

Advertisement:

Scotch Malt Whisky Society marketing materials

Advertiser:

MHW, Ltd. (non-Council member)

Complainant:

Private citizen

Complaint Summary:

The complainant believes that Scotch Malt Whisky Society 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 SMWS 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 SMWS has with [the ‘Scotch Trooper’] also imputes culpability on SMWS for the prohibited content published on [the ‘Scotch Trooper’s] social media sites. SMWS should not be allowed to actively and deliberately outsource promotional content that is in clear violation of the Code of Responsible Practices. SMWS 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 also states that “[i]t is clear that this ‘whisky and toys’ content is in violation of the Code of Responsible Practices and SMWS should have [the ‘Scotch Trooper’] remove it from his sites. SMWS should also cease providing [the ‘Scotch Trooper’] with free bottles of whisky 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 SMWS.”

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

- (1) SMWS 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. Subsequently, [the ‘Scotch Trooper’] has published on his social media sites photos of SMWS whisky and action figure toys.

- (2) In November of 2017, SMWS formally collaborated with [the 'Scotch Trooper'] in an Instagram "giveaway" where people had a chance to win a free bottle of SMWS whisky. To be entered into the contest people were required to comment on a post published on [the 'Scotch Trooper's] Instagram page and also "follow" SMWS' official Instagram account. In coordination, [the 'Scotch Trooper'] and SMWS both published photos of SMWS whisky and action figure toys promoting both SMWS whisky and the contest.
- (3) In August of 2017, SMWS published on its Instagram account an interview it conducted with [the 'Scotch Trooper'] discussing his photography of whisky and action figure toys.

Advertiser's Response: In response to the complaint, the importer for Scotch Malt Whisky Society, MHW, Ltd., stated that "[a]lthough MHW, Ltd. imports the Society's products...into the United States, the Society...market their respective products themselves. Therefore, MHW, Ltd. is not involved with [the 'Scotch Trooper's] Blog."

MHW also noted that "[w]e understand from the Society that [the 'Scotch Trooper'] has confirmed that 99% of his audience is over the age of 21 which is well within DISCUS' guidelines. We also understand that the Star Wars movie franchise appeals primarily to adults. For those reasons the Society thought it was appropriate to let its products be referenced in the Blog. Quite frankly it did not occur to the Society that the Star Wars reality figures would be considered toys since the overwhelming demographic of the Blog is over 21. That being said, if the Code Review Board disagrees and believes the reality figures are toys prohibited under the DISCUS Code of Responsible Practices, we and the Society will advise [the 'Scotch Trooper'] to cease and desist from using the Society's bottles in connection with such figures."

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 Scotch Malt Whisky Society 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 Scotch Malt Whisky Society and the "Scotch Trooper," as well as the advertiser's response thereto. The Board found that the "Scotch Trooper" posts and reposts by the Scotch Malt Whisky Society referenced in the complaint, as well as reposts by senior/managerial employees at Scotch Malt Whisky Society, 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 these activities were within the control of Scotch Malt Whisky Society.

The Board also found that there was a reasonable expectation by Scotch Malt Whisky Society that their products would be photographed with Star Wars action figures when the company provided product 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: Upon receiving the Board's decision, MHW, Ltd. stated that they have instructed Scotch Malt Whisky Society to no longer utilize Star Wars action figures in connection with their products and have instructed the advertiser to remove the posts found in violation. Scotch Malt Whisky Society has removed the postings with Star Wars action figures from their social media pages and requested that the "Scotch Trooper" remove such posts from his social media accounts, who has done so.

Status: Resolved: Responsive action taken.