

EATDRINK POLITICS

Countering Industry Harm to Improve Public Health

October 26, 2011

Federal Trade Commission
Office of the Secretary
Room H-113 (Annex D) 600
Pennsylvania Avenue, NW
Washington, DC 20580

Submitted Online

Re: OPPOSE: Proposed Consent Agreement In the Matter of Phusion Projects, LLC; Jaisen Freeman; Christopher Hunter; and Jeffrey Wright; FTC File No. 112 3084

Dear Commissioners:

We are writing to express our strong opposition to the consent order FTC has proposed regarding Phusion Projects potentially dangerous product line, Four Loko.

While we applaud the FTC investigation and complaint on deceptive marketing practices by Phusion Projects, we also have the following concerns regarding the proposed consent order:

- 1) The apparent endorsement of 2.5 drinks as an acceptable standard size drink, undermining current federal standards of one per day for women, two for men.
- 2) Lack of scientific evidence that a label indicating the number of alcohol servings in the container will be effective in deterring single use. To the contrary, given the target market, such information will likely backfire and serve as a convenient marketing tool.
- 3) Lack of scientific evidence the requirement of a resealable container will be effective in discouraging single use. These beverages are mostly sold in coolers in convenience stores for the purpose of drinking as a single serving.
- 4) The proposed order does nothing to solve the underlying, inherent problem with these products: They will still be sold in 23.5 cans, with up to 12% alcohol, with sweeteners.

Given these significant limitations, we are especially concerned that with this consent agreement, FTC will undercut both stronger industry voluntary solutions as well as more effective state level efforts. Will this new "FTC-approved" container now become the industry standard? How will other companies making similar products respond? While of course states retain legal authority to go further, the political reality is that such federal action will be used by Phusion and other industry members to convince state policymakers that the problem is solved.

Worse than taking no action at all, with this consent order, FTC is potentially undermining public health and safety. We respectfully request that FTC withdraw this agreement based on lack of science, as well as lack of support from the public health community and other industry members, and instead either propose a more effective solution or simply do nothing.

(continued)

Sincerely,

Michele Simon, President, Eat Drink Politics

The following organizations and individuals have also signed on to these comments:

Organizations

Campaign for a Commercial-Free Childhood

CANFIT (Communities Adolescents Nutrition Fitness)

Corporate Accountability International

Public Health Advocacy Institute

Individuals (Institutions for identification purposes only)

Andy Bellatti, MS, RD, Seattle, Washington

John Dickerson, Jr., PhD, Monroe, Ohio

Jenny Huston, MA, CEC, CDM, CFPP, Farm to Table Food Services

Louanne Kaupa, MS, RD, LN, CDE, Eat Well Nutrition Therapy

Erin Meyer RD, Basil's Harvest

Marion Nestle, Paulette Goddard Professor in the Department of Nutrition, Food Studies, and Public Health at New York University

Michael Siegel, Professor, Department of Community Health Sciences, Boston University School of Public Health

Maryen Vemuri, DDS, MPH, MNM, President/Board Chair, Generous Hands Foundation

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