



Written by [Brian Koenig](#) on August 30, 2012

## New York AG Investigates Energy-Drink Marketing Practices

The attorney general of New York has launched an investigation into whether the energy-drink industry is misleading consumers about the ingredients and overall health effects of its products. Eric Schneiderman [issued subpoenas](#) last month to three manufacturers — including PepsiCo Inc., which manufactures the popular AMP energy beverage; Monster Beverage Corp.; and Living Essential LLC — requesting details regarding the firms' marketing and advertising practices.



Energy drinks rank among the fastest-growing products in the beverage industry, with U.S. retail sales spiking 16 percent last year to a sizable \$8.9 billion. Leading the United States in sales is Monster Beverage Corp., just ahead of Rockstar Inc. and the Austrian-based Red Bull GmbH.

The super-caffeinated drinks are often sweetened with flavors such as grape, cherry, or mixed berry, formulated to boost energy with a blend of ingredients including ginseng, taurine, and B-vitamins. Branding ingredients into the marketing of its products, [AMP's website](#) asserts that the caffeine and B-vitamins in its "Boost" drinks provide consumers with "the kick you need to tackle the early morning meeting."

The AG's investigation targets whether energy-drink makers are deceiving consumers with false or misleading labeling and advertising. While the probe is currently targeting only three companies, it could extend to other manufacturers, according to a source familiar with the matter. The *Wall Street Journal* [reports](#):

The drinks are regulated more loosely than traditional sodas such as cola. In 2009, the Food and Drug Administration said it was "concerned" certain ingredients such as botanical extracts were being added to beverages and foods beyond their traditional use, which it said raised questions about safety. The federal agency says the term "energy drink" isn't defined by any FDA regulation, describing it as an ill-defined marketing term with widely varying ingredients.

Specifically, investigators are examining whether the drink makers exaggerated or falsely advertised the benefits of unique-sounding ingredients while downplaying the role of caffeine, a stimulant many critics perceive as the chief acting ingredient. Labels on these products often don't disclose how much caffeine the drinks contain. Monster's 16-ounce energy drink, for example, says only that it includes caffeine, but does not disclose specifically how much.

While the Food and Drug Administration (FDA) meticulously regulates how much caffeine is contained in sodas such as Coca-Cola and Mountain Dew, it has limited control on regulating energy drinks, because the beverages are branded as dietary supplements, placing them under looser regulatory scrutiny than soft drinks and other beverages.

Still, state attorneys general may probe and regulate almost any product distributed within their state.



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So if energy-drink makers are spotted to have violated New York state laws regulating food and drugs, they could face civil fines and penalties, as well as regulations on their labeling and advertising.

A Monster spokeswoman said the company's drinks include only half the amount of caffeine of some cups of coffee, when measured on a per-ounce basis. "Monster energy drinks are completely safe, and we stand behind our products," she wrote in an email. Soon following the New York probe, the American Beverage Association, which represents firms in the non-alcoholic beverage sector, issued a statement defending the ingredients in energy drinks as well as the marketing practices of manufacturers.

"Despite the misperception, most mainstream energy drinks contain about half the caffeine of a similar size cup of coffeehouse coffee," the statement [noted](#). "And, the caffeine content our members voluntarily display on their packages reflects total caffeine amounts, including those that come from other sources, such as additives."

The attorney general's move is the latest in a string of nanny-state ploys by New York officials to regulate consumer products, most noteworthy being New York City Mayor Michael Bloomberg's proposal to ban the sale of large-size sugary drinks by restaurants, movie theaters, and mobile food carts. Reporting on the move, *The New American's* Raven Clabough [cited](#) a catalog of other nanny-state regulations being instituted across the country:

Chocolate milk has been removed from school cafeterias across the country, toys are being taken out of fast food kids' meals, and cash-strapped states have turned to "sin taxes," all under the alleged guise of addressing obesity. Meanwhile, healthy options like raw milk and products grown on family farms continue to face the harsh scrutiny and overreach of the Food Safety Modernization Act.

Despite lacking any conclusive evidence that energy drinks do indeed produce adverse health effects — not to mention the oppressive elements that go into regulating such behaviors — New York is determined to regulate private commerce. In a [June ad](#) addressing Bloomberg's assault on sugary drinks, the Center for Consumer Freedom photoshopped the mayor in drag with the tagline, "New Yorkers Need a Mayor, Not a Nanny."

"Nanny Bloomberg has taken his strange obsession with what you eat one step further," the ad read. "He now wants to make it illegal to serve 'sugary drinks' bigger than 16 oz. What's next? Limits on the width of a pizza slice, size of a hamburger or amount of cream cheese on your bagel?"

Indeed, the Center for Consumer Freedom spelled it out clearly when it affirmed: "You only thought you lived in the land of the free."



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