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Director

State of California—Health and Human Services Agency
California Department of Public Health



ARNOLD SCHWARZENEGGER
Governor

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RE: Caffeinated Alcoholic Beverages

Dear Beverage Industry,

The US Food and Drug Administration (FDA) has been reviewing the safety and legality of caffeinated alcoholic beverages for the last year. Today the FDA issued notices to four manufacturers of caffeinated alcoholic beverages advising them that their products are adulterated in violation of the federal Food, Drug and Cosmetics Act. The products named today by the FDA are "Four Loko," "Joose," "Max," "Core High Gravity HG Green," "Core High Gravity HG Orange," "Lemon Lime Core Spiked," and "Moonshot."

California's Sherman Food, Drug and Cosmetic Law defines a "food" as any article intended for use for food, drink, confection, condiment, or chewing gum by man or any other animal (Health and Safety Code (H&S) Section 109935(a)). Caffeinated alcoholic beverages are included in the definition of food and are subject to the same food additive requirements as other foods.

H&S Section 110555 provides that a food is adulterated if it contains an unsafe food additive. As set forth in H&S Section 110445, food additives are considered unsafe unless there is a food additive regulation adopted pursuant to the federal Food, Drug and Cosmetic Act that limits the quantity and the use or intended use of the substance to the terms prescribed in the regulation.

The federal food additive regulations related to caffeine limit its use to no more than 0.02 percent when used in cola-type beverages. There is no regulation that permits caffeine to be added to alcoholic beverages. The FDA has now determined that the caffeine in certain alcoholic beverages is an "unsafe food additive." Therefore, pursuant to H&S Sections 110445 and 110555, these alcoholic beverages are adulterated.

H&S Section 110620 provides that the manufacturing, sale, delivery, holding or offering for sale of adulterated food is a crime. Violation of this provision can result in suspension or revocation of your license or registration, civil penalties, and/or criminal penalties that upon conviction could result in a sentence of up to one year in jail and a one thousand dollar fine for each violation.

The Food and Drug Branch will be initiating investigations of manufacturers and distributors of the above-named caffeinated alcoholic beverages to ensure they are complying with the law and have discontinued manufacturing, distributing and selling these adulterated products.

Sincerely,

Patrick Kennelly, Chief
Food Safety Section