

**Advertisement:**

WhistlePig marketing materials

**Advertiser:**

WhistlePig (non-Council Member)

**Complainant:**

Private citizen

**Complaint Summary:**

The complainant believes that WhistlePig 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 WP has with [the ‘Scotch Trooper’] imputes culpability on WP for the prohibited content published on [the ‘Scotch Trooper’s’] social media sites. WP should not be allowed to actively and deliberately outsource promotional content that is in clear violation of the Code of Responsible Practices. WP 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 claims that “[i]t is clear that this ‘whisky and toys’ content is in violation of the Code of Responsible Practices and WP should have [the ‘Scotch Trooper’] remove it from his sites. WP should also cease providing [the ‘Scotch Trooper’] with free bottles of whisky which is the cause-in-fact of the production and publication of the prohibited material.... The creation and publication of the prohibited content would not have occurred but for the actions of WP.”

**Advertiser’s Response:** In response to the complaint, the advertiser stated that “we want to ensure that our conduct is above reproach, and therefore have undertaken the following actions in response to the complaint: (1) we have requested that [the ‘Scotch Trooper’] delete the posts that contain the allegedly offending material; (2) we have scheduled a training session for our marketing, sales and social media personnel - to include WPs third party vendors who handle most of its social media strategy- to review the Code of Responsible Practices; and (3) we will make such training an annual event. Nevertheless, we believe that the complaint suffers from serious misstatements and mischaracterizations, at least as it relates to WP. We appreciate this opportunity to clarify matters.”

The advertiser further relayed that “WP’s involvement with [the ‘Scotch Trooper’] has been minimal: (1) WP made no cash payments to [the ‘Scotch Trooper’]; (2) WP paid no non-cash consideration to [the ‘Scotch Trooper’] (*i.e.*, sponsored trips); (3) [the ‘Scotch Trooper’] was not invited to any events by WP; (4) none of the content generated by [the ‘Scotch Trooper’] appeared on WP’s social media sites; and (5) no other supplier named in the complaint appears on [the ‘Scotch Trooper’s’] sites fewer times than WP. WP’s products appear in just two images that [the ‘Scotch Trooper’] created and posted exclusively through his own outlets.”

The advertiser continued by stating that “[a]gainst this backdrop of WPs very minimal connections to [the ‘Scotch Trooper’], some of the more incendiary claims against WP in the complaint cannot withstand scrutiny. Notably, the complaint states that WP has an ‘ongoing relationship’ with [the ‘Scotch Trooper’], and that WP outsourced the content to [the ‘Scotch Trooper’] with the ‘knowledge and expectation’ that [the ‘Scotch Trooper’] would ‘publish prohibited promotional content.’ None of the quoted language is correct. In fact, WP has no ‘ongoing relationship’ with [the ‘Scotch Trooper’]. Indeed, WP’s contact with [the ‘Scotch Trooper’] has been nearly non-existent. However, except for the stock room employee who shipped 2 bottles to [the ‘Scotch Trooper’], nobody at WP has had any contact with [the ‘Scotch Trooper’]. Further, over a one-year period, [the ‘Scotch Trooper’] posted WP content a total of two (2) times. Therefore, the characterization of the relationship, if any, as ‘ongoing,’ is inapt. In this regard, WP also notes that [the ‘Scotch Trooper’s’] content never appeared on any WP owned or controlled social media site.”

The advertiser added that “[t]he complaint’s statement that WP had the ‘knowledge and expectation’ that [the ‘Scotch Trooper’] would use the samples as he did is also inaccurate. WP uses a third-party company to develop and implement its social media strategy. This third-party company provided to WP a list of social media contacts from whom WP could benefit through outreach with samples. [The ‘Scotch Trooper’s’] name appeared on that list, and therefore he received samples. The persons at WP who provided the samples had no idea how [the ‘Scotch Trooper’] intended to use them.”

The advertiser stated “[t]he complaint also states that WP has ‘directed, controlled or facilitated’ the production of content on [the ‘Scotch Trooper’s’] websites. It is inaccurate to say that WP in any way ‘directed’ or ‘controlled’ [the ‘Scotch Trooper’], given that there has been no contact between any WP employees and [the ‘Scotch Trooper’] except for the shipment of two sample bottles. Even the statement that WP ‘facilitated’ the production of the content seems a reach, given that WP’s sole interaction with [the ‘Scotch Trooper’] involved shipping two sample bottles, and [the ‘Scotch Trooper’] could have obtained bottles at the store or used photo editing software to achieve the same effect whether WP provided samples or not.”

The advertiser relayed that “the complaint used the same broad and inflammatory language, in cookie cutter fashion, to describe WPs conduct as was used to describe the conduct of other suppliers with much deeper connections to [the ‘Scotch Trooper’]. The loaded language in the complaint as to WP, standing unchallenged could give rise

to a false sense of equivalency. We appreciate this chance to correct the record. Apart from the specifics of WP's very limited appearances on [the 'Scotch Trooper's'] website, there is some question as to whether [the 'Scotch Trooper's'] content violates the Code. Notably, it is not clear that the content appeals primarily to persons below the legal purchase age. Specifically, data obtained by our third party social media consultant indicates that on [the 'Scotch Trooper's'] Instagram account, 89% of the viewers were 25 and older, and another 11% were 18-24. Therefore, the Instagram viewers were overwhelmingly, and possibly almost exclusively, of legal purchase age.”

Further, the advertiser stated that “the complaint seems to take the position that the use of toys in advertising is *prima facie* evidence that the message is intended for persons below the legal purchase age (‘It follows that the use of these toys in the marketing and distilling of distilled spirits would also primarily appeal to persons below the legal purchase age.’). However, toys often are used to convey messages to adults, like Punch and Judy ([https://en.wikipedia.org/wiki/Punch\\_and\\_Judy](https://en.wikipedia.org/wiki/Punch_and_Judy)), or Barbie's original incarnation as a German sex doll gag gift (<http://www.time.com/3731483/barbie-history/>). Recent films such as *Team America: World Police*, involve dolls in very adult situations, featuring songs such as ‘America, F\*ck Yeah,’ and depicting the dolls in graphic scenes involving raunchy sex and substance use.”

The advertiser further relayed that “[m]oreover, today's youth, who are digitally oriented, prefer to live out their fantasies through video games and electronic devices, and are losing interest in lifeless plastic action figures: <https://www.theguardian.com/film/2018/apr/05/lights-camera-but-no-action-figures-are-movie-toys-going-out-of-fashion>. Evidently, there is also evidence to suggest that Star Wars figures in particular appeal to nostalgic adult toy buyers: <https://www.dailymail.co.uk/sciencetech/article-4400708/1-11-toys-sold-bought-adult-themselves.html>. This data raises questions as to whether or not Star Wars action figures have a special attractiveness to those below the legal purchase age beyond the general attractiveness of such figures to those of legal age.”

The advertiser concluded “[n]evertheless, WP understands that as an alcohol beverage supplier, it needs to approach this issue with an extra level of sensitivity. We also need to do a better job ensuring that third party vendors who work on behalf of WP are sensitive to the Code. Therefore, WP has requested that [the 'Scotch Trooper'] remove the two instances in which he used WP's images from his social media accounts, and has instituted mandatory and ongoing training, for both employees and contractors, to try to avoid future instances involving similarly questionable use of its images.”

**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/.](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 WhistlePig 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 WhistlePig and the "Scotch Trooper," as well as the advertiser's response thereto. The Board found that the "Scotch Trooper" posts regarding WhistlePig product with Star Wars action figures 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. Although the WhistlePig product was provided to the "Scotch Trooper" through a third party, such action still was within the control of the advertiser and the "Scotch Trooper's" business model was to exclusively depict branded product with Star Wars action figures.

The Board also found that there was a reasonable expectation by WhistlePig that its 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:** The advertiser proactively requested that the "Scotch Trooper" remove all posts utilizing Star Wars action figures and WhistlePig products from his social media accounts and the "Scotch Trooper" has removed these postings. The advertiser also has scheduled annual Code training sessions for WhistlePig marketing, sales and social media personnel, as well as third-party vendors.

**Status:** Resolved: Responsive action taken.