

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

In the Matter of)	
)	
PHUSION PROJECTS, LLC,)	FILE NO. 112-3084
a limited liability company,)	
)	
JAISEN FREEMAN,)	AGREEMENT CONTAINING
individually and)	CONSENT ORDER
as an officer and owner of the company,)	
)	
CHRISTOPHER HUNTER,)	
individually and)	
as an officer and owner of the company,)	
and)	
)	
JEFFREY WRIGHT,)	
individually and)	
as an officer and owner of the company.)	

The Federal Trade Commission (“Commission”) has conducted an investigation of certain acts and practices of Phusion Projects, LLC, a limited liability company, and its officers and owners, Jaisen Freeman, Christopher Hunter, and Jeffrey Wright (“proposed respondents”). Proposed respondents, having been represented by counsel, are willing to enter into an agreement containing a consent order resolving the allegations contained in the attached draft complaint. Therefore,

IT IS HEREBY AGREED by and between Phusion Projects, LLC, by its duly authorized officer; Jaisen Freeman, Christopher Hunter, and Jeffrey Wright, individually and as officers of the company; and counsel for the Commission that:

1. Proposed respondent Phusion Projects, LLC is a Delaware limited liability company with its principal office or place of business at 1658 North Milwaukee Avenue, #424, Chicago, Illinois 60647.
2. Proposed respondent Jaisen Freeman is an officer and owner of the corporate respondent. His principal office or place of business is the same as that of the corporate respondent. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of the corporate respondent.
3. Proposed respondent Christopher Hunter is an officer and owner of the corporate respondent. His principal office or place of business is the same as that of the corporate respondent. Individually or in concert with others, he formulates, directs, or controls the

policies, acts, or practices of the corporate respondent.

4. Proposed respondent Jeffrey Wright is an officer and owner of the corporate respondent. His principal office or place of business is the same as that of the corporate respondent. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of the corporate respondent.

5. Proposed respondents admit all the jurisdictional facts set forth in the draft complaint.

6. Proposed respondents waive:

- a. Any further procedural steps;
- b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and
- c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

7. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft complaint, will be placed on the public record for a period of thirty (30) days and information about it will be publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.

8. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft complaint, or that the facts as alleged in the draft complaint, other than the jurisdictional facts, are true.

9. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order in disposition of the proceeding, and (2) make information about it public. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time frame provided by statute for other orders. The order shall become final upon service. Delivery of the complaint and the decision and order to proposed respondents' address(es) as stated in this agreement by any means specified in Section 4.4(a) of the Commission's Rules shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

10. Proposed respondents have read the draft complaint and consent order. They understand that they may be liable for civil penalties in the amount provided by law and other appropriate relief for each violation of the order after it becomes final.

ORDER

DEFINITIONS

For purposes of this order, the following definitions shall apply:

1. Unless otherwise specified:

(a) “Respondents” shall mean Phusion Projects, LLC, its successors and assigns and their officers; Jaisen Freeman, individually and as an officer of the company; Christopher Hunter, individually and as an officer of the company; Jeffrey Wright, individually and as an officer of the company; and each of the above’s agents, representatives, and employees, or other persons directly or indirectly under the control of any respondent.

(b) “Corporate respondent” shall mean Phusion Projects, LLC, its successors and assigns and their officers, and each of the above’s agents, representatives, and employees.

(c) “Controlling respondent(s)” shall mean Jaisen Freeman, Christopher Hunter, and Jeffrey Wright, when such individual(s) is, or collectively are, a significant shareholder (5% or more equity owner) of, or when such individual(s) directly or indirectly manage(s) or control(s), any entity, and its agents, representatives, employees, and other persons directly or indirectly under its control.

2. “Commerce” shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

3. “Covered flavored malt beverage” shall mean any beverage:

(a) made by the alcoholic fermentation, in potable brewing water, of malted barley with hops, or their parts, or their products, and with or without other malted cereals, and with or without the addition of unmalted or prepared cereals, other carbohydrates or products prepared therefrom, and with or without other wholesome products suitable for human food consumption; and

(b) to which flavors containing alcohol and/or nonbeverage ingredients containing alcohol have been added; provided that, such flavors and nonbeverage ingredients may contribute no more than 49% of the overall alcohol content of the finished product unless the alcohol content is more than 6% by volume, in which case no more than 1.5% of the volume of the finished product may consist of alcohol derived from added flavors containing alcohol and non-beverage ingredients containing alcohol; and

(c) which may be filtered or otherwise processed in order to remove color, taste, aroma, bitterness, or other characteristics derived from fermentation.

4. “Covered product” shall mean any beverage product containing alcohol.
5. “Endorsement” shall mean as defined in 16 C.F.R. § 255.0.
6. “Food” shall mean as defined in Section 15 of the FTC Act, 15 U.S.C. § 55.
7. The term “including” in this order shall mean “without limitation.”
8. The terms “and” and “or” in this order shall be construed conjunctively or disjunctively as necessary, to make the applicable phrase or sentence inclusive rather than exclusive.

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 Four Loko or any other covered flavored malt beverage, in or affecting commerce, shall not offer for sale, sell, or distribute such product in a container that provides more than 1.5 ounces (“oz”) of ethanol unless the label for such product discloses, clearly and conspicuously, the following statement:

“This can [or bottle] has as much alcohol as [] regular (12 oz, 5% alc/vol) beers.”

Provided that: the second set of brackets shall be replaced by the number of 0.6 oz servings of ethanol in the product, where all fractional servings of 0.25 or less shall be rounded to the nearest whole number, all fractional servings of 0.26 to 0.74 shall be rounded to the half number ($\frac{1}{2}$), and all fractional servings of 0.75 and higher shall be rounded to the next higher whole number. For purposes of this Part, “clearly and conspicuously” shall mean:

- A. In the case of a container larger than 12 oz, the statement shall appear in 14 point Approved Font, except for the parenthetical phrase, “(12 oz, 5% alc/vol),” which shall be in 11 point Approved Font, as shown on Attachment A; and the statement shall appear in prominent and legible black type set against a white background with a black border, in contrast by typography, layout, or color with all other printed material on the container, in a prominent location, as follows:
 1. On a can, the statement shall be centered on the front of the container, with the bottom border of the statement located no more than 3.0 centimeters from the top of the container, and on a portion of the label that is not removed as the result of opening the container or otherwise obscured by any other text or depictions, as depicted on the sample label on Attachment B.

2. On a bottle, the statement shall be centered on the front of the container, in one of the following locations:
 - a. on the bottle's neck, as depicted on the sample label on Attachment C1; or
 - b. on the bottle's body, the bottom border of the statement shall be located no more than 2.5 centimeters from the top of the front panel, as depicted on the sample labels on Attachments C2 and C3.
- B. In the case of a container 12 oz or smaller, the statement shall appear in 12 point Approved Font, except for the parenthetical phrase, "(12 oz, 5% alc/vol)," which shall be in 9 point Approved Font, as shown on Attachment D; and the statement shall appear in prominent and legible black type set against a white background with a black border, in contrast by typography, layout, or color with all other printed material on the container, in a prominent location, as follows:
1. On a can, the statement shall be centered on the front of the container, with the bottom border of the statement located no more than 3.0 centimeters from the top of the container, on a portion of the label that is not removed as the result of opening the container or otherwise obscured by any other text or depictions, as depicted on the sample label on Attachment E.
 2. On a bottle, the statement shall be centered on the front of the container, in one of the following locations:
 - a. on the bottle's neck, as depicted on the sample label on Attachment F1; or
 - b. on the bottle's body, the bottom border of the statement shall be located no more than 2.5 centimeters from the top of the front panel, as depicted on the sample labels on Attachments F2 and F3.

II.

IT IS FURTHER ORDERED that, commencing six (6) months after date of issuance of this Order, 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 Four Loko or any other covered flavored malt beverage, in or affecting commerce, shall not offer for sale, sell, or distribute such product in a container that provides more than 1.5 oz of ethanol unless the container is resealable.

III.

IT IS FURTHER ORDERED that 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 covered product, in or affecting commerce:

- A. Shall not misrepresent, in any manner, expressly or by implication, including through the use of a product name or endorsement, the alcohol content of any covered product; and
- B. Shall not depict any covered product containing more than 1.5 oz of ethanol being consumed directly from the container.

IV.

IT IS FURTHER ORDERED that nothing in this Order shall prohibit respondents from making any representation about any covered product that is specifically required by regulation or order promulgated by the U.S. Department of Treasury Alcohol and Tobacco Tax and Trade Bureau pursuant to the Federal Alcohol Administration Act.

V.

IT IS FURTHER ORDERED that respondent Phusion Projects, LLC, its successors and assigns, and respondents Jaisen Freeman, Christopher Hunter, and Jeffrey Wright shall, for five (5) years after the last date of dissemination of any representation covered by this Order, maintain and upon reasonable notice make available to the Commission for inspection and copying:

- A. All advertisements and promotional materials containing the representation;
- B. All materials that were relied upon in disseminating the representation; and
- C. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question the

representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

VI.

IT IS FURTHER ORDERED that respondent Phusion Projects, LLC, its successors and assigns, and respondents Jaisen Freeman, Christopher Hunter, and Jeffrey Wright shall deliver a copy of this Order to all current and future principals, officers, directors, and other employees having primary responsibilities with respect to the subject matter of this Order, and shall secure from each such person a signed and dated statement acknowledging receipt of the Order. Respondents shall deliver this Order to such current personnel within thirty (30) days after the date of service of this Order, and to such future personnel within thirty (30) days after the person assumes such position or responsibilities.

VII.

IT IS FURTHER ORDERED that respondent Phusion Projects, LLC, and its successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this Order, including, but not limited to, dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. *Provided, however,* that, with respect to any proposed change in the corporation about which respondent Phusion Projects, LLC, learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

VIII.

IT IS FURTHER ORDERED that respondents Jaisen Freeman, Christopher Hunter, and Jeffrey Wright, for a period of five (5) years after the date of issuance of this Order, shall each notify the Commission of the discontinuance of his current business or employment. This notice shall include respondent's new business address and telephone number and a description of the nature of the business or employment and his duties and responsibilities. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

IX.

IT IS FURTHER ORDERED that respondent Phusion Projects, LLC, its successors and assigns, and respondents Jaisen Freeman, Christopher Hunter, and Jeffrey Wright shall, within sixty (60) days after the date of service of this Order, file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form in which they have complied with this Order. Within ten (10) days of receipt of written notice from a representative of the Commission, respondents shall submit additional true and accurate written reports.

X.

This Order will terminate twenty (20) years from the date of its issuance, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the Order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this Order that terminates in less than twenty (20) years;
- B. This order’s application to any respondent that is not named as a defendant in such complaint; and
- C. This Order if such complaint is filed after the Order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that respondents did not violate any provision of the Order, and the dismissal or ruling is either not appealed or upheld on appeal, then the Order will terminate according to this Part as though the complaint had never been filed, except that the Order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

Signed this _____ day of _____, 2011.

PHUSION PROJECTS, LLC

By: _____ Date: _____
JAISEN FREEMAN
An officer of the company

By: _____ Date: _____
JAISEN FREEMAN, individually and as
an officer of the company

By: _____ Date: _____
CHRISTOPHER HUNTER, individually
and as an officer of the company

By: _____ Date: _____
JEFFREY WRIGHT, individually and as
an officer of the company

By: _____ Date: _____
MEGAN E. ALVAREZ
Sidley Austin LLP
Attorney for respondents

By: _____ Date: _____
ALAN P. BIELAWSKI
Sidley Austin LLP
Attorney for respondents

By: _____ Date: _____
MATTHEW R. DORNAUER
Sidley Austin LLP
Attorney for respondents

By: _____ Date: _____
ANDREW J. STRENIO, JR.
Sidley Austin LLP
Attorney for respondents

_____ Date: _____
JANET M. EVANS
Counsel for the Federal Trade Commission

_____ Date: _____
CAROLYN L. HANN
Counsel for the Federal Trade Commission

APPROVED:

_____ Date: _____
MARY K. ENGLE
Associate Director
Division of Advertising Practices

_____ Date: _____
DAVID C. VLADECK
Director
Bureau of Consumer Protection