



December 12, 2022

VIA EMAIL

Howard Davner, Co-Founder
Nerd Focus
7 South Street, 3rd Floor
Freehold, NJ 07728
hdavner@nerdfocus.com

Re: Marketing for Nerd Focus Energy Drinks

Dear Mr. Davner:

On behalf of Truth in Advertising, Inc. (“TINA.org”), a nonprofit consumer advocacy organization dedicated to protecting consumers from deceptive advertising, and the UConn Rudd Center for Food Policy & Health (the “Rudd Center”), a research center committed to conducting research to reduce unhealthy food marketing, we write to alert you to certain deceptive and unfair marketing trends that are currently prevalent in the energy drink industry. Such trends include, but are not limited to:

- Marketing energy drinks to children despite the fact that these drinks may be harmful to their health. Examples of such deceptive and unfair marketing include product packaging that mimics the packaging of popular children’s food and candy brands, sponsoring high school sports teams or youth-focused organizations, and using influencers popular among children to promote the products;
- Failing to clearly and conspicuously disclose that the energy drinks are only intended to be consumed by healthy adults;
- Making unsubstantiated and unapproved health claims about the drinks, including, but not limited to, claims that the product provides cognitive benefits such as focus; and
- Using deceptive social media influencer marketing that fails to adequately disclose the influencers’ material connection(s) to the company.

Such unfair and deceptive marketing practices violate the Federal Trade Commission Act and/or the Federal Food, Drug, and Cosmetic Act, as well as the American Beverage Association's Guidance for the Responsible Labeling and Marketing of Energy Drinks.

TINA.org and the Rudd Center urge Nerd Focus to review its marketing and take the necessary steps to ensure compliance with FTC and FDA law, as well as industry guidance.

Thank you in advance for your consideration of this matter. 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