

Advertisement:

Michter's marketing materials

Advertiser:

Michter's (Affiliate Member)

Complainant:

Private citizen

Complaint Summary:

The complainant believes that Michter's 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 Michter’s 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 Michter’s (and advertising agencies acting as its agents) has with [the ‘Scotch Trooper’] also imputes culpability on Michter’s for the prohibited content published on [the ‘Scotch Trooper’s’] social media sites. Michter’s should not be allowed to actively and deliberately outsource promotional content that is in clear violation of the Code of Responsible Practices. Michter’s utilizes the following two methods to directly cause the publication of prohibited content on [the ‘Scotch Trooper’s’] sites: 1) Michter’s provided [the ‘Scotch Trooper’] significant non-cash consideration, such as an expense-paid trip to Kentucky, with the knowledge and expectation that [the ‘Scotch Trooper’] would in exchange publish prohibited promotional content gathered during the sponsored trip and 2) Michter’s 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.”

The complainant further states that “Michter’s should have [the ‘Scotch Trooper’] remove this [‘whisky and toys’ content] from his sites. Michter’s should also cease using the two methods described above that are the cause-in-fact of the production of the prohibited material. The creation and publication of the prohibited content would not have occurred but for these actions by Michter’s.”

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

- (1) Michter’s has provided [the ‘Scotch Trooper’] with free bottles of whisky in advance of their release to the general public with the knowledge and expectation that he will promote the new releases using action figure toys.
- (2) In February 2018, Michter’s paid for [the ‘Scotch Trooper’s’] multiday trip to Kentucky to visit Michter’s production facilities with the knowledge and expectation that he will promote Michter’s using action figure toys. This trip also included free whisky tastings provided to [the ‘Scotch Trooper’] with the knowledge that [the ‘Scotch Trooper’] would promote Michter’s whisky using action figure toys. Subsequently, in March of 2018, [the ‘Scotch Trooper’] published on multiple social media sites photos of Michter’s whisky and action figure toys.

Advertiser’s Response: In response to the complaint, the advertiser stated that “Michter’s and its affiliates are committed to the principle of marketing its products in a responsible manner to consumers of legal drinking age and thank the Distilled Spirits Council Code Review Board for bringing this matter to our attention. Further, we value our membership in the Distilled Spirits Council and endeavor to comply at all times with the Code of Responsible Practices (the ‘Code’) and the advertising and marketing practices promoted by the Council.”

The advertiser also stated that “[a]lthough we disagree with the assertions set forth in the complaint as we discuss further below, Michter’s at no time wants to imply or connect the MICTHER’s brand to anything having to do with underage consumers. If the Distilled Spirits Council Code Review Board determines that the activities by [the ‘Scotch Trooper’] using Star Wars actions figures and Michter’s whiskey violates the Code, we will immediately remove the offending posts on Michter’s Controlled Social Media Accounts...and shall request that Sirle Media, our advertising agency, and [the ‘Scotch Trooper’] remove all of the other posts [identified in the complaint] as we strive to market our products in the most responsible manner at all times.”

The advertiser relayed that “Michter’s reposting of content of whiskey and Star Wars action figures produced by [the ‘Scotch Trooper’] was not intended to market to or primarily appeal to individuals below the legal purchase age as alleged by the complainant. With respect to our digital media, we have age statements that are intended to restrict viewers who are under the legal age to consume alcohol from either following or sharing. Further, [the ‘Scotch Trooper’s’] social media accounts that are the

subject of the complaint have age statements that are intended to restrict views to 21 years of age and older. With such legends, there is a reasonable expectation that the viewers of our posts are of legal age. Michter's and Sircle Media, our advertising agency, also reasonably believe that the Star Wars franchise and related mementos, including character representations such as the Storm Trooper figures, appeal to all age groups."

In that regard, the advertiser noted that "[i]n fact the New York Yankees created and gave away an Aaron Judge Jedi bobblehead at their May 4th, 2018 game in honor of Star Wars Night (<https://www.mlb.com/cut4/the-yankees-will-give-away-an-aaron-judge-jedi-bobblehead-for-star-wars-night/c-266535212>), and moreover baseball games, where all age ranges are represented, routinely serve and advertise alcohol. Recognizing the general appeal of the Star Wars franchise, May 4th, Star Wars Day, has become an annual holiday that is celebrated by fans of all ages- 'May the Fourth Be With You'. In contrast, complainant's examples of the Hasbro toys like My Little Pony, Disney Frozen, Sesame Street, Play-Duh and Playskool are clearly meant to appeal to children, unlike Star Wars related material. If there is any special attractiveness of [the 'Scotch Trooper's'] material, it is to adults with a nostalgic connection to the original movies from the late 1970s and early 1980s (e.g., the Star Wars movie characters included in the posts...focus on the stars of the original movies rather than new characters from the more recent films of the franchise) and to that era generally (e.g., references to the sitcom 'Laverne and Shirley' and 'Wayne's World' on the 3/11/2018 @scotch_trooper Instagram). Upon a review of all of the posts on [the 'Scotch Trooper's'] social media accounts, Michter's is one of many reputable and responsible whiskey companies that were showcased along with the Star Wars figures (some named in the complaint and some not named) demonstrating that Michter's determination that such content did not primarily appeal to individuals below the legal purchase age was shared by many of its reputable peer companies."

The advertiser additionally stated that "[w]ith respect to the allegation that Michter's (or its advertising agencies acting on its behalf) 'directly causes the publication of prohibited content on [the 'Scotch Trooper's'] sites and 'has directed, controlled or facilitated the production of such content,' it is [the 'Scotch Trooper'], not Michter's, nor Sircle Media, on behalf of Michter's, that has the ultimate authority and control over the creation and production of content on [the 'Scotch Trooper's'] own social media accounts. [The 'Scotch Trooper'] is a digital media creator that directly creates and publishes posts of a multitude of different whiskey brands on his own social media accounts with Michter's being only one of such brands."

The advertiser concluded that "the Michter's whiskey and Star Wars action figures content was not intended to market or primarily appeal to individuals below the legal purchase age. However, if the Distilled Spirits Council Code Review Board determines otherwise, we will remove all of the posts on Michter's social media accounts and shall request the same of Sircle Media and [the 'Scotch Trooper']. Further, Michter's will continue to take precautions moving forward to ensure all external communications

are thoroughly reviewed against the Code and our internal compliance policies and procedures to ensure that we maintain the highest standards as a responsible whiskey company.”

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 Michter’s 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]verage 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 Michter’s and the “Scotch Trooper,” as well as the advertiser’s response thereto. The Board found that the “Scotch Trooper” posts and reposts by Michter’s referenced in the complaint, as well as the repost by Michter’s advertising agency, 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 and that this activity was under Michter’s control.

The Board also found that there was a reasonable expectation by Michter’s that its products would be photographed with Star Wars action figures when the company provided product and a tour of its facilities 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 removed all posts utilizing Star Wars action figures from its social media pages and the social media page of their advertising agency, as well as requested that the “Scotch Trooper” remove such posts from his social media accounts and he has done so.

Status: Resolved: Responsive action taken.