


11 September 2020

Food Standards Australia New Zealand  
PO Box 5423  
KINGSTON ACT 2604  


By email: [submissions@foodstandards.gov.au](mailto:submissions@foodstandards.gov.au)

Dear Sir/Madam,

**RE: Urgent Proposal P1054 Pure and highly concentrated caffeine products – Assessment of the Approved Variation (Proposal)**

We write to express our concern and opposition to the variation under the Urgent Proposal P1054 (Variation).

We understand the FSANZ Board approved a variation to the ANZ Food Standards Code to prohibit the retail sale of pure and highly concentrated caffeine products under an urgent proposal. This Variation bans foods in which total caffeine is present in a concentration of 5% or more (if the food is a solid or semi-solid food) or 1% or more (if the food is a liquid).

FSANZ is now reviewing the approved Variation to decide whether it should be affirmed, repealed, or amended. We respectfully request that the Variation is repealed or amended as set out in this letter.

**Background to our Business**

My wife Jacqui and I are the founders of Revvies Energy Strips. Most of our products are currently considered supplemented foods and the strips are manufactured in the UK, with the retail packaging manufactured in Australia. The products are then packaged in New Zealand via a sheltered workshop and distributed from New Zealand for retail sale in both New Zealand and Australia. However, the products were imagined in Sydney, where we live with our two children, and from where we operate the business

In 2018, we became the first Australian company to complete a Crowd Source Funding offer, under the Coalition's innovative legislation, so we now have 265 other mums and dads, and other Australians sharing our dream and journey.

We take the safety and quality of our product very seriously, and were the first brand in New Zealand and second in Australia to gain accreditation through the Informed-Sport quality assurance program, meaning every Revvies batch is third party tested for purity before going on sale. We understand that Revvies is the only caffeine supplement available in Australia and New Zealand to have the lowest risk assessment assigned to it by the Australian Sports Anti-Doping Authority (ASADA).

Part of the reason we developed Revvies was that we wanted a smaller (40mg) and healthier caffeine alternative to sugary energy drinks, and pre-workout supplements that often contain many unproven ingredients with unmeasured serving sizes.

## Our Product

Our idea was to provide a sugar-free, pocket-size caffeine boost you could take without water, as we often used a coffee before a workout or run, but didn't like the liquid sloshing around whilst we exercised. Our format has proved very popular with sports people and elite athletes, in fact, we are a preferred supplier to High Performance Sport New Zealand, and are used by the Australian Diamonds and a number of NRL, Super Rugby and A-League teams.

Our Tropical Hit and Arctic Charge Energy Strips are regulated under the New Zealand (Supplemented Food) Standard 2016 which incorporates the caffeine prohibition under the Variation.

Our Energy Strips are thin strips that are individually pre-packed with five serves per pack. They are a small strip that is intended to be placed on the tongue and allowed to dissolve (not chewed). As you can see from the photos below, they are:

- individually packed;
- thin and small (comparison against NZ 10c and AUD 2 coins); and
- in a **controlled serving sizes** with each strip weighing only 0.2g or 211mg.



Each strip only contains 0.04g or 40mg of caffeine. This is about the same amount of caffeine as **half a cup of instant coffee**.<sup>1</sup> The entire pack (of 5 serves) only contains a total of 200mg of caffeine which is slightly more caffeine than one espresso 50mL coffee.<sup>2</sup>

The label also sets out relevant caffeine information for the consumer, including:

- the amount of caffeine per serve and per 100g;
- advisory statements that:

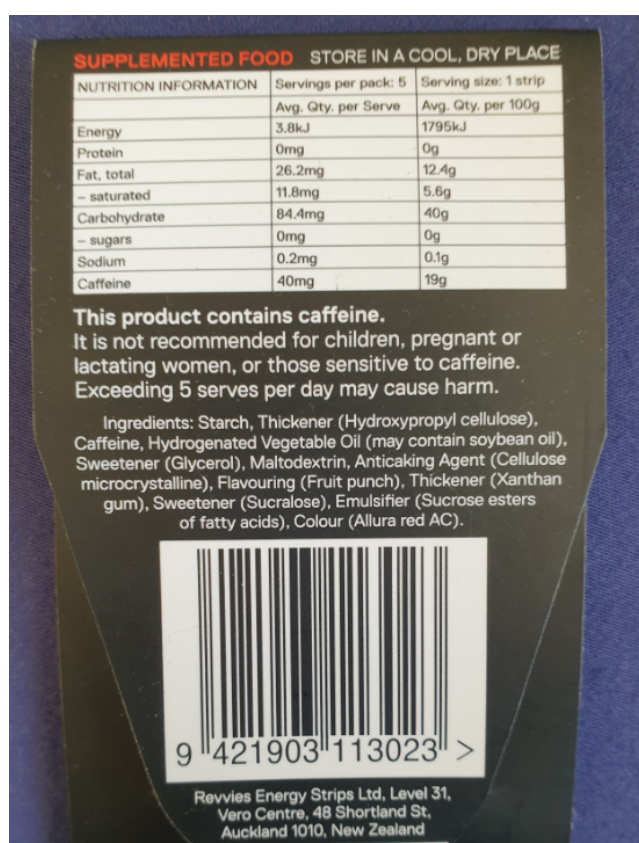
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<sup>1</sup> <https://www.foodstandards.gov.au/consumer/generalissues/Pages/Caffeine.aspx>

<sup>2</sup> <https://www.foodstandards.gov.au/consumer/generalissues/Pages/Caffeine.aspx>

- the product is not recommended for children, pregnant or lactating women or those sensitive to caffeine;
- the product contains caffeine and
- exceeding 5 serves per day may cause harm (noting that 5 serves is 200mg of caffeine which equates to about 2 1/2 cups of instant coffee or slightly more than one espresso 50mL coffee – so not very much)<sup>3</sup>.

As can be seen from the label below, the consumer is clearly forewarned that the product contains caffeine and that excessive consumption may cause harm. Children and pregnant women are also warned, as well as those sensitive to caffeine.



## FSANZ Variation

The FSANZ Variation means that our Products may not be able to be sold as they contain a concentration of more than 5% caffeine. Each strip contains less than 0.04g of caffeine but due to the size of the strip, this equates to a concentration of 19%. This seems grossly unfair given each strip contains less than half the amount of caffeine than in a cup of instant coffee, and due to measured individual serves, the retail pack size (5 strips) and warnings, Revvies have a very different risk profile to powers or other unmeasured formats

<sup>3</sup> <https://www.foodstandards.gov.au/consumer/generalissues/Pages/Caffeine.aspx>

We would submit that this is hardly a pure or concentrated caffeine product that was intended to be captured by the Variation. And is not one that is likely to cause harm, particularly as the form of the strip is unlikely to be eaten in an excessive amount and there are clear warnings around excessive consumption on both the outer and inner pack.

#### ***Further consideration by FSANZ due to controlled serving size format***

Although we appreciate some thought was given to our products by FSANZ, we respectfully do not believe that FSANZ *adequately* considered the impacts of food products that are sold in small serves of divided preparations. This has meant that divided preparations sold in small **controlled serving size** formats and with relatively minor levels of caffeine per serve may be prevented from sale.

This includes our Energy Strips. It should also be noted that these strip delivery systems are based on technological advances that avoid gastrointestinal disturbances and takes advantage of caffeine absorption in the oral cavity. Caffeine serving size requirements to achieve the same effects may be lower using a strip delivery system. The limit that FSANZ is wishing to affirm does not reflect technological advances like our Energy Strips<sup>4</sup>, and creates an environment where future food innovations that may again provide safer and healthier options than those currently on the market are stifled.

Should the Variation be affirmed by FSANZ this would mean our products are unable to be sold as a supplemented food in Australia or New Zealand without changes to New Zealand legislation which is a time-consuming process and not guaranteed it could occur. This provides no certainty to us, our employees, suppliers or investors, which is not helpful during these unprecedented times.

We ask that FSANZ reconsider the permitted level in relation to formats such as our Energy Strips which are small serve size, contain a small amount of caffeine per serve, and come in divided preparations of a controlled serving size.

It is also not clear to us why our Energy Strips are unfairly targeted when they are safe and labelled in a precautionary manner to ensure sufficient consumer protection.

#### ***Caffeine level consistent with FSANZ's recommendations on reasonable caffeine consumption***

It is also worth noting that the amounts of caffeine in our products is consistent with FSANZ's own views about what a reasonable level of caffeine consumption is. This information was published by FSANZ in December 2019.<sup>5</sup> In particular, FSANZ notes that for adults:

- *It is reasonable to consume a maximum of 400mg of caffeine per day and from all sources.*

We recommend no more than five serves of our product is consumed per day which is only 200mg per day. This is half the 400mg amount recommended by FSANZ and still leaves room for other caffeine sources to be consumed.

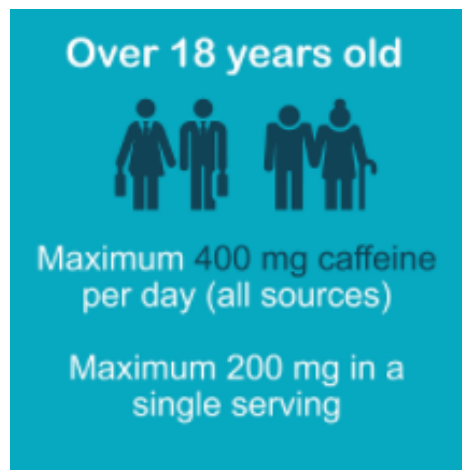
- *It is reasonable to have a maximum of 200mg in a single serving.*

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<sup>4</sup> As noted by High Performance Sport NZ in their submission of 14 November 2019.

<sup>5</sup> <https://www.foodstandards.gov.au/consumer/generalissues/Pages/Caffeine.aspx>

Our Energy Strips have far less than this, only 40mg per serve so well below FSANZ's recommendation. Further, the entire pack of 5 individual serves has 200mg which again shows that this is well within FSANZ's own recommendations.



As you can see, it does then surprise us that the Variation prevents sale of our products even though we are well within the reasonable consumption limits proposed by FSANZ above. It seems inconsistent and it is not clear to us why our products are potentially being prevented from sale when our products align with your own recommendations as to reasonable and safe caffeine consumption.

#### ***Impact on sports athletes***

We also note that High Performance Sport New Zealand (**HPNZ**) are also in support of our products as can be seen in their previous submission dated 14 November 2019. Athletes wishing to use appropriate and safe serving sizes of caffeine choose products such as Revvies due to the controlled serving size and that they are tested for banned substances. As HPNZ notes in their submission:

*We would be concerned that removal of such products could increase the use of internet purchasing from foreign sources and obtaining products that are not tested. There is a risk access and use of preferred caffeine products could go 'underground' where product risk is much greater to health and wellbeing (e.g. mixed ingredient products, questionable quality assured dose, and products contaminated/spiked with scheduled substances).*

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*Restricting the availability and range of currently suitable products will pose a much greater challenge for NZ athletes and HPSNZ to source quality and appropriately tested product.*

This is still a very real risk for both Australian and New Zealand elite athletes and recreational and club athletes.

#### ***Our Proposed Variation***

We submit that the Variation is amended to permit the retail sale of food products that:

- are solid or semi-solid foods;

- sold in packaging with individual portion packs (ie. are divided portion packs). (This allows for specific controlled dosage);
- each individual portion packs contains a controlled serving size of no more than 3g per serve. (This provides limitation to only smaller food products); and
- each individual portion or serve contains no more than 200mg of caffeine. This aligns with FSANZ's maximum per serve amount outlined earlier.

An advisory statement on the label could also be included based on a maximum one-day quantity of caffeine which we submit should be 300mg per day. This aligns with FSANZ's reasonable one day quantity of 400mg and allows room for other sources of caffeine to still be consumed safely.

Given the above aligns with FSANZ reasonable caffeine consumption level we would hope that FSANZ are agreeable to our proposal. We would welcome discussions with FSANZ on the above or any other alternative suggested changes.

As an innovative locally owned product, used by many loyal organisations and consumers in New Zealand and Australia, we ask that FSANZ reassess its decision and foster innovation, not create more barriers. We hope you understand Revvies products already meet the gold standard of quality and purity, and the Variation would not improve their safety, quality or purity, but could instead see us out of business, and our investors out of pocket.

We thank you for the opportunity to provide comments, and for your consideration.

Kind regards,



Managing Director  
Revvies Energy Strips Ltd