

Advertisement:

Edrington marketing materials

Advertiser:

Edrington

Complainant:

Private citizen

Complaint Summary:

The complainant believes that Edrington marketing materials utilizing Star Wars action figures run afoul of Responsible Content Provision Nos. 2 and 3. Responsible Content Provision Nos. 2 and 3 provide, respectively, that “[t]he content of beverage alcohol advertising and marketing materials should not primarily appeal to individuals below the legal purchase age” and that “[b]everage alcohol advertising and marketing materials should not depict a child or portray objects, images or cartoon figures that primarily appeal to persons below the legal purchase age. Advertising or marketing material is considered to ‘primarily appeal’ to persons below the legal purchase age if it has special attractiveness to such persons beyond the general attractiveness it has for persons of legal purchase age.”

The complainant also believes that these marketing executions run afoul of Responsible Placement Provision No. 2 providing that “[b]everage alcohol products should not be advertised or marketed in any manner directed or primarily appealing to persons below the legal purchase age.”

The complainant states that “[e]ach violation described involve[s] the use of Star Wars action figure toys in the marketing and advertising of distilled spirits. The use of these toys clearly falls into the category of a manner that is primarily appealing to persons below the legal purchase age. These toys are produced by toy maker Hasbro and all of their toy brands are primarily targeted at persons below the legal purchase age, including their Star Wars action figure toys. Examples of other Hasbro toy brands include My Little Pony, Disney Frozen, Sesame Street, Play-Duh and Playskool.”



The complainant points to “recent official Hasbro TV commercials for Star Wars action figures that not surprisingly begin with children dressed as Star Wars characters. The children are then shown play acting with the action figures. Hasbro has identified persons below the legal purchase age as the group of people that these figures primarily appeal to and focuses its marketing to this group to generate sales of these toys. It follows that the use of these toys in the marketing and advertising of distilled spirits would also primarily appeal to persons below the legal purchase age.”

The complainant states that “all of the content that constitutes the violations described below is created by the ‘Scotch Trooper’.....[who] is the owner of online and social media sites that publish photographs of Star Wars action figure toys posing with bottles of whisky.”

The complainant relays that the “Scotch Trooper” “has acknowledged that Star Wars action figure toys primarily appeal to persons below the legal purchase age. In an article published by Whisky Advocate magazine (<http://whiskyadvocate.com/whisky-obsession-scotch-trooper/>), when describing how he started using these toys with whisky, [the ‘Scotch Trooper’] is quoted as saying ‘[i]t wasn’t until I used one of my daughter’s stormtroopers in front of a bottle of [whisky] ... and I got maybe 100 followers in a day. I was like, ‘I might be onto something here.’ ... [My daughters] have their slew of Barbie dolls, but thrown in there is a bunch of Star Wars toys as well.’”

The complainant claims that “almost a dozen distilled spirits producers have provided [the ‘Scotch Trooper’] with valuable consideration in exchange for [the ‘Scotch Trooper’] to advertise and market their products using Star Wars action figure toys.”

As part of the complaint, the complainant points to “published promotional content on official Edrington controlled social media sites that contain whisky and Star Wars action figure toys. It is clear that this ‘whisky and toys’ content is in violation of the Code of Responsible Practices and should be removed from its sites.”

The complainant claims that “[t]he ongoing relationship Edrington (and advertising agencies acting as its agents) has with [the ‘Scotch Trooper’] also imputes culpability on Edrington for the prohibited content published on [the ‘Scotch Trooper’s’] social media sites. Edrington should not be allowed to actively and deliberately outsource promotional content that is in clear violation of the Code of Responsible Practices. Edrington utilizes the following four methods to directly cause the publication of prohibited content on [the ‘Scotch Trooper’s’] sites: 1) Edrington pays [the ‘Scotch Trooper’] cash to produce and publish prohibited promotional content, 2) Edrington provides [the ‘Scotch Trooper’] significant non-cash consideration, such as expense-paid luxurious international trips, with the knowledge and expectation that [the ‘Scotch Trooper’] will in exchange publish prohibited promotional content gathered during these sponsored trips, 3) Edrington provides free bottles of whisky to [the ‘Scotch Trooper’] with the knowledge and expectation that [the ‘Scotch Trooper’] will in exchange publish prohibited promotional content using the bottles and 4) Edrington proactively invites [the ‘Scotch Trooper’] to

both private and non-private free whisky tastings and events with the knowledge and expectation that [the 'Scotch Trooper'] will in exchange publish prohibited promotional content gathered at these tastings and events.”

Specifically, the complainant points to the following activities to support his/her claims:

- (1) In late April 2017, Edrington invited [the 'Scotch Trooper'] on an all-expense paid trip to Copenhagen, Denmark for the launch of their new Highland Park Valkyrie whisky and new package design. During this time, Edrington allowed [the 'Scotch Trooper'] to “take over” the official Highland Park brand Instagram account (@highlandparkofficial) to post “stories” of his trip. (Instagram “stories” are short videos or pictures that disappear 24 hours after publication.) Included in the stories posted on the official Highland Park Instagram account during this trip is a Star Wars action figure toy posing with a bottle of Highland Park whisky. A link to a video of the stories that were published to Highland Park’s official Instagram account is included within [the 'Scotch Trooper’s'] May 11, 2017 blog post.
- (2) With knowledge that [the 'Scotch Trooper'] exclusively creates and publishes content containing whisky and toys, Edrington nonetheless paid for his international trip and provided him full bottle samples of whisky. In exchange, [the 'Scotch Trooper'] subsequently published on May 11th the blog post promoting the new Highland Park whisky and package design and five corresponding Instagram posts between April 25th and May 11th that all advertise and promote Highland Park whisky with action figure toys.
- (3) On May 4th, Edrington published on its official Highland Park United States Instagram account (@highlandparkus) [the 'Scotch Trooper’s'] photo from the Copenhagen trip that shows the newly packaged Highland Park 12 with an action figure toy.
- (4) On May 7th, [the 'Scotch Trooper'] made an appearance on an unrelated whisky themed YouTube account (Scotch Test Dummies #318) promoting the new Highland Park whisky and package design. In apparent coordination with these efforts, on May 11th Edrington posted to its official Highland Park brand Instagram account (@highlandparkofficial) a picture of whisky and an action figure toy with the caption directing people to view [the 'Scotch Trooper’s'] promotion of the new Highland Park whisky on the above mentioned YouTube account. Edrington went as far as providing a link to the video in the bio of the official Highland Park Instagram account.

- (5) One of Highland Park's brand ambassadors also posted on his official non-personal Highland Park brand ambassador Instagram account a photo of himself with an action figure toy, presumably taken by [the 'Scotch Trooper']. The caption includes a link to [the 'Scotch Trooper's'] May 11, 2017 blog post promoting Highland Park's new whisky and package design and more photos of whisky and action figure toys.
- (6) On Edrington's official Highland Park Canada Instagram account (@highlandparkcanada), it reposted one of [the 'Scotch Trooper's'] photos containing Highland Park's newly repackaged whisky and action figure toys taken on the Copenhagen trip it paid for him to attend. The caption to this post only includes the marketing slogan "heritage, history and triumph in every bottle."
- (7) On September 13, 2017, one of the world's leading whisky magazines, Whisky Advocate, published an article featuring [the 'Scotch Trooper'] and several of his photos of whisky and toys. Of the hundreds of photos of whisky and toys that [the 'Scotch Trooper'] has produced, selected to be included in the article was a photo of Edrington's newly repackaged Highland Park whisky (<http://whiskyadvocate.com/whisky-obsession-scotch-trooper/>).
- (8) After his Edrington sponsored trip to Europe, and with full knowledge he exclusively publishes content containing whisky and toys, [the 'Scotch Trooper'] was hosted by Edrington in Washington D.C. at an official private tasting of Macallan's ultra-premium releases from its brand portfolio. [The 'Scotch Trooper'] subsequently posted to his Instagram account a photo taken that evening of Macallan's M whisky and action figure toys.
- (9) On at least two other occasions [the 'Scotch Trooper'] published on his Instagram account photos of action figure toys and promotional samples of Edrington's Macallan whisky not available to the general public. One contained a sample of an extremely rare Macallan sponsored flask and whisky and the other a promotional sample of Macallan Edition No. 2.
- (10) In late February 2018, Edrington invited [the 'Scotch Trooper'] on an all-expense paid trip to London, England for the professional production of an official Edrington promotional video that exclusively features [the 'Scotch Trooper'] and his action figure toys. This trip also included Edrington providing [the 'Scotch Trooper'] a free bottle of expensive rare whisky that was subsequently published with action figure toys on [the 'Scotch Trooper's'] social media sites.

- (11) In March 2018, Edrington published on its official Macallan Instagram and Twitter accounts photos of its whisky and action figure toys taken by [the ‘Scotch Trooper’] on his international trip that was paid for by Edrington. These posts direct people to watch the promotional video of [the ‘Scotch Trooper’] that was produced in London. In coordination with Edrington, [the ‘Scotch Trooper’] published on his social media sites links to the Edrington produced promotional video.

Advertiser’s Response: In response to the complaint, the advertiser stated that “the Scotch Trooper sites, including but not limited to its blog and social media channels, do not primarily appeal to individuals below the legal purchase age. Further, the *Star Wars* figures do not depict children (all figures represent adults or robots) and do not primarily appeal to or have ‘special attractiveness’ to those below the legal purchase age. *Star Wars* was originally released in 1977, with a series of films released thereafter, with the latest film in the franchise released in 2017. Because the *Star Wars* films have developed a fan base for over 40 years, the characters are known and beloved by its original fans who are now well over 21 years of age. For instance, the Scotch Trooper, is a ‘*Star Wars* loving Whiskey Enthusiast’ who is over 21 years of age. Further, based on Scotch Trooper provided analytics of its audience, 89% of its social media visitors are over the age of 25. It is evident that Scotch Trooper’s content does not primarily appeal to individuals below the legal purchase age.”

The advertiser also stated “[n]onetheless, as a responsible advertiser and member of the Distilled Spirits Council, we have taken corrective measures. The Scotch Trooper has now implemented a statement on its social media sites that individuals must be at least 21 years of age to follow Scotch Trooper. As required by the Distilled Spirits Council, Edrington brand sites and social media channels, including but not limited to Highland Park and The Macallan, have similar statements or are age gated.”

Code Review Board Decision: In reviewing the complaint, the Board concluded that *Star Wars* action figures utilized in the advertising and marketing of distilled spirits violated Responsible Content Provision Nos. 2 and 3. In making this determination, the Board noted that these action figures are sold as toys for children “ages 4 and up” as stated on their packaging (see examples [1](#) and [2](#)) and the sale of these action figures are geared to individuals below the legal purchase age (see, e.g., [“Hot Holiday Toys: From BB-8 to the Girl Scout Cookie Oven” – The Washington Post](#), [“Cheap Toys Under 10 Dollars” – The Spruce.com](#), and [“Toy Expert Breaks Down Hottest New ‘Star Wars’ Toy” – Good Morning America](#)).

The Board also took into account the following statement by the “Scotch Trooper:” “It wasn’t until I used one of my daughter’s stormtroopers in front of a bottle of [whisky] ... and I got maybe 100 followers in a day. I was like, ‘I might be onto something here.’...[My daughters]...have their slew of Barbie dolls, but thrown in there is a bunch of *Star Wars* toys as well.” (<http://whiskyadvocate.com/whisky-obsession-scotch-trooper/>.)

Given that the complainant identifies eleven companies and points to numerous types of activities, the Code Review Board addressed the assertions in the “Scotch Trooper” complaint generally prior to examining the specifics raised by the complainant about Edrington products.

To that end, the Code Review Board evaluated the complainant’s claims in three main categories:

- (1) whether Star Wars action figure marketing materials featuring branded products were posted solely by the “Scotch Trooper” without any knowledge or control by the brand advertiser or whether those posts were used or reposted by the brand advertiser in its marketing materials/social media pages, including whether any such postings were done by the advertiser’s employees, brand ambassadors and/or advertising agencies associated with the advertiser under a contractual agreement or otherwise;
- (2) whether sending product to the “Scotch Trooper” was done with the expectation that the brand would be featured with Star Wars action figures on his blog and social media pages; and
- (3) whether payment or a direct invite by the advertiser for distillery visits or other events to the “Scotch Trooper” was done with the expectation that products associated with the advertiser would be included in images with Star Wars action figures on his blog and social media pages or whether the “Scotch Trooper’s” presence at an event was without any anticipation of an endorsement by the “Scotch Trooper” for the advertiser’s brand.

Regarding the first category, the Code Review Board concluded that retweets or reposts of the content from the “Scotch Trooper” pages with Star Wars action figures on (1) an advertiser’s social media pages, (2) the social media pages of employees in senior/managerial positions who expressly hold themselves to be brand representatives or ambassadors or whom would be understood to be brand representatives or ambassadors (excluding, for example, an employee in a support position who publishes an incidental post about a brand), and (3) the social media pages of the advertiser’s brand ambassadors and/or advertising agencies under a contractual agreement or otherwise are within the advertiser’s control. Consequently, the actions by these parties posting the “Scotch Trooper” Star Wars action figure images with the advertiser’s product violated Responsible Content Provision Nos. 2 and 3.

Regarding the second and third categories, the Board determined that, given the “Scotch Trooper’s” business model (e.g., <https://www.tastethedram.com/single-post/2018/03/01/scotch-trooper/>) that exclusively depicts branded product with Star Wars action figures, there was a reasonable expectation by the advertiser providing product to the “Scotch Trooper” and/or paying for or extending a direct invite to visit U.S.-based

distilleries/other events that Star Wars action figures would be posed with the advertiser's product in photographs in violation of Responsible Content Provision Nos. 2 and 3.

The Board did not find a violation of Responsible Placement Provision No. 2 providing that "[b]everage alcohol products should not be advertised or marketed in any manner directed or primarily appealing to persons below the legal purchase age." This conclusion was based upon information regarding the "Scotch Trooper" blog and the syndicated demographic data regarding the Instagram and Twitter posts identified by the complainant.

Using the decision matrix outlined above, the Code Review Board carefully assessed the claims regarding Edrington and the "Scotch Trooper," as well as the advertiser's response thereto. The Board found that the "Scotch Trooper" posts and reposts by the official Macallan and Highland Park US social media pages referenced in the complaint, as well as the Macallan interview with the "Scotch Trooper" on YouTube, that are accessible via their respective websites were in violation of the Code given that the use of Star Wars action figures in marketing materials is not consistent with the Code's provisions referenced above.

The Board also found that there was a reasonable expectation by Edrington that its products would be photographed with Star Wars action figures when the company provided product and a private tasting in Washington, D.C. to the "Scotch Trooper." As a consequence, the Board concluded that these activities violated Responsible Content Provision Nos. 2 and 3.

The Code Review Board decision solely relates to the use of Star Wars action figures in marketing materials and not to other activities by the "Scotch Trooper."

Action by Advertiser: The advertiser has removed all posts utilizing Star Wars action figures from its social media accounts and has requested the "Scotch Trooper" to remove such posts on his social media accounts, who has agreed to do so.

Status: Resolved: Responsive action taken.