

Advertisement:

Virginia Distillery Company marketing materials

Advertiser:

Virginia Distillery Company (non-Council Member)

Complainant:

Private citizen

Complaint Summary:

The complainant believes that Virginia Distillery Company 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 VDC 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 VDC has with [the ‘Scotch Trooper’] also imputes culpability on VDC for the prohibited content published on [the ‘Scotch Trooper’s’] social media sites. VDC should not be allowed to actively and deliberately outsource promotional content that is in clear violation of the Code of Responsible Practices. VDC 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. VDC has also provided [the ‘Scotch Trooper’] a private free tour of their distillery with the knowledge and expectation that [the ‘Scotch Trooper’] would in exchange publish prohibited promotional content gathered on the tour.”

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 VDC should have [the ‘Scotch Trooper’] remove it from his sites. VDC should also cease providing [the ‘Scotch Trooper’] with free bottles of whisky and any other non-cash consideration.”

Advertiser’s Response: In response to the complaint, the advertiser stated that “VDC respectfully but strongly disagrees with both the facts and interpretations supporting the accusations made by the Complainant against VDC and many other DISCUS members in the Complaint. VDC takes seriously its responsibility to promote responsible drinking and its duty to ensure its marketing is always age-appropriate and will continue to foster a culture of responsibility within the Company and with its external relationships.”

The advertiser further relayed that “VDC disagrees with the dangerous precedent that the Complainant attempts to set in: (i) the extremely stretched and factually inaccurate interpretation of the nature of the collectible figurines featured in the subject of the Complaint; and (ii) the tenuous definition of what constitutes culpability and control of a DSP over an external third-party relationship.”

The advertiser noted that “[t]he Complainant argues that that the collectible figurines featured in the subject of the Complaint ‘clearly falls into the category of a manner that is primarily appealing to persons below the legal purchase age.’ The Complainant used a highly limited view to prove this case – a link to similarly branded figurines being marketed towards children – when any reasonable person understands the target demographic of the figurines in question is in actuality a significantly higher age group, well above the legal purchase age. Additionally, the collectible figurines featured in the subject of the Complaint are not the same as in the example provided by the Complainant for the simple reason that high-quality photography requires higher quality collectible figurines than the examples provided. If DISCUS were to modify its Code to indicate that ANY potential link to a target audience under the legal purchase age was prohibited, no matter how small, then the Complaint may have merit.”

The advertiser concluded by stating that “[t]he Complainant argues in the Complaint that the ‘ongoing relationship that [named DSPs] has with [the subject of the Complaint] imputes culpability on [named DSPs].’ The Complainant does not provide specific facts or sources of the ongoing relationships, and indeed has made false accusations against VDC. Relationships with a broad range of industry constituents have always been a vital part of any consumer marketing, both formal and informal. Imputing culpability on DSPs for their relationships sets a dangerous precedent – sending marketing samples to traditional print media publications, review writers, influential taste makers such as mixologists is a critical part of building any spirits brand. A DSP cannot be responsible for the actions of the New York Times, Whisky Advocate, or a Celebrity Mixologist. If DISCUS were to modify its Code to indicate that a DSP is responsible for the actions of any external relationship, and endeavor to seek facts supporting their accusations, then the Complaint may have merit. We strongly encourage the DISCUS Code Review Board to reject the Complaint.”

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 Virginia Distillery Co. 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 Virginia Distillery Co. and the “Scotch Trooper,” as well as the advertiser’s response thereto. The Board found that the “Scotch Trooper” posts and reposts by Virginia Distillery Co. 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 Virginia Distillery Co. 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: None.

Status: No responsive action taken. The Board continues to urge the advertiser in the strongest possible terms to withdraw these advertising and marketing materials in light of the Code’s provisions.