

COMMENTS OF THE COMPETITIVE ENTERPRISE INSTITUTE REGARDING THE
FEDERAL TRADE COMMISSION'S AGREEMENT WITH PHUSION PROJECTS, LLC.
FTC File No. 112 3084

November 29th, 2011
By Electronic Filing
Federal Trade Commission
Office of the Secretary
Room H-135 (Annex)
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

**Re: FTC Proposed Agreement with Phusion Projects, LLC for Packaging Changes for
Fruit-Flavored Four Loko Malt Beverage**
FTC Project No. P094513

The Competitive Enterprise Institute (CEI) is a non-profit public policy organization based in Washington, D.C., with a longstanding interest in protecting and expanding consumer choice in the marketplace and in opposing overregulation of commercial speech. While we disagree with the Federal Trade Commission's (FTC) action against Phusion Projects (Phusion) and other companies—actions which we believe are based on anecdotal evidence and political pressure—we do believe that the agreement between the Commission and Phusion should be allowed. While other groups and individuals may call for stronger action, we believe that further action by the FTC against Phusion is unwarranted, could potentially infringe on First Amendment rights, hinder competitiveness in the marketplace and may overstep the Commission's authority.

Commercial entities, like individuals, have a right to free expression, and that freedom ought to extend to their ability to freely communicate the attributes of their products to any potential consumer, so long as that communication is factual. Phusion's Four Loko cans already clearly and accurately identify their alcohol and volume contents. . . As long as there is no fraud or misrepresentation, the government should not further regulate or restrict a seller's or consumer's choice of serving size or alcohol content.

We believe that the added label information Phusion has agreed to place on the label, per the agreement with the FTC, does an adequate job of informing consumers how Four Loko compares to other alcohol beverages. Four Loko's manufacturer, Phusion, should be free to sell its beverages to willing adult consumers.

Sincerely,
Michelle Minton
The Competitive Enterprise Institute