

A Communication From the Chief Legal Officers
Of the Following States:

Alabama ▪ Arizona ▪ Connecticut ▪ Delaware ▪ Idaho ▪ Illinois ▪ Kentucky
Maryland ▪ Maine ▪ New Jersey ▪ Oregon ▪ Rhode Island
Utah ▪ Vermont ▪ Washington ▪ Wyoming

Sent via facsimile

February 21, 2008

The Honorable John J. Manfreda, Administrator
Alcohol and Tobacco Tax and Trade Bureau
1310 G Street, NW
Room 300
Washington, D.C. 20220

Re: *Sparks Brand Alcoholic Energy Drinks*

Dear Mr. Manfreda:

On February 1, 2008, Television Channel CBS4 of Miami and Fort Lauderdale, Florida, aired an investigative report on alcoholic energy drinks.¹ We have attached a copy of the print story for your review.

As you know, Attorneys General from across the country previously have written to the Alcohol and Tobacco Tax and Trade Bureau (TTB) to express our concerns about alcoholic energy drinks. This recent news story caught our attention because of the assertion that Sparks brand alcoholic energy drink contains 214mg of caffeine. We contacted the producer to obtain more information about this allegation.

Producer Reizel Larrea informed us that in an attempt to determine the amount of caffeine in alcoholic energy drinks, CBS4 purchased several cans of Sparks and Sparks Plus brand energy drinks and took them to Kappa Laboratories, Inc. for testing. Kappa Laboratories is registered with the U.S. Food and Drug Administration (FDA) and is an FDA-accepted laboratory for import testing. Kappa tested the products to determine the caffeine and alcohol content. We are attaching the laboratory reports for your review.

We acknowledge that the laboratory analyzed only one can of each product indicating the need for further testing to confirm the results. However, these findings raise two serious concerns that we believe warrant your immediate attention.

¹ The video of the live report may be viewed at <http://cbs4.com/video/?id=47055@wfor.dayport.com>.

Caffeine Levels

First, with regard to the caffeine content of Sparks, Kappa Laboratories found that the tested cans of Sparks 6.0% and Sparks Plus 7.0% Alcohol Premium Malt Beverages contained 214mg of caffeine/16 fl oz and 215mg of caffeine/16 fl oz, respectively.

The TTB has approved the production of alcoholic beverages where caffeine has been directly added to the product but has set the maximum limit for caffeine from any source at 200 ppm.² By our calculation, the caffeine levels allegedly established by Kappa for these products are more than two times the allowable limit.

Alcohol Content

We also are concerned about the quantity of alcohol found in Sparks 6.0%. Kappa Laboratories report that Sparks Plus 7.0% Alcohol Premium Malt Beverage contained 6.97% alcohol by volume. This is consistent with the labeling for this product. However, the Sparks 6.0% Alcohol Premium Malt Beverage also contained 6.97% alcohol by volume, which is significantly higher than the amount stated on the label.

The excessive levels of caffeine found in Sparks and Sparks Plus may create a health risk for consumers as the amount of caffeine found by Kappa has not been approved by the FDA as safe. The mislabeling of the alcohol content of Sparks 6.0% Alcohol Premium Malt Beverage may also put consumers at risk. We are gravely concerned about the negative health outcomes that may result from consumers unknowingly mixing dangerously high amounts of caffeine with higher than disclosed amounts of alcohol.

We ask that you immediately investigate to determine if caffeine levels in Sparks brand alcoholic energy drinks exceed allowable amounts and if Sparks 6.0% Alcohol Premium Malt Beverage contains a higher alcohol by volume content than is approved for the product.

We thank you for your prompt attention to this matter.

Sincerely,



Troy King
Attorney General of Alabama
NAAG Youth Access to Alcohol
Committee Co-Chair



G. Steven Rowe
Attorney General of Maine
NAAG Youth Access to Alcohol
Committee Co-Chair

² See: http://www.ttb.gov/public_info/cm98-1.pdf and http://www.ttb.gov/ssd/limited_ingredients.shtml



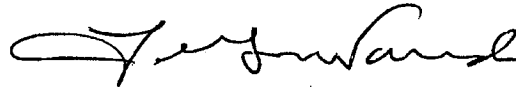
Terry Goddard
Attorney General of Arizona



Richard Blumenthal
Attorney General of Connecticut



Joseph R. "Beau" Biden III
Attorney General of Delaware



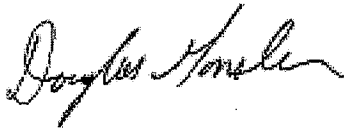
Lawrence G. Wasden
Attorney General of Idaho



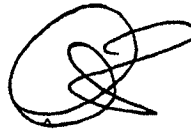
Lisa Madigan
Attorney General of Illinois



Jack Conway
Attorney General of Kentucky



Douglas F. Gansler
Attorney General of Maryland



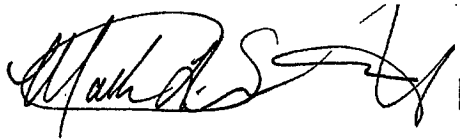
Anne Milgram
Attorney General of New Jersey



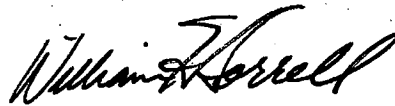
Hardy Myers
Attorney General of Oregon



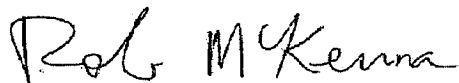
Patrick C. Lynch
Attorney General of Rhode Island



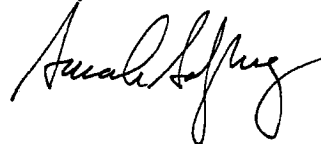
Mark Shurtleff
Attorney General of Utah



William H. Sorrell
Attorney General of Vermont



Rob McKenna
Attorney General of Washington



Bruce A. Salzburg
Attorney General of Wyoming

Attachment

Powerful Potions: An I-Team Investigation

Reporting: Laurie Stein

MIAMI (CBS4) — Have you ever heard of alcohol-energy drinks? They're not advertised on TV but if you go online you'll find they're very popular with young people, so much so that 29 state attorneys general have expressed concern about the marketing and the safety risks for America's youth.

CBS4 I-Team investigator Laurie Stein's exclusive hidden camera investigation revealed why police are so worried about these powerful potions, including a fruit-flavored drink called "Sparks" sold by the Miller Brewing Company.

These beverages look like energy drinks and taste like orange soda but law enforcement is now concerned about the contents of these drinks, and the mixture of caffeine and alcohol.

The combination of ingredients means users stay awake and drink longer, police say, have a false sense of sobriety, and the caffeine and carbonation helps the alcohol get into the bloodstream faster.

Dr. Peter Kmieck, director of Kappa Labs, said "it's the combination of these stimulants that may produce an effect that otherwise they wouldn't have had."

The I-team checked out places that target kids like MySpace and You Tube and we found dozens of blogs devoted to "Sparkaholics" who are looking for friends who want to get hyper and drunk at the same time.

Young people have posted photos and videos of themselves posing with the drinks, drinking them with friends even chugging them online.

The official Miller Brewing Company Sparks website looks like a page from a high school notebook. Substance abuse expert Jim Hall thinks the companies are trying to hook kids as young as they can get them.

"The packaging is attractive," Hall said. "They look like orange juice rather than necessarily beer and they are promoted as high energy athletic enhancing drinks."

Sparks contains up to 7% alcohol, which is almost twice as much as some beers.

A Miller Brewing Company customer service representative told the I-Team Sparks contains about 15 milligrams of caffeine per can, far less than a cup of coffee.

But the I-Team had a sample of Sparks tested by Kappa Labs, and the report showed the contents of one can contained 214 milligrams of caffeine, about the amount of caffeine in 2 average cups of coffee.

To test the effects of the Sparks one two punch of caffeine and alcohol, I-Team reporter Stein enlisted the help of the Florida Highway Patrol. Under the supervision of an expert DUI investigator, Stein drank 3 cans of Sparks over the course of 2 hours, and had her reactions and reflexes tested over time.

After two hours, Stein failed the typical roadside sobriety test given by the FHP, and when she was given a Breathalyzer test, she was shocked to find her blood alcohol level was .117, far above the legal limit in Florida.

What really worries police is that since these drinks are packaged with the same colors and even the same typefaces as some energy drinks, kids might confuse them with their non-alcoholic cousins.

Police worry kids will be tempted to try the drinks, which they can't legally buy. That prohibition may not be much of a barrier, as the I-Team found when it was invited to join an undercover investigation by state Alcoholic Beverage Control officers.

Investigators sent young-looking adults into a series of convenience stores in Miami-Dade and Broward County, and as undercover cameras rolled, they attempted to purchase drinks including Sparks.

At four out of the six stores the teenagers, age 18 and 19, were allowed to walk out of the stores without facing an ID check. The investigation resulted in the arrest of the clerks who sold the drink to minors.

"I'm happy that you're bringing this to the public's attention," said Lt. Pat Santangelo, spokesperson for the Florida Highway Patrol.

"I really think this is something that we should try to prevent young people from getting a hold of this product."

Miller Brewing Company spokesperson Julian Green provided CBS4 with posters it says are distributed to retailers of Sparks, setting forth guidelines for how the drinks are to be marketed in their stores.

"Sparks was created solely for the use of legal drinking age consumers, and there is no non-alcoholic version of Sparks," said Miller's statement.

"The reference to alcohol is clearly and prominently displayed on the Sparks label. We provide our distributors and retailers with information to ensure that Sparks is only displayed in the alcohol beverage section of stores and only sold to legal drinking age consumers. We responsibly market our products to legal drinking age consumers consistent with industry marketing codes and applicable laws and regulations."

"The caffeine content for a 12 oz. serving of Sparks is less than a 12 oz can of cola or two 8 oz. cups of coffee."



Kappa Laboratories, Inc.

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Phone (305) 599-0199 • Fax (305) 592-1224

Mt. Sinai Medical Center • Biomedical Research
Pearlman Building
4300 Alton Road • Miami Beach, Florida 33140

www.kappalabs.com

LABORATORY REPORT

Channel 4 News
Attn.: Laurie Stein / Reizel Larrea
8900 NW 18th Terrace
Miami, Florida 33172

January 17, 2008

Lab Ref. No.: 5547, Log #I46-I48

PAGE 02/05

Re: Alcohol results obtained from three (3) Premium Malt samples.

The samples were delivered to Kappa Laboratories, Inc., 2577 NW 74th Avenue, Miami, Florida on January 8, 2008 at 2:55 p.m., under Chain of Custody. The analyses were performed for Channel 4 News, Miami, Florida.

Method: Alcohol, AOAC 942.06

Mt. Sinai Medical Center • Biomedical Research
Pearlman Building
4300 Alton Road • Miami Beach, Florida 33140

www.kappalabs.com

RESULTS

LOG NUMBER	SAMPLE IDENTIFICATION	ALCOHOL RESULTS	DATE ANALYZED	ANALYST
I46	Sparks 6.0% Alcohol Premium Malt	6.97% Alcohol @ 60°F	01/17/08	IF
I47	Sparks Plus 7.0% Alcohol Premium Malt	6.97% Alcohol @ 60°F	01/17/08	IF
I48	Tilt 6.6% Alcohol Premium Malt	6.44% Alcohol @ 60°F	01/17/08	IF

Kappa Laboratories has been inspected and previously recognized by the U.S. Department of Agriculture (USDA Microbiology-#0093, Chemistry-#1282); NELAC certified by the Florida Dept. of Health, Drinking Water including Microbiology, Pesticides and PCB's; Environmental Certification as Basic Environmental Laboratory (DOH #E86515 and #E86942); Registered with the U.S. Food and Drug Administration (FDA-#1039389) and is an FDA Accepted Laboratory for Import Testing. Kappa Laboratories is currently a Contract Laboratory to the U.S. Centers for Disease Control (CDC), Atlanta, Georgia; Vessel Sanitation Program.

Signed:
Dr. Peter J. Kmieck
Director, Kappa Laboratories, Inc.

LOG NUMBER	DATE ANALYZED	ANALYST
I46	01/17/08	IF
I47	01/17/08	IF
I48	01/17/08	IF

Kappa Laboratories, Inc
Reporting Sheet - High Pressure Liquid Chromatography

Client: Channel 4 News
Job No: 5547
Date: 01/15/2008
Data Ref: HPLC System II Data Book #7; page 146
Sample Description: Sparks 6.0 Alcohol Premium Malt Beverage
Lot Number: B827183A
Kappa ID: 146
Analysis Method: USP 30/NF25 Caffeine p.1582
Programmed Computer Method: KL49
HPLC System: System II Axxiom Computer A
Detector: SpectroMonitor SM4100 (KLI-SM4100) Wavelength: 275 nm
Mobile Phase: K080114A; Sodium Acetate:Acetonitrile:THF
Reference: CSP-E page 147
Flow rate: 0.70ml/min
Range: 1.0 Column: Luna C18(2) Loop size: 20 µl
Pump: ConstaMetric 3200- DKL-3200 SN: 181551-3
Analyst: IF

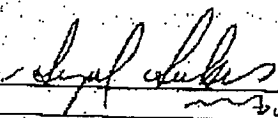
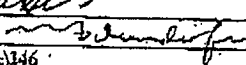
Standard: Caffeine USP- Spectrum Chemical Lot No: RV0371
Standard Weight used: 0.0081g Balance ID: Bal C Exp: 09/20/2008
Reference: CSL-3; page 222
Dilution Method: 0.0051g in 25ml
Final Concentration: 0.204mg/ml
Computer File Name: CFF20, 25, 30
HPLC Resp(s): 147618, 147532, 147285
Avg. Area: 147478
Avg. Hght: Avg. Ret. Time: 8.82min
Avg. Ret. Time:

Sample: Sparks 6.0 Alcohol Premium Malt Beverage Lot No: B827183A
Sample weight: 5ml
Dilution Method: 5ml diluted into 25ml v/v w/ mp Amt. Analyzed: 5ml/25ml
Sample Diluent: mobile phase
Computer File Name: CFF22, 27 Avg. Ret. Time: 8.59min
HPLC Resp(s) Sum of peaks: 64516, 64678
Avg. Area Sum of peaks: 64597
Final Conc. And Calculation: x
1 fl. oz = 30ml
16 fl. oz = 480ml

$$\frac{64597}{147478} \times 0.204 \text{mg/ml} \times 5 = 0.44677 \text{mg}$$

$$\frac{0.44677 \text{mg}}{\text{ml}} \times 480 \text{ml} = 214.4496 \text{mg/serving}$$

$$= 214 \text{mg Caffeine/ 16 fl. oz.}$$

Analyst: 
Checked By: 
File Name: C:\HPLC\Channel 4\2008\Caffeine\146

Date: 01/15/08
Date: 1-17-08
Form No. 99-C-03, (1,2), Rev. 2

Kappa Laboratories, Inc
Reporting Sheet - High Pressure Liquid Chromatography

Client: Channel 4 News

Date: 01/15/2008

Job No: 5547

Data Ref: HPLC System II Data Book #7; page 146

Sample Description: *Sparks Plus 7.0 Alcohol Premium Malt Beverage*

Kappa ID: 147

Lot Number: B82 7283A

Analysis Method: USP 30/NF25 Caffeine p.1582

Programmed Computer Method: KL49

HPLC System: System II Axxiom Computer A

Detector: SpectroMonitor SM4100 (KLI-SM4100)

Wavelength: 275 nm

Mobile Phase: K080114A; Sodium Acetate:Acetonitrile:THF

Reference: CSP-E page 147

Flow rate: 0.70ml/min

Range: 1.0

Column:

Luna C18(2)

Loop size: 20 µl

Pump: ConstaMetric 3200- DKL-3200

SN: 181551-3

Analyst: IF

Standard: Caffeine USP- Spectrum Chemical

Standard Weight used: 0.0081g

Balance ID: Bal C

Lot No: RV0371

Reference: CSL-3; page 222

Exp: 09/20/2008

Dilution Method: 0.0051g in 25ml

Final Concentration: 0.204mg/ml

Computer File Name: CFF20, 25, 30

HPLC Resp(s) : 147618, 147532, 147285

Avg. Area : 147478

Avg. Ret. Time: 8.82min

Avg. Hght:

Avg. Ret. Time:

Sample: *Sparks 7.0 Alcohol Premium Malt Beverage*

Sample weight: 5ml

Lot No: B827283A

Dilution Method: 5ml diluted into 25ml v/v w/ mp

Sample Diluent: mobile phase

Amt. Analyzed: 5ml/25ml

Computer File Name: CFF24, 29

HPLC Resp(s) Sum of peaks: 63852, 65891

Avg. Area Sum of peaks: 64872

Avg. Ret. Time: 8.59min

Final Conc. And Calculation: x

1 fl. oz. = 30ml

16 fl. oz. = 480ml

$$\frac{64871}{147478} \times 0.204\text{mg/ml} \times 5 = 0.44867\text{mg}$$

$$\frac{0.44867\text{mg}}{\text{ml}} \times 480\text{ml} = 215.3597\text{mg/serving}$$

$$= 215\text{mg Caffeine/ 16 fl oz}$$

Analyst:

Checked By:

File Name: C:\HPLC\Channel 4\2008\Caffeine\147

Date:

Date:

Form No. 99-C-03. (1,2), Rev. 2

Kappa Laboratories, Inc
Reporting Sheet – High Pressure Liquid Chromatography

Client: Channel 4 News Date: 01/15/2008
 Job No: 5547 Data Ref: HPLC System II Data Book #7; page 146
 Sample Description: *Tilt 6.6 Alcohol Premium Malt Beverage*
 Lot Number: 7100BA2BB Kappa ID: 148
 Analysis Method: USP 30/NF25 Caffeine p.1582
 Programmed Computer Method: KL49
 HPLC System: System II Axxiom Computer A
 Detector: SpectroMonitor SM4100 (KLI-SM4100) Wavelength: 275 nm
 Mobile Phase: K080114A; Sodium Acetate:Acetonitrile:THF
 Reference: CSP-E page 147
 Flow rate: 0.70ml/min Loop size: 20 µl
 Range: 1.0 Column: Luna C18(2) SN: 1815513
 Pump: ConstMetric 3200-DKL-3200 ANALYST: [Signature]

Standard: Caffeine USP- Spectrum Chemical Lot No: RV0371
 Standard Weight used: 0.0081g Balance ID: Bal C Exp: 09/20/2008
 Reference: CSL-3; page 222
 Dilution Method: 0.0051g in 25ml
 Final Concentration: 0.204mg/ml
 Computer File Name: CFF20, 25, 30
 HPLC Resp(s) : 147618, 147532, 147285
 Avg. Area : 147478
 Avg. Hght:
 Avg. Ret. Time: 8.82min
 Avg. Ret. Time:

Sample: *Tilt 6.6 Alcohol Premium Malt Beverage*
 Sample weight: direct assay Lot No: 7100BA2BB
 Dilution Method: no dilution Amt. Analyzed: direct assay
 Sample Diluent: mobile phase
 Computer File Name: CFF25, 28
 HPLC Resp(s) Sum of peaks: 109340, 109135
 Avg. Area Sum of peaks: 109238
 Final Conc. And Calculation: x
 1fl oz = 30ml
 16 fl. oz = 480ml
 Avg. Ret. Time : 8.82min

$$\frac{109238 \cdot x \cdot 0.204\text{mg/ml}}{147478} = 0.15110\text{mg}$$

$$0.15110\text{mg/ml} \times 240\text{ml} = 36.26501\text{mg/serving}$$

$$= 36\text{mg Caffeine/ 16 fl oz}$$

Analyst: [Signature]
 Checked By: [Signature]
 File Name: C:\HPLC\Channel 4\12008\Caffeine\148

Date: 01/16/08
 Date: 1-17-08
 Form No. 99-C-03, (1,2), Rev.2