

---

<sup>1</sup> The Federal Trade Commission enforces the Federal Trade Commission Act,  
which,which,Th

---

Dangerous Caffeinated Alcoholic Beverages Like Four Loko, Nov. 10, 2010, available at <http://schumer.senate.gov/record.cfm?id=328504&> (describing a 17-year-old female from New York who experienced fatal cardiac arrest after drinking caffeinated alcohol); Jack Broom, AG Wants to Ban Drink That Hospitalized CWU Students, Seattle Times, Oct. 25, 2010, available at <http://seattletimes.nwsourc.com/html/localnews/2013255746cwustudents26m.html> (reporting that nine Washington State students were hospitalized with high blood alcohol levels after drinking caffeinated alcohol); Associated Press, Ramapo College President Pushes for Legislation Banning Caffeinated Alcoholic Drinks, New Jersey Real-Time News, Oct. 19, 2010, available at [http://www.nj.com/news/index.ssf/2010/10/ramapo\\_college\\_president\\_pushe.html](http://www.nj.com/news/index.ssf/2010/10/ramapo_college_president_pushe.html) (reporting on hospitalization of intoxicated students in New Jersey); Cindy Stauffer, Physicians Warn of Alcohol Energy Drink, Lancaster Online.com, Oct. 26, 2010, available at <http://articles.lancasteronline.com/local/4/298250> (reporting that medical personnel in War-cafBanningeysicians

Rhonda Kallman

p. 3

the past, the FTC has accorded significant weight to FDA findings regarding product safety and efficacy.<sup>6</sup>

The FTC staff therefore strongly urges you to take swift and appropriate steps to protect consumers. Even in the absence of express safety claims, the very act of offering goods for sale creates an implied representation that the goods are reasonably fit for their intended uses and free of gross safety hazards.<sup>7</sup> In addition, the non-disclosure of rare but serious safety risks may constitute an unfair practice.<sup>8</sup>

Please notify Janet M. Evans, [jevans@ftc.gov](mailto:jevans@ftc.gov), 202.326.2125, and Carolyn L. Hann, [chann@ftc.gov](mailto:chann@ftc.gov), 202.326.2745, in writing, within 15 days, of the specific actions you have taken to address our concerns. You may contact Ms. Evans and Ms. Hann by email or, alternatively, by mail:

Janet M. Evans  
Carolyn L. Hann  
Federal Trade Commission - Division of Advertising Practices  
600 Pennsylvania Ave., NW, Mail Drop NJ-3212  
Washington, D.C. 20580

Very truly yours,

Mary K. Engle  
Associate Director  
Division of Advertising Practices

---

<http://www.ftc.gov/os/2001/06/aaronanalysis.htm>, noting discussions with FDA).

<sup>6</sup> See *Thompson Med. Co.*, 104 F.T.C. 648, 825-27 (1984), *aff'd*, 791 F.2d 189 (D.C. Cir. 1986); see also *Simeon Mgmt. Corp. v. FTC*, 579 F.2d 1137, 1146 n.10 (9th Cir. 1978) (ruling that an FDA finding that a product is not safe and effective may be material information, the omission of which could cause an advertisement to be deceptive); *FTC v. Trudeau*, No. 1-03 CV-03904 (N.D. Ill. Nov. 16, 2007) (citing FDA finding on safety and efficacy).

<sup>7</sup> *Figgie Int'l, Inc.*, 107 F.T.C. 313, 379 n.17 (1986), *aff'd as mod.*, 994 F.2d 595 (1993); *Int'l Harvester Co.*, 104 F.T.C. 949, 1058-59 (1984) (holding that failure to disclose safety risk from tractor fuel geysering was unfair and articulating alternative theories of liability).

<sup>8</sup> See *Int'l Harvester Co.*, 104 F.T.C. at 1064.