Energy Drinks - regulatory risks and market growth

Abstract

The consumption of so called "Energy drinks" is on an upwards trend, as demonstrated by their already large and increasing market growth[1]. Companies claim that these beverages can offer the consumer an increased energy boost related to their ingredient content. However, the wider health consequences of their increased consumption remain unclear and on a regional basis, efforts are being made to develop a better regulatory framework for this niche segment of the beverage industry.

Definitions and Context

An energy drink is a type of beverage containing a significant level of added stimulants, which is marketed as providing mental and/or physical stimulation. These drinks contain a variety of ingredients, but the primary ones are energy-producing elements like caffeine, taurine, herbal extracts and vitamins. However, coffee, tea and other naturally caffeinated beverages are usually not considered energy drinks. Soft drinks, such as cola, may contain caffeine but are also not normally classified as energy drinks. Energy drinks were first developed in Asia in the 1960s in response to the public demand for a dietary addition or supplement that would give a boost of energy and provide vitamins, all in one. In 1962, a Japanese company, Taisho Pharmaceuticals[2], launched Lipovitan D, one of the very first energy drinks, which is still dominating the Japanese market. Energy drinks did not make their way into the U.S. market until 1997 when Red Bull was first introduced.Since the 1960s, the energy drink market has grown into a multibillion dollar business, which has been reported as being the fastest growing segment in the beverage industry since bottled water.
The targeted demographic group for this product appears to be teenagers and young adults (aged 18 to 34 in particular).

[1] Energy drink market continues growth – Institute of Food Technologists– January 2014.
[2] Assessed by Vigeo Rating in the Pharmaceuticals & Biotechnology Asia Pacific sector.

Key Players on the Market

The energy beverage market is now effectively dominated by two brands, Red Bull[3] and the Monster Beverage Corporation (Monster). Amongst the other companies that are specialized in producing energy drinks are Rockstar an energy drink created in 2001 and manufactured by Rockstar, Inc. In 2009, PepsiCo signed an agreement to act as distributor for the Rockstar product across the US and Canadian markets. PepsiCo[4] also have their own energy beverage product on the market called Amp. Their primary competitor, the Coca Cola Company[5] have an energy drink product on the market called Burn and in August 2014, Coke signed a deal with Monster to enter into a long term strategic partnership. Coke acquired a 16.7% share in the Company and will have two directors representing their interests on Monster's Board of Directors.

The Monster Beverage Corporation is the only Company that is wholly *specialized* in developing and selling energy drinks **that is currently rated by Vigeo**. It was rated in the North American Beverage sector for the first time in June 2014. The Company provides a very low level of information on how it addresses all of its CSR responsibilities. Furthermore, Monster faced recurrent allegations on product safety and information to customers, two of the main issues at stake for the Company and this niche sub-sector. Compared to other companies in the sector, Monster achieved a below average and weak overall CSR performance, providing Vigeo with no clear indication as to its managerial mindset regarding CSR issues.

Stakeholder Risks

Energy drinks contain high levels of caffeine, usually about 80 milligrams (mg) of caffeine in a small 250ml can. Typically, they are marketed as beneficial in improving consumers' concentration, reaction time, alertness, endurance, physical performance, and even risk taking. However, a number of studies have argued that the over, or mis-consumption of energy drinks can have negative behavioral effects and lead to problematic behavior.

3 Red Bull is an energy drink sold by Austrian company Red Bull GmbH, a private company that produces and markets energy and sugar free drinks internationally.
4 Assessed by Vigeo Rating in the Beverage North American sector
5 Assessed by Vigeo Rating in the Beverage North American sector.

For instance, according to a study by researchers at the University of Minnesota and Duke University, the consumption of these high-sugar, high-caffeine beverages by teenagers (one or more drink per week) represents a trigger for negative behavior. Examples of the negative behavior reported to be caused by this product included increased amounts of television watching, more time spent playing video games, poor sleep, consuming more sugar as part of their overall diet, fluctuating physical activity, and a greater risk of smoking cigarettes. Furthermore, the EU Scientific Committee on Food (SCF) considered the effects of caffeine intake in 1999 and 2003 and noted that a dose of 5mg caffeine per kilogram bodyweight (300mg for a 60kg person) could result in transient behavioral changes, such as increased arousal, irritability, nervousness or anxiety in some people, particularly if they were normally low consumers of caffeine. In addition to these alleged consumer risks, a recent study[6] found that consuming a caffeine-infused energy drink combined with alcohol is more dangerous than drinking alcohol alone. In fact, this study alleges that what makes the combination of energy drinks and alcohol especially dangerous is that energy drinks have about three times as much caffeine as cola, making them extremely stimulating. One of the added dangers in combining caffeine and alcohol is that caffeine may make a person less aware of alcohol's effect on the body.

Risks for Companies & the Mixed Regulatory Environment

The primary risks faced by energy drinks manufacturers are legal in nature. In the United States, the Food and Drug Administration (FDA) has released a series of adverse health event reports linked with the consumption of products marketed as energy drinks. Furthermore, the Department of Health and Human Services (DHHS) issued a report which noted that emergency room visits related to energy drinks doubled from 10,000 to 20,000 between 2007 and 2011. In this context, energy drinks companies do appear to be facing a wide range of litigation from consumers, but we are yet to see a major corporation take a significant financial hit in terms of legal penalties. The FDA has been investigating five deaths and one non-fatal heart attack related to energy drinks consumption since 2012 linked to the Monster product.

[6] The research was conducted in the department of psychological science at the Northern Kentucky University and was published in the 2011 print issue of Alcoholism: Clinical & Experimental Research.

The FDA also have an active investigation into 13 deaths that are reportedly linked to the 5-Hour Energy Product. In spite of these public concerns and ongoing FDA inspections, energy drinks are still legal and are experiencing growth compared to other beverages[7].

Criticism has been raised towards the FDA in the US as there are currently no restrictions on the amounts of caffeine in energy drinks, whereas the caffeine content of other beverages such as cola is restricted. The regulatory framework clearly appears inconsistent and works in the favour of the beverage industry over the consumer in the US. In comparison, in the European Union (EU) although there is not an upper limit for caffeine, if the beverage contains more than 150 mg/L, the product label must read "High Caffeine Content" followed by the amount of caffeine. Furthermore, Lithuania is the first EU country to actually ban the sale of energy drinks to consumers aged under 18. The ban came into effect in November 2014, after it was approved on the 15th of May 2014.

It does appear inevitable that this lucrative market will eventually find itself being more stringently regulated most likely from a marketing perspective. Strict labeling requirements for the amount of caffeine are important because they allow consumers to make informed decisions about how much caffeine they are consuming, which help to prevent overconsumption. Companies that are forward thinking and wish to be ahead of such regulatory changes should work to increase the intelligibility and quality of their labelling. They should also more strictly monitor the quality and content of their advertising. As things stand, Vigeo has no such indication that Monster is undertaking such steps. Furthermore, as we are seeing that energy drinks are also starting to face increasing regulation on who can buy the products and may perhaps even be restricted on the content itself. These companies could also start to anticipate this growing consumer scrutiny and potential legislation by taking more voluntary steps. For instance, by modifying the ingredients to reduce the amount of caffeine while maintaining the energy boost and being more active at industry level on how the potential risks are being managed through voluntary marketing procedures.

[7] Energy Drinks Could Be The Growth Driver For Coca-Cola In The Domestic Market - Forbes - 05/08/2014

Conclusion

Energy drinks have had exponential growth since their arrival into the United States in the 1990s. With a society of time-scarce consumers struggling to maintain a work-life balance and a younger generation appearing to be attracted to the products' market appeal, this growth is most likely to continue. The weak regulatory frameworks governing these products currently fall in favour of the beverage corporations. However, the outcomes of investigations by the FDA into the deaths of stakeholders linked to energy beverage products may well be the trigger that sparks genuine reform of how these products are developed, labelled and marketed to consumers. Until then, beverage companies can be expected to thrive in this niche market.

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