



**National
Programs**

**Direct Selling
Self-Regulatory Council**

2020 Activity Report

**Activity Report
for the Direct Selling
Self-Regulatory Council**

*January 1, 2020
through July 31, 2020*

Introduction

The Direct Selling Self-Regulatory Council's (DSSRC) 3rd Program Activity Report provides details on the significant endeavors of DSSRC through the first seven months of 2020 including the program's monitoring of direct selling advertising and marketing, its case work, and its efforts to provide ongoing industry education for the direct selling industry. Despite the considerable impact that COVID-19 had on business communities throughout the world, including the direct selling industry, DSSRC's administration of the direct selling industry's forum of self-regulation continued unabated.

In 2020, DSSRC provided ongoing oversight of product and business opportunity claims for direct selling companies and their salesforce members (with a particular focus on representations related to COVID-19), commenced its 100th case inquiry and released guidance for the dissemination of earnings claims in the direct selling industry. In addition to participating at the 2020 Direct Selling Legal & Compliance Summit in January and engaging with industry thought-leaders at the Direct Selling Association's (DSA) Compliance Officer Retreat in February, DSSRC has spoken individually with over two dozen direct selling companies in an effort to provide guidance and instruction regarding the dissemination of claims of product performance and income opportunity as well as compliance supervision.

DSSRC Guidance on Earnings Claims for the Direct Selling Industry

On July 7, 2020, DSSRC released its Guidance on Earnings Claims for the Direct Selling Industry (the “Guidance”) that defines and identifies direct selling earnings claims to help ensure that all representations made by direct-selling companies or members of their salesforce comply with legal and self-regulatory standards.

The Guidance originated from dialogue between DSSRC and thought leaders in the direct selling industry including legal professionals and direct selling compliance teams over several months. The Guidance refers to a number of fundamental claim substantiation principles articulated in Section A(8) of the Direct Selling Association’s (DSA) Code of Ethics, the Federal Trade Commission’s (FTC) .com Disclosures Guide, and the FTC Guides Concerning the Use of Endorsements and Testimonials in Advertising. The Guidance was intended to provide companies in the direct-selling industry with additional clarity on issues such as:

- ◆ what qualifies as an earnings claim;
- ◆ a direct selling company’s responsibility for claims made by members of its salesforce;
- ◆ the importance of net impression in the evaluation of earnings claims;
- ◆ disclosures that may be necessary in connection with an otherwise truthful earnings claim or testimonial; and
- ◆ recommended best practices for direct-selling companies to help them avoid self-regulatory and regulatory scrutiny.

The Guidance also includes over a dozen mock examples to help illustrate the principles espoused by DSSRC in the Guidance.

Following the release of the Guidance, DSSRC engaged in educational initiatives focused on the distribution of the Guidance throughout the direct selling industry including participation in a webinar to industry professionals that was hosted by DSA. DSSRC discussed the Guidance with the DSA Ethics and Self-Regulation Committee, the DSA Compliance Officers Committee and the DSA Lawyers Council Committee.

DSSRC Casework

COVID-19 Inquiries

The COVID-19 pandemic significantly impacted all sectors of the business community and direct selling companies continue to face the added challenge of ensuring that their independent sales representatives are not making unauthorized health-related claims and business opportunity claims related to COVID-19.

In April, DSA and DSSRC issued a joint press release cautioning direct selling companies and their independent salesforces from making claims referencing COVID-19 in the context of product claims and business opportunity claims. In addition, as product claims made by salesforce members are attributable to direct selling companies themselves, DSSRC reminded all direct selling companies to educate their salesforce members about best practices with respect to health-related product claims.

Following warning letters issued by the FTC to several direct selling companies regarding claims that they or their salesforces were making about their products' ability to treat or prevent COVID-19 or about the earnings people can earn, DSSRC released a public statement urging direct selling companies to fulfill their commitment to self-regulation and cautioned direct selling companies from expressly claiming or implying that their products can prevent, treat, alleviate, or cure COVID-19 and its symptoms.

Since the beginning of 2020, DSSRC commenced 58 inquiries that involved claims pertaining to COVID-19. In those 58 inquiries, DSSRC has reviewed 122 product performance claims and 12 claims that discuss the pandemic as an earnings opportunity for direct selling companies and their salesforce members. Of the 58 inquiries, 43 have been administratively closed and 14 cases remain pending as of July 31, 2020. In almost all of the inquiries in which DSSRC identified COVID-19 claims to direct selling companies, the parties took prompt and immediate action to remove references to COVID-19. DSSRC referred one matter that included COVID-19 claims to the FTC and the Food and Drug Administration (FDA) for enforcement.

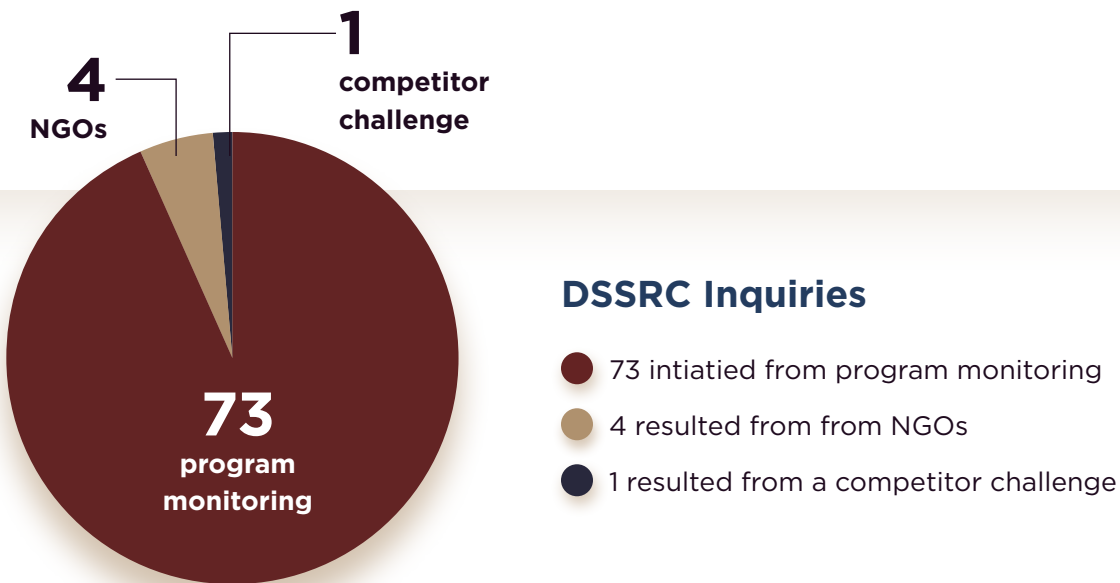
General Casework

DSSRC has opened 78 inquiries since January 1, 2020 (including the COVID-19 inquiries discussed above) and 17 cases were pending as of July 31, 2020. Of the 78 inquiries that have been commenced, 34 matters have been (or are in the process of being) administratively closed—as the companies involved in those inquiries have either withdrawn or significantly modified the claims that were the basis of the DSSRC inquiry. DSSRC will administratively close an inquiry if the direct selling company in its initial response (i.e., within 15 business days from receipt of DSSRC’s opening letter) commits to discontinue or significantly modify the claims at issue. If DSSRC does not receive such a commitment, the matter will transition into a formal case review that will result in a written decision.

Of the 78 inquiries, 73 originated from program monitoring, four were brought to DSSRC’s attention by non-governmental organizations and one case has been the result of a competitive challenge. Additionally, 58 of the inquiries involve DSA-member companies and 20 involve non DSA-member companies.

The one competitive challenge involved two marketers of CBD products and concerned health-related claims and business opportunities claims that were disseminated in over 40 social media posts and videos. The challenge resulted in the direct selling company that was the subject of the inquiry significantly revamping its website and compliance process.

With respect to the particular claims at issue in the 78 program inquiries, DSSRC has brought 382 claims in total to the attention of direct selling companies, including 201 product claims and 181 business opportunity/earnings claims (which also include express and implied earnings claims made through lavish lifestyle representations). As noted in the previous section of this report, DSSRC referred one matter that included a number of



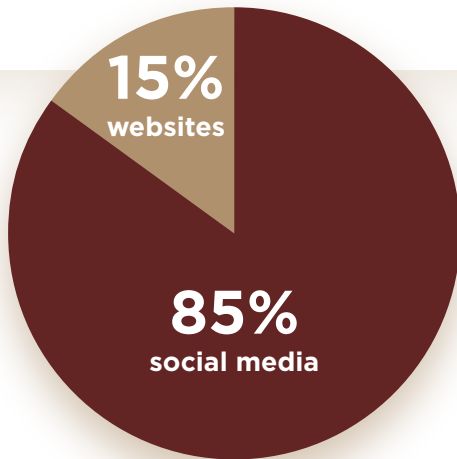
business opportunity and product performance claims (including several COVID-19 claims) to the FTC and the FDA for enforcement.

Almost all of the non-COVID-19 inquiries involved the issue of inadequate disclosures of qualifying and material information and the necessity of providing such disclosures clearly and conspicuously and in close proximity to the triggering claim. With respect to earnings claims, companies participating in the DSSRC self-regulatory forum have modified such claims by including disclosure of the amount of income that can be generally expected by program participants in the depicted scenario. Similarly, direct selling companies have addressed the issue of unqualified company bonus and incentive claims with inclusion of disclosures indicating the number (i.e., percentage) of the program participants obtaining such a reward. Direct selling companies have also informed DSSRC that they have been in direct contact with active salesforce members to remove certain posts or to include disclosure language that has been approved by the direct selling company.

Approximately 85 percent of claims identified by DSSRC originated from social media platforms of direct selling company salesforce members (a significant majority of which were found on Facebook). The remainder of the claims were disseminated on company websites—several of which derive from “success story” videos from salesforce members or company spokespersons.

With the exception of the one case referral, all of the direct selling companies that have been the subject of a DSSRC inquiry have been responsive and participated in the forum. In each inquiry, following its receipt of the DSSRC opening letter, the companies have reached out to the DSSRC and have engaged in telephone calls and correspondence to discuss the DSSRC process and express their support for participating in the forum in the spirit of voluntary self-regulation.

As noted earlier, 34 matters have been (or are in the process of being) administratively closed—as the companies involved in those inquiries have either withdrawn the claims at issue or have made significant modifications to the claims.



Claims Identified by DSSRC

- 85% originated from social media platforms
- 15% were disseminated on company websites

DSSRC Monitoring

The DSSRC independently monitors product, service and income representations by all members of the direct selling industry. DSSRC monitors and tracks earnings representations and product claims on various social media platforms (e.g., Facebook, Instagram, YouTube, etc.) from direct selling company salesforces, as well as the various websites of companies in the direct selling industry. DSSRC works with a third-party monitoring company that manages an online incident portal for DSSRC which includes analytical data with respect to the number of online URLs that are discovered and calls DSSRC’s attention to potential claim infractions of pertinent FTC rules and regulations for further review by program staff. The online portal is updated several times per week. DSSRC also speaks with the monitoring company several times per month to discuss the data and strategize for the upcoming monitoring cycle.

According to DSSRC’s monitoring data, the number of product performance claims that have been identified as potential infractions has risen significantly, accounting for 66% of all potential infractions, up from 49% of potentials infractions in 2019. The increase in product claim infractions can be attributed to the COVID-19 pandemic and the overzealousness of a number of direct selling companies’ salesforce members to position their products as a potential prevention or treatment for the virus and its symptoms.

As was the case in 2019, Facebook continues net the most infractions, with over 75% of all infractions being found on this popular social media platform.

From January 1 through July 31, 2020, DSSRC monitoring identified:

- ◆ approximately **900,000** Unique URLs;
- ◆ **41,168** unique URLs Reviewed aka potential incidents;
- ◆ **1,040** Facebook Claims;
- ◆ **151** Instagram Claims;
- ◆ **152** YouTube Videos;
- ◆ **918** Health-Related Product Claims;
- ◆ **478** Business Opportunity Income Claims;
- ◆ **207** COVID-Tagged Posts

Ongoing Industry Education

In addition to the drafting and publication of the DSSRC earnings claim document, its casework and its monitoring discussed above, DSSRC participated in a number of in-person and remote meetings with direct selling companies from January through July 2020.

DSSRC regularly schedules meetings with parties who participate in program inquiries to discuss the self-regulation process and to reinforce general claim substantiation principles. In addition, DSSRC regularly speaks with direct selling compliance groups and in-house and outside counsel. Since January 2019, the DSSRC staff engaged in telephone conferences and participated in remote meetings with over two dozen direct selling companies

As part of its educational efforts, the DSSRC staff participated at a number of events during the first seven months of 2019 including the 2020 Direct Selling Legal & Compliance Summit in Salt Lake City, Utah, DSA Canada Legal and Regulatory Conference in Toronto, Canada, the DSA Compliance Retreat in Scottsdale, Arizona and participated in a remote presentation at DSA's Annual Meeting. As part of its efforts to familiarize direct selling companies with its new Earnings Claims Guidance, Mary Engle, Howard Smith and Peter Marinello presented a webinar to DSA members and other industry professionals in July. Finally, DSSRC provided updates to DSA's Board of Directors, the DSA Ethics and Self-Regulation Committee, the DSA Compliance Officer Committee and the DSA Lawyers Council.

In addition to providing the FTC with ongoing updates of program activity through the first half of 2020, DSSRC participated in the FTC's Consumer Protection Week in March 2020 and also submitted comments to the FTC as part of the its proposed revisions of the Guide on the Use of Endorsements and Testimonials in Advertising.

DSSRC has also been the subject of several articles in various professional publications including Social Selling News, the Direct Selling News, HBW Insight and the National Products Insider as well as in several blogs from industry legal professionals. In June 2020, Peter Marinello and Howard Smith discussed self-regulation in the direct selling industry as part of an ongoing series of BBB National Program podcasts on advertising self-regulation.

About the Direct Selling Self-Regulatory Council

The Direct Selling Self-Regulatory Council (DSSRC), a division of BBB National Programs, provides independent, impartial monitoring, dispute resolution, and enforcement of product claims and income representations made by direct selling companies and their salesforce members across digital platforms. The DSSRC seeks to establish high standards of integrity and business ethics for all direct selling companies in the marketplace.

About BBB National Programs

BBB National Programs is where businesses turn to enhance consumer trust and consumers are heard. The non-profit organization creates a fairer playing field for businesses and a better experience for consumers through the development and delivery of effective third-party accountability and dispute resolution programs. Embracing its role as an independent organization since the restructuring of the Council of Better Business Bureaus in June 2019, BBB National Programs today oversees more than a dozen leading national industry self-regulation programs, and continues to evolve its work and grow its impact by providing business guidance and fostering best practices in arenas such as advertising, child-directed marketing, and privacy. To learn more, visit bbbprograms.org.