

Advertisement:

William Grant marketing materials

Advertiser:

William Grant (non-Council member)

Complainant:

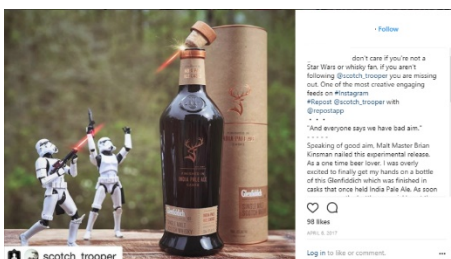
Private citizen

Complaint Summary:

The complainant believes that William Grant 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 WGS 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 WGS (and advertising agencies acting as its agents) has with [the ‘Scotch Trooper’] also imputes culpability on WGS for the prohibited content published on [the ‘Scotch Trooper’s’] social media sites. WGS should not be allowed to actively and deliberately outsource promotional content that is in clear violation of the Code of Responsible Practices. WGS utilizes the following four methods to directly cause the publication of prohibited content on [the ‘Scotch Trooper’s’] sites: 1) WGS pays [the ‘Scotch Trooper’] cash to produce and publish prohibited promotional content, 2) WGS 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) WGS 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) WGS 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.”

The complainant further states that “[i]t is clear that this ‘whisky and toys’ content is in violation of the Code of Responsible Practices and WGS should have [the ‘Scotch Trooper’] remove it from his sites. WGS should also cease using the four 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 WGS.”

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

- (1) In June 2017, WGS paid for [the ‘Scotch Trooper’] to travel to Scotland on a multiday trip to visit the Glenfiddich and Balvenie distilleries. In exchange, [the ‘Scotch Trooper’] published eight separate Instagram posts using action figure toys promoting not only the two brands but specific whisky products that were recently released at that time.
- (2) On August 28th, WGS invited [the ‘Scotch Trooper’] to help promote WGS’ brands at a WGS sponsored event at the British Consulate. One of WGS’ brand ambassadors published to her work-related Twitter account a photo of [the ‘Scotch Trooper’] and a consulate employee holding whisky and a Star Wars action figure toy. Previously, on August 11th, the same WGS controlled Twitter account posted a photo taken by [the ‘Scotch Trooper’] that uses action figure toys to promote a new release of WGS whisky.
- (3) In late September 2017, WGS paid for [the ‘Scotch Trooper’] to travel to Toronto, Canada for the launch of the new Glenfiddich whisky named Winter Storm. The multiday trip included private jet and helicopter transportation. In exchange, [the ‘Scotch Trooper’] published multiple social media posts of action figure toys posing with the new bottle of whisky. On October 1st, [the ‘Scotch Trooper’] made another appearance on the whisky related YouTube account (Scotch Test Dummies) promoting WGS’ new Winter Storm whisky.
- (4) On September 21st, one of WGS’s brand ambassadors published on his work related Instagram account a photo of whisky and action figure toys taken by [the ‘Scotch Trooper’] in Toronto. The same day, a different WGS ambassador retweeted the photo on his work-related Twitter account.
- (5) On at least one occasion, [the ‘Scotch Trooper’] had been invited to the corporate offices of WGS located in New York City for a private tasting of unreleased WGS whisky. During this trip in August of 2017, [the ‘Scotch

Trooper'] was provided full bottle samples of the new whisky that he subsequently used to publish photos promoting them with action figure toys.

Advertiser's Response: In response to the complaint, the advertiser stated that "[w]hile William Grant is not a member of the Distilled Spirits Council, the William Grant Code of Marketing Practice states that our advertising may also be governed by the DISCUS Code of Responsible Practice (DISCUS Code) in the United States. Accordingly, William Grant voluntarily addresses the issues raised in the Complaint and shares the commitment to responsible advertising contained in the DISCUS Code."

The advertiser also relayed that "[n]o evidence is provided in the Complaint to measure general attractiveness to adults or special attractiveness to the children of the Images. The figures as well as the activities portrayed and backgrounds in the images clearly have broad appeal to adults. Klear social media statistics indicate that more than 86 percent of the followers of [the] Scotch Trooper social media page[s] are above the legal purchase age in the United States... Online publications have overwhelmingly adult audiences and no connection to William Grant."

The advertiser further stated that "[v]irtually all Americans of any age immediately recognize the Star Wars action figures, which date back to the 1976 movie and sequels over the succeeding decades. The figures as well as the activities portrayed and backgrounds in the Images clearly have broad appeal to adults. The Images would undoubtedly be perceived very differently by persons in different age groups. Those factors make 'relative appeal' to adults versus younger age groups virtually impossible to measure in a meaningful way."

The advertiser continued by stating "William Grant acknowledges that the juxtaposition of Star Wars action figures with our brands could be attractive to children who are exposed to the advertising material. As discussed in the response concerning placement, the Images were not directed at persons below the legal purchase age. Taken out of context of adult-oriented media in which the Images were placed, however, use of the Star Wars figures could be misconstrued as an effort to appeal to persons below the legal purchase age."

The advertiser added that "[u]pon receipt of the Complaint, William Grant reviewed the Images, placements of the Images involving William Grant brands on pages controlled by William Grant and its employees, the content of [the 'Scotch Trooper's'] social media pages, William Grant's relationship with [the 'Scotch Trooper'], and user data. William Grant verified that the Images referenced in the Complaint were still available online and initiated follow-up actions. William Grant's inquiry found the following:

One Image was on a William Grant-controlled social media page managed in the United States.

One Image was found on each of two William Grant-controlled social media pages managed globally and visible in the U.S.

13 Images were on social media pages controlled by William Grant Brand Ambassadors in the United States.

25 Images were found on social media pages controlled by William Grant Brand Ambassadors or employees currently working outside the United States, although some have worked in the United States in the past.”

The advertiser relayed the following remedial steps taken:

Images referenced in the Complaint and any similar images that appeared on global and U.S. social media pages controlled directly by William Grant were removed.

The 41 Images referenced in the Complaint and any similar images that appeared on social media pages controlled by William Grant Brand Ambassadors and employees working in the U.S. and in other countries were removed.

William Grant instructed its Brand Ambassadors throughout the world to remove any and all Scotch Trooper images containing Star Wars action figures from social media pages operated by the individual Brand Ambassadors.

A review of the William Grant's Code of Marketing Practice, Social Media Policy, and Social Media Guidelines as well as the DISCUS Code content and placement guidelines will also be conducted with William Grant marketing personnel, Brand Ambassadors, and appropriate representatives of William Grant's advertising and marketing agencies.

The Complaint does not indicate that any Images were found on William Grant websites and we verified that no Images ever appeared on a website controlled by William Grant.”

The advertiser stated that “[the ‘Scotch Trooper’] is not a William Grant employee or contractor. He is an independent blogger, whisky critic, photographer, and entrepreneur. Contrary to assertions in the Complaint-

No formal or informal understanding exists or existed between William Grant and [the ‘Scotch Trooper’] concerning reviews of William Grant products or production of the Images.

[The 'Scotch Trooper'] was not paid by William Grant for production or posting of any of the Images and his work was not directed by William Grant.

No invitation extended to [the 'Scotch Trooper'] to William Grant facilities or events was contingent on production of any Images or any other actions by [the 'Scotch Trooper'].”

The advertiser continued by noting that “William Grant has invited [the 'Scotch Trooper'] to company promotional events and tastings and provided samples to [the 'Scotch Trooper']. [The 'Scotch Trooper'] and other food and beverage media bloggers, reporters, and pundits did receive samples of William Grant products and travel expenses for participating in promotional tours and events for trade media personnel. The event at the British Consulate in Atlanta, Georgia was arranged by UK Government officials. William Grant personnel participated at the invitation of Consular officials, but did not have any role in organizing or inviting others to attend the event.”

In that regard, the advertiser relayed that “[a]s members of the Code Review Board know, the William Grant and third-party events outlined above are normal practices for brand launches, competitions, and special events to feature consumer products. Industry promotion events are restricted to adults over the legal purchase age and are beyond issues addressed in the DISCUS Code. Accordingly, we respectfully request that the Code Review Board refrain from addressing any of the assertions suggesting that invitations to [the 'Scotch Trooper'] to industry events and to limit the decision to content and placement issues in the Complaint that are properly before the Code Review Board.”

The advertiser also stated “[a]s pointed out above, Klear statistics indicate that more than 86 percent of the viewers of [the 'Scotch Trooper's'] social media page are adults of legal drinking age. William Grant recognizes, however, that Section 1 of the Responsible Content Guidelines referenced above still applies to the content of the media. Accordingly, William Grant sent the message...to its Brand Ambassadors stating that images including William Grant brands and the Star Wars action figures should be removed immediately from all company devices and sites and that no similar images shall be downloaded, posted, or shared in the future. William Grant is also reviewing the DISCUS Code and our internal policies with relevant stakeholders as described above.”

Regarding the alleged violation of Responsible Placement Provision No. 2, the advertiser relayed that “William Grant does not believe that the information in the Complaint supports a violation of the Responsible Placement Guidelines in the DISCUS Code occurred. William Grant’s Twitter and Instagram accounts are age-restricted to adults of legal purchase age. Instagram age-restricts certain product profiles, including distilled spirits. The methodology is generally based on a consumer’s demographic information from his or her Facebook account. Ads are targeted in the same manner. If an individual attempts to access a restricted handle without logging in, an error message appears and access to a restricted profile is denied.”

Further, the advertiser stated that “William Grant understands, however, that Section I of the Responsible Content provisions of the DISCUS Code strictly mandates that Responsible Content Guidelines apply ‘regardless of where these materials are placed.’ Placement is addressed separately in the DISCUS Code and in the Complaint. William Grant’s placement policies substantially mitigated exposure of underage persons to the Images. The issue of attractiveness to persons under the legal purchase age is not an issue if they cannot access it.”

The advertiser also noted that “William Grant produces a variety of Scotch whisky brands imported into and sold in the United States that are not advertised to mass audiences. William Grant’s general promotional strategy is to engage a niche of adult consumers of legal drinking age who enjoy or may wish to sample Scotch whisky. Social media allows William Grant to engage consumers in voluntary, ongoing, two-way communications concerning William Grant products. William Grant marketing communications reach a tiny fraction of regular adult users of Twitter and Instagram in the United States. The facts that the media containing the Images are age-restricted and participation by adult consumers is completely voluntary distinguish the types of social media advertising referenced in the Complaint from placements in advertising media controlled by third parties and broadcast to the general public.”

The advertiser stated “[t]he Complainant identified seventeen social media pages associated with William Grant brands. One page was operated by William Grant in the United States and seven were operated independently by U.S. Brand Ambassadors who are William Grant employees. Nine pages were operated by William Grant or its employees outside the United States and generally interact with consumers outside the United States. To the extent that residents of the United States did receive the images on the accounts associated with William Grant brands, the recipients were registered users of the social media sites above the legal purchase age in the United States.”

The advertiser further stated that “[c]ontext and the nature of modern digital communications are very important in making a decision based on placement of images by the William Grant Twitter and Instagram accounts. Forty-one images with the Star Wars figures were identified among thousands of images posted on the seventeen accounts over a period dating back to 2015. The subject matter of the accounts is whisky. In order to view one or two images referenced in the Complaint, an individual would have to follow one or more accounts on a daily basis for more than two years. During that same period, the viewer would also see hundreds and in some instances thousands of messages about whisky brands and the travels of adult brand ambassadors.”

The advertiser further relayed that “William Grant does not believe that placement of the Images on the social media pages taken as a whole had any appeal to persons under the legal purchase age, who cannot access the content without extensive subterfuge. The messages are communications between and among adults who voluntarily participated and received the Images as well as many other images. The content of all

of the social media pages referenced in the Complaint is overwhelmingly traditional brand imagery and normal adult activities. As indicated above, William Grant recognizes the content issue created by appearance of the Star Wars figures in the Images and addressed it separately.”

The advertiser concluded by stating that “[s]ocial media controlled by [the ‘Scotch Trooper’] are not ‘placements made by or under the control of the advertiser’ as defined in the DISCUS Code Media ‘Buying Guidelines.’ The placements are completely under the control of [the ‘Scotch Trooper’] and deal with whisky generally. Klear social media statistics indicate that more than 86 percent of Scotch Trooper followers are above the legal purchase age in the United States. As indicated by the content of the Scotch Trooper page, [the ‘Scotch Trooper’] reviews, discusses, and produces images of dozens of competing brands. As stated in the discussion of the Responsible Content Guidelines above, William Grant accepts the premise that the Images could be attractive to persons under the legal drinking age.”

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 William Grant 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 that provides "[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 William Grant and the "Scotch Trooper," as well the advertiser's response thereto. The Board found that the "Scotch Trooper" posts and reposts on the William Grant social media pages referenced in the complaint, as well as reposts by

William Grant brand ambassadors, 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 William Grant's control.

The Board also found that there was a reasonable expectation by William Grant that its products would be photographed with Star Wars action figures when the company provided product and invitations to events, such as a private tasting in New York City, 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 removed all posts utilizing Star Wars action figures with William Grant products from William Grant controlled social media accounts and requested that the "Scotch Trooper" remove the postings from his sites, as well as strongly communicated this action to their brand ambassadors. All of the postings utilizing Star Wars action figures referenced above have been removed. A review of the Code's provisions, its Code of Marketing Practice and Social Media Guidelines also will be conducted with the advertiser's marketing personnel, brand ambassadors and appropriate representatives of its advertising and marketing agencies.

Status: Resolved: Responsive action taken.