

## December 4, 2012

Via Federal Express

Via Fax 248-536-0837

Via Email to mbhargava@5hourenergy.com and elutz@5hourenergy.com

Mr. Manoj Bhargava

Chief Executive Officer

Living Essentials, LLC

38955 Hills Tech Dr.

Farmington Hills, MI 48331

Dear Mr. Bhargava:

This firm represents the Center for Science in the Public Interest (CSPI), a nonprofit consumer-advocacy organization based in Washington, D.C. Living Essentials, LLC, has posted a video on its website (www.5hourenergy.com/index.asp) in which you purport to quote Michael Jacobson, the Executive Director of CSPI. I am writing to demand that you immediately remove any reference to Dr. Jacobson or CSPI from your website, as such use infringes on Dr. Jacobson's right of publicity and on CSPI's marks. I also demand that you immediately and stop falsely representing CSPI's statements.

In the video, you quote Dr. Jacobson as saying "Overdoing caffeine alone is actually pretty difficult to do. Someone would have to make an effort to consume 40 or so 200-milligram tablets." Your video suggests that Dr. Jacobson believes that your product is safe, simply because he stated it would be difficult to overdose on caffeine alone. However, 5-hour Energy has many ingredients in addition to caffeine. Significantly, the product has been linked to 13 deaths in the last four years, and has been associated with 30 other serious, life-threatening events, including heart attacks, convulsions, and one spontaneous abortion, according to the New York Times' review of Food and Drug Administration records. In addition, there are many negative effects from caffeine short of overdose and death. Dr. Jacobson and CSPI most certainly do not believe that 5-hour Energy is necessarily safe at the dosages that may be consumed, as your video suggests.

In addition to misrepresenting the views of Dr. Jacobson and CSPI, you have infringed Dr. Jacobson's right of publicity under state statutes and common law. The use of Dr. Jacobson's statements for commercial purposes is prohibited without his written permission.

## Harmon, Curran, Spielberg + Eisenberg LLP



Neither Dr. Jacobson nor CSPI has given Living Essentials, LLC permission to use his statements to promote its products.

The statement in your video also infringes on CSPI's marks by falsely suggesting that CSPI endorses 5-hour Energy. In addition, the use of CSPI's marks as described constitutes false advertising in violation of the Lanham Act, as the video does not reflect CSPI's view about 5-hour Energy.

Your use of Dr. Jacobson's name and name of CSPI without prior consent has resulted, and will continue to result, in damage to Dr. Jacobson and the Center. Dr. Jacobson and the Center have made every effort over the past four decades to maintain their reputation for objectivity and independence. As such, CSPI does not accept funding from any companies and CSPI's flagship publication, Nutrition Action Healthletter, does not accept advertising. Dr. Jacobson and CSPI never permit their names or the work of the organization to be used by commercial entities. Dr. Jacobson's reputation will be irreparably harmed by your misrepresentation of his views on caffeine and your suggestion that he views your product as safe. Viewers of your video might even assume that Dr. Jacobson was paid by your company and was endorsing your product, two things he would never do.

Therefore, CSPI demands that Living Essentials, LLC immediately cease and desist from making or distributing any statements by Dr. Jacobson or CSPI in connection with the promotion of your products. No later than close of business on Wednesday, December 5, please respond to this letter confirming that you have removed the video from your website or removed any reference to Dr. Jacobson and the Center for Science in the Public Interest from the video.

Sincerely,

Ruth Eisenberg

Counsel for Center for Science in the Public Interest

ANA Eisenberg

cc: Michael Jacobson, Ph.D.