

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Jon Leibowitz, Chairman
Edith Ramirez
Julie Brill
Maureen K. Ohlhausen
Joshua D. Wright

In the Matter of)

DOCKET NO. C-4382

PHUSION PROJECTS, LLC,)
a limited liability company,)

JAISEN FREEMAN,)
individually and)
as an officer and owner of the company,)

CHRISTOPHER HUNTER,)
individually and)
as an officer and owner of the company,)
and)

JEFFREY WRIGHT,)
individually and)
as an officer and owner of the company.)

COMPLAINT

The Federal Trade Commission, having reason to believe that Phusion Projects, LLC, a limited liability company, and Jaisen Freeman, Christopher Hunter, and Jeffrey Wright, individually and as officers of the company (“respondents”), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Phusion Projects, LLC (“Phusion Projects”) is a Delaware corporation with its principal office or place of business at 1658 North Milwaukee Avenue, #424, Chicago, Illinois 60647.

2. Respondent Jaisen Freeman is a Co-Founder and Managing Partner of Phusion Projects. Freeman oversees the company's daily operations. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of Phusion Projects, including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of Phusion Projects.

3. Respondent Christopher Hunter is a Co-Founder and Managing Partner of Phusion Projects. Hunter oversees all marketing and promotional materials for the company. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of Phusion Projects, including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of Phusion Projects.

4. Respondent Jeffrey Wright is a Co-Founder and Managing Partner of Phusion Projects. Wright oversees the company's manufacturing and production functions. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of Phusion Projects, including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of Phusion Projects.

5. Respondents have labeled, advertised, promoted, offered for sale, sold, and distributed Four Loko to consumers.

6. Four Loko is an 11% or 12% alcohol by volume ("ABV"), fruit-flavored, carbonated malt beverage sold in 23.5 ounce ("oz") cans that are not resealable. Four Loko is a "food" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act ("FTC Act"). Until approximately November 2010, Four Loko also included added stimulants such as caffeine, taurine, and guarana.

7. The acts and practices of respondents, as alleged herein, have been in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act.

8. Respondents have disseminated or caused to be disseminated advertisements, packaging, and promotional material for Four Loko including, but not limited to, the attached Exhibits A through D. These materials contain the following statements and depictions:

A. **Four Loko Packaging** (Exhibits A1 and A2)

[image of Four Loko XXX Limited Edition can]

[image of Four Loko Lemon-Lime can]

B. **DrinkFour Website: "Photo Contest"** (Exhibits B1 through B4)

". . . Here at Four, we like it when you guys and girls flip out, get weird, and go all crazy. We like it even more if you have a camera around to capture your most ridiculous, out of

control, sexy, fun, cuddly, zany, spicy, demented, screwball moments while drinking Four. If you're daring enough to submit a photo so provocative, absurd, uncivilized, titillating, uninhibited, or fierce that we deem it the 'Photo Contest Winner,' we'll send you your pick of one of our hot new T-Shirts!"

* * *

[photo depicting two young men holding cans of 23.5 oz Four Loko, one drinking from the can]

* * *

[photo depicting young woman in a straw hat consuming Four Loko directly from a 23.5 oz can]

* * *

[photo of three young men, one of whom is holding a can of Four Loko]

"first guy drank 1 [can], second guy drank 2, third guy drank 3, fourth guy was on the ground."

C. Retail Instructions and Display

“The CRUSHING the Competition LOKO and Earthquake rollout Incentive

Salesman
Four LOKO Placements
May 24th - June 30th

...

must be placed in singles door
Must be merchandised with proper pricing”

* * *

– (Exhibit C1)

[Photo of Actual Display in Retail Store in Washington, D.C.]

– (Exhibit C2)

D. Promotional Material: “Four Loko” (Exhibits D1 through D3)

[Four Loko Block Party photo]

* * *

[Marketing Sheet]

Four Loko is a crazy fruit punch flavored blend . . . packed into a HUGE 23.5 oz CAN.
...

23.5 oz can singles are experiencing exponential growth” (emphasis added)

* * *

[Email Solicitation to a Potential Distributor: “FOUR LOKO AND EARTHQUAKE”]

“... Four loko [sic] is one of the fastest growing products in the country. . . .
Watermelon is the top selling single serve in the SE region of 7-11. . . .” (emphasis added)

9. Through the means described in Paragraph 8 including, but not limited to, the statements and depictions contained in the materials attached as Exhibits A through D, among others, respondents have represented, expressly or by implication, that a 23.5 oz can of 11% or 12% ABV Four Loko contains alcohol equivalent to one or two regular, 12 oz beers.

10. In truth and in fact, a 23.5 oz can of 11% or 12% ABV Four Loko does not contain alcohol equivalent to one or two regular, 12 oz beers. A 23.5 oz can of 11% ABV Four Loko contains 2.6 oz of ethanol, that is, alcohol equivalent to 4.3 regular beers, and a 23.5 oz can of 12% ABV Four Loko contains 2.8 oz of ethanol, that is, alcohol equivalent to 4.7 regular beers. Therefore, the representation set forth in Paragraph 9 was, and is, false or misleading.

11. Through the means described in Paragraph 8 including, but not limited to, the statements and depictions contained in the materials attached as Exhibits A through D, among others, respondents have represented, expressly or by implication, that an individual can safely consume a 23.5 oz can of 11% or 12% ABV Four Loko on a single occasion.

12. In truth and in fact, an individual cannot safely consume a 23.5 oz can of 11% or 12% ABV Four Loko on a single occasion. A 23.5 oz can of 11% ABV Four Loko contains 2.6 oz of ethanol, that is, alcohol equivalent to 4.3 regular beers, and a 23.5 oz can of 12% ABV Four Loko contains 2.8 oz of ethanol, that is, alcohol equivalent to 4.7 regular beers. As a result, consuming a single can of Four Loko on a single occasion constitutes “binge drinking,” which is defined by health officials as men drinking five (and women drinking four) or more standard drinks in about two hours. Such excessive drinking typically raises a person’s blood alcohol concentration to 0.08 percent or more. It also typically results in acute intoxication that can be harmful for a variety of reasons, including impaired brain function resulting in poor judgment, reduced reaction time, loss of balance and motor skills, and slurred speech. Therefore, the representation set forth in Paragraph 11 was, and is, false or misleading.

13. Through the means described in Paragraph 8, including, but not limited to, the statements and depictions contained in the materials attached as Exhibits A through D, among others, respondents have represented, expressly or by implication, that a 23.5 oz can of 11% or 12% ABV Four Loko is a single serving. Respondents have failed to disclose, or failed to disclose adequately, that a 23.5 oz can of 11% ABV Four Loko contains 2.6 oz of ethanol, that is, alcohol equivalent to 4.3 regular beers, and a 23.5 oz can of 12% ABV Four Loko contains 2.8 oz of ethanol, that is, alcohol equivalent to 4.7 regular beers. These facts would be material to consumers in their purchase or consumption of Four Loko. The failure to disclose these facts, in light of the representation made, was, and is, a deceptive practice.

14. The acts and practices of respondents as alleged in this complaint constitute unfair or deceptive acts or practices, and the making of false advertisements, in or affecting commerce in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission this sixth day of February, 2013, has issued this Complaint against respondents.

By the Commission, Chairman Leibowitz and Commissioner Wright not participating.

Donald S. Clark
Secretary

SEAL