

Interlocutory Orders, Etc.

IN THE MATTER OF

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

*Docket No. C-4382. Order, July 24, 2014*

Order responding to respondent's petition to reopen and modify the consent order.

ORDER TO SHOW CAUSE AND ORDER MODIFYING ORDER

The Commission issued a Complaint and a Decision and Order ("Order") against Phusion Projects, LLC, Jaisen Freeman, Christopher Hunter, and Jeffrey Wright ("Respondents") in Docket No. C-4382 on February 6, 2013. The Complaint alleged that Respondents had violated Sections 5 and 12 of the Federal Trade Commission Act, 15 U.S.C. §§ 45(a) and 52, in connection with the advertising and marketing of the flavored malt beverage product Four Loko. Part I.A. of the Order required Respondents to immediately request approval from the Department of the Treasury's Alcohol and Tobacco Tax and Trade Bureau ("TTB") to display an "Alcohol Facts" disclosure, in the form set forth in Order Attachment A1-A3, on flavored malt beverages in containers providing 1.2 or more fluid ounces of ethanol. Part I.B. of the Order required Respondents to display those labels commencing no later than ninety (90) days after receiving TTB approval. Commencing six (6) months after the date of issuance, the Order prohibited Respondents from selling flavored malt beverages in containers providing more than 1.5 fluid ounces of ethanol, unless the container was resealable.

Respondents submitted requests for approval to display "Alcohol Facts" labels on their products to TTB, consistent with Part I.A. of the Order, on a timely basis. In addition, Respondents complied with all other relevant portions of the Order on a timely basis.

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On August 31, 2013, TTB denied Respondents' applications for approval to display "Alcohol Facts" disclosures on their products. On February 19, 2014, TTB denied Respondents' appeal of that decision. However, on April 30, 2014, TTB approved three (3) applications by Respondents to display revised "Alcohol Facts" disclosures on certain of their products.

In view of the foregoing, the Commission has determined in its discretion that it is in the public interest to reopen the proceeding in FTC Docket No. C-4382, pursuant to Section 3.72(b) of the Commission's Rules of Practice, 16 C.F.R. § 3.72(b), and to modify the Order, as set forth below. Among other things, Part I.A. of the modification provides for a revised "Alcohol Facts" disclosure, and Part I.B.iii. of the modification provides that serving sizes, for the purposes of the "Alcohol Facts" disclosure, shall comply with TTB Ruling 2013-2, Voluntary Nutrient Content Statements in the Labeling and Advertising of Wines, Distilled Spirits, and Malt Beverages (May 28, 2013). In addition, the modification deletes the requirement that certain of Respondents' products be resealable.

Respondents have consented to reopening this docket, have waived their rights under Section 3.72(b) of the Commission's Rules of Practice, 16 C.F.R. § 3.72(b), and have consented to the modifications set forth below.

Accordingly,

**IT IS ORDERED** that this matter be, and it hereby is, reopened.

**IT IS FURTHER ORDERED** that the Order in Docket No. C-4382 be, and it hereby is, modified to replace the current language in Part I with the following:

**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

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container that provides 1.2 or more fluid ounces of ethanol, in or affecting commerce:

- A. Commencing no later than ninety (90) days after the Entry of this Order to Show Cause and Order Modifying Order, shall not offer for sale, sell, or distribute such product unless the label for such product includes the “Alcohol Facts” disclosure set forth in Part I.B., below.
- B. The disclosure required by Part I.A. shall appear as depicted on Attachment A1-A4, *provided that*:
  - 1. The disclosure shall be boxed with all black type printed on a white ground, and shall use the format, including fonts, lines, and spacing depicted on Attachments A1-A4 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;
  - 2. 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;
  - 3. The serving size shall comply with TTB Ruling No. 2013-2, Voluntary Nutrient Content Statements in the Labeling and Advertising of Wines, Distilled Spirits, and Malt Beverages (May 28, 2013);
  - 4. The serving size shall be rounded to the nearest quarter ounce and reflected as a fraction (*i.e.*,  $\frac{1}{4}$ ,  $\frac{1}{2}$ ,  $\frac{3}{4}$  or a whole number); and
  - 5. The disclosure of alcohol by volume will be considered accurate if it complies with 27 C.F.R. § 7.71.

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**IT IS FURTHER ORDERED** that the Order in Docket No. C-4382 be, and it hereby is, modified to delete Part II, and to renumber Parts III, IV, V, VI, VII, VIII, IX, and X, as Parts II, III, IV, V, VI, VII, VIII, and IX, respectively.

**IT IS FURTHER ORDERED** that the Order in Docket No. C-4382 be, and it hereby is, modified to delete Attachment A1-A3, and to replace them with Attachment A1-A4.

By the Commission.

### Attachment A-1

Attachment A1. For containers with more than 20 fluid ounces.  
(This sample shows the serving size for a 12% ABV product.)

|                                                                                 |                               |                                 |
|---------------------------------------------------------------------------------|-------------------------------|---------------------------------|
| 144pt x 64.8pt box, 0.5pt rule                                                  | <b>Alcohol Facts</b>          | Helvetica Bold 17pt, centered   |
| Helvetica Regular 7pt, 8pt leading, Left & Right justified                      | Serving Size 5 fl oz (148 ml) |                                 |
|                                                                                 | Servings Per Container 4.34   | 140pt long 3pt rule, centered   |
| Helvetica Bold 8pt, 11pt leading, Left & Right justified                        | <b>Alcohol By Volume</b> 12%  |                                 |
| Helvetica Regular 8pt, 11pt leading, Left & Right justified, w/ 9pt Left indent | Alcohol Per Serving 0.6 fl oz | 140pt long 0.5pt rule, centered |
|                                                                                 | 2.0" x .9"                    |                                 |

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**Attachment A-2**

Attachment A2. For containers with more than 20 fluid ounces.  
(This sample shows the serving size for a 6% ABV product.)

Diagram illustrating the layout and dimensions of the Alcohol Facts label for containers with more than 20 fluid ounces. The label is 2.0" x .9".

| Alcohol Facts          |                   |
|------------------------|-------------------|
| Serving Size           | 12 fl oz (355 ml) |
| Servings Per Container | 2                 |
| Alcohol By Volume      | 6%                |
| Alcohol Per Serving    | 0.7 fl oz         |

Dimensions and Font Specifications:

- 144pt x 64.8pt box, 0.5pt rule
- Helvetica Regular 7pt, 8pt leading, Left & Right justified
- Helvetica Bold 8pt, 11pt leading, Left & Right justified
- Helvetica Regular 8pt, 11pt leading, Left & Right justified, w/ 9pt Left indent
- Helvetica Bold 17pt, centered
- 140pt long 3pt rule, centered
- 140pt long 0.5pt rule, centered

**Attachment A-3**

Attachment A3. For containers with 12 to 20 fluid ounces.  
(This sample shows the serving size for an 8% ABV product).

Diagram illustrating the layout and dimensions of the Alcohol Facts label for containers with 12 to 20 fluid ounces. The label is 1.75" x .9".

| Alcohol Facts          |                  |
|------------------------|------------------|
| Serving Size           | 5 fl oz (148 ml) |
| Servings Per Container | 3 1/4            |
| Alcohol By Volume      | 8%               |
| Alcohol Per Serving    | 0.4 fl oz        |

Dimensions and Font Specifications:

- 126pt x 64.8pt box, 0.5pt rule
- Helvetica Regular 6.5pt, 8pt leading, Left & Right justified
- Helvetica Bold 7pt, 11pt leading, Left & Right justified
- Helvetica Regular 7pt, 11pt leading, Left & Right justified, w/ 9pt Left indent
- Helvetica Bold 16pt, centered
- 120pt long 3pt rule, centered
- 120pt long 0.5pt rule, centered

## Attachment A-4

Diagram illustrating the layout and typography for a 1.5" x .9" label:

- Top Section:** 108pt x 64.8pt box, 0.5pt rule.
- Section Headers:**
  - Serving Size:** Helvetica Regular 6pt, 8pt leading, Left justified.
  - Servings Per Container:** Helvetica Regular 6pt, 8pt leading, Left justified.
  - Alcohol By Volume:** Helvetica Bold 7pt, 11pt leading, Left & Right justified.
  - Alcohol Per Serving:** Helvetica Regular 7pt, 11pt leading, Left & Right justified.
- Values:**
  - Serving Size: 5 fl oz (148 ml)
  - Servings Per Container: 2 1/4
  - Alcohol By Volume: 11%
  - Alcohol Per Serving: 0.6 fl oz
- Font Styles and Sizes:**
  - Helvetica Bold 15pt (for main title and values)
  - Helvetica Bold 10pt (for section headers)
  - Helvetica Regular 10pt (for values)
- Dimensions:** 1.5" x .9"

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IN THE MATTER OF

**FIDELITY NATIONAL FINANCIAL, INC.  
AND  
LENDER PROCESSING SERVICES, INC.**

*Docket No. C-4425. Order, July 24, 2014*

Letter approving application to divest copies of five single-county title plants in Oregon to AmeriTitle, Inc.

LETTER ORDER APPROVING DIVESTITURE OF CERTAIN ASSETS

Aidan Synnott, Esquire  
Paul, Weiss, Rifkind, Wharton & Garrison LLP

Re: *In the Matter of Fidelity National Financial, Inc.*, FTC  
Docket No. C-4425

Dear Mr. Synnott:

This letter responds to the Amended Application for Approval of Proposed Divestiture of the Five Title Plant Assets to AmeriTitle, Inc., (“Amended Application”), which Fidelity National Financial, Inc., filed on May 21, 2014. The Amended Application requests that the Federal Trade Commission approve Fidelity’s proposed divestiture pursuant to the order in this matter. The Amended Application was placed on the public record for comments until June 12 , 2014, and no substantive comments were received.

After consideration of the proposed divestitures as set forth in Fidelity’s Amended Application and supplemental documents, as well as other available information, the Commission has determined to approve the proposed divestitures. In according its approval, the Commission has relied upon the information submitted and representations made in connection with Fidelity’s Amended Application and has assumed them to be accurate and complete.

By direction of the Commission, Commissioner Wright dissenting.