

Caffeinated alcoholic drinks stir up legal concerns

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Mix caffeine with malt liquor, add fruity flavors like grape or orange, and what do you get? Four Loko and Four Maxed, two beverages made by a Chicago-based company and aimed squarely at a twentysomething crowd weaned on energy drinks.

But to several state attorneys general, Four and beverages of its kind can make drinkers think that caffeine counteracts intoxication, a potentially dangerous illusion, particularly for partying college kids.

Attorneys general from up to 25 states scored a victory in December against cuffed-up, high-alcohol brews when MillerCoors, under pressure from the officials, agreed to suck the stimulants out of its Sparks beverage, the market leader. Anheuser-Busch also agreed to do the same with its Tilt and Bud Extra brews.

Now, the attorneys general are investigating Chicago-based Phusion Projects and Los Angeles-based United Brands, respective owners of Four and Joose, the two top brands in the caffeinated alcohol category since Sparks was reformulated.

"We are focusing very actively on the makers of Joose and Four," said Richard Blumenthal, Connecticut's attorney general and a leader of the legal officials' campaign against caffeinated alcohol beverages.

Illinois attorney general Lisa Madigan is "actively investigating Phusion" and remains a part of the multistate effort, according to spokeswoman

Natalie Bauer. The attorneys general are examining whether the companies have engaged in misleading marketing.

But United and Phusion appear undaunted. United didn't return calls for comment, and Chris Hunter of Phusion Projects, which also does business under Drink Four Brewing Co., declined to comment beyond saying, "We're letting our products speak for themselves."

Hunter founded Four a few years ago with some friends -- twentysomethings at the time. They had met at Ohio State University, according to a November 2007 interview Hunter gave to the Web site CollegeDrinker.

What set Four apart from other energy brews is wormwood oil, he said then. It's a key ingredient in absinthe, a strong, green-hued liquor long believed to cause hallucinations. A chemical called thujone in wormwood oil has psychedelic qualities, so federal food regulators allow wormwood oil as a flavoring only if its thujone has been extracted. But it's not clear whether Four still contains wormwood.

Four's primary ingredients are standard for [energy drinks](#): caffeine, the stimulant guarana and an amino acid called taurine. The beverages come in different flavors, and tropical punch Four Loko tastes like carbonated, spiked fruit punch.

A can of Four doesn't divulge caffeine levels. Popular energy drinks typically have two to three times as many milligrams of caffeine per ounce than a can of cola, though often less caffeine than what is in a cup of coffee, according to data from the Web site Energy Fiend.

Alcoholic beverages are not supposed to have more caffeine than the amount found in most colas, according to the federal Alcohol and Tobacco and Tax and Trade Bureau. In early 2008, at the request of the

attorneys general, that agency tested Miller's Sparks beverages and found acceptable levels of caffeine, bureau spokesman Art Resnick said.

"We didn't find a public safety concern," Resnick said.

As for alcohol, Four packs a punch. Four Loko, sold in 23.5 ounce cans, has up to 12 percent alcohol by volume; Four Maxed has 10 percent. Most beer has 4 percent to 5 percent alcohol by volume, and even high-alcohol malt liquors typically don't go much higher than 8 percent.

The energy malt beverage market is small, and Four isn't available in Chicago. Phusion pulled the beverage from the Chicago market eight to 10 months ago because it wasn't happy with sales in that city, said Rob Granato, sales vice president at Grant Importing and Distributing in Broadview, Ill., which was Four's local distributor.

Still, Phusion has a firm foothold in a fast-growing industry, and sales appear to be growing, according to data from Information Resources Inc., which tracks food and beverage sales at conventional supermarkets and convenience stores. Four-branded drinks tallied about \$11 million in sales during the year ended June 14, according to IRI, and that doesn't include business at liquor stores.

Four's target market is 21- to 27-year-olds, Hunter told CollegeDrinker. The college market appears to be important too. Phusion sent brand managers to college campuses, Hunter told CollegeDrinker. And one of those brand managers discovered how popular beer pong, a ping-pong-ball drinking game, was on campuses at the time. So Four started sponsoring tournaments affiliated with the World Series of Beer Pong.

Of course, Four is hardly the only alcohol or energy-drink company to market to college students. Whether it's a can of premixed stimulants and alcohol like Four or a bartender blending vodka and an energy drink,

they all have their critics in the public health community.

Mary Claire O'Brien, a doctor and professor at Wake Forest University's School of Medicine, is one of them. O'Brien got interested in caffeinated alcohol after tending to a nearly comatose college student in a hospital trauma ward.

The student had been imbibing energy drinks mixed with booze and told O'Brien the combination allowed "you to drink more and not pass out, so you can party longer," she said.

Research on the subject is limited. Still, last year O'Brien co-published an academic study of more than 4,000 college students, finding that 24 percent of them mixed energy drinks with alcohol.

The study found significant increases in drunkenness among consumers of energy-alcohol concoctions and significantly higher amounts of intoxication-related risky behavior, including riding in a car driven by a drunk and taking advantage of someone sexually.

Several state attorneys general, investigating claims that the drinks were being improperly marketed, in early 2008 subpoenaed Miller and Anheuser-Busch, the nation's two largest brewers. Both companies reportedly complied, and by June 2008 Anheuser agreed to nix stimulant-laden brews.

Miller initially defended Sparks. But in December, MillerCoors, which is now based in Chicago, agreed to reformulate the beverage without stimulants. The attorneys general would like the makers of Four and Joose to do the same.

But that may be a tougher task. Caffeinated malt beverages made up a tiny slice of Miller and Anheuser-Busch's sales, and both brewers have

high public profiles to worry about. The makers of Joose and Four are relatively obscure companies with a big stake in caffeinated alcohol.

"Whether we can stop the manufacturing of these drinks is a different issue," said Blumenthal, Connecticut's attorney general. But at a minimum, the states' top prosecutors are out to stop misleading marketing that implies consumers can drink a lot of either product and remain unimpaired, he said.

Blumenthal pointed to the Joose and Four Web sites as examples of marketing that concerns him. He cited a photo on Joose's site of a young man pouring two cans of Joose at once into his mouth. The picture is next to a comment from "RaeLynn" of Akron, saying, "We drink Joose all day every day."

Blumenthal also points to a Web missive from a Four fan in Texas named Tyler: "You just gotta drink it and drink it and drink it and drink it and not even worry about it because it's awesome and you're just partying and having fun and getting wild and drinking it."

That posting no longer appears to be on Four's Web site, which promotes quotes from satisfied customers.

The list recently culminated with "Gina from New York" saying, "I'm having a weird reaction to Four that makes me want to dance in my bra and panties. Please advise."

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