

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

Re: Phusion Projects, LLC
File No. 112-3084

Gentlemen:

This letter is submitted on behalf of the National Alcohol Beverage Control Association (NABCA) in response to the request for public comment on the Commission's proposed Consent Agreement with Phusion Projects, LLC concerning its Four Loko product [76 *Federal Register* 62066, October 6, 2011].

By way of background, NABCA represents the jurisdictions which directly control the distribution of alcohol beverages through the operation of government operated wholesale and in some cases retail outlets. NABCA's members include Alabama, Idaho, Iowa, Maine, Michigan, Mississippi, Montana, New Hampshire, North Carolina, Ohio, Oregon, Pennsylvania, Utah, Vermont, Virginia, Washington, West Virginia, Wyoming and Montgomery and Worcester Counties in Maryland. Collectively, these jurisdictions account for approximately 25% of all distilled spirits sales in the United States. In addition to selling alcohol beverages, NABCA's members also regulate the distribution of products sold within the private sector in their respective jurisdictions.

NABCA has long been concerned about the proliferation of products, including flavored malt beverages, caffeinated beverages and other so-called energy drinks, which seem to be designed and marketed to appeal to younger, and in some cases, underage consumers.

More recently, NABCA's members have indicated their concern over an apparent trend toward the production and sale of higher-proof malt beverages in larger-than-usual containers. NABCA believes that such products often do not appropriately and adequately inform consumers about the amount of alcohol in the container. We have applauded the work of attorneys general in many states who have sought to urge or require these products to be more clearly labeled.

The Consent Agreement with Phusion Projects, LLC proposed by the Commission is a step in the right direction in that it would require the company to place a clear and conspicuous notice on the product container informing consumers of the amount of alcohol in the product in the context of the amount of alcohol found in a "normal" size malt beverage container.

NABCA believes the proposed Consent Agreement, while helpful, does not go far enough in providing necessary information to consumers. Specifically, we would urge the Commission to require the same clear and conspicuous disclosure to be utilized by the company in *all* advertising and marketing material, whether print, audio/visual, digital or website. The decision to purchase a product is often made prior to the entry into a retail establishment and having all information available before purchase would be enormously helpful to consumers, public health advocates and state regulatory officials who must contend with the effects of over-consumption of alcohol beverages.

In addition, NABCA would strongly urge the Commission to consider promulgation of a rule encompassing labeling and advertising disclosures applicable to all companies who would product and/or market the type of product covered by the Phusion Consent Agreement.

NABCA would be happy to discuss these comments and concerns with Commission staff in greater detail.

James M. Sgueo
President and CEO