

New York Alcohol Policy Alliance

Proud Partner of the Global Alcohol Policy Alliance



December 1, 2011

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

Re: Phusion Projects, File No. 112 3084

Dear Mr. Clark:

As a statewide coalition in New York working toward the implementation of public health alcohol policies, we at the New York Alcohol Policy Alliance appreciate the opportunity to comment on the proposed consent order to resolve charges against Phusion Projects and its principal officers regarding the marketing of Four Loko.

We are well aware of the problematic nature of the flavored malt beverage (FMB) category in general,¹ and the second-generation FMB products - which some alcohol industry interests have disingenuously termed "progressive adult beverages"² - in particular.

We have seen the harms engendered by Four Loko in our state, including high rates of illegal sales of Four Loko to minors in New York City,³ alcohol-related emergency room visits,⁴ and numerous reports of Four Loko-related alcohol poisoning from both the Downstate⁵ and Upstate⁶ Poison Control Centers.

1 Mosher, J. F., & Johnsson, D. (2005). Flavored alcoholic beverages: An international marketing campaign that targets youth. *Journal of Public Health Policy*, 26(3), 326-342.

2 Kesmodel, D. (2011, March 18). "Pabst's horse of a different color: Colt 45 enters controversial ring." *Wall Street Journal*. Retrieved on December 1, 2011 from <http://online.wsj.com/article/SB10001424052748704360404576206621165029478.html>

3 Independent Democratic Caucus of New York State (2011, March). *Alcopops: The underage drink of choice* [report] Retrieved on December 1, 2011 at <http://www.nysenate.gov/files/pdfs/IDC%20alcopops%20paper%20final.pdf>

4 Ibid.

5 Ibid.

6 T. Michele Caliva, Director, Upstate New York Poison Control Center. Personal communication.

Because of our serious concerns regarding these harms, we have been greatly encouraged by the thorough, fact-based, and principled analysis of the relevant issues provided by the Attorneys General of 32 states; the US territories of Guam, the Northern Marianas Islands, and Puerto Rico; and the City Attorney of San Francisco in their comments to you.⁷

We would echo the recommendations of the Attorneys General and City Attorney, with the following difference in emphasis and additional recommendation:

Resealability


We would contend that the lack of resealability in the containers of Four Loko (and similar products) serves as a *marker* rather than a *cause* of the products' single-serving nature. With that in mind, adding a resealability feature to these containers will only serve to distract from the only effective remedy: to limit the total amount of alcohol per "single serving" FMB container to two standard drinks.

Marketing

In light of Four Loko's youth-oriented packaging and marketing, we urge you to thoroughly investigate the product's marketing strategy. Accordingly, Phusion Projects should be required to submit to the FTC all of its marketing plans, relevant marketing memoranda, and related documentation in order to more fully determine the extent of their deceptive and unfair business practices.

In closing, while we commend the Federal Trade Commission for its efforts, we would posit that the consent order in its current form does not adequately address the dangers posed by the marketing and packaging of Four Loko.

Respectfully submitted,


Robert S. Pezzolesi, MPH
Founding Director
New York Alcohol Policy Alliance

⁷ Cf. at <http://www.ftc.gov/os/comments/phusionprojectsconsent/00241-81707.pdf>