

Complaint

IN THE MATTER OF

**PHUSION PROJECTS, LLC,
JAISEN FREEMAN, CHRISTOPHER HUNTER
AND JEFFREY WRIGHT**

CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECS. 5(A) AND 12 OF THE FEDERAL TRADE COMMISSION ACT

Docket No. C-4382; File No. 112 3084

Complaint, February 6, 2013 – Decision, February 6, 2013

This consent order addresses allegations that Respondents labeled, advertised, promoted, offered for sale, sold and distributed a fruit-flavored, carbonated alcoholic beverage, Four Loko, to consumers. The complaint alleges that Respondents' made false and misleading representations that a 23.5-ounce can of Four Loko contains the alcohol equivalent to one or two beers and could safely be consumed in its entirety on a single occasion. In fact, a 23.5-ounce can of Four Loko contained alcohol equal to more than four regular beers. The consent order prohibits the respondents from offering for sale, selling, or distributing Four Loko or any other flavored malt beverage in a container that provides more than 1.5 ounces of ethanol unless the label clearly and conspicuously discloses the equivalent number of beers that such alcoholic content represents. The consent order further prohibits the respondents from misrepresenting the alcohol content of any alcohol beverage product, and requires respondents to keep copies of any relevant advertisements and substantiation for any advertising claims.

Participants

For the *Commission*: *Janet Evans and Carolyn Hann.*

For the *Respondents*: *Megan E. Alvarez, Alan P. Bielawski, Matthew R. Dornauer, and Andrew J. Strenio, Jr., Sidley Austin LLP.*

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:

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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.

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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]

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“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)

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* * *

[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

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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.

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EXHIBIT A1

Complaint

EXHIBIT A2



Complaint

EXHIBIT B1



EXHIBIT B2



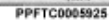
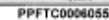
EXHIBIT B3

EXHIBIT B4



Complaint

EXHIBIT C1

The CRUSHING the competition LOKO and Earthquake rollout Incentive

Salesman
Four LOKO Placements
May 24th - June 30th

5 sku's in account = \$4.00 per placement
4-5 sku's in account = \$5.00 per placement
6-7 sku's in account = \$6.00 per placement

\$1.00 on all cases four loko cases sold during the month of July

Qualifier
• must be placed in singles door
• Must be merchandised with proper pricing and static

Earthquake
May 24th - June 30th
\$5.00/ placement

\$0.50/case on all Earthquake cases sold in Month of July

Qualifier
• must be placed in singles door next to other budgets not four loko, priced in line with cheapest budget
• Must be merchandised with proper pricing and static

Supervisors- Get paid out an average their teams overall payout

Co Op 50/50

www.drinkfour.com




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PPFTC0005045

FTC-0005045

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EXHIBIT C2



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EXHIBIT D1

Incentive

Placements

\$3 for 1 flavor
\$5 for 2 flavors
\$10 for all 3 flavors

Potential of \$10 per account!

*Not Stack them High Let them Fly
We want you to
Stack them low and let them go!!!*

Sell in 1 case of each flavor on first order



www.drinkfour.com

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PPFTC0004948

FTC-0004948

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EXHIBIT D2

four Loko

is a crazy **fruit punch** flavored blend of **Caffeine, Guarana, Taurine,** and **11% alcohol** all packed into a **HUGE 23.5 oz. CAN**

- Caffeinated Alcoholic Beverages are the fastest growing category in the alcohol industry
- 23.5 oz can singles are experiencing exponential growth
- High Profits for Distributors and Retailers
- At **11% Alc/Vol**, LOKO is the highest alcohol content product in this category.
- The only **fruit punch** flavored product in the Caffeinated Alcoholic Beverage category

12% ALCOHOL

95216 00104

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PPFTC0001646

FTC-0001646

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EXHIBIT D3

From: Jaison Freeman [REDACTED]
Sent: Wednesday, October 21, 2009 12:22 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: FOUR LOKO AND EARTHQUAKE
Attachments: FourLoko All Sellsheet 12% web[2].pdf; Earthquake_SS.pdf; FOUR LOKO Nielson in Convenience-Virginia YTD 2009.xls; Report - 7 11.pdf

Hi [REDACTED],

We have some new packages that I wanted to see if we could get approved in your system as all our Wisconsin Wholesalers are selling these new products.

Four loko is one of the fastest growing products in the country. I have attached a sell sheet and some competitive data from other areas. Four loko is approved and recommended for many national chains such as 7-11, Circle K, Speedway, Kroger, Hess, Sonoco, etc. All of our Wisconsin wholesalers do very well with this product set and are asking about the approval for Kwik Trip. I believe we have the loko fruit punch set up in your system but I wanted to get our watermelon and other flavors approved. Watermelon is the top selling single serve in the SE region of 7-11. Please see the attached.

Earthquake High Gravity Lager:

This product competes with Steel Reserve but has 12% alc/vol. We are seeing a great response from this product as the budget beer category is very popular and profitable right now.

Please let me know if I need to set up a meeting with you at your office or on the phone to discuss.

Thanks for your time and effort and I look forward to your response.

Jaison Freeman
Phusion Projects
www.drinkfour.com



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PPFTC0002729

FTC-0002729

Decision and Order

DECISION AND ORDER

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.

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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

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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

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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:

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- 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

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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:

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- 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,*

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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.

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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.

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ATTACHMENT A1

For containers with more than 20 fluid ounces

144pt x 108pt box, 0.5pt rule
2pt inside margin

Helvetica Bold 8pt, 12pt leading
Left justified

140pt long 0.5pt rule, centered

140pt long 1pt rule, centered

Alcohol Facts

Container Size	23.5 fl. oz.
Alcohol by volume	12%
Servings per Container*	4.7
Serving Size	5 fl. oz.
* According to the U.S. Dietary Guidelines, a serving contains 0.6 ounces of pure alcohol.	

Franklin Gothic Heavy 18pt

Helvetica Bold 8pt, 12pt leading
Right justified

Helvetica Bold 8pt, 8pt leading
Left indent 5pt, first line indent -5pt
Soft line break before "0.6"

2.0" x 1.25"

ATTACHMENT A2

For containers with 12 to 20 fluid ounces

126pt x 90pt box, 0.5pt rule
2pt inside margin

Helvetica Bold 7pt, 10pt leading
Left justified

122pt long 0.5pt rule, centered

122pt long 1pt rule, centered

Alcohol Facts

Container Size	12 fl. oz.
Alcohol by volume	12%
Servings per Container*	2.4
Serving Size	5 fl. oz.
* According to the U.S. Dietary Guidelines, a serving contains 0.6 ounces of pure alcohol.	

Franklin Gothic Heavy 17pt

Helvetica Bold 7pt, 10pt leading
Right justified

Helvetica Bold 7pt, 7pt leading
Left indent 4pt, first line indent -4pt
Soft line break before "0.6"

1.75" x 1.125"

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ATTACHMENT A3

For containers with less than 12 fluid ounces

The diagram shows a 1.5" x 1.0" label for 'Alcohol Facts'. It includes a table with four rows: Container Size, Alcohol by volume, Servings per Container, and Serving Size. A footnote at the bottom states: '* According to the U.S. Dietary Guidelines, a serving contains 0.6 ounces of pure alcohol.' Design specifications are provided for the box, text, and table elements.

Alcohol Facts	
Container Size	8 fl. oz.
Alcohol by volume	15%
Servings per Container*	2
Serving Size	4 fl. oz.

* According to the U.S. Dietary Guidelines, a serving contains 0.6 ounces of pure alcohol.

Design specifications:

- 108pt x 81pt box, 0.5pt rule
- 2pt inside margin
- Helvetica Bold 6pt, 9pt leading
- Left justified
- 104pt long 0.5pt rule, centered
- 104pt long 1pt rule, centered
- Franklin Gothic Heavy 15pt
- Helvetica Bold 6pt, 9pt leading
- Right justified
- Helvetica Bold 6pt, 6pt leading
- Left indent 3pt, first line indent -3pt
- Soft line break before "0.6"

1.5" x 1.0"

Analysis to Aid Public Comment

**ANALYSIS OF PROPOSED CONSENT ORDER
TO AID PUBLIC COMMENT**

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Phusion Projects, LLC, Jaisen Freeman, Christopher Hunter, and Jeffrey Wright (the “respondents”). The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw the agreement or make final the agreement’s proposed order.

This matter involves the marketing for Four Loko, a fruit-flavored malt beverage product. Four Loko contains 11% to 12% alcohol by volume (“ABV”) and is sold in a 23.5 oz can. The respondents promoted Four Loko through product packaging, Internet advertising including fan photo contests, and print solicitations to potential distributors.

According to the FTC complaint, the respondents represented in its marketing materials that a 23.5 oz can of 11% or 12% ABV Four Loko: (a) contains the alcohol equivalent to one or two regular, 12 oz beers, and (b) could safely be consumed in its entirety on a single occasion. The complaint alleges that both claims are false or misleading because a 23.5 oz can of 11% ABV Four Loko contains alcohol equivalent to 4.3 regular beers and a 23.5 oz can of 12% ABV Four Loko contains alcohol equivalent to 4.7 regular beers. In addition, the complaint alleges that the respondents’ failure to disclose these facts was deceptive, in light of their representation that a can of Four Loko contained a single serving.

The proposed consent order contains provisions designed to prevent the respondents from engaging in similar acts and practices in the future. Parts I and II apply to the defined term, “covered flavored malt beverages.” Part I prohibits the corporate respondent and controlling respondents (generally defined as the individual respondents, when such individual(s) is, or collectively are, a significant shareholder or directly or indirectly manage or control any entity) from offering for sale, selling, or distributing

Analysis to Aid Public Comment

Four Loko or any other covered flavored malt beverage in a container that provides more than 1.5 oz of ethanol (approximately two and one half (2 1/2) regular beers) unless the label discloses, clearly and conspicuously, the following statement:

“This can [or bottle] has as much alcohol as [] regular (12 oz, 5% alc/vol) beers.”

Part I sets forth specific approved fonts and font sizes, placement requirements (for both cans and bottles larger and smaller than 12 oz), and a formula for calculating the number of regular beers in the container. This part also provides that the second set of brackets shall be replaced by the number of 0.6 oz servings of ethanol in the product. Part I is designed to address the allegedly false representation that Four Loko contains the alcohol equivalent to one or two regular, 12 oz beers. The disclosure requirement is designed to alert consumers to the actual number of servings of alcohol in the container.

Part II of the proposed order further prohibits, commencing six (6) months after date of issuance of the order, the corporate respondent and controlling respondents from offering for sale, selling, or distributing Four Loko or any other covered flavored malt beverage in a container that provides more than 1.5 oz of ethanol unless the container is resealable. Together, Parts I and II of the proposed order are designed to address the allegedly false representation that Four Loko can safely be consumed on a single occasion. The disclosure requirement is designed to alert consumers to the number of servings of alcohol in the container, and the resealability requirement makes it possible for consumers to drink a portion of the container's content and to save some for later.

Part III of the proposed order prohibits the respondents from misrepresenting the alcohol content of any alcohol beverage product. Part III also prohibits the respondents from depicting in advertising any alcohol beverage product containing more than 1.5 oz of ethanol being consumed directly from the container. This provision also addresses the respondents' representation that a can of Four Loko can be safely consumed on a single occasion.

Analysis to Aid Public Comment

This prohibition provides a clear standard for compliance by the respondents and for enforceability by the FTC.

Part IV of the proposed order states that the order does not prohibit the respondents from making any representation about any alcohol beverage product that is specifically required by regulation or order by the U.S. Department of Treasury Alcohol and Tobacco Tax and Trade Bureau pursuant to the Federal Alcohol Administration Act.

Parts V through IX of the proposed order require the respondents to keep copies of relevant advertisements and materials substantiating claims made in the advertisements; to provide copies of the order to its personnel; to notify the Commission of changes in corporate structure that might affect compliance obligations under the order; to notify the Commission of changes in any of the individual respondents' business or employment that might affect compliance obligations under the order; and to file compliance reports with the Commission. Part X provides that the order will terminate after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Complaint

IN THE MATTER OF

IDEXX LABORATORIES, INC.CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket No. C-4383; File No. 101 0023**Complaint, February 11, 2013 – Decision, February 11, 2013*

This consent order addresses allegations that Respondent IDEXX Laboratories, Inc. (“IDEXX”) entered into exclusive dealing arrangements in violation of Section 5 of the FTC Act. IDEXX develops, manufactures, and sells diagnostic products to veterinarians. The complaint alleges that IDEXX has monopoly power in the market for point-of-care (“POC”) diagnostic testing products, which includes equipment and supplies that allow veterinarians for small animals to test, diagnose, and treat conditions such as heart worm in a single visit. More than three-quarters of veterinarians in the United States use POC diagnostic products, and more than 85 percent of all products and supplies that small animal veterinarians purchase are sourced through one of IDEXX’s top five distributors. The complaint further alleges that IDEXX used its monopoly power to reduce competition by threatening to terminate those distributors unless they sold IDEXX’s products exclusively. The order prohibits IDEXX from maintaining concurrent exclusive distribution agreements with the three top tier distributors for the next 10 years. Further, IDEXX is prohibited from retaliating against non-exclusive distributors, withholding products, or using other means to limit the distributor’s sales of other manufacturer’s products. The order also outlines the requirements for all future non-exclusive agreements between IDEXX and any national distributor.

Participants

For the *Commission*: Dana Abrahamsen, Joel Christie, David Conn, Peggy Bayer Femenella, Patricia Galvan, and Lisa Kopchik.

For the *Respondent*: Craig Seebald and William Vigdor, Vinson & Elkins LLP.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. § 41 et seq., and by virtue of the authority vested in it by said Act, the Federal Trade Commission (“Commission”), having reason to believe that IDEXX Laboratories, Inc. (“IDEXX” or “Respondent”) has violated