



Ankin Law Office LLC

Protecting the Rights of Injured Workers

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Caffeinated Alcoholic Beverages Banned

Caffeinated alcoholic beverages may soon be a thing of the past. On November 17, 2010, the U.S. Food and Drug Administration (FDA) issued warning letters to four manufacturers of beverages containing both alcohol and caffeine, such as Four Loko and Joose, admonishing the companies for violations of federal law and effectively banning the beverages from store shelves throughout the country. The FDA deemed the added caffeine in the companies' malt alcoholic beverages an ['unsafe food additive'](#) and directed the companies to take immediate action to remedy the violation or face possible seizure of the products.

The following companies received the FDA's warning letter:

Charge Beverages Corp., manufacturer of Core High Gravity HG, Core High Gravity HG Orange, and Lemon Lime Core Spiked

New Century Brewing Co., LLC, manufacturer of Moonshot

Phusion Projects, LLC (doing business as Drink Four Brewing Co.), manufacturer of Four Loko

United Brands Company Inc., manufacturer of Joose and Max

The FDA reached its conclusions after examining published literature on the co-consumption of caffeine and alcohol, consulting with applicable medical and toxicology experts, reviewing product information provided by the manufacturers and conducting its own independent laboratory analysis of the products.

According to the FDA, "there is evidence that the combinations of caffeine and alcohol in these products pose a **public health concern**." There are concerns that caffeine can mask the sensory cues that individuals may rely on to gauge their level of intoxication. Moreover, the FDA stated in its press release that studies have indicated that "the consumption of beverages containing caffeine and alcohol is associated with risky behaviors that may lead to hazardous and life-threatening situations." In fact, **several recent deaths**, including the cardiac arrest of a New York high school student and the suicide of a Florida college student, have been attributed to the consumption of the controversial beverages. The controversial beverages may include as much as three cups of coffee with three cans of beer, according to critics, and are designed to appeal to younger consumers accustomed to consuming high-caffeine energy drinks.

The FDA's warning letters informed the companies that their products are in violation of Federal Food, Drug and Cosmetic Act (FFDCA). Under the FFDCA, a substance that is added to food, such as caffeine added to an alcoholic beverage, is deemed an **"unsafe food additive"** and is, therefore, unlawful unless its particular use has been approved by FDA, is the subject of a prior sanction, or is "generally recognized as safe." Currently, the FDA has only identified caffeine as "generally recognized as safe" when added to soda in relatively small concentrations and there is currently no food additive regulation that permits the addition of caffeine, at any level, to alcoholic beverages.

Moreover, the FDA has stated that it does not consider the use of caffeine in the aforementioned beverages to be "generally recognized as safe."

In the warning letters, the FDA requested that the companies inform the FDA within 15 days of the steps they plan to take to remedy the violation or provide the FDA with information to support the company's position that it is not in violation of the Act. If the FDA believes that a violation continues to exist, they may pursue enforcement action,

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which could include seizure of the products in violation, to prevent the company from continuing to produce products in violation of the Act.

Even prior to the FDA's action, five states – New York, Washington, Utah, Michigan and Oklahoma – had already banned the beverages. While the FDA's warning letters effectively amount to a ban on the beverages, some states are explicitly banning the beverages. For instance, on November 19, the day after the FDA's action, the Massachusetts Alcoholic Beverages Control Commission issued an emergency regulation banning the sale of the beverages effective immediately. Illinois could soon follow suit. State Senator Ira Silverstein recently introduced a bill that would ban the beverages statewide. Similarly, the Chicago City Council had already been considering a proposal by Aldermen Ed Burke and Gene Schulner that would ban the beverages even before the FDA issued its warnings.

Phusion Products, the manufacturer of Four Loko, has already announced that it intends to reformulate its drinks to remove caffeine, guarana and taurine and it will only produce noncaffeinated versions of Four Loko going forward.

While the FDA sent warning letters only to the four manufacturers listed above, it stated that other alcoholic beverages to which caffeine has been added may be subject to future FDA action if the available scientific data and information indicate that the use of caffeine in those products is not "generally recognized as safe."

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By [Admin - CO](#)
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