

Advertisement: Fireball Whisky “candy cane” promotional packaging material

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

Complainant: Industry member

Complaint Summary:

The complainant believes that the Fireball Whisky “candy cane” shaped Fireball Whisky promotional packaging 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.



The complainant states that “[w]e believe this packaging ‘appeals primarily to minors’ and is very similar to the adult trick or treat violation found against Sazerac last year and is apparently being ignored. We think minors would certainly grab for this item in this format if it was in the home or in a grocery store.”

The complainant added that “[w]hen you look up ‘candy canes’ on google and ask for its origination – you get the following as one such accepted explanation for its origin. We don’t think much has changed since then, and this candy is primarily consumed by minors around the Christmas holidays.

[Who Invented Candy Canes?](#) - 'Legend has it that the candy cane dates back to 1670, when the choirmaster at the Cologne Cathedral in Germany handed out sugar sticks among his young singers to keep them quiet during the Living Creche ceremony,' Schildhaus says. 'In honor of the occasion, he bent the candies into shepherds' crooks.'"

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 "Sazerac takes seriously its obligations to responsibly market alcohol products. Sazerac is confident that it has not violated the Code. As discussed below, when considered in its whole, the Fireball Whisky candy cane secondary packaging appeals to adults of legal purchase age and does not bear any primary appeal or special attractiveness to persons below the legal purchase age. In addition, the complaint did not provide any evidence to support the allegations. A review of the marketplace shows that using holiday indicia is common in the industry. Therefore, the Code is not violated by Sazerac and the complainant appears to have filed a frivolous complaint."

The advertiser noted that "[t]he complainant claims that the Fireball Whisky candy cane secondary packaging has a special attractiveness to persons below the legal purchase age and violates the Responsible Content Provision Nos. A1 and A2. The complainant did not provide any information to support their claim that the packaging has a special attractiveness to persons below the legal purchase age. They simply provided details on the origin of the candy cane."

The advertiser continued by relaying that "[i]n previous matters, DISCUS has found that advertising material primarily appealed to persons below the legal purchase age include: trademarks and trade dress that evoked common children's cereals or products that noted a similarity in taste to such cereals; marketing materials that evoked well-known children's media companies and children's television shows; and trade dress and marketing materials that feature toys and/or appeared to be toys. None of these factors are involved here. Moreover, the Code notes examples of inappropriate content: depictions of children or portrayals of objects, images, or cartoon figures that primarily appeal to persons below the legal purchase age, use of the name or image of Santa Claus, or parodies of famous children's products or

children’s media. None of these factors are found on the Fireball Whisky candy cane secondary packaging.”

The advertiser stated “[t]he Fireball Whisky candy cane secondary packaging includes prominently the Fireball dragon, Fireball trademark and a clear tube that shows the Fireball bottles inside. These are not factors that support a finding that the packaging primarily appeals to persons below the legal purchase age. When common universal holiday indicia are utilized with otherwise responsible advertising that primarily appeals to adults of legal purchase age, DISCUS has found no violation of the Code. As stated above, the Fireball secondary packaging clearly includes all of the elements used to market Fireball whisky. This is not a situation where the content inside the secondary packaging is not known prior to opening the packaging.”

The advertiser also noted that “[m]oreover, numerous industry members are using the same or similar secondary packaging and presumably conducted the same analysis as Sazerac to determine that the secondary packaging does not primarily appeal to persons below the legal purchase age. Furthermore, industry members use other common universal holiday indicia, like an advent calendar, to promote their products during the holiday season. Finally, the complainant provided no evidence of consumer confusion or deception. Sazerac has offered the Fireball Whisky candy cane secondary packaging for a number of years and the Company is not aware of any consumer complaints related to the packaging or any confusion occurring as a result of the secondary packaging.”

The advertiser concluded by relaying that “Sazerac is confident that it has not violated the Code. When considered in its whole, the Fireball Whisky candy cane secondary packaging appeals to adults of legal purchase age and does not bear any primary appeal or special attractiveness to persons below the legal purchase age.”

After careful consideration of the complaint and the advertiser’s response, the Code Review Board could not reach a majority decision regarding this complaint and forwarded the complaint to the Outside Advisory Board in accordance with the procedures set forth in the Code. The Outside Advisory Board did not find the Fireball Whisky “candy cane” promotional packaging in violation of the Code. The Outside Advisory Board did not agree with the complainant that the Fireball Whisky “candy cane” promotional packaging had a special attractiveness or appeal to individuals below the legal purchase age. The Board, however, expressed caution was warranted when using holiday or candy themed packaging to ensure the elements of the packaging, such as coloring and related imagery, do not have special attractiveness to underage individuals. The Board also stressed that advertisers should exercise care to not invoke similar attributes to branded products directed to children in their advertising materials and packaging, such as well-known candy products in this instance given the choice of packaging.

Action by Advertiser: None required.

Status: Not applicable.