National Advertising Division 2020

Annual Report
In this unprecedented year of COVID-19, BBB National Programs’ National Advertising Division (NAD) rose to the challenge of supporting the needs of our stakeholders while dealing with the virtual environment amid a new wave of health and safety advertising claims.

At the onset of the pandemic, NAD and BBB National Programs’ National Advertising Review Board (NARB) quickly pivoted from in-person meetings and hearings to hold them virtually. At the end of March NAD began to hold all meetings with the parties virtually and held 126 virtual meetings, while the NARB held 14 virtual appeals in 2020.

In response to stakeholders who wanted a faster way to resolve single-issue cases, NAD's Fast-Track SWIFT (Single Well-defined Issue Fast Track) challenge process launched in April 2020. The process, which was developed in partnership with BBB National Programs stakeholders, has been proven over the last year to be fast, but fair. Decisions are made public monthly, and to date every case has been resolved within the promised 20-business day timeline, with an average time to close of twelve business days.

While well-suited for digital advertising, SWIFT challenges run the gamut of advertising media and product categories. The NAD team has seen SWIFT cases for telecom television commercials, infant formula labels, Google Ads search results for energy bars, the provenance of custom kitchen designs, disclosures for dietary supplements, security system claims, online Wi-Fi coverage maps, and more.

A few months later, NAD Complex Track, a new customized filing option to support complex cases with greater transparency and more predictable scheduling also launched. Complex challenges to truth and transparency issues that arise in advertising often require more time and resources to resolve. Between the SWIFT, Complex, and Standard case tracks, NAD case filers now have more choice over their path to quick, efficient resolution of truth-in-advertising claims.

In July, the Council for Responsible Nutrition Foundation (CRNF) and NAD announced the conclusion of the CRN/NAD program. Launched in 2006, the CRN/NAD program served as a key self-regulatory initiative to monitor and promote truthful and accurate advertising for the dietary supplement industry, closing more than 370 cases.

Federal Trade Commissioners and FTC staff have supported the program as “an excellent example of self-regulation” that has helped to serve consumers for 15 years. The unique and effective ad-monitoring and peer-to-peer program has seen a range of dietary supplement claims, from more traditional claims for the industry, such as claims about weight loss, sports performance, heart disease, and cold and flu prevention, to less common, but still important health benefit claims, such as those about sun protection, breast feeding, sexual dysfunction, tinnitus, computer eye strain, and those seeking the courage to speak publicly.

Under the program, company-to-company competitor challenges also have dramatically risen – putting other watchdogs on the case, not just CRN and NAD. Together, CRN and NAD achieved their goal of engaging the supplement industry in claim substantiation and leveling the playing field so that all companies played by the same rules.

Late in the year, NAD took an important step to advance the effectiveness of its quick and efficient self-regulatory programs by establishing a new partnership with Facebook. This partnership, which was announced in December 2020, enables NAD to share case outcomes addressing Facebook advertising directly with Facebook, allowing Facebook enforcement teams to then act on those
ads that violate their policies. This partnership leverages Facebook’s commitment to quickly act when ads violate their truth-in-advertising rules to reinforce NAD’s role as the centerpiece of the advertising industry’s efforts to increase public trust in advertising.

The result will be to encourage ethical practices among advertisers and a stronger, more robust system of self-regulation.

Facebook head of business integrity product management Rob Leathern said in a statement, “Facebook’s Advertising Policies, which incorporate and go further than our Community Standards, include prohibiting misleading, exaggerated, or false claims. This partnership with BBB National Programs’ National Advertising Division will add a new layer of proactive detection to help us identify ads that violate those policies and take action quickly.”

Though the self-regulation process is voluntary, more than 90% of companies participate and elect to make changes to their advertising based on NAD guidance. Companies recognize that the industry self-regulatory process provides them with a means of demonstrating their own accountability and commitment to corporate social responsibility.

Throughout this year of shift and change, advancement and growth, BBB National Programs had an increased focus on certain health and wellness claims. NAD, with BBB National Programs’ Direct Selling Self-Regulatory Council (DSSRC), led monitoring efforts to identify false and misleading claims about a product’s ability to treat or prevent COVID-19. This targeted effort came as both the FDA and FTC issued dozens of warning letters to companies making such claims.

In a continued commitment to ensure consumers are not deceived during this pandemic, primarily across social media, NAD and DSSRC’s monitoring efforts have included well over 100 cases to date.

Beyond that effort, here is a high-level look at the cases that crossed NAD desks in 2020:

50% increase in case filings in Cosmetics, Drugs & Dietary Supplements driven in part by 75% case increase in Dietary Supplement cases alone, many of which reviewed COVID-19 claims.

100% case increase for natural, sustainable or environment benefit claims.

33% Telecom Case increase, largely driven by 5G claims.

25% increase in cases brought by or against market disruptors.
2020 Case Trends

Aspirational Advertising

NAD explored how brands can advertise lofty goals for their business without misleading consumers. In case #6422, T-Mobile’s advertising highlighted future benefits of the Sprint-T-Mobile merger. The resulting case decision provides guidance, and NAD’s recommendations, on how to handle advertising aspirational statements. The following guidance can be applied in any industry when considering how to advertise new initiatives with uncertain future benefits.

- Ensure consumers understand future-facing claims may not mean current benefits.
- Even aspirations must have a reasonable basis, so make sure yours do.
- Hopes or ambitions that cannot be accomplished imminently should not convey the message that they will be.

Future-Facing Claims

NAD explored a claim for a product not yet available for sale called Vazalore, a product that contains the same active pharmaceutical ingredient as aspirin delivered in a novel form. In evaluating whether NAD had jurisdiction to review claims about a product not yet available for sale as advertising, we reviewed the website for PLx Pharma’s Vazalore and the claims, which were clearly directed to consumers, and concluded that “[t]he clear purpose of the website is to generate interest in the product with both consumers and health care [sic] professionals.” Companies seem increasingly focused on using the system of advertising industry self-regulation to prevent future-facing advertising, even before a product launch, as a timely way to promote fair competition and ultimately protect consumers from potentially misleading advertising.

Natural and Sustainable

Showcasing the “natural” ingredients or sustainable qualities of products can be tricky. Consumer preference for “natural” or sustainable products or ingredients persists but the benefits can be unclear or any benefits are difficult to support. In several NAD cases, certain advertising claims communicated the natural or sustainable aspects of products without being misleading.

- In two cases (Kind and BodyArmor) the advertising successfully compared products by highlighting ingredients consumers might want to avoid without stating or implying those ingredients were harmful. The advertising served as an invitation for consumers to compare the featured ingredients.
- In two other cases (Blueland and DoTerra) some advertising claims simply landed the right phrasing, using words like “comforting,” “refreshing,” to describe aromas or “forever” to describe a bottle that can be reused. Both cases provide good examples of claims that fell on the right side of the puffery principle and were not misleading, in contrast with those claims that NAD recommended be discontinued because the claimed benefits were not supported.
## 2020 Summary of Case Work

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## National Advertising Division 2020 Case Summary

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Annual Report 2020

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**Drugs / Health / Health Aids**

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- **Church & Dwight Co., Inc. (Vitafusion Gummy Vitamins); #6355, NAD/CARU Case Reports (March 2020)**
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<td>NAD/CARU Case Reports</td>
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<td>Ontel Products Corporation</td>
<td>Safe &amp; Healthy™ UV-C Disinfecting Light</td>
<td>#6426</td>
<td>NAD/CARU Case Reports</td>
<td>December 2020</td>
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<td>Optivida Health</td>
<td>Optivida Silver Liquid Solution</td>
<td>#6372</td>
<td>NAD/CARU Case Reports</td>
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<td>OrganiCare, LLC</td>
<td>FemiClear Vaginal Yeast Infection Treatment</td>
<td>#6347</td>
<td>NAD/CARU Case Reports</td>
<td>February 2020</td>
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<td>OrganiCare, LLC</td>
<td>FemiClear Vaginal Yeast Infection Treatment</td>
<td>#6347C</td>
<td>NAD/CARU Case Reports</td>
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<td>Petco Animal Supplies, Inc.</td>
<td>Petco “No Artificial Ingredients” Campaign</td>
<td>#6357</td>
<td>NAD/CARU Case Reports</td>
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<td>Plix Pharma, Inc.</td>
<td>Vazalore</td>
<td>#6912</td>
<td>NAD/CARU Case Reports</td>
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<td>Provezza Health, LLC</td>
<td>Provezza Elderberry Syrup</td>
<td>#6380</td>
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<td>RB Health</td>
<td>Neuriva Dietary Supplement</td>
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<td>S.C. Johnson &amp; Son, Inc.</td>
<td>Windex Vinegar Glass Cleaner</td>
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<td>NAD/CARU Case Reports</td>
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<td>S.C. Johnson &amp; Son, Inc.</td>
<td>Method Cleaning Products</td>
<td>#6354</td>
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<td>SimpliSafe, Inc.</td>
<td>SimpliSafe Home Security</td>
<td>#6358</td>
<td>NAD/CARU Case Reports</td>
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<td>SimpliSafe, Inc.</td>
<td>SimpliSafe Home Security</td>
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<td>Trek Bicycle Corporation</td>
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<td>#6351</td>
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<td>VGH Solutions, Inc.</td>
<td>Dr. Ho's Circulation Promoter</td>
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<td>Vitamin Bounty/Matherson Organics, LLC</td>
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<td>#6397</td>
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<tr>
<td>Vitamin Bounty/Matherson Organics, LLC</td>
<td>Vitamin Bounty Elderberry Immune Support</td>
<td>#6397R</td>
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<td>AT&amp;T Services, Inc.</td>
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<td>Avadim Health, Inc.</td>
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<td>BodyArmor Nutrition, LLC</td>
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<td>Chobani, LLC</td>
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<td>Church &amp; Dwight Co., Inc.</td>
<td>Vitafusion Gummy Vitamins</td>
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<td>Church &amp; Dwight Co., Inc.</td>
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<td>Comcast Cable Communications, LLC</td>
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<td>Daatrics, Ltd.</td>
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<td>DISH Network, LLC</td>
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<td>#6915</td>
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<td>doTERRA International, LLC</td>
<td>doTERRA Essential Oils</td>
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<td>NAD/CARU Case Reports</td>
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<td>Geerpres, Inc.</td>
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Avadim Health, Inc. (Theraworx Relief Products); #6418, NAD/CARU Case Reports (October 2020)

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SimpliSafe, Inc. (SimpliSafe Home Security); #6358C, NAD/CARU Case Reports (June 2020)
UQORA, Inc. (Uqora Prevention System); #6393, NAD/CARU Case Reports (July 2020)
Verizon Communications, Inc. (Verizon 5G Wireless Service); #6376, NAD/CARU Case Reports (June 2020)
Zero Gravity (Perfectio™); #6325R, NAD/CARU Case Reports (July 2020)

Children’s Advertising Review Unit 2020 Case Summary

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Website / Web Services

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Discord, Inc. (Discord Applications); #6413, NAD/CARU Case Reports, (September 2020), Product Type: Website/Web Services

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National Fluid Milk Processor Promotion Board (“MilkPEP”) (America’s Milk Companies); #6388, NAD/CARU Case Reports, (July 2020), Product Type: Food/Beverage
# National Advertising Review Board 2020 Summary

## Closed NARB Decisions

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<td>#225C</td>
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<td>Charter Communications, Inc. d.b.a Spectrum / Spectrum Mobile</td>
<td>No Further Action Required</td>
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