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Our ref: 439065-v02\W97\AJC\RO1

Project Manager - Proposal P236  
Australia New Zealand Food Authority  
PO Box 7186  
Canberra Mail Centre ACT 2610

Dear Sir

### Proposal P236 (Sports Foods) and Gatorade's PROPEL and TORQUE products

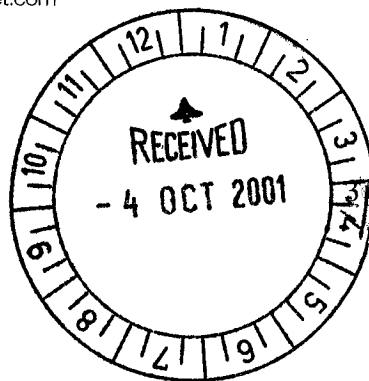
We refer to [REDACTED] recent telephone conversations with [REDACTED] regarding Proposal P236 and Gatorade's PROPEL and TORQUE products. We have already provided you with a sample of the PROPEL product and now enclose a sample of the TORQUE product (now known as Gatorade Energy Drink) to allow you to examine its ingredients. Our client has requested that we provide some background to the Gatorade products as well as the market in which they operate. We also attach a copy of the "Frequently Asked Questions" regarding the PROPEL product taken from Gatorade's website.

Gatorade believes that the PROPEL and Gatorade Energy Drink products should come within Proposal P236 and should be permitted to be manufactured and distributed in Australia. Each individual ingredient of the PROPEL and Gatorade Energy Drink products is approved for use in Australia: the issue arises from the combination of ingredients as appears in these products.

### The PROPEL and Gatorade Energy Drink products

The following paragraphs are taken from the product propositions for the PROPEL and Gatorade Energy Drink products. Although couched in consumer marketing terms, they detail the ingredients and function of the products.

*PROPEL is a "functional beverage that has been scientifically designed to meet the needs of active people. Both thirst quenching and refreshing, PROPEL contains six essential vitamins (B3-niacin, B5-pantothenic acid, B6, B12 and antioxidant vitamins C & E) which assist active people in their daily pursuit of fitness and wellbeing. PROPEL also contains carbohydrates for energy and is lightly flavoured to promote fluid consumption. Additionally to meet the low calorie levels*



*that fitness oriented people seek in a beverage, while maintaining the right level of sweetness, PROPEL also contains artificial sweetener."*

*Gatorade Energy Drink is a "carbohydrate rich beverage which gives active people a quick and sustained energy to help enhance performance and speed recovery. The beverage is designed for use before and after exercise or for fuel during the day. In addition to carbohydrates, Gatorade Energy Drink contains three antioxidant vitamins (A, C & E) which help protect the body from free radicals and five B-complex vitamins (riboflavin, niacin, B6, B12 and pantothenic acid) which aid the body in energy metabolism."*

### **Fitness water – an emerging category of product**

The PROPEL and Gatorade Energy Drink products are currently sold in the United States and are classified as "fitness water" or "near water". These products are not the only products available which fall within this category. It is an emerging category of drinks which consist of water with vitamins and flavours added. These products are gaining increasing popularity, particularly in the Asian markets, for example the SUPLI product in Japan, and it is likely that other manufacturers will seek to introduce their fitness water products into the Australian market. If required, Gatorade is able to provide further information regarding the development of this category of product amongst its Asian partners.

### **Trans Tasman Mutual Recognition Arrangement**


The PROPEL and Gatorade Energy Drink products are currently able to be sold in New Zealand under the New Zealand Food Regulations. Under the Trans Tasman Mutual Recognition Arrangement, Gatorade is able to import the PROPEL and Gatorade Energy Drink products into Australia through New Zealand. Aside from the obvious commercial benefits of manufacturing the products in Australia and distributing them directly into the Australian market, Gatorade also has other reasons for its preference. Gatorade products are bottled in Australia by Cadbury Schweppes, however Cadbury Schweppes does not have a bottling plant in New Zealand. Gatorade would like to support its bottling partner but if it is only able to enter the Australian market via New Zealand, it would be forced to engage another bottler. If the PROPEL and Gatorade Energy Drink products are permitted to be manufactured in Australia, the concentrate will be manufactured by Gatorade either locally or imported from the United States and most likely bottled by Cadbury Schweppes. PROPEL and Gatorade Energy Drink products will be sold through all distribution channels, including route, grocery and convenience.

Gatorade submits that for the reasons above, the PROPEL and Gatorade Energy Drink products should be covered by Proposal P236 and should be able to be manufactured in Australia. We request your favourable consideration of these issues.

### **Options for Regulation**

Gatorade has considered the 4 options for regulation proposed in P236 and considers that Option 2 which proposes full regulation of sports foods is the most appropriate. This type of regulations allow for more consistent control of the industry and more reliable information being dispensed to consumers. As you will appreciate a number of issues arise from industry

codes of conduct which must be managed and enforced from resources within the industry, often meaning that the codes are not given the priority required to ensure effective regulation. In our view, some change is required and maintaining the status quo is unlikely to satisfy the needs of the sports foods industry nor the consumers in the future as this industry continues to develop. Although in the short term, full regulation may impose difficulties and expense, Gatorade believes that in the long term, the benefits of full regulation will be realised.



Yours faithfully

**BAKER & MCKENZIE**



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## [ Frequently Asked Questions ]

### 1. What is Propel?

Propel Fitness Water, from the makers of Gatorade, is a lightly flavored, low calorie, non-carbonated water with six essential vitamins for people who lead an active, healthy lifestyle and typically drink water. The first of its kind, Propel is made from purified water and is available in four flavors – natural lemon, orange, berry and black cherry.

### 2. Why did Gatorade create Propel?

Consumers told us that they have a difficult time meeting their fluid needs by drinking water alone throughout their day. We created Propel for the health-conscious person who is tired of drinking plain water and would prefer a beverage with light flavor, vitamins and low calories.

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### 3. How is Propel different from Gatorade?

Propel and Gatorade are two different kinds of beverages for two different kinds of people.

Propel is a fitness water for people who lead an active, healthy lifestyle and typically drink bottled water instead of a sports drink. Lightly flavored to help you drink more, Propel helps you feel better during your workout and your day. It also contains vitamins which are important to an active, healthy lifestyle.

Gatorade is the ultimate sports drink for athletic people who are looking to quench their thirst, replace fluids and electrolytes lost through sweat and obtain energy for working muscles to enhance performance.

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### 4. When should someone drink Propel and when should someone drink Gatorade?

Gatorade and Propel were designed for different people with different needs. It's more a question of **what** people want to get out of their beverage than **when**. Gatorade is formulated for optimal performance and re-hydration. Anyone looking to quench their thirst, replace fluids and electrolytes lost through sweat and provide energy for working muscles to perform better, would choose Gatorade. Based on our research, people who typically drink plain water will drink Propel anytime to enjoy the benefits of staying well hydrated.

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### 5. What type of workouts call for Propel over Gatorade? Cardioboxing? Yoga? Spinning?

Any workout calls for fluids to keep the body hydrated. The type of workout doesn't dictate the beverage choice. The intensity does. Both Gatorade and Propel are excellent

1. What is Propel?
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5. What type of workouts call for Propel over Gatorade? Cardioboxing? Yoga? Spinning?
6. What is the percent Daily Value of vitamin in Propel?
7. Will Propel cause an over-supplementation of the vitamins, especially when I already take a multiple vitamin?
8. How much carbohydrate is in Propel?
9. How many calories do Propel contain?
10. Where can I purchase Propel?

products. Gatorade has 30 plus years of research behind it and was formulated for optimizing physical performance and hydration. Propel assists in hydration because research shows a lightly flavored beverage encourages people to drink more than they would of plain water. Propel also has 6 essential vitamins to help maintain a healthy lifestyle.

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#### **6. What is the percent Daily Value of vitamins in Propel?**

Based on guidelines set by the FDA, Propel is an excellent source of four B vitamins – Niacin, B-6, B-12 and Pantothenic Acid – providing 25 percent of the Daily Value. In addition, Propel is a good source of antioxidant vitamins C and E by providing 10 percent of the Daily Value of each.

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#### **7. Will Propel cause an over-supplementation of the vitamins, especially when I already take a multiple vitamin?**

. No. If there were a risk to the consumers of putting too many vitamins in one of our products, we wouldn't do it. Propel is designed to provide an additional source of vitamins in our diet without over doing it. We should consume a wide variety of foods and fluids to obtain our requirements of vitamins. Propel's formulation follows this strategy by providing up to 25%, which does not exceed the Daily Value based on a 2000-calorie diet.

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#### **8. How much carbohydrate is in Propel?**

Propel has a little more than 1 percent (1.2%) carbohydrates, or 3 grams per 8 ounces.

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#### **9. How many calories does Propel contain?**

Only 10 calories per 8 ounces.

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#### **10. Where can I purchase Propel?**

Propel is currently available in about one-third of the United States, including Texas, New Mexico, Arizona, Colorado, Florida, Southern California and Las Vegas, Nevada.

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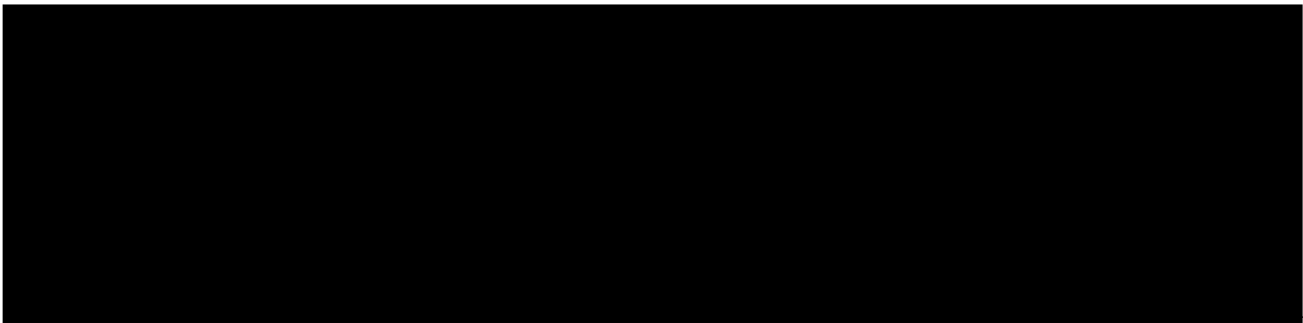
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## ***FACSIMILE MESSAGE***



### **Message:**

The original Gatorade application to A394 that has now moved to P236.



**BAKER & MCKENZIE**

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Our ref: 286753-v01\W97\RGMDL

26 May 2000

  
 Australia New Zealand Food Authority  
 PO Box 10 559  
 Wellington 6036  
 NEW ZEALAND

Dear Ms Reid

**Application A394: Energy Drinks**

We act for the Gatorade Company of Australia Pty Ltd ("Gatorade") and refer to our recent telephone conferences with respect to this application.

Gatorade supports the application by Red Bull GmbH ("Red Bull") to vary the Food Standards Code to allow certain additives and vitamins to be added to dietary supplement products which they have referred to as "energy drinks".

Gatorade wishes to manufacture in Australia a product known as PROPEL, a functional beverage specifically designed to meet the needs of active people. It contains vitamins (B3, B5, B6, B12, C and E) and aspartame, which are not at present allowed to be added to dietary supplement products such as energy drinks. The addition of B-group vitamins is to aid energy metabolism by converting fats and carbohydrates to energy. There is some sucrose, an energy source, and the aspartame enhances the flavour in order to promote fluid consumption.

PROPEL was launched in the United States of America in January 2000, and is now widely available in that country. The product is pitched at women undertaking high levels of exercise who need a product which both rehydrates and provides some energy benefits. It is not marketed as a substitute for the usual dietary sources of vitamins and minerals but as a product which people with good diets will drink during or after their exercise regime. We enclose the label currently used in the United States.

Gatorade has asked us to prepare a more detailed submission regarding this application which will include information regarding evidence of the safety of the present levels of vitamins in

## BAKER &amp; MCKENZIE

its PROPEL product as sold in the United States. We expect to be in a position to lodge that submission in the next week or so.

PROPEL does not contain caffeine and various other ingredients found in the Red Bull product, and is non-carbonated. For these reasons, Gatorade has an interest in expanding the scope of the Red Bull application to cover other beverages, such as PROPEL, where the major regulatory issue in Australia is the addition of vitamins. With minor formulation and label changes (eg. the preservatives may need to change) the PROPEL product could already be imported into New Zealand, and therefore Australia.

Gatorade supports applications such as Red Bull's, provided that the final standard was broad enough to also cover the types of beverages that Gatorade wishes to manufacture, such as the PROPEL product.

The Red Bull application suggests three options for variation of the Food Standards Code to allow for the addition of vitamins and other substances. Gatorade favours the first option, which supports the creation of a generic food additive standard, allowing the various additives, rather than prescribing a specific category and standard for energy drinks.

Option 1 provides maximum flexibility to regulate a wide range of drinks, many of which may not come within the parameters of a standardised energy drink based on the Red Bull product. There may be future formulations involving additives which fall outside any specified category of energy drinks, such as a product including fibre as an additive.

Depending on the scope of a generic additive standard, consequential amendments to other generic standards may also be required to allow particular substances such as aspartame, or specific vitamins and minerals, to be included in products such as PROPEL.

Whether ANZFA proceeds with Option 1 or another option, Gatorade would like to participate in any consultations or other processes to develop appropriate standards. If you have any questions regarding the PROPEL product, please contact the writer or [REDACTED], who is assisting on this matter.

Yours sincerely

[REDACTED]

Enc



