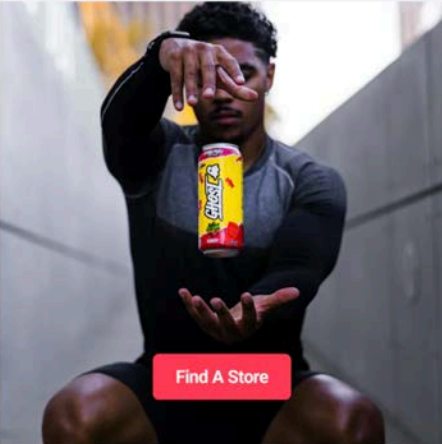
EPIC FOCUS



ZERO SUGARS



NO ARTIFICIAL COLORS



Find A Store

Amazon.com





LEGENDARY ENERGY



EPIC FOCUS



ZERO SUGARS



NO ARTIFICIAL COLORS



GHOST ENERGY is the first full disclosure energy drink that delivers on efficacy, combining natural caffeine with brain-boosting nootropics for the perfect combo of energy and focus.

FEEL GOOD ENERGY



See products

COMPLETE PERFORMANCE



LEGENDARY ENERGY



EPIC FOCUS

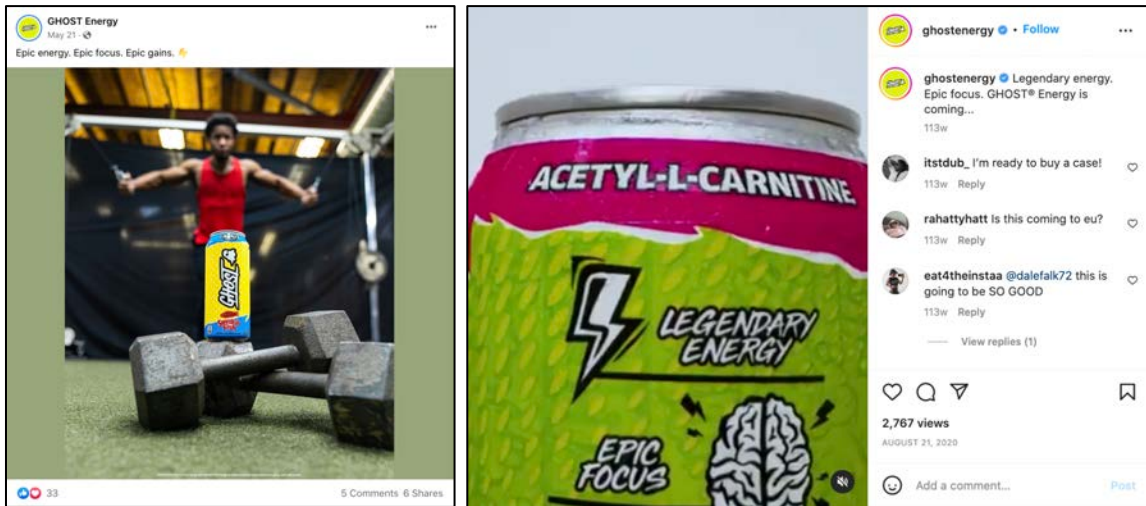


ZERO SUGARS



NO ARTIFICIAL COLORS

Social Media³⁸



Product Packaging



With respect to its supplements, Ghost tells consumers that the products can, among other things, boost cognitive performance, attention, and focus, as well as balance hormones and reduce anxiety.

Examples of Focus Claims³⁹

LIFE'S A GAME
Use GHOST® GAMER for

GAMING WORK
STUDY EPIC FOCUS*

*This statement has not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure, or prevent any disease.

MORE ENERGY. MORE PUMPS. MORE FOCUS.

GHOST LEGEND® WAS CONCEIVED TO POWER LEGENDARY IN ALL OF ITS FORMS.

Examples of Hormone Balance Claims⁴⁰

RADIANCE* COMPLEXION* HORMONAL BALANCE* DETOX* ANTIOXIDANTS*

LET THE GLOW UP BEGIN

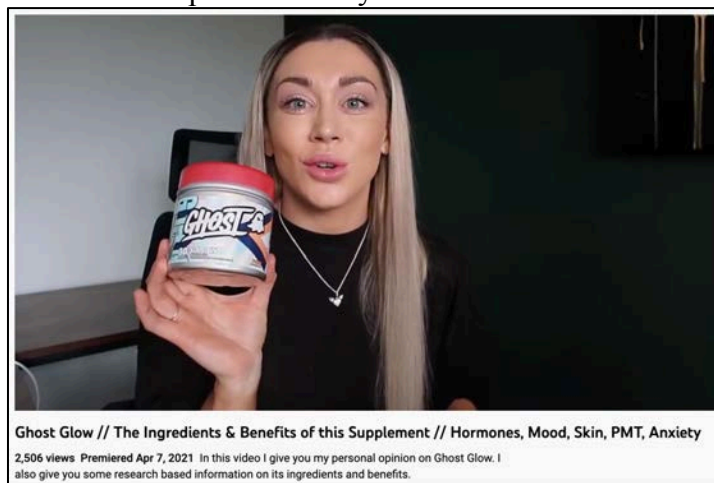
Your skin is a direct representation of your body's ability to combat stress, manage your diet (we all love a good physique destroyer), balance hormones and tolerate the environment, so it's about time you showed it some love... Introducing GHOST® GLOW, the badass skin-boosting, detoxifying powerhouse formulated to keep you feeling 100 inside and out. Let the GLOW UP begin!

- GHOST® Full Disclosure Label
- 250MG Asthion™
- 250MG Setria® L-Glutathione
- 4000MG Inositol

COMPLETE PERFORMANCE

RADIANCE COMPLEXION HORMONAL BALANCE DETOX ANTIOXIDANTS

Example of Anxiety Treatment Claim⁴¹



“[Ghost influencer:⁴²] I’ve done quite a bit of research into this product and its ingredients so hopefully that’s also a little bit helpful. So the product I’m going to be talking about is Ghost Glow. There are a couple of ingredients in here, which are not just for skin but also help anxiety, stress, sleep, cognitive function, etc.”

A sampling of Ghost’s unsubstantiated health claims is available at www.truthinadvertising.org/evidence/ghost-health-claims/.

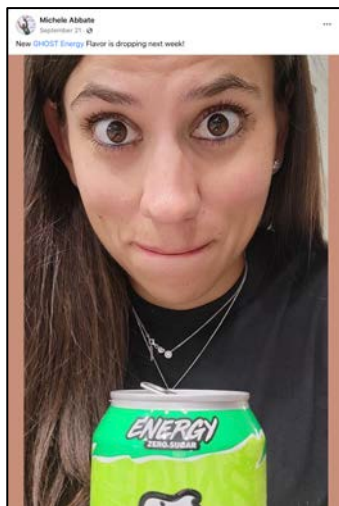
While certain individual ingredients in Ghost products have been the subject of studies, neither TINA.org nor the Rudd Center are aware of any competent and reliable scientific studies showing that Ghost’s specific formulations and dosages provide the advertised benefits to its target audience.⁴³ And indeed Ghost does not provide any such substantiation to consumers.

In short, claims that a product can improve cognitive function, enhance mental focus, balance hormones, and treat anxiety require substantiation in the form of competent and reliable scientific evidence,⁴⁴ as well as prior FDA approval,⁴⁵ neither of which Ghost has. As such, Ghost’s health claims violate sections 5 and 12 of the FTC Act, 15 U.S.C. §§ 45 and 52, as well as sections 301(d) and 505(a) of the FD&C Act, 21 U.S.C. §§ 331(d) and 355(a).

III. Ghost’s Failure to Ensure Its Influencers Properly Disclose Their Material Connections

Ghost uses a fleet of influencers to promote its products, including its energy drinks, on various social media platforms but fails to ensure that these influencers clearly and conspicuously disclose that the promotional posts are ads, in violation of FTC law.⁴⁶

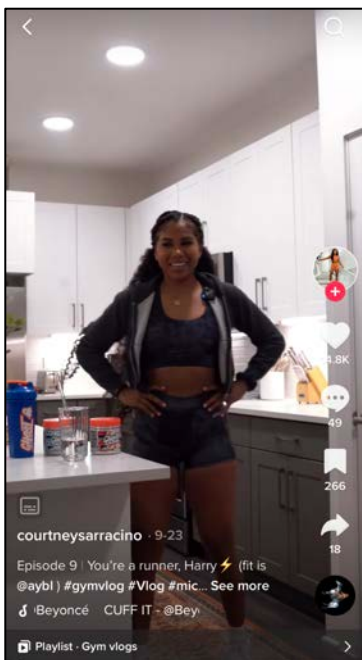
Facebook⁴⁷



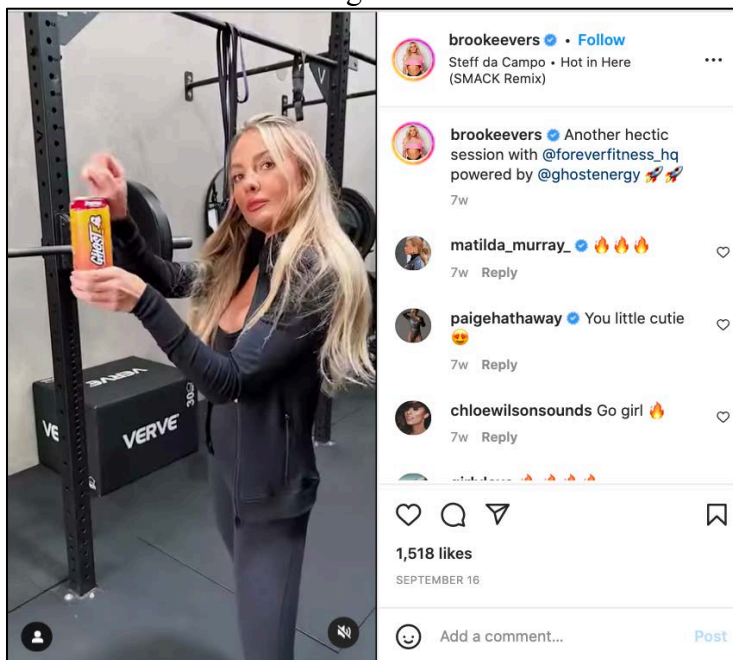
Twitter⁴⁸



TikTok⁴⁹



Instagram⁵⁰



TINA.org has catalogued a sampling of more than 50 social media influencer posts that deceptively advertise Ghost Energy products, all of which are available at www.truthinadvertising.org/evidence/ghost-influencer-database/.

Conclusion

Ghost would not be targeting children with its unfair and deceptive marketing were it not economically advantageous for the company to do so.⁵¹ Unfortunately, such marketing not only impacts purchasing decisions, but there are also possible serious harms resulting from minors consuming Ghost products. As a well-established company with the backing and support of industry giants such as Mondelez International and Anheuser-Busch

InBev, there is simply no excuse for Ghost’s multiple violations of the law. TINA.org and the Rudd Center urge the FTC and FDA to open investigations into Ghost and take appropriate enforcement action.

If you have any questions, please do not hesitate to contact Laura Smith, Legal Director at TINA.org, directly at lsmith@tina.org or (203) 421-6210.

Sincerely,

Truth in Advertising, Inc.

UConn Rudd Center for Food Policy & Health

Cc via email: Dan Lourenco, CEO, Co-Founder, Ghost, LLC
Ryan Hughes, CMO, Co-Founder, Ghost, LLC
Laura Stein, General Counsel, Mondelez International Group
Impact Confections
Katherine Barrett, General Counsel, AB InBev

¹ TINA.org is a nonprofit consumer advocacy organization dedicated to protecting consumers from deceptive advertising.

² Rudd Center research documents and analyzes food and beverage company marketing tactics and informs policy efforts to reduce unhealthy food marketing affecting youth and their families.

³ See December 2, 2022 letter to Ghost, https://truthinadvertising.org/wp-content/uploads/2022/12/12_2_22-Ghost_Warning-Letter.pdf.

⁴ Such practices also run counter to established industry practices. See American Beverage Association’s Guidance for the Responsible Labeling and Marketing of Energy Drinks, <https://www.ameribev.org/files/resources/2014-energy-drinks-guidance-approved-by-bod-43020.pdf>.

⁵ Ghost Story, <https://www.ghostlifestyle.com/pages/ghost-story>.

⁶ Ghost Energy, <https://ghostenergy.com/>; Securities and Exchange Commission, Form 20-F Anheuser-Busch InBev SA/NV, fiscal year ending December 31, 2021, <https://www.sec.gov/Archives/edgar/data/1668717/000119312522079594/d301591d20f.htm>. See also E.J. Schultz, Behind the Rise of Ghost Energy Drink: How Ghost injected fun into the nutritional supplement category and what it is doing to push its new energy drink business with help from AB InBev, Sep. 14, 2022, [https://adage.com/article/podcast-marketers-brief/ghost-energy-drink-marketing-strategy/2428866#:~:text=The%20meeting%20with%20Whitworth%20was,Kroger%2C%20GNC%20and%20Circle%20K](https://adage.com/article/podcast-marketers-brief/ghost-energy-drink-marketing-strategy/2428866#:~:text=The%20meeting%20with%20Whitworth%20was,Kroger%2C%20GNC%20and%20Circle%20K;); Power Plays: The Concept of an “Energy Drink” is Evolving, and Brands are Eager to Change with the Times, May 16, 2022,

<https://www.bevnet.com/magazine/issue/2022/power-plays-the-concept-of-an-energy-drink-is-evolving-and-brands-are-eager-to-change-with-the-times/>.

⁷ Ghost Energy, <https://ghostenergy.com/>.

⁸ Ghost Instagram page, <https://www.instagram.com/ghostlifestyle/?hl=en>; Ghost Facebook page, <https://www.facebook.com/ghostlifestyle/>; Ghost Twitter page, <https://twitter.com/ghostlifestyle?lang=en>; Ghost YouTube channel, <https://www.youtube.com/channel/UC0j1mZixvnXuBzTrcLy5joQ>.

⁹ Ghost, Meet the Family, <https://www.ghostlifestyle.com/blogs/meet-the-family>.

¹⁰ Ghost Lifestyle Energy, <https://www.ghostlifestyle.com/pages/ghost-energy>; Ghost Energy, <https://ghostenergy.com/>.

¹¹ Ghost Supplements, <https://www.ghostlifestyle.com/collections/supplements>.

Ghost also sells a Ghost Gamer supplement that it specifically markets to video gamers. *See, e.g.,* Ghost Gamer, <https://www.ghostlifestyle.com/products/ghost-gamer?variant=32034412724298>; Ghost Gamer August 12, 2022 Instagram post, <https://www.instagram.com/p/ChKOPaKOUuNO/>; Ghost Gamer September 12, 2022 Instagram post, https://www.instagram.com/p/Cia_yM_perd/.



And earlier this year, Ghost partnered with Nickelodeon to create a Teenage Mutant Ninja Turtle supplement product line. Ghost Lifestyle, Teenage Mutant Ninja Turtles, <https://www.ghostlifestyle.com/pages/teenage-mutant-ninja-turtles>.

¹² *See, e.g.,* Ghost Swedish Fish Energy Drink Review. Does it REALLY taste like Swedish Fish?, CaffeineMan, YouTube, Feb. 6, 2022, <https://www.youtube.com/watch?v=gPzwkVsTI0U> (“that is Swedish Fish in a can”); REVIEW: GHOST Energy Drink (Sour Patch Kids RedBerry and Blue Raspberry, WarHeads Sour Watermelon, WarHeads Sour Green Apple, Strawbango Margarita, Swedish Fish, Orange Cream, Citrus, Tropical Mango), Nov. 23, 2020, <https://seansskillet.com/2020/11/23/review-ghost-energy-drink-sour-patch-kids-redberry-warheads-sour-watermelon-citrus-tropical-mango/> (“...this one carries that distinct RedBerry flavor that’s so accurate I can sense the squish digging into my molars.”); GHOST ENERGY Sugar-Free Energy Drink, Customer reviews, https://www.amazon.com/product-reviews/B09YG6LN3W/ref=pd_sbs_cr_sccl_3_3/000-0000000-0000000?pd_rd_w=

[JW5Mi&pf_rd_p=44b0dc04-f99a-4419-a406-9567d0fa03fe&pf_rd_r=XRJ31AZR0J31XH2QE7XA&pd_rd_r=b25a2c54-e833-4607-8b44-62659cf8cac0&pd_rd_wg=Gmql&pd_rd_i=B09YG6LN3W](https://www.instagram.com/p/CZmVf3qujGk/?hl=en) (“I cannot believe how the Swedish Fish tastes EXACTLY like a Swedish Fish”); youcanjustcallmeeric Feb. 5, 2022 Instagram post, <https://www.instagram.com/p/CZmVf3qujGk/?hl=en> (“...the flavor is spot on and super tasty.”)

¹³ See, e.g., May 1, 2018 Warning Letter to Drip More LLC, <https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/drip-more-llc-548401-05012018> (“Candy King Batch e-liquid packaging resembles that for Sour Patch Kids, a candy brand that is very popular with young children.”); May 1, 2018 Warning Letter to Ultimate Vape Deals, <https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/ultimate-vape-deals-05012018> (“WarHeads candies are especially popular with children and its advertising and marketing on Facebook and other social media platforms is targeted to children.”)

In fact, Mondelez International (owner of Sour Patch Kids, Swedish Fish, and Bubblicious) and Impact Confections Inc. (owner of Warheads), both of whom are receiving a copy of this letter, specifically target children and teens with their marketing by, among other things, entering into partnerships with venues frequented by children, advertising on social media platforms popular among children and teens, and using kid imagery in ads. See, e.g., Swedish Fish Doubles their Aquarium Partnerships for a Family Friendly Sampling Campaign, June 3, 2019, <https://www.allioncegroup.com/event-marketer-swedish-fish/> (“The [Swedish Fish] brand first doubled the number of aquarium partnerships, broadening its outreach toward millennial parents with young children—its target market for the campaign.”); Sour Patch Kids targets Gen Z in new campaign with Twitch, June 13, 2022, <https://www.thedrum.com/news/2022/06/13/sour-patch-kids-targets-gen-z-new-campaign-with-twitch> (“Both collaborations are geared towards introducing Sour Patch candy to Gen Z, a demographic that makes up a majority of Twitch’s estimated 31 million users.”); Sour Patch Kids: The Sweet Side of Effective Marketing, <https://sites.psu.edu/sarahholloway27/2016/04/11/sour-patch-kids-the-sweet-side-of-effective-marketing/> (indicating that a target market for Mondelez’s Sour Patch Kids is teenagers); Warheads: The perfect balance of sweet and sour, <https://www.slingshot.com/work/warheads> (“To build awareness around the new, sweeter offering we introduced our teen market to Sweet and Sour Tooth.”); Sour Patch Kids Oct. 31, 2022 TikTok post, https://www.tiktok.com/@therealsourpatchkids/video/7160803347572772138?is_copy_url=1&is_from_webapp=v1&lang=en; Warheads Oct. 11, 2021 TikTok post, https://www.tiktok.com/@warheadscandy/video/7017959663220034822?is_copy_url=1&is_from_webapp=v1&item_id=7017959663220034822&lang=en; Sour Patch Kids Mar. 28, 2022 TikTok post, https://www.tiktok.com/@therealsourpatchkids/video/7080263008286412075?is_copy_url=1&is_from_webapp=v1&item_id=7080263008286412075&lang=en; Sour Patch Kids Sep. 7, 2022 post, https://www.instagram.com/p/CiOU_oVMk4e/?hl=en; Swedish Fish Feb. 26, 2021 post, <https://www.instagram.com/p/CLxPyrhApHx/?hl=en>; Swedish Fish Sep. 14, 2022 post, <https://www.instagram.com/p/CigRIDTrZ0e/>; Warheads Mar. 10, 2021 post, <https://www.instagram.com/p/CMQe7WrnxuI/?hl=en>.

¹⁴ See e.g., Swedish Fish Feb. 15, 2022 post, <https://www.instagram.com/p/CaAdXMeLUNr/?hl=en>; Swedish Fish Sep. 28, 2021 post, <https://www.instagram.com/p/CUYQYk3vFJ4/?hl=en>; Swedish Fish Sep. 17, 2021 post, <https://www.instagram.com/p/CT8AEs1PoSt/?hl=en>.

¹⁵ FaZe Clan | Ghost, Brand News, May 5, 2022, <https://www.ghostlifestyle.com/blogs/ghost-hq/ghost-x-faze-clan>. *See also* FaZe Clan and Ghost Announce Multi-Year Partnership, May 5, 2022, <https://www.prnewswire.com/news-releases/faze-clan-and-ghost-announce-multi-year-partnership-301541057.html>; Investor Presentation, July 2022, https://www.sec.gov/Archives/edgar/data/1839360/000121390022038688/ea162732ex99-1_briley150.htm.

¹⁶ FaZe Clan, A Leading Gaming, Lifestyle and Media Platform, to Become a Publicly Listed Company Through Merger with B. Riley Principal 150 Merger Corp., Oct. 25, 2021, <https://fazeclan.com/public/>. *See also* Youth-Focused Digital Platform FaZe Clan Inks \$1 Billion SPAC Deal to Go Public, Oct. 25, 2021, <https://www.wsj.com/articles/youth-focused-digital-platform-faze-clan-nears-1-billion-spac-deal-to-go-public-11635154201>; FaZe Clan goes public as first esports and gamer lifestyle brand on Nasdaq, July 20, 2022, <https://venturebeat.com/games/faze-clan-goes-public-as-first-esports-and-gamer-lifestyle-brand-on-nasdaq/>.

¹⁷ FaZe Clan, A Leading Gaming, Lifestyle and Media Platform, to Become a Publicly Listed Company Through Merger with B. Riley Principal 150 Merger Corp., Oct. 25, 2021, <https://fazeclan.com/public/>.

¹⁸ FaZe Clan followed by more US teen males than any traditional sports team, Dec. 23, 2021, <https://gamelevate.com/faze-clan-followed-by-more-teen-males/>.

¹⁹ FaZe Clan | Ghost, Brand News, May 5, 2022, <https://www.ghostlifestyle.com/blogs/ghost-hq/ghost-x-faze-clan>. *See also* FaZe Clan and Ghost Announce Multi-Year Partnership, May 5, 2022, <https://www.prnewswire.com/news-releases/faze-clan-and-ghost-announce-multi-year-partnership-301541057.html>; FaZe Sway’s Sway Series 2 | Presented by GHOST, <https://www.twitch.tv/videos/1607560057>.

²⁰ Cuyahoga Valley Christian Academy Royals Varsity Boys Football, Roster, <https://www.maxpreps.com/oh/cuyahoga-falls/cuyahoga-valley-christian-academy-royals/football/roster/> (showing at least 17 freshmen and 9 sophomores on the team roster).

²¹ *See* “Our Sour Secret Leaked” – Building The Brand | S9:E11, Ghost YouTube, Sep. 23, 2022, <https://www.youtube.com/watch?v=QR1I5MXXK8w>; My Block My Hood My City, Mission, <https://www.formyblock.org/mission>.

²² Twitch Takeover with Aileen, Ghost Lifestyle, <https://www.twitch.tv/videos/1595602991?filter=archives&sort=time>.

²³ Ronshredz, Apex Ranked, <https://m.twitch.tv/videos/1604802237>; Ghost Vibes | Ronshredz, <https://www.ghostlifestyle.com/blogs/ghost-hq/ghost-vibes-ronshredz>; ESRB Rating for Apex Legends, [https://www.esrb.org/search/?searchKeyword=Apex%20Legends&platform=All%20Platforms&rating=E%2CE10%2B%2CT%2CM%2CAO&descriptor=All%20Content&pg=1&searchType=All&ielement\[\]=all](https://www.esrb.org/search/?searchKeyword=Apex%20Legends&platform=All%20Platforms&rating=E%2CE10%2B%2CT%2CM%2CAO&descriptor=All%20Content&pg=1&searchType=All&ielement[]=all).

²⁴ Keefrica Feb. 9, 2022 Instagram post, <https://www.instagram.com/reel/CZw6JJbIEvY/>.

²⁵ Keefrica Instagram page, <https://www.instagram.com/keefrica/>. *See also* Keefrica Sep. 2, 2020 YouTube post, GHOST BURN 30 day REVIEW,

<https://www.youtube.com/watch?v=PNaWR2lxqFo> (“...Maybe your mom and your dad don’t want you on preworkout. Take this, take this!”)

²⁶ Eric Koenreich Instagram page, <https://www.instagram.com/youcanjustcallmeeric/?hl=en>.

²⁷ In its promotion of Ghost products, Mondelez also fails to disclose the products are not intended for children. See Swedish Fish Feb. 15, 2022 post, <https://www.instagram.com/p/CaAdXMeLUNr/?hl=en>; Swedish Fish Sep. 28, 2021 post, <https://www.instagram.com/p/CUYQYk3vFJ4/?hl=en>; Swedish Fish Sep. 17, 2021 post, <https://www.instagram.com/p/CT8AEs1PoSt/?hl=en>.

However, certain third-party retailers disclose on their websites that the products are only intended for healthy adults. See e.g., The Vitamin Shoppe, GHOST Energy Drink, <https://www.vitaminshoppe.com/p/ghost-energy-redberry-12-drink-s/gst0002>.

²⁸ Laila Al-Shaar et al., *Health Effects and Public Health Concerns of Energy Drink Consumption in the United States: A Mini-Review*, 5 *Frontiers Pub. Health* 225 (2017), <https://www.frontiersin.org/articles/10.3389/fpubh.2017.00225/full>; Fahad Ali et al., *Energy Drinks and Their Adverse Health Effects: A Systematic Review of the Current Evidence*, 127 *Postgraduate Med.* 308 (2015), <https://www.ncbi.nlm.nih.gov/pubmed/25560302>; David Hammond et al., *Adverse Effects of Caffeinated Energy Drinks Among Youth and Young Adults in Canada: A Web-Based Survey*, 6 *CMAJ Open Rsch.* E19 (2018), <https://www.cmajopen.ca/content/cmajo/6/1/E19.full.pdf>; Sara Seifert et al., *Health Effects of Energy Drinks on Children, Adolescents, and Young Adults*, 127 *Pediatrics* 511 (2011), <http://pediatrics.aappublications.org/content/127/3/511>.

²⁹ See, e.g., Cleve Wootson Jr., *A Teen Chugged a Latte, a Mountain Dew and an Energy Drink. The Caffeine Binge Led to his Death*, *Wash. Post.* (Mar. 16, 2017), <https://www.washingtonpost.com/news/to-your-health/wp/2017/05/16/a-teen-chugged-a-latte-a-mountain-dew-and-an-energy-drink-the-caffeine-binge-led-to-his-death/>; Barry Meier, *F.D.A. Posts Injury Data for 3 Drinks*, *N.Y. Times* (Nov. 15, 2012), <https://www.nytimes.com/2012/11/16/business/scrutiny-of-energy-drinks-grows.html>.

According to one consumer who complained to the FTC regarding Ghost:

“I was on vacation with my family. My sons ran into the convenience store and came back with Ghost energy drinks. First, they are both underage, ... and these are supposed to be adult drinks. I informed them how horrible they are for their growing bodies, and their response was, but I really wanted to try the Swedish Fish flavor, while my other son said he really wanted to try the Sour Patch Kids flavor. This is because as KIDS they like candy! I was extremely upset. This company is marketing a drink directly to kids that is horrible for their growing bodies, not regulated for them, and can cause long term health issues! How is this even allowed? How is this legal? This has to be stopped....”

Information obtained by TINA.org through a FOIA request.

See also Cornelia Pechmann et al., *Impulsive and Self-Conscious: Adolescents’ Vulnerability to Advertising and Promotion*, 24 *J. Pub. Pol’y & Mktg.* 202 (2005), <https://journals.sagepub.com/doi/10.1509/jppm.2005.24.2.202>.

-
- ³⁰ Columbia U. Irving Med. Ctr., *Caffeine and Kids* (Aug. 3, 2022), <https://www.cuimc.columbia.edu/news/caffeine-and-kids#:~:text=How%20much%20caffeine%20can%20kids,be%20sensitive%20to%20lower%20amounts>; Jennifer Temple et al., *The Safety of Ingested Caffeine: A Comprehensive Review*, 8 *Frontiers Psychiatry* 1 (May 26, 2017), <file:///Users/melissayoud/Downloads/fpsyt-08-00080.pdf>. See also AARP Report, Glob. Council on Brain Health, *The Real Deal on Brain Health Supplements: GCBH Recommendations on Vitamins, Minerals, and Other Dietary Supplements* (2019), https://www.aarp.org/content/dam/aarp/health/brain_health/2019/06/gcbh-supplements-report-english.doi.10.26419-2Fpia.00094.001.pdf (“Caffeine in high doses, such as those found in some energy drinks, can have adverse effects including insomnia, nervousness, headache and even seizures. Emergency room visits involving energy drinks increased tenfold between 2005 and 2011, to more than 20,000, according to the Substance Abuse and Mental Health Services Administration. Most of those emergency room visits were by 18- to 25-year-old males, although visits in those over age 40 was growing rapidly, according to the report.”)
- ³¹ Marcie Beth Schneider et al., *Sports Drinks and Energy Drinks for Children and Adolescents: Are They Appropriate?*, 127 *Pediatrics* 1182 (2011), <https://publications.aap.org/pediatrics/article/127/6/1182/30098/Sports-Drinks-and-Energy-Drinks-for-Children-and>.
- ³² *AMA Endorses Energy Drink Marketing Ban for People Under 18*, *CSP Daily News* (June 18, 2013), <https://www.cspdailynews.com/beverages/ama-endorses-energy-drink-marketing-ban-people-under-18>; Am. Med. Ass’n 2013 Annual Meeting Memorial Resolutions, https://www.ama-assn.org/sites/ama-assn.org/files/corp/media-browser/public/hod/a13-resolutions_0.pdf (“RESOLVED, That our American Medical Association support a ban on the marketing of “high stimulant/caffeine drinks” to children/adolescents under the age of 18.”).
- ³³ See, e.g., Andrew Jagim et al., *Common Habits, Adverse Events, and Opinions Regarding Pre-Workout Supplement Use Among Regular Consumers*, 11 *Nutrients* 855 (2019), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6520716/>.
- ³⁴ Children’s Health of Orange County, *Are Sports Supplements Safe for Children and Teens?*, <https://health.choc.org/are-sports-supplements-safe-for-children-and-teens/>; R.L. Terjung et al., *Physiological and Health Effects of Oral Creatine Supplementation*, 32 *Med. & Sci. Sports & Exercise* 706 (2000), https://journals.lww.com/acsm-msse/Fulltext/2000/03000/Physiological_and_Health_Effects_of_Oral_Creatine.24.aspx; Jordan Metzl et al., *Creatine Use Among Young Athletes*, 108 *Pediatrics* 421 (2001), <https://publications.aap.org/pediatrics/article-abstract/108/2/421/63924/Creatine-Use-Among-Young-Athletes?redirectedFrom=fulltext>.
- ³⁵ FTC, FDA Take Action Against Companies Marketing E-liquids That Resemble Children’s Juice Boxes, Candies, and Cookies, May 1, 2018, <https://www.ftc.gov/news-events/news/press-releases/2018/05/ftc-fda-take-action-against-companies-marketing-e-liquids-resemble-childrens-juice-boxes-candies>; May 1, 2018 Warning Letter to Drip More LLC, <https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/drip-more-llc-548401-05012018> (“Candy King Batch e-liquid packaging resembles that for Sour Patch Kids, a candy brand that is very popular with young children.”); May 1, 2018 Warning Letter to On Cloud Vape, <https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/cloud-vape-548412-05012018> (same); May 1, 2018 Closeout Letter to ACH Group, LLC d/b/a Candy Co E-Liquids,

<https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/ach-group-llc-dba-candy-co-e-liquids-552811-05012018> (“...the labeling and/or advertising of the product looks very similar to candy that is primarily marketed toward, or appealing to, children, such as Sour Patch Kids or other candies that are coated in sugar...”); May 1, 2018 Warning Letter to Warrender Enterprise Inc., <https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/warrender-enterprise-inc-553196-05012018> (“...the labeling and/or advertising of the product looks nearly identical to WarHeads Extreme Sour Hard Candy and WarHeads Super Sour Double Drops Liquid Candy, which are food products that are marketed toward, and/or appealing to, children.”); May 1, 2018 Warning Letter to Ultimate Vape Deals, <https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/ultimate-vape-deals-05012018> (“WarHeads candies are especially popular with children and its advertising and marketing on Facebook and other social media platforms is targeted to children.”)

³⁶ FTC, Full Disclosure, <https://www.ftc.gov/business-guidance/blog/2014/09/full-disclosure-ftc-com-disclosures-how-to-make-effective-disclosures-in-digital-advertising>, <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-staff-revises-online-advertising-disclosure-guidelines/130312dotcomdisclosures.pdf>.

³⁷ See, e.g., Ghost Energy, <https://www.ghostlifestyle.com/pages/ghost-energy>; Ghost Amazon store, https://www.amazon.com/stores/page/F7CDD832-CBFE-488A-B04D-818AAF0B6E6F?ingress=2&visitId=ed77322d-aff3-4645-adc2-d81e015fe61c&ref_ast_bln; Ghost Energy Sugar-Free Energy Drink Swedish Fish list, https://www.amazon.com/GHOST-ENERGY-Sugar-Free-Energy-Drink/dp/B09YG6LN3W?source=ps-sl-shoppingads-lpcontext&ref_fplfs&psc=1&smid=A990RDWI62A7Z.

In addition, given Ghost’s repeated marketing claims that its energy drinks provide “epic focus,” it is not at all surprising that consumers are touting the energy drinks as an Adderall alternative, a controlled substance and prescription medication used to treat attention deficit hyperactivity disorder (ADHD). See, e.g., Dustin Kelly June 20, 2022 TikTok post, https://www.tiktok.com/@dustin.kelly0/video/7111330857930984746?r=1&t=8Wb4sVWpTB8&is_from_webapp=v1&item_id=7111330857930984746 (showing that the consumer, who claims he uses Ghost energy drinks as an alternative for Adderall, tagged Ghost).



³⁸ GHOST Energy May 21, 2022 Facebook post, <https://www.facebook.com/profile/100063534010597/search/?q=epic%20focus>; GHOST Energy Aug. 21, 2020 Instagram post, <https://www.instagram.com/reel/CEKoA57jT1/>.

-
- ³⁹ GHOST Gamer Amazon listing, <https://www.amazon.com/GHOST-Gamer-Brain-Boosting-Nootropics-Gluten-Free/dp/B08HSQ9QRJ>; GHOST Legend Pre-Workout Energy Powder Amazon listing, https://www.amazon.com/dp/B09XHDWBVK/ref=sspa_dk_detail_1?ie=UTF8&psc=1&pd_rd_i=&pd_rd_i=B09XHDWBVKp13NParams&s=hpc&sp_csd=d2lkZ2V0TmFtZT1zcF9kZXRhaWxfdGhlbWF0aWM.
- ⁴⁰ GHOST Glow: Beauty and Detox Support Formula Amazon listing, <https://www.amazon.com/Ghost-Glow-Beauty-Detox-Support/dp/B09JXRMTVT>; Ghost Glow, <https://www.ghostlifestyle.com/pages/ghost-glow>.
- ⁴¹ Kirsty Joanna Fitness Apr. 7, 2021 YouTube post, Ghost Glow // The Ingredients & Benefits of this Supplement // Hormones, Mood, Skin, PMT, Anxiety, <https://www.youtube.com/watch?v=VSSngezp1mA>. *See also* Ghost Burn, <https://www.ghostlifestyle.com/products/ghost-burn-black?variant=31858158174282>.
- ⁴² Ghost, Meet the Family, Kirsty Colbert, <https://www.ghostlifestyle.com/blogs/meet-the-family/kirsty-colbert>.
- ⁴³ Even if Ghost had more robust scientific studies to substantiate its claims, studies only examining individual ingredients are not sufficient on their own. Certain ingredients may not be as effective when mixed with other ingredients than they are on their own. And the dosage or delivery method of an ingredient tested in an ingredient study may not be the same as the dosage or delivery method of the ingredient in the advertised product. *See* Dietary Supplements: An Advertising Guide for Industry, <https://www.ftc.gov/business-guidance/resources/dietary-supplements-advertising-guide-industry>.
- ⁴⁴ FTC Advertising Substantiation Principles, <https://www.ftc.gov/sites/default/files/attachments/training-materials/substantiation.pdf>.
- ⁴⁵ FDA warning letter to Crystal Clear Supplements, February 4, 2022, <https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/crystal-clear-supplements-620285-02042022> (“Examples of some of the claims observed on your website, your social media websites, and your products’ packaging that provide evidence that your products are intended for use as drugs include, but may not be limited to, the following: ... ‘#nootropics #anxietyrelief’ and ‘MOOD ELEVATION -ENHANCED SLEEP-HEIGHTENED FOCUS’ on the product image.”); FDA warning letter to NV Nutrition, LLC, December 1, 2021, <https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/nv-nutrition-llc-617979-12012021> (“Some examples of claims observed on your websites and social media websites that established the intended use of your products as drugs include, but may not be limited to, the following: ... On the webpages titled, ‘Focus’ and ‘Focus XL’: ‘Nutriair Focus. . . full of nootropics, which may improve cognitive function.’”); FDA warning letter to VitaCig, Inc., December 1, 2021, <https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/vitacig-inc-617847-12012021> (“Examples of some of the claims observed on your website... that provide evidence that your products are intended for use as drugs include, but may not be limited to, the following: ... VitaCig® FOCUS . . . is an inhalable natural cognitive booster. . . . It has a stimulation effect, improves your concentration, helps support optimal cognition and acute focus, bringing clarity of mind.”); FDA warning letter to VitaStik, Inc., December 1, 2021, <https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warning->

[letters/vitastik-inc-617713-12012021](https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/peak-nootropics-llc-aka-advanced-nootropics-557887-02052019) (“Your website ... also includes various “Category” tags such as ... ‘Mental Clarity / Focus,’ ... that ... provide evidence of your products’ intended uses.”); FDA warning letter to Peak Nootropics LLC aka Advanced Nootropics, February 5, 2019, <https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/peak-nootropics-llc-aka-advanced-nootropics-557887-02052019> (“Examples of some of the website claims that provide evidence your products are intended for use as drugs include the following: ... Enhances Alertness & Focus”); FDA warning letter to Irie Star LLC, July 6, 2017, <https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/irie-star-llc-524242-07062017> (“Examples of some of the website claims that provide evidence that your products are intended for use as drugs include... ‘Organic Evening Primrose oil and Pomegranate Oil [(ingredients in your product)] are rich in omega 5, 6, and 9 essential fatty acids including GLA which helps balance hormones, ...’ ... ‘Pomegranate oil [(an ingredient in your product)] also has phytoestrogen to assist with hormone balancing, ...”); FDA warning letter to Enlifta, LLC, Feb/ 18, 2021, <https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/enlifta-llc-612253-02182021> (“Examples of some of the website claims that provide evidence that your “Enlifta Mood Elevator” and “Enlifta Anxiety” are intended for use as drugs include: ‘English Lavender Flower Powder [an ingredient in “Enlifta Anxiety”] . . .for the treatment of insomnia and anxiety.”)

⁴⁶ FTC, Guides Concerning the Use of Endorsements and Testimonials in Advertising, <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-publishes-final-guides-governing-endorsements-testimonials/091005revisedendorsementguides.pdf>.

⁴⁷ Michele Abbate Sep. 21, 2022 Facebook post, <https://www.facebook.com/M1cheleAbbate/posts/pfbid02MX79ktzALH4Jqymi5vYgx7DJhdKtYryo8SK5xq7Jfg5cd63X2RPukZETVR8Ycgbl>.

⁴⁸ Maxx Chewning Sep. 19, 2022 Twitter post, <https://twitter.com/MaxxChewning/status/1571915158708187137>.

⁴⁹ Courtney Sarracino Sep. 23, 2022 TikTok post, https://www.tiktok.com/@courtneysarracino/video/7146620401580346666?is_from_webapp=v1&item_id=7146620401580346666&web_id=7138878520571037230.

⁵⁰ Brooke Evers Sep. 16, 2022 Instagram post, <https://www.instagram.com/p/CijgX-gDi6y/>.

⁵¹ As of April, sales of Ghost products were up over 1,500 percent compared to the previous year, “thanks in part to its officially licensed candy flavors like Sour Patch Kids and Warheads.” Power Plays: The Concept of an “Energy Drink” is Evolving, and Brands are Eager to Change with the Times, May 16, 2022, <https://www.bevnet.com/magazine/issue/2022/power-plays-the-concept-of-an-energy-drink-is-evolving-and-brands-are-eager-to-change-with-the-times/>.