

Where businesses turn to enhance consumers' trust and consumers are heard.

# Help Create a More Trustworthy Marketplace.

Why to Consider BBB National Programs as a Recipient for Your Class Action Cy Pres Award

BBB National Programs, Inc.  
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BBB National Programs is a non-profit organization that develops and delivers cost-effective third-party industry self-regulation, dispute resolution, technology-enabled tools, research, substantive business education, and other programs to foster trust, innovation, and competition in the marketplace. By proactively responding to marketplace concerns and setting high standards for business practices in advertising, privacy, consumer relations, and other areas, BBB National Programs creates a better, more trustworthy experience for consumers and a fairer playing field for businesses.

With 10 unique and well-respected programs, BBB National Programs provides guidance to businesses to encourage them to make responsible decisions with proven results. The programs set adoptable standards that industries can use to navigate the regulatory landscape and ensure that they are meeting best practices. BBB National Programs' efforts create a business landscape that benefits all stakeholders.

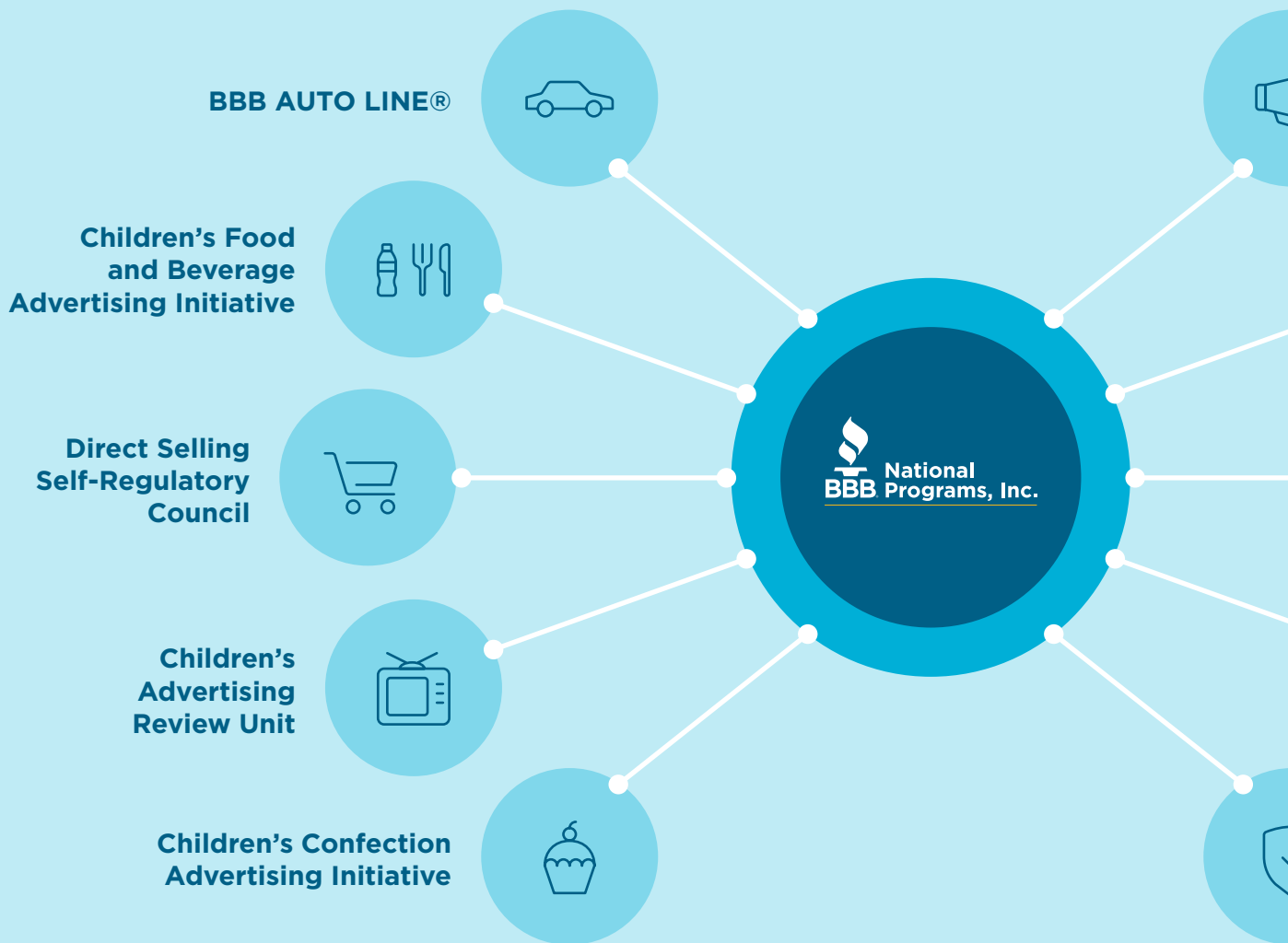
By building relationships, staying on the cutting edge of industry, and operating transparent, ethical, consumer-driven processes, BBB National Programs fosters consumer trust in the marketplace. It also tracks emerging marketplace issues and works to expand and adapt its successful programs and create new initiatives that maintain that trust in a rapidly changing digital landscape.

**Competitors** value the dispute resolution decisions BBB National Programs publishes and the careful consideration of the experienced staff who review disputes.

**Regulators** appreciate that self-regulation expands the adoption of best practices in areas like advertising and consumer privacy, helping hold businesses of all sizes accountable to the promises they make.

**Consumers** benefit when businesses hold themselves to higher standards.

BBB National Programs' Programs address a wide range of business practices in myriad industries.



## Programs Designed to Resolve Marketplace Issues

BBB National Programs' self-regulation, dispute resolution, and privacy-focused programs help businesses meet a high standard of integrity that earns consumer trust. Each program is carefully designed to balance the needs of its participants with industry-specific obstacles while working to build a more trusted marketplace.



### National Advertising Division

The National Advertising Division provides independent self-regulation and dispute resolution services for the advertising industry. The National Advertising Division reviews national advertising and claim substantiation in all media and across sectors. Its published body of over 6,000 decisions sets consistent standards for truth and accuracy in advertisements, delivering meaningful protection to consumers and leveling the playing field for brands.

### Children's Advertising Review Unit

The Children's Advertising Review Unit protects children by reviewing and evaluating child-directed advertising in all media and online privacy practices as they relate to children. The Children's Advertising Review Unit also established a voluntary safe harbor program for online data collection from children that has evolved into an important component of the Children's Online Privacy Protection Act (COPPA).

## Children's Food and Beverage Advertising Initiative

The Children's Food and Beverage Advertising Initiative works with leading food, beverage, and restaurant companies to set its Uniform Nutrition Standards that have improved the children's food advertising landscape. Participants commit to only advertise foods that meet its science-based nutritional criteria to children under age 12.

## Children's Confection Advertising Initiative

The Children's Confection Advertising Initiative is a program for small- and medium-sized companies modeled on the Children's Food and Beverage Advertising Initiative. Participants agree to not advertise confections to children under 12.

## Direct Selling Self-Regulatory Council

The Direct Selling Self-Regulatory Council provides independent, impartial monitoring of product claims and income representations made by direct selling companies and their sales force members, with an emphasis on claims disseminated on social media platforms. The Direct Selling Self-Regulatory Council seeks to establish high standards of integrity and business ethics that are the guiding principles for all direct selling companies in the marketplace.

## Digital Advertising Accountability Program

The Digital Advertising Accountability Program is a self-regulatory enforcement watchdog ensuring proper notice and effective choices are delivered with online interest-based advertising. This empowers consumers while delivering transparency and accountability through independent, third-party enforcement of cross-industry best practices governing online advertising. The Digital Advertising Accountability Program also provides guidance to companies looking to comply with industry principles and responds to complaints filed by consumers about online privacy.

## Coalition for Better Advertising Dispute Resolution Program

The Coalition for Better Advertising Dispute Resolution Program is a cross-industry program that helps to fairly enforce the "Better Ads Experience" program regarding online advertising formats and to create a better experience for consumers.

## BBB EU-U.S. Privacy Shield

The BBB EU-U.S. Privacy Shield operates an independent, third-party dispute resolution mechanism—a necessary component of a co-regulatory framework that enables trans-Atlantic trade. As a recognized Independent Recourse Mechanism under Privacy Shield, BBB EU-U.S. Privacy Shield empowers European Union and Swiss individuals to resolve Privacy Shield complaints against participating businesses.

## **BBB AUTO LINE**

The BBB AUTO LINE is a voluntary dispute resolution program that offers both mediation and arbitration to resolve automotive warranty disputes between consumers and vehicle manufacturers.

## **National Advertising Review Board**

The National Advertising Review Board is the appellate body for BBB National Programs' advertising self-regulatory programs. Made up of volunteer professionals from national advertisers, advertising agencies, and the public sector who serve on panels that hear appeals of NAD and CARU decisions. The Board serves as a layer of independent industry peer review that helps engender trust and compliance in NAD and CARU matters.

BBB National Programs' staff are deeply familiar with the industries they engage with and monitor, earning them the respect of both the industries they serve and the regulators.

Their self-regulatory efforts have been commended by regulatory authorities, leading corporations—both big and small, and attorneys at the forefront of their fields.



### Eric D. Reicin

#### President and Chief Executive Officer

Prior to joining BBB National Programs as President and

CEO, Eric served as a senior corporate and legal executive with over 25 years of experience assisting publicly traded and private companies and other organizations grow, manage transformational change, and weather regulatory and public scrutiny. Most recently, Eric served as Vice President, General Counsel, and Corporate Secretary for MorganFranklin Consulting, LLC and MorganFranklin, LLC, a global management consulting firm and government contractor (DOD and civilian) and previously served as Senior Vice President and Deputy General Counsel at Sallie Mae, then a Fortune 500 diversified financial services company (NASDAQ: SLM). Eric served a six-year term on the global board of the Association of Corporate Counsel, which has a presence in 85 countries. Eric previously served as president of the Association of Corporate Counsel - National Capital Region, the largest regional in-house bar association.



### Mary K. Engle

#### Executive Vice President, Policy

Before joining BBB National Programs as Executive Vice President, Policy, Mary directed

the Federal Trade Commission (FTC)'s Division of Advertising Practices, enforcing truth-in-advertising principles for national advertising matters, including claims about food, dietary supplements, medical devices, alcohol, tobacco, and broadband. She also examined social media and digital technology marketing practices. Her investigations and law enforcement actions in this area helped create new policy and standards that are now used to govern influencer marketing, native advertising, and privacy cases. Mary held several management positions at the FTC and served as an advisor to a commissioner and two directors of the Bureau of Consumer Protection. During her government career, she received several awards for her work including the Meritorious Executive Rank Award from President Obama for accomplishments in the management of U.S. government programs and the FTC Chairman's Award for the Commission's 2000 Media Violence Study and Report.



## Laura Brett

### **Vice President—National Advertising Division**

Laura Brett began leading the BBB National Programs National Advertising Division (NAD) in August of 2017, after serving as an NAD staff attorney and Assistant Director. Ms. Brett has helped develop NAD's body of guidance, including in the evolving areas of transparency in digital media advertising, and the adequacy of disclosures in influencer marketing. Prior to joining BBB National Programs, Ms. Brett was a litigator in private practice and an attorney in commercial litigation at Willkie Farr & Gallagher. Ms. Brett also was elected to her local city council and served as Deputy Mayor.

## Dona J. Fraser

### **Vice President—Children's Advertising Review Unit**

Dona J. Fraser is a leading privacy expert with a passion for building creative solutions to business problems. As the Vice President of the BBB National Programs Children's Advertising Review Unit (CARU), Dona draws on her extensive experience in the self-regulation space to provide a deep understanding of the marketplace challenges facing advertisers. Before joining BBB National Programs, Dona served as Vice President, Privacy Certified for the Entertainment Software Rating Board (ESRB), where she was responsible for helping companies develop data collection and privacy practices and crafting privacy best practices. Prior to ESRB, Dona served as a Director of Business and Legal Affairs for misc labels at BMG/Sony Music in New York.

## Maureen Enright

### **Vice President—Children's Food and Beverage Advertising Initiative and Children's Confection Advertising Initiative**

Maureen Enright leads the advertising self-regulation efforts of these programs, working with participants—some of the nation's largest food and beverage companies—to set standards for responsible food advertising to children. Before joining BBB National Programs, Ms. Enright served as counsel at Collier Shannon Scott. She also spent 10 years at the Federal Trade Commission (FTC), where she held several positions, including serving as a lead staff attorney on the FTC's Enforcement Policy Statement on Food Advertising.

## Peter C. Marinello

### **Vice President—Direct Selling Self-Regulatory Council**

Peter C. Marinello serves as Director of BBB National Programs' Direct Selling Self-Regulatory Council (DSSRC), a national advertising self-regulation program for the direct selling industry. Mr. Marinello has over 25 years of experience in advertising self-regulation, starting as a staff attorney at BBB National Programs' National Advertising Division (NAD) in March of 1993, and later becoming NAD Associate Director in 1998. Prior to joining BBB National Programs, Mr. Marinello practiced law for six years at a general litigation firm in New York City.

# Putting Cy Pres Awards to Work for Consumers and a Fair Marketplace

Cy pres distributions allow BBB National Programs to serve the public interest by building a trusted marketplace through independent self-regulation and dispute resolution programs. Businesses and attorneys that put BBB National Programs forward as a cy pres recipient in their settlements help protect consumers from misleading and unfair practices in the marketplace. BBB National Programs' initiatives:

- » **Monitor the marketplace** to protect consumers from misleading advertising claims;
- » Ensure consumers are provided adequate and accurate **disclosures about online data collection and use**;
- » **Are a leading provider of "safe harbor" programs** under the Children's Online Privacy Protection Act;
- » Serve as a **leading Independent Recourse Mechanism provider** under the U.S. Department of Commerce's Privacy Shield program.

Cy pres awards from suits related to these areas help BBB National Programs grow these valuable programs.

## Looking to Meet the Challenges of the Future

As we look to the future, BBB National Programs can also address new issues by leading individual company- or industry-wide efforts to create enforceable standards to address issues of consumer concern. BBB National Programs is at the forefront of developing programs to protect consumers from emerging harms and maintain a fair and ethical marketplace for businesses. When class action lawsuits relate to alleged consumer harms, BBB National Programs is well-suited to utilize cy pres funds to develop programs tailored to address those issues.

## Past BBB National Programs Cy Pres Awards

The United States Court of Appeals for the 9th Circuit noted in *Dennis v. Kellogg*<sup>1</sup> that the most appropriate cy pres recipients in misleading advertising cases are “organizations dedicated to protecting consumers from, or redressing injuries caused by, false advertising.” To that end, BBB National Programs’ programs have been named as a cy pres award recipient in numerous class action matters.

### **Rawa v. Monsanto**<sup>2</sup>

BBB National Programs’ National Advertising Division was awarded 50 percent of the cy pres in a matter related to allegedly misleading claims about Roundup Concentrate. The court noted the National Advertising Division’s role in “enforcing high standards of truth and accuracy [in advertising].”

### **Graves v. United Industries Corporation**<sup>3</sup>

The National Advertising Division was named a cy pres recipient in this matter related to allegedly misleading claims about the defendant’s Spectracide® Concentrate Products. It cited *Rawa v. Monsanto*, in finding it to be a suitable cy pres recipient.

### **Anthony v. Yahoo**<sup>4</sup>

BBB National Programs’ corporate predecessor, the Council of Better Business Bureaus, was named as a cy pres recipient in a suit related to Yahoo’s online dating service.


<sup>1</sup> *Dennis v. Kellogg*, 697 F.3d 858, 866-67 (9th Cir. 2012)

<sup>2</sup> *Rawa v. Monsanto*, Case No. 4:17CV01252, 2018 WL 2389040 (ED Mo. May 25, 2018)

<sup>3</sup> *Graves v. United Industries Corporation*, Case No. 2:17-cv-06983-CAS-SKx, 2020 WL 953210, at \*7 (C.D. Ca February 24, 2020)

<sup>4</sup> *Anthony v. Yahoo*, No. C 05 04175 RMW (ND Cal. June 18, 2007).

<sup>5</sup> *Beck-Ellman v. Katz*, Case No. 3:10-CV-02134-H-DHB (S.D. Cal. June 11, 2013).



“BBB National Programs’ self-regulation programs have a long, commendable record of adding to consumer protections in the marketplace. Whether monitoring advertisements, promoting better privacy practices, better food advertising to children, or providing individual dispute resolution programs for consumers, BBB National Programs has been recognized for providing effective oversight that benefits consumers, ethical businesses, and a more trustworthy marketplace.”

— **Maureen K. Ohlhausen**

Partner, Baker Botts, former Federal Trade Commissioner (2012-2018) and Acting Chair (2017-2018), and a member of the BBB National Programs Board (2019-present)

## Snapshot

### BBB National Programs Effective Use of Cy Pres Funds

Presented with an industry historically difficult to regulate and far too many misleading advertising claims and unclear standards, the Council for Responsible Nutrition’s (CRN) Foundation turned to the National Advertising Division to create a dedicated monitoring program. Over the years, this groundbreaking effort was increasingly supported by a series of cy pres awards granted to the Foundation as part of dietary supplement false advertising settlements. The result was a 12-year partnership that expanded the National Advertising Division’s review and monitoring of dietary supplement advertising and helped create a high standard for substantiating claims in this area.

Between 2007 and 2019, the National Advertising Division drafted over 350 decisions in the dietary supplement space.

“CRN is a strong supporter of self-regulation as one way to demonstrate the dietary supplement industry’s commitment to truthful advertising. Through our partnership with BBB, we raised our industry’s awareness of the importance of robust science to support advertising claims and, most importantly, protected consumers.”

— **Megan Olsen**

Vice President & Associate General Counsel, CRN

The National Advertising Division’s increased monitoring of these claims created a framework that has encouraged responsible supplement marketers to utilize the National Advertising Division’s dispute resolution forum to hold their competitor’s accountable. The NAD decisions that came out of this program served as an “early warning system” for industry and consumers by identifying emerging issues and responsibly addressing them before regulators or litigation arose.

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