



To: Donald S. Clark, Secretary, Federal Trade Commission

From: Baylen J. Linnekin, Executive Director, Keep Food Legal

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

Date: December 2, 2011

Thank you for accepting the comments of Keep Food Legal (<http://www.keepfoodlegal.org/>), a grassroots nonprofit based in Washington, DC, on behalf of our members and supporters. Keep Food Legal is the first and only nationwide, nonprofit membership organization devoted to culinary freedom—the right of every American to grow, raise, produce, buy, sell, cook, and eat the foods and beverages of their own choosing. Keep Food Legal members and supporters hail from across the United States and are key cogs in nearly every link in the food chain: farmers, ranchers, fishermen, hunters, manufacturers, grocers, restaurateurs, tavern owners, chefs, consumers, foodies, activists, academics, and authors.

I am the founder and executive director of Keep Food Legal. I am a lawyer, earned an advanced degree in agricultural and food law, and have written and spoken extensively on food regulation, law, and policy in general. I have written and spoken out on numerous occasions against the federal government’s wrongheaded crackdown on Four Loko.

Keep Food Legal, on behalf of our members and supporters, urges the FTC to SETTLE this matter by adopting in full the proposed consent agreement with Phusion Projects (“Phusion”), as described in *Proposed Consent Agreement, In the Matter of Phusion Projects, LLC; Jaisen Freeman; Christopher Hunter; and Jeffrey Wright; FTC File No. 112 3084*, for three reasons. First, while we believe strongly that Phusion has done nothing illegal or wrong with regard to its production, labeling, marketing, or distribution of Four Loko, we believe that it is past time that the government stop meddling in Phusion’s business. The quickest way for this regularization to occur is for the FTC to finalize the proposed consent agreement adopted by the unanimous vote of its own commissioners.

Second, arguments opposing the proposed consent agreement lack merit. For example, some respondents argue that after the FTC adopts the proposed consent agreement Four Loko will still taste sweet and will continue to be sold in 23.5-ounce cans containing up to 12% alcohol by volume. While this is true, the size of a can or bottle or the alcohol contents within the can or bottle do not fall under the regulatory purview of the FTC. What’s more, a can of Four Loko contains about two fewer ounces and less alcohol than a typical bottle of champagne—and is not

as sweet and fruity as many popular champagnes. Champagne bottles are also not resealable. Yet the FTC and other respondents have (thankfully) urged no action to date against champagne makers. If consumers of drinking age are smart enough to purchase champagne and to consume it responsibly—and they are—then consumers of drinking age are also smart enough to purchase Four Loko and to consume *it* responsibly.

Third, Phusion has taken unprecedented steps to comply with various commands issued by three giant federal agencies—the FDA, TTB, and FTC. Within the last year Phusion removed all traces of caffeine from its Four Loko brand in order to comply with an FDA mandate. As part of the proposed FTC consent agreement Phusion will add still more alcohol-content information to its cans, which already boast a half-dozen different statements in at least ten locations describing Four Loko's alcohol content and the fact consumers must show an identification to purchase the drink. Phusion will also begin selling Four Loko in a resealable can. Phusion has demonstrated through these and other actions that it intends to continue to market its product responsibly to consumers of drinking age.

For these and other reasons, Keep Food Legal and our members and supporters urges the FTC to SETTLE this matter by adopting in full the proposed consent agreement with Phusion Projects (“Phusion”), as described in *Proposed Consent Agreement, In the Matter of Phusion Projects, LLC; Jaisen Freeman; Christopher Hunter; and Jeffrey Wright; FTC File No. 112 3084*.

Thank you for reviewing and considering the comments of Keep Food Legal and our members and supporters. I would be happy to speak further about my remarks at your request.