

Energy Shot's 'No Crash' Claim Is Disputed by Watchdog

By BARRY MEIER
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The distributor of the top-selling energy "shot," 5-Hour Energy, has long claimed on product labels, in promotions and in television advertisements that the concentrated caffeine drink produced "no crash later" — the type of letdown that consumers of energy drinks often feel when the beverages' effects wear off.



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But an advertising watchdog group said on Wednesday that it had told the company five years ago that the claim was unfounded and had urged it then to stop making it.

An executive of the group, the National Advertising Division, also said that 5-Hour Energy's distributor, Living Essentials, had publicly misrepresented the organization's position about the claim and that it planned to start a review that could lead to action against the company by the Federal Trade Commission.

"We recommended that the 'no crash' claim be discontinued because their own evidence showed there was a crash from the product," said Andrea C. Levine, director the National Advertising Division. The organization, which is affiliated with the Council of Better Business Bureaus, reviews ad claims for accuracy.

The emerging dispute between Living Essentials and the National Advertising Division is unusual because the \$10 billion energy drink industry is rife with questionable marketing. And Living Essentials, which recently cited the advertising group's support in seeking to defend the "no crash" claim, may have opened the door to greater scrutiny.

Major producers like 5-Hour Energy, Red Bull, Monster Energy and Rockstar Energy all say their products contain proprietary blends of ingredients that provide a range of mental and physical benefits. But the companies have conducted few studies to show that the costly products provide anything more than a blast of caffeine, a stimulant found in beverages like coffee, tea or cola-flavored sodas.

The dispute over 5-Hour Energy's claim also comes as regulatory review of the high-caffeine drinks is increasing. The Food and Drug Administration recently disclosed that it

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had received reports over the last four years citing the possible role of 5-Hour Energy in 13 deaths. The mention of a product in an F.D.A. report does not mean it caused a death or injury. Living Essentials says it knows of no problems related to its products.

The issue surrounding the company's "no crash" claim dates to 2007, when National Advertising Division began reviewing all of 5-Hour Energy's marketing claims. That same year, the company conducted a clinical trial of the energy shot that compared it to Red Bull and Monster Energy.

At the time, Living Essentials was already using the "No crash later" claim. [An article on Wednesday](#) in The New York Times reported that the study had shown that 24 percent of those who used 5-Hour Energy suffered a "moderately severe" crash hours after consuming it. The study reported higher crash rates for Red Bull and Monster Energy.

When asked how those findings squared with the company's "no crash" claim, Elaine Lutz, a spokeswoman for Living Essentials, said the company had amended the claim after the 2007 review by the National Advertising Division. In doing so, it added an asterisklike mark after the claim on product labels and in promotions. The mark referred to additional labeling language stating that "no crash means no sugar crash." Unlike Red Bull and Monster Energy, 5-Hour Energy does not contain sugar.

Ms. Lutz said that based on the modification, the advertising accuracy group "found all of our claims to be substantiated."

However, Ms. Levine, the advertising group's director, took sharp exception to that assertion, saying it mischaracterized the group's decision. And a review of the reports suggested that Living Essentials had simply added language of its choosing to its label rather than doing what the group had recommended — drop the "no crash" claim altogether.

That review concluded that the company's 2007 study had shown there was evidence to support a "qualified claim that 5-Hour Energy results in less of a crash than Red Bull and Monster" Energy. But it added the study, which showed that 5-Hour Energy users experienced caffeine-related crashes, was inadequate to support a "no crash" claim.

Ms. Levine said Living Essentials had apparently decided to use the parts of the group's report that it liked and ignore others.

Companies "are not permitted to mischaracterize our decisions or misuse them for commercial purposes," she said.

She said the group planned to notify Living Essentials that it was reopening its review of the "no crash later" claim. If the company fails to respond or provides an inadequate response, the National Advertising Division will probably refer the matter to the F.T.C., she said.

A Democratic lawmaker, Representative Edward Markey of Massachusetts, has asked that the agency review energy drink marketing claims.

Asked about the position of the National Advertising Division, Ms. Lutz, the 5-Hour Energy spokeswoman, stated in an e-mail that the "no sugar crash" language had been added to address the group's concern.

This article has been revised to reflect the following correction:

Correction: January 2, 2013

An earlier version of this article misstated the number of deaths in which the Food and Drug Administration said 5-Hour Energy possibly played a role. The number was 13, not 15.

A version of this article appeared in print on January 3, 2013, on page B1 of the New York edition with the headline: Energy Shot's Promotion Of 'No Crash' Is Disputed.

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