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Submission: Proposal P1030 concerning Health Claims on Electrolyte Drinks

The Obesity Policy Coalition (OPC) is a partnership between Cancer Council Victoria, Diabetes Australia – Vic, and the World Health Organization Collaborating Centre for Obesity Prevention at Deakin University, with funding from VicHealth. The OPC is concerned about the high rates of overweight and obesity in Australia, particularly among children.

The OPC is pleased to have the opportunity to provide comment on Proposal P1030, a proposal to amend the *Australia New Zealand Food Standards Code* as it relates to health claims on electrolyte drinks. We enclose our submission.

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Yours sincerely

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A partnership between:

The Cancer Council Victoria
Diabetes Australia-Vic
WHO Collaborating Centre
for Obesity Prevention,
Deakin University



Submission to Food Standards Australia New Zealand

Proposal P1030 - Health Claims on Formulated Supplementary Sports Foods and Electrolyte Drinks - September 2014

Introduction

The Obesity Policy Coalition (OPC) is a partnership between Cancer Council Victoria, Diabetes Australia – Vic and the World Health Organization Collaborating Centre for Obesity Prevention at Deakin University. The OPC is concerned about poor diets and high rates of overweight and obesity in Australia, particularly among children.

The OPC's submission on FSANZ Proposal P1030, relating to regulation of health claims carried by formulated supplementary sports foods and electrolyte drinks (ED) under the Food Code (Proposal P1030), focuses on the proposal that the range of health claims able to be carried by EDs be expanded. Our interest in the issue is based in our broader concern about the contribution of sugar-sweetened beverage (SSB) consumption to increased risk of overweight, obesity, dental caries and chronic diseases. In particular, we are concerned about the impact of the proposed removal of provisions governing EDs from Standard 1.2.7 on consumers, which will mean the capacity of EDs to carry health claims will no longer be limited by the Nutrient Profile Scoring Criteria (NPSC).

Summary

The OPC considers that increasing the range of health claims permitted on EDs and exempting these products from the consumer protections contained in Standard 1.2.7 will add to the impression that they are an appropriate part of a healthy diet. This impression is misleading as consumption of added sugar including through sports drinks, is not recommended under the Australian Dietary Guidelines. At a time when diet and obesity-related chronic diseases place a huge burden on our society, Proposal P1030 will undermine consumers' capacity to make healthy dietary choices.

In support of this position, we rely on the following points, elaborated below:

- a. EDs are overwhelmingly marketed to, and consumed by, everyday Australians, not just sportspeople;
- b. EDs are very high in sugar and can contribute to excess dietary energy, weight gain and chronic diseases;
- c. Allowing EDs to carry health claims without meeting the NPSC under Standard 1.2.7 is misleading, conveying an impression of healthfulness compared to other sugary drinks (such as soft drinks), that is not accurate for most Australians;
- d. The proposed changes are inconsistent with the objectives of the *Food Standards Australia New Zealand Act 1991* (Cth) (FSANZ Act) and other recent Australian food labelling policy initiatives such as the Health Star Rating System (HSRS).
- e. The World Health Organisation recommends that sugar intake should contribute less than 10% of total energy and notes that levels of 5% or less will give extra health benefits. Some EDs exceed these recommended maximum levels in just one serve.

1. EDs are widely marketed to, and consumed by, non-sportspeople

a. When EDs are recommended

EDs were developed for people engaging in prolonged, strenuous physical activity. The Australian Institute of Sport notes that carbohydrate replenishment is not needed during exercise of less than 45 minutes duration, and only small amounts (swilling in the mouth) are required for sustained high intensity exercise of up to 75 minutes.¹ The Sports Dietitians' Association of Australia notes that sports drinks may improve performance in sessions of constant lower intensity exercise of 90 minutes or more, or in periods of more than 60 minutes of intermittent high intensity exercise.² However, consumption of sports drinks for normal hydration purposes is not recommended for Australians who do not engage in exercise of long duration. This is because their significant sugar content can contribute to excess dietary energy consumption, overweight and obesity.³ For a typically active Australian or casual athlete, additional electrolytes are also unnecessary if a well-balanced diet is maintained.⁴

Population health research shows that very few Australians engage in sufficiently intense and sustained exercise to warrant the use of EDs. In 2007-2008, around 62% of adults did not meet the recommendations of the Australian physical activity guidelines⁵, which recommend exercise of only 2 ½ to 5 hours at moderate intensity per week.⁶ It may be inferred from this that the proportion of Australians exercising at an intensity level and for a duration sufficient to require 'carbohydrate replenishment' from EDs is a very small minority indeed. For sedentary people, and for moderately active people participating in sport, EDs therefore represent a significant source of dietary added sugar which is a risk factor for weight gain, without contributing any valuable nutrients or health benefits.

b. Marketing of EDs in Australia

Respondents to consumer research commissioned by FSANZ in 2010 felt that marketing for EDs was really aimed towards the general public rather than elite athletes, which was noted to be supported by the prominence of electrolyte drinks and their availability for purchase from many outlets.⁷ Consumers were aware of marketing for sports drinks (used interchangeably with 'electrolyte drinks' in the report) in televised sport, sporting clubs, TV ads, billboards in train stations, on the sides of buses and in ad shells at bus stops.⁸ Respondents noted sports drinks being sold at supermarkets (aisle and point of sale), corner stores, sporting events, sports club houses, petrol stations, railways station vending machines, food courts and sandwich shops.⁹

Popular sports drinks fitting the prescribed composition of EDs in Proposal P1030 include drinks from PepsiCo's Gatorade range and Coca Cola's PowerAde range, in bottled and powdered forms.¹⁰ These brands are marketed widely to Australian spectators through popular televised sports such as AFL, with Brownlow medallists currently promoting Gatorade under a three-year deal signed in 2013.¹¹ EDs are also heavily promoted through televised cricket, including to children. This can be seen in the "Fuelling the Future of Australian Cricket" advertisements featuring young athletes who extoll the benefits of EDs for performance.¹² Marketing for EDs also targets children through community sport programs like the Powerade Junior Cricket program in South Australia¹³ and the Gatorade Under 18 Twenty20 Cup for teams across Australia.¹⁴ Endorsements from elite athletes and sporting clubs contribute to the healthy 'halo' around these products.

c. Perceptions of EDs by active and sedentary consumers

Importantly, respondents to FSANZ consumer research considered EDs to be a healthier option than soft drinks,¹⁵ with parents considering them “better” for their children than other drinks such as soft drinks like Coca Cola.¹⁶ Parent respondents noted that their children consumed sports drinks in the context of sport or activity, or during hot weather or outdoors in the sun, during sports like football and playing in playgrounds. Adult respondents reported consuming EDs after working out at the gym, netball games, volleyball games and jogging.¹⁷ We submit that few of these instances of physical activity equate to the type of sustained physical activity during which EDs are of benefit. Perhaps most concerning was that sedentary respondents reported drinking EDs when they were hot and/or thirsty, had a hangover, needed energy or were feeling lethargic. This suggests that consumers’ perceptions of the benefits of EDs, and appropriate circumstances for consumption, do not reflect the evidence.

These results show clearly that EDs are perceived as appropriate for consumption by non-sportspeople. Responses suggested it was acceptable to consume sports drinks as part of the general diet, based on reasons ranging from general taste motivations through to hydration needs from exercising in hot weather.¹⁸ Active respondents described sports drinks using the words “replenish, rejuvenate, revitalize, refresh, scientific”, while sedentary respondents used “healthy, energising, revitalising, quick rehydration, refreshing, thirst-quenching and delicious.” These views differed from attitudes to specialist sports foods, which were perceived as having specific sports-related purposes.

d. Consumption of EDs by active and sedentary consumers

Industry publications note that the market for sports drinks has grown and broadened in Australia as they are increasingly promoted as a rehydration beverage for anyone feeling run down, not just sportsmen and sportswomen.¹⁹ The 2014 Interim Result Overview of beverage company Coca Cola Amatil noted that increased market share in the sports drinks category had been achieved by “product innovation backed by a strong marketing campaign”, with the company aiming to continue to “drive sports and energy” categories.²⁰ Researchers internationally have noted that sports drinks including EDs have attained a regular place in the intake of minimally active children or adolescents who may already be at risk of excessive energy intake.²¹

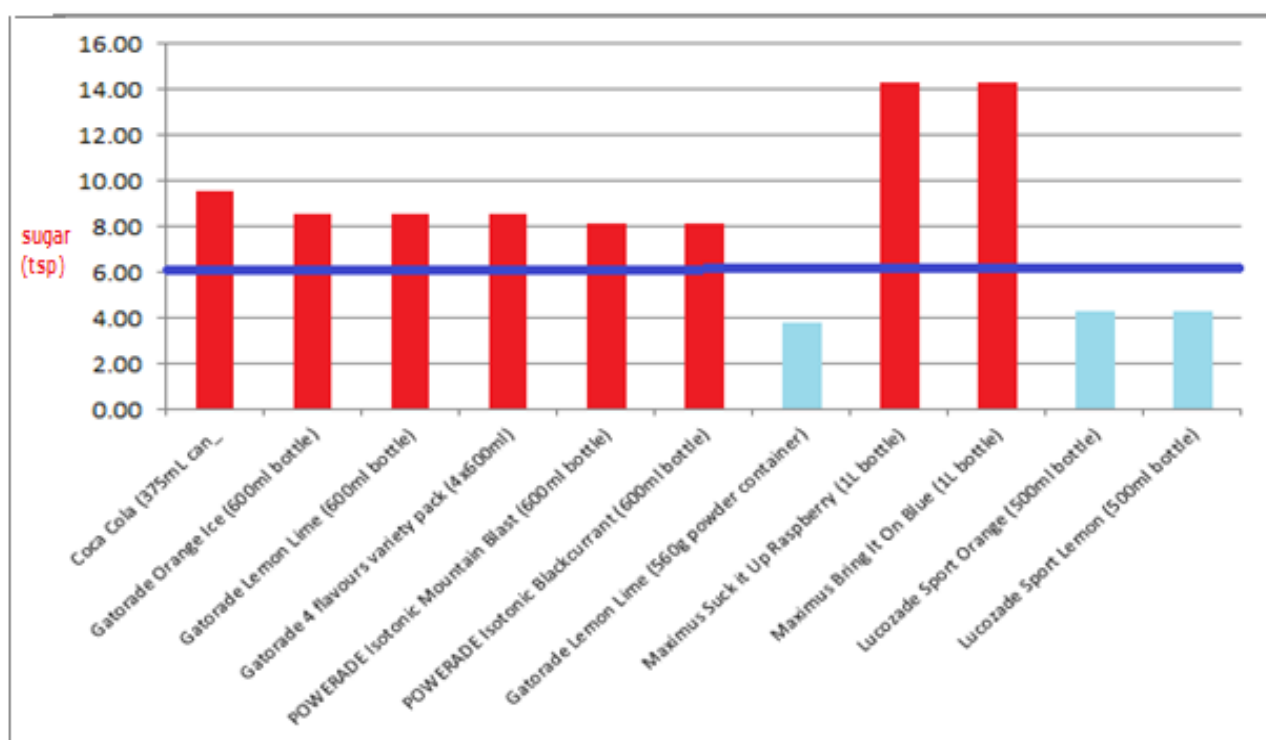
Therefore, although Proposal P1030 asserts that the health claims “will supply sports people with information to help make food choices appropriate to nutritional or performance goals”, it is clear that beverage companies’ target market for sports drinks are not serious sportspeople, but regular Australians. For these consumers, the messages are entirely incorrect and have great potential to mislead. It is clear from FSANZ consumer research that the healthfulness of EDs is already misperceived by consumers, and health claims will add to this impression, driving increased consumption of these products in circumstances where it is not recommended for health.

2. EDs are very high in sugar and can contribute to excess energy intake and risk of overweight, obesity and chronic diseases

EDs, according to their definition in Proposal P1030, contain significant amounts of sugar, often delivering an equivalent dose to soft drinks. While a can of Coke contains 40g (9 tsp) of sugar, a single-serve bottle of Gatorade contains almost as much, at 36g (8 tsp).²² To put this quantity of sugar into context, the WHO recommends that free sugars make up no more than 10% of total energy intake, and in 2014 launched a draft guideline, proposing that reducing sugar intake to below 5% of total energy intake per day (equivalent to around 6 teaspoons for adults of normal Body Mass Index) will have additional health benefits.²³

This reflects an increasingly strong body of evidence showing that intake of free sugars or SSBs is a determinant of body weight, as well as being associated with other negative health impacts.²⁴ The Australian Dietary Guidelines do not recommend any minimum level of sugar consumption for dietary health, but note that intake of food and drinks containing added sugar should be limited. In particular, it notes that SSBs including sports drinks should be limited.²⁵ A single serve of all the EDs surveyed by OPC would exceed the maximum recommended quantity of free sugar in the draft WHO guidelines (see Graph 1, below).

Graph 1 – Figure showing sugar content of popular sports drinks (some EDs, some non-EDs.) Sugar is measured in teaspoons per serve, and compared to the sugar content of Coca Cola. The blue line represents the World Health Organisation’s 2014 Draft Guidelines for maximum daily dietary sugar consumption (25g or 6 tsp).²⁶



Note that the Lucozade products, shown in light blue, which contain less sugar, would not qualify as EDs under Proposal P1030 and would therefore not qualify to make health claims exempt from the NPSC in Standard 1.2.7.

Australia’s significant consumption of EDs is of particular concern because our current high rates of overweight and obesity (more than 60% of Australian adults and one quarter of children are currently overweight or obese²⁷) place a large proportion of the population at heightened risk of diseases including cardiovascular disease, type 2 diabetes and some cancers.²⁸ The contribution of poor diets to preventable chronic disease rates in Australia should not be underestimated, with poor diet and high Body Mass Index now the two greatest contributors to the burden of disease in Australia.²⁹ It has never been more important to ensure that food regulation initiatives support healthy diets.

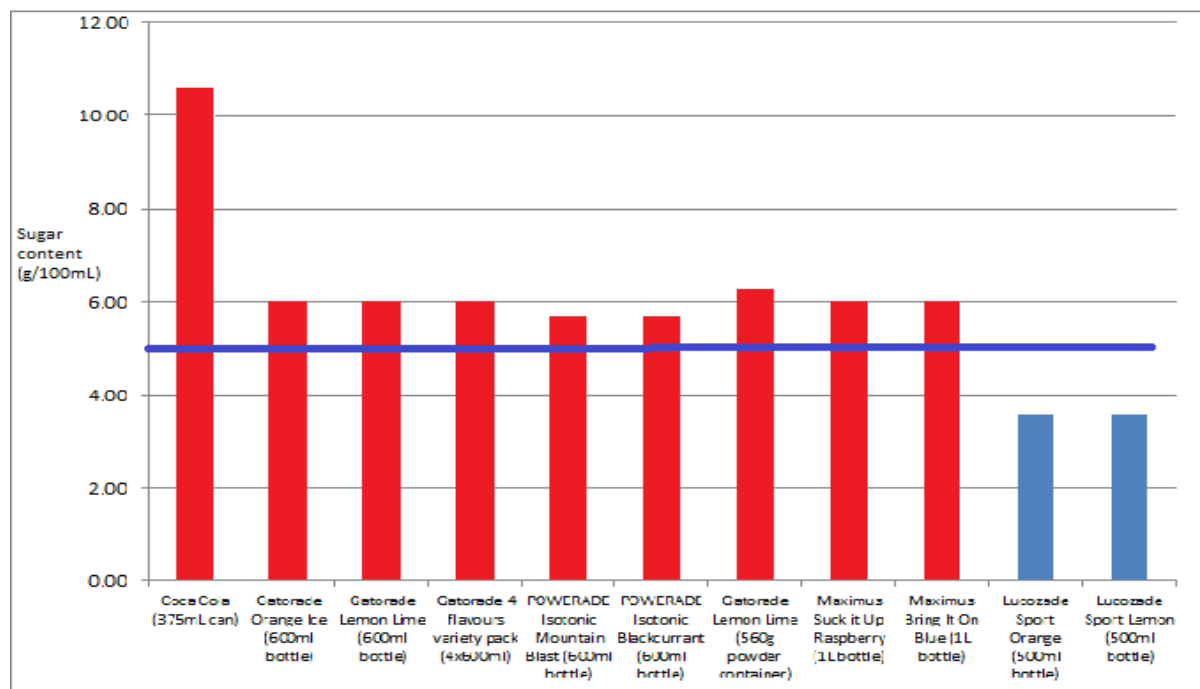
3. Allowing EDs to carry health claims reinforces the erroneous impression (for most consumers) that they are a healthier option

As set out above, consumer research in Australia and New Zealand shows that although sports drinks were developed for consumption by athletes, they are widely perceived as beneficial for health by moderately active and sedentary consumers, who report that sports drinks are considered healthier than carbonated beverages when feeling thirsty or lethargic.³⁰

The potential for consumers to be misled by health claims where a product is not a healthy choice overall underpins the important consumer protections contained in Standard 1.2.7. This Standard provides that a product must meet the threshold requirements of the NPSC in order to carry a health claim. Inherent in this approach is recognition that health claims give an overall impression of healthiness, and may not be carefully dissected for veracity by many consumers, particularly those of limited health or reading literacy, including children. That is, health claims are acknowledged within the Food Code to have great potential to mislead many consumers.

Sugar content is one of the elements within the NPSC that should preclude a product being allowed to carry a health claim. Schedule 5 of Standard 1.2.7 provides that a beverage that contains more than 5g of sugar per 100mL attracts a Nutrient Profiling Score of at least 1, meaning it cannot, in general, carry a health claim. Overwhelmingly, popular EDs including those in the well-known PowerAde and Gatorade ranges would be disqualified from carrying a health claim under Standard 1.2.7. Graph 2 (below) illustrates the large proportion of popular sports drinks that would not satisfy the sugar content NPSC and therefore should not be allowed to carry a health claim.

Graph 2: Figure showing which surveyed sports drinks (some EDs, some non-ED sports drinks) would meet the NPSC requirements to carry health claims under Standard 1.2.7, with reference to sugar content. The blue line represents the threshold sugar concentration of 5g sugar per 100mL.



Note that the least sugary products (shown in blue) would not qualify as EDs under Proposal P1030 and would therefore not qualify to make health claims exempt from the NPSC in Standard 1.2.7.

The significant potential for health claims on EDs to mislead consumers is also illustrated by considering the absurd situation that would arise under P1030 where an ED and a non-ED sports drink (containing less sodium and sugar) are presented together in a retail environment. The consumer will be met with high-sugar, salt-containing EDs professing health benefits, while a less sugary product that is not an ED (for example, Lucozade, shown in Graphs 1 and 2) may not profess the same claims to healthiness, despite potentially being a healthier choice for a large majority of consumers. To single-out EDs from among popular, mainstream sugary drinks as an exception to the important consumer protections provided by Standard 1.2.7 and the NPSC would seriously undermine this hypothetical consumer's capacity to exercise informed choice, because the health claim is blatantly misleading.

4. Further health claims on EDs would be misleading

In our view, the presentation of health claims relating to exercise and performance³¹ of high-sugar EDs, when it is well-known that such claims are applicable to only a small minority of very active consumers, would be misleading and deceptive within the meaning of section 18 of the *Australian Consumer Law* (formerly section 74 of the *Trade Practices Act 1952*). The High Court has reiterated in *Australian Competition and Consumer Commission v TPG Internet Pty Ltd* [2013] HCA 54, that, when considering whether the presentation of information is misleading and deceptive, the "dominant message" of the advertisement is of crucial importance³² and the attributes of the hypothetical viewer and the degree of attention to which they may be expected to pay the communication must be considered.³³ In our view, references in the proposed claims to engagement in 'strenuous activity' would not be sufficient to mitigate against the strong overall impression of healthfulness. There is also no mechanism proposed to inform consumers of the potential negative effects of the sugar and sodium content of these products.

Proposal P1030 would, of course, present great advantages for one stakeholder group: beverage companies. Coca Cola has acknowledged that consumers are increasingly attracted to 'better for you' options³⁴ and is reported to be moving increasingly towards 'still' (non-carbonated) beverages such as sports and energy drinks, with consumers showing 'heightened sensitivity towards sugar-based beverages'.³⁵ It clearly advances the commercial interests of the beverage industry to allow palatable, high sugar products, which are already (mis)perceived by consumers to present a healthier alternative to soft drinks, to carry health claims. We therefore urge FSANZ to very carefully scrutinize any submissions that argue in favour of further health claims on EDs on the basis they will result in improved consumer information. Such arguments are disingenuous while everyday Australians remain the target market for the growth of this sector.

5. Proposal P1030 is inconsistent with the objectives of food regulation and with Australia's public health priorities

Proposal 1030, insofar as it relates to more permissive health claims for EDs, is not consistent with the objectives of the key policy instruments underpinning the Food Code and relevant standards. The objective the FSANZ Act is to:

"ensure a high standard of public health protection throughout Australia and New Zealand...." and

"ensure the provision of adequate information relating to food to enable consumers to make informed choices."

The introduction of Standard 1.2.7, imposing limits on the type of foods that may carry health claims was an important step to advance this goal of ensuring information on food is not misleading. Misleading health claims on EDs, which would significantly undermine the exercise of informed consumer choice, are completely inconsistent with these objectives.

The proposal is also inconsistent with other current government policies that seek to help Australians to make healthier dietary choices. Poor diet is one of the leading contributors to the burden of disease in Australia,³⁶ and governments have taken several important steps to empower healthier choices. An example is the HSRS for packaged food labelling, which will provide clear information for consumers and allow them to compare similar products for overall healthfulness and nutritional quality. In designing the scheme, the Australian Government has been careful to ensure that food labelling policy aligns with the Australian Guide to Healthy Eating. Key goals of the project committee tasked to develop the scheme included allowing comparison between products that may contribute to risk factors for various diet-related chronic diseases, and increasing awareness of foods that may contribute positively or negatively to those risk factors.³⁷ Allowing additional health claims on EDs would represent a huge step backwards for consumer empowerment in Australia and would significantly weaken the impact of initiatives including the HSRS, which has been driven collaboratively by government in consultation with industry and public health groups.

Finally, the proposed changes to health claims on EDs may have the further negative consequence of prompting non-ED sports drinks (such as Lucozade or Vitamin Water), which are presently too low in sugar or sodium to meet the definition of ED, to reformulate to increase these levels to qualify for the broader range of health claims. This would be a perverse outcome at a time when excess dietary salt and sugar currently contribute so significantly to negative health outcomes for many Australians.

Conclusion

Insofar as it relates to EDs, we consider that P1030 is entirely at odds with the objectives of food regulation in Australia, will undermine other recent food labelling initiatives and does not reflect the Australian Dietary Guidelines or the international policy impetus from the WHO, which urges reduction of SSB consumption. We urge FSANZ not to proceed with its proposal to single out EDs from other SSBs for the purposes of health claims. We consider the consumer protections that currently apply under Standard 1.2.7 and the NPSC are desirable and appropriate given the dual public health challenges of poor diet and overweight and obesity, which present a huge challenge for policy makers in Australia.

References and Notes

- ¹ Australian Institute of Sport Supplement Framework, May 2014, at p 4, available [here](#).
- ² Sports Dieticians Australia 'Fact Sheet – Sports Drinks' June 2007.
- ³ Hector D et al., 'Soft Drinks, Weight Status and Health: A Review' (2009) NSW Centre for Public Health Nutrition, University of Sydney, for NSW Department of Health; see also Field A et al., 'Association of sports drinks with weight gain among adolescents and young adults' (2014) 22(10) *Obesity* 2238.
- ⁴ O'Dea J., 'Consumption of nutritional supplements among adolescents: Usage and perceived benefits' (2003) 18 *Health Education Research* 98, as cited by Meadows-Oliver and Ryan-Krause, 'Powering up with Sports and Energy Drinks' (2007) 21(6) *Journal of Pediatric Health Care* 413.
- ⁵ Australian Bureau of Statistics, 4835.0.55.001 – Physical Activity in Australia: A Snapshot, 2007-2008. Released 9 September 2011.
- ⁶ Australian Government Department of Health *Australia's Physical Activity and Sedentary Behavior Guidelines* Updated 10 July 2014.
- ⁷ Colmar Brunton 'FSANZ Consumer research investigating the use of formulated supplementary sports foods – Final Report' 2010 at 36. See also: Pirotin S et al., 'Looking Beyond the Marketing Claims of New Beverages' – Health Risks of Consuming Sports Drinks, Energy Drinks, Fortified Waters and Other Flavoured Beverages' (2014) *University of California at Berkely, Atkins Center for Weight and Health*
- ⁸ Colmar Brunton, above n 7, at 7.
- ⁹ Ibid.
- ¹⁰ Assessed by comparing the criteria for EDs in P1030 with product information on composition contained in the Australian Institute of Sport Supplement Framework, (2014) available [here](#). Also sourced was manufacturer product information accessed from <http://www.gatorade.com/products/g-series/thirst-quencher> and <http://shop.coles.com.au/online/national/powerade-sports-drink-powder-mountain-blast>.
- ¹¹ See coverage on AFL website <http://www.afl.com.au/news/2013-12-27/gaz-and-pendles-serve-it-up>
- ¹² See Cricket Australia 'behind the scenes' video: <http://www.cricket.com.au/video/gatorade-ad-behind-the-scenes-181213>
- ¹³ See South Australian Cricket website promotion: <http://www.saca.com.au/content.aspx?p=1326>
- ¹⁴ See commentary at <http://www.crickethnews.com.au/gatorade-under-18-twenty20-cup/>
- ¹⁵ Colmar Brunton, above n 7, at 37.
- ¹⁶ Ibid at 49.
- ¹⁷ Ibid at 45.
- ¹⁸ Ibid at 8.
- ¹⁹ As reported in Food Magazine 'Industry Update: energy and sports drinks in high demand' 24 September 2007
- ²⁰ Coca Cola Amatil, *Interim Result Report*, 20 August 2014
- ²¹ Meadows-Oliver and Ryan-Krause, 'Powering up with Sports and Energy Drinks' (2007) 21(6) *Journal of Pediatric Health Care* 413.
- ²² Based on product information sourced from Coles Online Shopping site, available here <http://shop.coles.com.au/online/national/gatorade-sport-drink-orange-ice>
- ²³ WHO Media Centre 'WHO opens public consultation on draft sugar guideline' 5 March 2014, reported [here](#).
- ²⁴ Te Morenga et al., 'Dietary sugars and body weight: systematic review and meta-analyses of randomised controlled trials and cohort studies' (2013) *British Medical Journal* 346; Malik et al. Intake of sugar-sweetened beverages and weight gain: a systematic review 2006 *American Journal of Clinical Nutrition* 274; Vartanian et al 'Effects of soft drink consumption on nutrition and health: a systematic review and meta-analysis' 2007 97 *American Journal of Public Health* 667; Taylor et al (2005). *Do Sugary Drinks Contribute To Obesity In Children?* A report prepared by the Scientific Committee of the Agencies for Nutrition Action. New Zealand.
- ²⁵ Australian Dietary Guidelines (2013)
- ²⁶ WHO Media Centre, above n 24.
- ²⁷ Australian Bureau of Statistics 4125.0 Overweight /Obesity, released 30 January 2013
- ²⁸ World Health Organization Obesity: preventing and managing the global epidemic, Report of a WHO consultation. Technical Report Series 894. Geneva, 2000; The InterAct Consortium. Consumption of sweet beverages and type 2 diabetes incidence in European adults: results from EPIC-InterAct. *Diabetologia* PMID, 2013.
- ²⁹ Institute for Health Metrics and Evaluation (2014) Global Burden of Disease Country Profile data for Australia, available at www.healthmetricsandevaluation.org
- ³⁰ Ibid, at 7.
- ³¹ Wording taken from the Executive Summary of FSANZ Consultation Document on P1030.
- ³² *Australian Competition and Consumer Commission v TPG Internet Pty Ltd* [2013] HCA 54 (12 December 2013) at 45.
- ³³ Ibid at 47-48.
- ³⁴ As reported by SBS News, "Can Coke be cool again?" 20 August 2014.
- ³⁵ Ibid.
- ³⁶ Institute for Health Metrics and Evaluation (2014) Global Burden of Disease Country Profile data for Australia, available at www.healthmetricsandevaluation.org.
- ³⁷ See "Front of pack labelling Project Committee - Objectives and principles for the development of a front-of-pack labelling (FoPL) system" available [here](#).