

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

**COMMISSIONERS:**       **Edith Ramirez, Chairwoman**  
                                  **Julie Brill**  
                                  **Maureen K. Ohlhausen**  
                                  **Joshua D. Wright**  
                                  **Terrell McSweeney**

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<b>In the Matter of</b>	)	
	)	
<b>PHUSION PROJECTS, LLC,</b>	)	<b>DOCKET NO. C-4382</b>
<b>a limited liability company,</b>	)	
	)	
<b>JAISEN FREEMAN,</b>	)	
<b>individually and</b>	)	
<b>as an officer and owner of the company,</b>	)	
	)	
<b>CHRISTOPHER HUNTER,</b>	)	
<b>individually and</b>	)	
<b>as an officer and owner of the company,</b>	)	
<b>and</b>	)	
	)	
<b>JEFFREY WRIGHT,</b>	)	
<b>individually and</b>	)	
<b>as an officer and owner of the company.</b>	)	

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**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.

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 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*:

- i. 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;
- ii. 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;
- iii. 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);
- iv. 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
- v. The disclosure of alcohol by volume will be considered accurate if it complies with 27 C.F.R. § 7.71.

**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.

Donald S. Clark  
Secretary

SEAL:  
ISSUED: July 24, 2014