



CONSUMER NEWS

SAN DIEGO CITY ATTORNEY'S OFFICE

Caffeine – Growing Concerns About Use In Consumable Products

July 2013

We all know a sizable population of America is addicted to its coffee, soda and/or tea, in large part to wanting or needing that “caffeine fix.” In the wake of the craze of energy drinks and diet supplements with added caffeine introduced to consumers, other foods are either being or have been developed with infusions of caffeine. For instance, various candies, snack foods, syrup, gum, oatmeal, and mints, to name a few. The Federal Food and Drug Administration [FDA] is investigating the safety of these new food products, focusing especially on caffeine’s accumulated effects in children.

CONSUMER SAFETY CONCERNS

The FDA and consumer advocate and health groups have concerns about the influx of caffeine-infused food products in the market place. A major concern is the consumption of caffeinated products by children. Caffeine is an addictive stimulant drug. Studies have shown that too much caffeine can cause anxiety, restlessness, irritability, and insomnia. In some cases, large and compounded doses of caffeine have caused rapid heartbeat and seizures. Children have less ability to process the stimulant than adults. Studies about the long term effects of caffeine in children are ongoing, especially the effect on a child’s developing neurologic and cardiovascular systems.

If caffeinated products are not clearly labeled, pregnant women or others who purposefully avoid caffeine due to health or allergy issues will unknowingly consume the drug.

THE FDA AND CAFFEINE

Caffeinated Food Generally

The FDA has not passed a regulation regarding the use of caffeine in food since the 1950’s, when the FDA set a limit on the amount of caffeine that could be added to colas. At that time, the FDA ruled the use of caffeine in cola as “generally recognized as safe when it comprises .02 percent” of the cola beverage.

Caffeinated Alcoholic Beverages

In late 2010, the FDA sent warning letters to alcohol beverage manufacturers regarding malt beverages to which the manufacturer directly added caffeine as a separate ingredient. The warning letters advised manufacturers the added caffeine was an unsafe food additive. Studies show when caffeine and alcohol are combined, a consumer may not necessarily feel the alcohol’s effects because the caffeine would simultaneously be providing a stimulant, masking sensory cues normally relied upon to determine an intoxication level. The warning letters were not directed at alcoholic beverages that only contain caffeine as a natural

constituent of one or more of their ingredients, such as a coffee flavoring.

California joined several other states by passing a law in August 2011 which prohibits an alcoholic beverage manufacturer from adding caffeine to any malt beverage.

Caffeinated Energy Drinks

Prosecutors and multiple health officials have urged the FDA to take prompt regulatory action to govern the manufacturing, sale and advertising of the energy drinks that children, adolescents and adults find so highly attractive for obtaining a little extra energy boost. Laws in this area may be changing soon.

MARKETING OF NEW CAFFEINATED FOOD PRODUCTS

The manufacturers of these newest food products infused with caffeine hitting store shelves claim their target audience is young to middle-aged adults. However, the packaging and products are very attractive to children, and actually seemed to be geared toward children by virtue of the art on the packaging. Some manufacturers list caffeine in the ingredients. Other packages state in fine print that the products are inappropriate for children. Unfortunately, however, not all manufacturers engage in this “disclosure” practice, and even if caffeine is listed, this disclosure is

not sufficient to keep children from consuming the enticingly produced products.

CONSUMER LAWS

There are multiple federal and state laws which will assist governing and prosecuting agencies in calling manufacturers to task for any improper disclosure practice. For instance, among others, there exists the:

- ▶ Federal Food, Drug, and Cosmetic Act
- ▶ California Sherman Food, Drug and Cosmetic Act
- ▶ Fair Packaging and Labeling Act
- ▶ Dietary Supplement Health and Education Act
- ▶ Food Allergen Labeling and Consumer Protection Act

The California Sherman Food, Drug and Cosmetic Act makes it a state crime to violate several of the federal acts noted above.

MISBRANDED PRODUCTS

The California Sherman Food, Drug and Cosmetic Act makes it a crime to manufacture, sell, deliver, hold or offer misbranded food or drugs for sale. A product is “misbranded” if it:

- ▶ Fails to include required information about the ingredients or nutrient content;
- ▶ Has a false or misleading label;
- ▶ Is manufactured, packed or held in a facility not licensed by the proper health authorities;
- ▶ Fails to indicate the name and place of business of the manufacturer and its quantity.

PROTECTING YOUR FAMILY

Carefully read the label, front and back, of any product you purchase, even on items you would normally assume do not contain caffeine. In most cases, reading the package

will provide the product ingredient information. However, as stated above, a misbranded product does not always list every ingredient.

CITY ATTORNEY'S ROLE

The Consumer and Environmental Protection Unit of the San Diego City Attorney's Office has prosecuted several cases against individuals and companies who sold misbranded foods or drugs.

If you observe the sale of any food or other products which may be misbranded by failing to list all of the ingredients as required by both Federal and State law, you may call the San Diego County Department of Environmental Health Services at (858) 505-6903, or the City Attorney's Office for assistance.

For additional general information on dietary supplements, *see San Diego City Attorney's Consumer News*, September 2011. For additional information on food safety, *see San Diego City Attorney's Consumer News*, July 2010.

**San Diego
City Attorney's Office
Consumer and Environmental
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The information provided in this newsletter is intended to convey general information and is not intended to be relied upon as legal advice.

The San Diego City Attorney's Consumer & Environmental Protection Unit prosecutes criminal and civil violations of California's

unfair competition and other consumer laws committed in the City of San Diego. The Unit maintains a Phone Hotline for consumers to report possible violations. You can reach the Hotline at **(619) 533-5600**.