



January 13, 2023

VIA EMAIL

Daniel Fabricant, Ph.D.
President and CEO
Natural Products Association
440 1st Street, NW, Suite 520
Washington, D.C. 20001
Daniel.Fabricant@npanational.org

Re: Deceptive marketing by energy drink companies

Dear Dr. Fabricant:

Thank you for your letter of January 10, 2023 in which you selectively “address some of the statements outlined in [TINA.org’s] letters... .” While I have no intention of responding to the letter’s irrelevant content or hyperbolic jabs directed at TINA.org, it is my pleasure to set the record straight with regard to relevant factual and legal matters presented in our investigation of Ghost, LLC and the subsequent letters we sent to other energy drink companies requesting that they review their marketing to ensure it complies with truth-in-advertising laws.

To begin, your contention that “the primary thrust of [our] letters [is] that, because of the use of nostalgic flavors, recognizable candy and confectionary product flavors, the products in question are inappropriately targeting minors in their marketing” is simply not correct. Quite to the contrary, as our letter to Ghost clearly stated, “using candy flavoring for adult-only products is not illegal... .” However, if you are indeed unaware of the numerous deceptive and inappropriate marketing claims being made by Ghost and other energy drink companies, a review of TINA.org’s website will inform you at once.

By way of illustration, our investigation of Ghost and other companies’ energy drinks revealed that they were:

- making unsubstantiated and unapproved health claims about the drinks, including claims that the products provide cognitive benefits such as focus;



- using deceptive social media influencer marketing that failed to adequately disclose the influencers' material connections to the company;



- marketing adult energy drinks to kids; and



- failing to clearly and conspicuously disclose that the products are only intended to be consumed by healthy adults (the sole disclosures are in illegible fine print inconspicuously placed on product containers).



Please note that the above examples are merely a sampling among a multitude of deceptive and unfair marketing claims being made by energy drink companies today.

Further, your letter’s near exclusive focus on FDA labeling laws is misplaced. There are a plethora of federal and state laws, as well as self-regulatory guidance, that are applicable to the numerous deceptive and unfair marketing issues that TINA.org’s investigation revealed. If you are really unclear how these energy drink products are being unfairly and deceptively marketed, I would advise that you consult with someone who has truth-in-advertising expertise.

As the maxim goes, actions speak louder than words. If the Natural Products Association does actually “take[] truth in advertising very seriously,” as your letter states, then your organization should work to rid the internet of false and misleading energy drink claims, work with energy drink companies to clearly and conspicuously disclose health and age restriction warnings on their labels and in their marketing, and educate these companies about truth-in-advertising laws instead of attempting to defend their misdeeds.

Sincerely,

Handwritten signature of Bonnie Patten in blue ink.

Bonnie Patten, Esq.
Executive Director
Truth in Advertising, Inc.