

Advertisement: Fireball Whisky promotional material

Advertiser: Sazerac Company, Inc. (Non-DISCUS Member)

Complainant: Industry member

Complaint Summary:

The complainant believes that the Fireball Whisky promotional material set forth below has a special attractiveness to persons below the legal purchase age and runs afoul of Responsible Content Provision Nos. A1 and A2, in line with the Code Review Board’s decision in the previous complaint on this promotion. The complainant provided the images below from October 2023 of a Total Wine & More in Boca Raton, Florida and Cork Dorks in Nashville, Tennessee, showing the Fireball Whisky promotional material still in the marketplace after being found in violation of the Code and supposedly depleted from last year’s seasonal distribution.



The complainant notes that “the packaging appears to be identical to the packaging from the previous complaint, despite Sazerac pledging in its response to the prior complaint that it ‘will keep the topics raised by this proceeding in mind should Sazerac revisit this packaging next Halloween season.’”

Responsible Content Provision No. A1 provides that “[a]ll beverage alcohol advertising and marketing materials, regardless of placement, are intended for legal purchase age adults who choose to drink. The content of beverage alcohol advertising and marketing materials should primarily appeal to individuals 21 years of age or older.”

Responsible Content Provision No. A2 provides that “[m]arketing that primarily appeals to individuals under the age of 21 is inappropriate. Advertising and marketing materials are

considered to ‘primarily appeal’ to persons below the legal purchase age if they have special attractiveness to such persons beyond the general attractiveness for persons of legal purchase age.”

Code Review Board Decision:

The advertiser stated that “[w]e are in receipt of your letter dated October 13, 2023, referencing a complaint alleging that Sazerac’s Fireball Whisky Adult Trick or Treat packaging violates the Distilled Spirits Council of the United States (‘DISCUS’) Code of Responsible Practices for Beverage Alcohol Advertising and Marketing (the ‘Code’). As a supporter of DISCUS’s self-regulatory initiatives, Sazerac appreciates the opportunity to respond. Please note that Sazerac accurately represented last year that at the time of the complaint, the packaging was largely sold through and depleted. This is a specific holiday packaging and has a limited time on retailers’ shelves. Last year, Sazerac did not represent that it would not offer the packaging in the future. In fact, we noted that if we decided to use the packaging again, we would communicate further instructions to our distributors and retailers.”

The advertiser noted that “[r]egarding the current complaint, Sazerac takes seriously its obligations to responsibly market alcohol products. The Fireball Whisky Adult Trick or Treat packaging does not violate the Code. For the reasons set forth in our response last year, the packaging primarily appeals to adults of legal purchase age and does not primarily appeal to children and persons under the legal purchase age through any special attractiveness to this demographic.”

The advertiser continued by relaying that “[i]n Sazerac’s response to the previous complaint, Sazerac stated that if it offered the packaging in the future, it would ensure that its distributors and retailers are instructed to never refer to the Fireball Whisky Adult Trick or Treat packaging as ‘candy’ in price labeling or other point-of-sale materials. I am confirming that this communication to distributors and retailers occurred.”

The Code Review Board relayed to the advertiser that it conducted a careful review of a complaint about the same Fireball Whisky Adult Trick or Treat packaging and their detailed response last year. The Board concluded that this product packaging primarily appeals to individuals below the legal purchase age in violation of Responsible Content Provision Nos. A1 and A2. The Board understood from the recent response that Sazerac does not agree that the Fireball Whisky Adult Trick or Treat packaging violates the Code and is choosing to continue to produce and market this product without any revisions.

The Board relayed that, while it appreciates Sazerac’s stated undertaking to instruct distributors and retailers to not refer to this product as candy, this action does not remedy the violation as the product packaging itself was found to primarily appeal to those under the legal drinking age. The ongoing production and marketing of this product packaging thus continues to violate the Code.

Action by Advertiser: No responsive action taken.

Status: The Code Review Board continues to urge the advertiser in the strongest possible terms to cease its current and any future production of these promotional materials in light of the Board's prior decision.