

Advertisement:

Pernod Ricard USA marketing materials

Advertiser:

Pernod Ricard USA

Complainant:

Private citizen

Complaint Summary:

The complainant believes that Pernod Ricard USA 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 states that “[t]he ongoing relationship PR (and advertising agencies acting as its agents) has with [the ‘Scotch Trooper’] imputes culpability on PR for the prohibited content published on [the ‘Scotch Trooper’s’] social media sites. PR should not be allowed to actively and deliberately outsource promotional content that is in clear violation of the Code of Responsible Practices. PR utilizes the following two methods to directly cause the publication of prohibited content on [the ‘Scotch Trooper’s’] sites: 1) PR provides [the ‘Scotch Trooper’] significant non-cash consideration, such as a trip to a PR whisky event in Chicago in January 2018, with the knowledge and expectation that [the ‘Scotch Trooper’] would in exchange publish prohibited promotional content gathered during the sponsored trip and 2) PR 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 points to “promotional content on [the ‘Scotch Trooper’s’] social media sites that PR has directed, controlled or facilitated the production of such content. It is clear that this ‘whisky and toys’ content is in violation of the Code of Responsible Practices and PR should have [the ‘Scotch Trooper’] remove it from his sites. PR 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 PR.”

Advertiser’s Response: In response to the complaint, the advertiser stated that “[a]lthough Pernod Ricard did provide to [the ‘Scotch Trooper’] the items noted in the complaint, such items were not provided on the condition or under any contractual or other obligation that he would post content featuring Pernod Ricard brands with Star Wars action figures. Nor did Pernod Ricard ‘direct, control, or facilitate’ the production of such content. On the contrary, the posted content referenced in the complaint was done by [the ‘Scotch Trooper’] independently and without our direction.”

The advertiser further relayed that “Pernod Ricard is not interested in having its products featured with Star Wars action figures. Previously, Pernod Ricard has contracted with [the ‘Scotch Trooper’] for photos of our products without action figures, and for our own use only. Aside from being a talented photographer, [the ‘Scotch Trooper’] is also a craftsman who creates lamps from whiskey bottles which we may consider engaging him to produce for us in the future. Accordingly, we provided the items noted in the complaint to him because of our on-going relationship with him and his influence and status within the professional whiskey community. We did not provide them in exchange for him to post our products with Star Wars action figures.”

The advertiser added that “[m]oreover, while advertising with certain action figures *may* primarily appeal to those below the legal purchase age, the Star Wars figures depicted in posts in this context do not – in our view – have special attraction for persons below the legal drinking age. First, the social media sites (Instagram and Twitter) where [the ‘Scotch Trooper’] posted the alleged offending posts are platforms that comprise an audience that is at least 71.6% twenty-one years or older. Second, [the ‘Scotch Trooper’s’] social media pages all relate to whiskey, a topic which inherently does not appeal to those below the legal purchase age, and clearly state that ‘you must be 21+ to follow.’ Last, Star Wars, an iconic franchise that is nearly forty years old, primarily appeals to an older demographic. According to Nielson MPAA ratings (the gold standard for cinema validation and reflecting a demographic of those older than two years old), the last three Star Wars movies that were released comprised an audience of at least 71.6% of whom were twenty-one years or older. Indeed, it is customary for many of these same adult followers to dress up as the iconic characters when new movies are released or at conventions. See <http://www.nydailynews.com/entertainment/star-war-convention-gallery-1.2188255?pmSlide=1.2188240>.”

The advertiser concluded by stating that “our marketing objectives do not benefit from featuring our products next to action figures and we have therefore requested – but cannot guarantee – that the posts referenced by [the] complainant be removed. In either case, however, Pernod Ricard should not be held responsible for actions taken out of its control. Thus, for the reasons stated above, we respectfully request the CRB find that Pernod Ricard is not in violation of the Code provisions asserted by the complainant.”

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 Pernod Ricard USA 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 Pernod Ricard USA and the "Scotch Trooper," as well as the advertiser's response thereto. The Board found that the "Scotch Trooper" posts regarding Pernod Ricard USA products referenced in the complaint 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 Pernod Ricard USA that its products would be photographed with Star Wars action figures when the company provided product to the "Scotch Trooper" and an invite to an Arbelour PR event in Chicago. 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 proactively requested that the "Scotch Trooper" remove all posts utilizing Star Wars action figures and Pernod Ricard products from his social media accounts, and they have been so removed. In addition, the advertiser has removed all postings utilizing Star Wars action figures from its social media accounts.

Status: Resolved: Responsive action taken.