

Process Summary

As part of our continuing effort to provide businesses with choices for filing advertising challenges with BBB National Programs' National Advertising Division (NAD), we are developing an enhanced process for resolving challenges that require review of complex claim substantiation. NAD Complex Track is designed to improve the user experience by providing more flexible scheduling and insights into NAD's perspective on the evidence. The goal in developing a new track is to foster confidence that the case review was fair and thorough and increase the predictability for the timing of case decisions in all tracks and reduce conflict between the parties.

Process Overview

Because complex cases often require more time than a standard case, NAD Complex Track provides flexibility and transparency in setting the timetable from the outset. When additional testing or expert reports are needed to respond to specific issues or arguments raised in the challenge, instead of granting extensions on a case-by-case basis, NAD will meet with both parties to schedule the work and evidence-gathering from the initiation of the case, providing assurance that the timetable is reasonable and fair.

Benefits of the NAD Complex Track process include:

- ◆ Predictability in the length of time complex cases take from start to finish
- ◆ Reduced conflict in seeking extensions and in scheduling meetings
- ◆ Insights into NAD's perspective on evidence and arguments before a record is closed
- ◆ Reduced opportunity for tactics in withholding evidence or argument to final submissions

Designating a Challenge as Complex Track

Challengers would have three different filing options: Fast-Track SWIFT, Standard, or Complex Track. Advertisers can request that a challenge be moved from Standard to Complex Track, but NAD will have the discretion to deny the request if the case is not appropriate for Complex Track.

Eligible Claims

NAD Complex Track is designed for challenges that require complex claim substantiation, which may include:

- ◆ Cases involving multiple expert reports explaining and/or rebutting the evidence submitted
- ◆ Cases where the evidence will include consumer perception surveys or other studies or surveys that can require additional time to complete
- ◆ Cases involving challenges to similar claims made on a variety of different products

NAD Attorney Staffing

Three NAD attorneys (one lead attorney and two supporting attorneys) will be staffed to each complex challenge to enhance collaboration and improve efficiency. This staffing will help ensure that all cases, regardless of track, are resolved in a predictable time period and within the procedural timelines.

NAD Complex Track

Process Outline

1

Pre-Case Conference

The pre-case conference will give the parties the ability to map out the timeline necessary to compile evidence in support of a claim or rebut that evidence. Parties will have the opportunity to jointly discuss the timing of the submissions and the meetings. Joint participation in the pre-case conference streamlines the process and promotes the goals of transparency. Any confidential information can be discussed ex parte with the advertiser.

2

Second and Final Case Meetings (Ex Parte)

The second case conference, held separately with each party after the advertiser's first submission, will help provide insight into the evidence received and any questions NAD has about that evidence before their final submission. By gaining insight into the evidence at this initial stage, parties have the option to either provide specific evidence or demonstrate why different evidence is also sufficient.

Understanding NAD's view of the case before the record closes will give both parties an opportunity to prepare for final meetings, ensure NAD has the evidence and arguments to resolve the case and avoid instances when NAD must ask for additional evidence and/or briefing after the party's case meeting.

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Post-Decision: Ad statement, Press Releases, Appeals, Compliance

Other post-decision processes are planned to remain the same as Standard Track challenges.



National Programs

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