

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)	
)	
PHUSION PROJECTS, LLC,)	DOCKET NO. C-4382
a limited liability company,)	
)	
JAISEN FREEMAN,)	DECISION AND ORDER
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.)	
)	

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the respondents with violation of the Federal Trade Commission Act; and

The respondents, respondents' counsel, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all of the jurisdictional facts set forth in the aforesaid draft complaint, a statement that the signing of the agreement is for settlement purposes only and does not constitute an admission by the respondents that the law has been violated as alleged in such complaint, or that any of the facts as alleged in such complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments received from interested persons pursuant to Section 2.34 of its Rules, and having modified the Decision and Order in certain respects, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Phusion Projects, LLC is a Delaware limited liability company with its principal office or place of business at 1658 North Milwaukee Avenue, #424, Chicago, Illinois 60647.
2. Respondent Jaisen Freeman is an officer and owner of the corporate respondent. His principal office or place of business is the same as that of the corporate respondent. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of the corporate respondent.
3. Respondent Christopher Hunter is an officer and owner of the corporate respondent. His principal office or place of business is the same as that of the corporate respondent. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of the corporate respondent.
4. Respondent Jeffrey Wright is an officer and owner of the corporate respondent. His principal office or place of business is the same as that of the corporate respondent. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of the corporate respondent.
5. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

DEFINITIONS

For purposes of this order, the following definitions shall apply:

1. Unless otherwise specified:
 - a. “Respondents” shall mean Phusion Projects, LLC, its successors and assigns and their officers; Jaisen Freeman, individually and as an officer of the company; Christopher Hunter, individually and as an officer of the company; Jeffrey Wright, individually and as an officer of the company; and each of the above’s agents, representatives, and employees, or other persons directly or indirectly under the control of any respondent.

- b. “Corporate respondent” shall mean Phusion Projects, LLC, its successors and assigns and their officers, and each of the above’s agents, representatives, and employees.
- c. “Controlling respondent(s)” shall mean Jaisen Freeman, Christopher Hunter, and Jeffrey Wright, when such individual(s) is, or collectively are, a significant shareholder (5% or more equity owner) of, or when such individual(s) directly or indirectly manage(s) or control(s), any entity, and its agents, representatives, employees, and other persons directly or indirectly under its control.
2. “Commerce” shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.
3. “Flavored malt beverage” shall mean Four Loko and any other beverage:
- a. made by the alcoholic fermentation, in potable brewing water, of malted barley with hops, or their parts, or their products, and with or without other malted cereals, and with or without the addition of unmalted or prepared cereals, other carbohydrates or products prepared therefrom, and with or without other wholesome products suitable for human food consumption; and
- b. to which flavors containing alcohol and/or nonbeverage ingredients containing alcohol have been added; provided that, such flavors and nonbeverage ingredients may contribute no more than 49% of the overall alcohol content of the finished product unless the alcohol content is more than 6% by volume, in which case no more than 1.5% of the volume of the finished product may consist of alcohol derived from added flavors containing alcohol and non-beverage ingredients containing alcohol; and
- c. which may be filtered or otherwise processed in order to remove color, taste, aroma, bitterness, or other characteristics derived from fermentation.
4. “Covered product” shall mean any beverage product containing alcohol.
5. “Endorsement” shall mean as defined in 16 C.F.R. § 255.0.
6. “Food” shall mean as defined in Section 15 of the FTC Act, 15 U.S.C. § 55.
7. “TTB” shall mean the Alcohol and Tobacco Tax and Trade Bureau of the U.S. Department of Treasury, or any successor agency responsible for granting approval for beverage alcohol labels.
8. “TTB Approval Date” shall mean the date that TTB approves the display of the Alcohol Facts disclosure set forth in Part I.B, below, on a particular label.
9. The term “including” in this order shall mean “without limitation.”

10. The terms “and” and “or” in this order shall be construed conjunctively or disjunctively as necessary, to make the applicable phrase or sentence inclusive rather than exclusive.

I.

IT IS ORDERED that corporate respondent and controlling respondents, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any flavored malt beverage in a container that provides 1.2 or more fluid ounces of ethanol, in or affecting commerce:

A. Shall request TTB approval to display the “Alcohol Facts” disclosure set forth in Part I.B, below, on such containers and shall use all commercially reasonable efforts to obtain such TTB approval expeditiously and in good faith.

B. Commencing no later than ninety (90) days after the TTB Approval Date, shall not offer for sale, sell, or distribute such product unless the label for such product includes an accurate “Alcohol Facts” disclosure as depicted on Attachment A1-A3 to this order; *provided that*:

i. The disclosure shall be boxed with all black type printed on a white ground, and shall use the format, including fonts, justification, border, lines, and spacing, depicted on Attachment A1-A3 for the various container sizes there identified, and the dimensions of the disclosure shall be no smaller than the sizes identified for those container sizes;

ii. The disclosure shall appear on the back of the container, perpendicular to the top of the container, and its outside border shall be at least 2.5 centimeters from the top and bottom of the container;

iii. The serving size shall be rounded to the nearest quarter ounce and reflected as a decimal value (i.e., “.25,” “.5,” “.75,” or a whole number); and

iv. The disclosure of alcohol by volume will be considered to be accurate if it complies with 27 C.F.R. § 7.71.

II.

IT IS FURTHER ORDERED that, commencing on August 6, 2013, corporate respondent and controlling respondents, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of Four Loko or any other flavored malt beverage, in or affecting commerce, shall not offer for sale, sell, or distribute such product in a container that provides more than 1.5 fluid ounces of ethanol unless the container is resealable.

III.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any covered product, in or affecting commerce:

- A. Shall not misrepresent, in any manner, expressly or by implication, including through the use of a product name or endorsement, the alcohol content of any covered product; and
- B. Shall not depict any covered product containing 1.2 or more fluid ounces of ethanol being consumed directly from the container.

IV.

IT IS FURTHER ORDERED that nothing in this Order shall prohibit respondents from making any representation about any covered product that is specifically required by regulation or order promulgated by the U.S. Department of Treasury Alcohol and Tobacco Tax and Trade Bureau pursuant to the Federal Alcohol Administration Act.

V.

IT IS FURTHER ORDERED that respondent Phusion Projects, LLC, its successors and assigns, and respondents Jaisen Freeman, Christopher Hunter, and Jeffrey Wright shall, for five (5) years after the last date of dissemination of any representation covered by this Order, maintain and upon reasonable notice make available to the Commission for inspection and copying:

- A. All advertisements and promotional materials containing the representation;
- B. All materials that were relied upon in disseminating the representation; and
- C. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

VI.

IT IS FURTHER ORDERED that respondent Phusion Projects, LLC, its successors and assigns, and respondents Jaisen Freeman, Christopher Hunter, and Jeffrey Wright shall deliver a copy of this Order to all current and future principals, officers, directors, and other employees having primary responsibilities with respect to the subject matter of this Order, and shall secure

from each such person a signed and dated statement acknowledging receipt of the Order. Respondents shall deliver this Order to such current personnel within thirty (30) days after the date of service of this Order, and to such future personnel within thirty (30) days after the person assumes such position or responsibilities.

VII.

IT IS FURTHER ORDERED that respondent Phusion Projects, LLC, and its successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this Order, including, but not limited to, dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. *Provided, however,* that, with respect to any proposed change in the corporation about which respondent Phusion Projects, LLC, learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

VIII.

IT IS FURTHER ORDERED that respondents Jaisen Freeman, Christopher Hunter, and Jeffrey Wright, for a period of five (5) years after the date of issuance of this Order, shall each notify the Commission of the discontinuance of his current business or employment. This notice shall include respondent's new business address and telephone number and a description of the nature of the business or employment and his duties and responsibilities. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

IX.

IT IS FURTHER ORDERED that respondent Phusion Projects, LLC, its successors and assigns, and respondents Jaisen Freeman, Christopher Hunter, and Jeffrey Wright shall, within sixty (60) days after the date of service of this Order, file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form in which they have complied with this Order. Within ten (10) days of receipt of written notice from a representative of the Commission, respondents shall submit additional true and accurate written reports.

X.

This Order will terminate on February 6, 2033, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the Order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this Order that terminates in less than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This Order if such complaint is filed after the Order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that respondents did not violate any provision of the Order, and the dismissal or ruling is either not appealed or upheld on appeal, then the Order will terminate according to this Part as though the complaint had never been filed, except that the Order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

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

Donald S. Clark
Secretary

SEAL
ISSUED: February 6, 2013