

NAD Fast-Track

PROCESS DISCUSSION

The BBB National Programs National Partner program convened in a workshop in September to discuss creating a fast-track process for NAD. The overall consensus was that a fast-track proposal had merit and further discussion should move forward to develop the process framework. Together, the group worked to outline a basic process to fast-track challenges brought at NAD.

Feedback: Please send any feedback on the fast-track process to NADfasttrack@bbbnp.org.

We will also be hosting meetings with BBB National Programs National Partners in January 2020. Details will follow.



**National Advertising
Division (NAD)[®]**

Of **BBB National Programs, Inc.**

ELIGIBLE CLAIMS

Fast-track challenges would be limited to a single issue (slight wording variations acceptable). Claims that require complex substantiation (e.g., clinical studies or technical product testing), as well as implied claims supported by consumer perception studies, would not be appropriate for fast-track review.

Examples of Eligible Claim Categories

The fast-track process may be implemented as a pilot and limited, at first, to a few of these categories, and expanded over time.

- **Disparagement**
- **Failure to disclose material connection**
- **“New” and “free”**
- **#1 claims (e.g., best in class)**
- **Demonstrations**
 - + Apples-to-oranges
 - + Digital enhancement of images (e.g., “fit” claims)
 - + Not consumer relevant
- **Ratings and reviews**
- **Testimonials**
- **Pricing claims (e.g., unending sales)**
- **Claims in clear violation of FTC Guidelines**
- **Insufficient disclosures**

FAST-TRACK RESULTS

Timeframe Decisions would be completed within 2-4 weeks of receiving a complaint.

Decision Process A fast-track process necessarily involves a more streamlined public decision. While a public decision is important for the credibility of the process, decisions will be shorter and less detailed. There will be more discussion around what fast-track decisions include and how they will be released. In NAD’s experience, obtaining a procedure-compliant ad statement is one of the biggest obstacles to issuing a timely decision. As a result, fast-track decisions will not include an ad statement.

Press Releases Press releases on NAD decisions are necessary to support the transparency of self-regulation and demonstrate consistent decision-making. Further discussion is necessary, however, to evaluate whether all cases will conclude with a press release and whether press releases can occur at regular intervals with a short summary of the decisions.

Is An Appeal Process Needed? The ability of an advertiser to appeal requires further review and discussion. Appeals delay compliance with NAD decisions but can build confidence in the self-regulatory system. If appeals are available, an expedited process for appeals would also be needed.

Compliance NAD would like input on reasonable timelines for discontinuing or modifying advertising on specific platforms. For discussion purposes, NAD has outlined proposed timelines for the following various platforms:

- **Television** (2 weeks)
- **In-Store Materials** (1 month)
- **Packaging** (3 months)
- **Website** (1 week)
- **Influencers** *in advertiser’s control* (1 week)
- **YouTube** (1 week)
- **Facebook, Instagram, Twitter** *in advertiser’s control* (1 week)

NAD Fast-Track PROCESS OUTLINE

STEP 1: Filing A Challenge

This is the challenger's only submission and can only be filed online. A complaint shall include:

- **The challenged advertising** (including date and media platform where it appeared)
- **Brief statement as to why the challenged claim is appropriate for a fast-track process** (e.g., whether it fits within the categories defined as appropriate for fast-track review and will not require review of clinical or technical testing or consumer perception evidence)
- **Brief description of facts showing the advertising is likely controlled by the advertiser** (e.g., an influencer who did not include #ad in its post has been known in the past to accept product or fees from the advertiser)
- **Exhibits to support the argument that challenged claim is misleading** (e.g., Nielsen data that the challenger's brand, and not the advertiser's brand, is the #1 seller)
- **Contact information for the advertiser**

Initial Process Determination Based on a review of the challenger's complaint, NAD will make an initial determination as to whether the challenged claim is appropriate for a fast-track process. If NAD determines that the claim is not appropriate, NAD will inform the challenger that the complaint will not be opened. The challenger can choose to file a standard-track NAD complaint.

STEP 2: Advertiser's Response

To meet the shortened timeline for a fast-track decision, an advertiser would have 5 business days to submit its support for the challenged claim. Instead of submitting a response, the advertiser could agree to voluntarily and permanently discontinue the claim or agree to modify the claim as requested by the challenger (e.g., add #ad to an Instagram post).

Advertisers should be given some flexibility in their response time to ensure that the advertiser perceives the process as fair. Short extensions may be granted to an advertiser.

If the advertiser objects to the fast-track process, it should still submit a response in 5 business days, but in two sections. The first section is a brief statement as to why the challenged claim is not appropriate for a fast-track process. In order to provide a fair process for advertisers, the second section includes an advertiser's support for the challenged claim, including exhibits, which would be submitted only to NAD initially and shared with the challenger only after NAD concluded the case was appropriate for fast-track review.

Final Process Determination A review of the advertiser's arguments that a claim is not appropriate for a fast-track will be undertaken before providing the advertiser's response to the challenger. If NAD determines that fast-track review is appropriate, the advertiser's entire submission, including any evidence and arguments in support of the challenged claim, will be made available to the challenger. NAD's determination that a case is appropriate for fast track should be made within 2-3 days.

If NAD agrees with the advertiser that the claim is not appropriate for the fast-track process, the case will be administratively closed. The challenger will not be permitted to see the advertiser's evidence. The challenger can choose to file a standard NAD challenge.

Meetings would be held by video or telephone conference at NAD's discretion.

Pricing Pricing has not yet been determined but we would like feedback from our national partners about how much more companies would be willing to pay for a "fast track" process.