



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Bureau of Consumer Protection  
Division of Advertising Practices

November 17, 2010

Via Electronic Mail  
Andrew J. Strenio, Jr.  
Sidley Austin LLP  
1501 K Street, N.W.  
Washington, D.C. 20005

RE: NOTICE OF POTENTIALLY ILLEGAL MARKETING OF CAFFEINATED  
ALCOHOL PRODUCTS

Dear Mr. Strenio:

Your client, Phusion Products LLC (“Phusion”), markets and sells Four Loko and Four Maxed, alcohol beverages containing caffeine directly added as a separate ingredient. Four Loko, a carbonated malt beverage that comes in several fruity flavors, is sold in 23.5 fluid ounce cans containing 11% to 13% alcohol by volume (depending on the state), plus added caffeine, taurine, and guarana. Thus, one can of this product contains the same alcohol content as four regular or five light beers. Four Maxed, also a carbonated malt beverage with added caffeine that comes in fruity flavors, is sold in 16 fluid ounce cans containing 10% alcohol by volume (equivalent to about three regular beers). These products sell for less than \$3.00 a can. This letter serves to advise Phusion that its marketing and sale of Four Loko and Four Maxed may constitute an unfair or deceptive act or practice in violation of the Federal Trade Commission Act, 15 U.S.C. § 45.<sup>1</sup>

Consumer safety is among the highest priorities of the Federal Trade Commission (“FTC”). Safety concerns have, in the past, contributed to the Commission’s decision to take action against alcohol marketers.<sup>2</sup> We are aware of a number of recent incidents suggesting that

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<sup>1</sup> The Federal Trade Commission enforces the Federal Trade Commission Act, which, among other things, prohibits unfair or deceptive acts or practices in or affecting commerce, *id.*, and the false advertising of food, drugs, devices, services, or cosmetics, 15 U.S.C. § 52. The Food and Drug Administration is responsible, among other things, for ensuring that any food, drug, device, or cosmetic is not adulterated, misbranded, or otherwise improperly labeled. *See generally* Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 321 *et seq.*

<sup>2</sup> *See, e.g., Constellation Brands, Inc.*, FTC Docket No. C-4266 (Oct. 2, 2009) (deceptive alertness claims for caffeinated alcohol), available at <http://www.ftc.gov>

Co., 114 F.T.C. 349 (1991) (deceptive alcohol content claim).

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<sup>3</sup> Over the past several months, consumers in at least four states have been hospitalized following consumption of caffeinated alcohol. *See, e.g.*,

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Andrew J. Strenio, Jr.

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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