



*A service of the advertising industry and Council of Better Business Bureaus*



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# Social Media Digest

**The Advertising Industry's Self-Regulatory System** monitors advertising in all media, including social media, to assure that advertising claims are truthful, accurate and not misleading. The self-regulatory system is a service of the advertising industry and the Council of Better Business Bureaus (CBBB).

Although compliance with self-regulatory decisions is voluntary, the self-regulatory system enjoys a high rate of compliance with its decisions – more than 90 percent of companies that appear before one of the self-regulatory units agree to abide by the terms of decisions that require advertising to be modified or discontinued.

**The Advertising Self-Regulatory Council (ASRC)** is the governing body for advertising industry self-regulation. ASRC's 11-member Board of Directors is comprised of the top leadership of the American Advertising Federation (AAF), American Association of Advertising Agencies (AAAA), Association of National Advertisers (ANA), CBBB, Direct Marketing Association (DMA), Electronic Retailing Association (ERA) and Interactive Advertising Bureau (IAB).

## **The Self-Regulatory Programs:**

- **NAD** – The National Advertising Division (NAD) monitors national advertising in all media, enforcing high standards of truth and accuracy. NAD examines advertising claims made for goods and services as diverse and critical as telecommunications, infant nutrition, over-the-counter medications and dietary supplements and “green” products. NAD accepts complaints from consumers, competing advertisers and local Better Business Bureaus. NAD's decisions represent the single largest body of advertising decisions in the U.S. In addition to its own monitoring, NAD provides a fast, expert forum for the resolution of competitors' disputes. NAD handles about 150 cases each year and publicly reports its formal decisions.
- **Accountability Program** – The Online Interest-Based Advertising Accountability Program charged with ensuring industry compliance with the Self-Regulatory Principles for Online Behavioral Advertising (Principles). The Principles require third parties to provide consumers with an easy-to-use mechanism that allows the consumer to exercise choice regarding the collection and use of data from their device for online behavioral advertising (OBA) purposes.
- **CARU** – Recognizing the special vulnerability of young children, the Children's Advertising Review Unit holds advertisers to high standard of truth and appropriateness when they direct advertising to young children. Among other things,

CARU's guidelines provide that advertisers can not state or imply that their products will make children more popular with their peers, advertise vitamins or other products that carry "keep out of reach of children" labels, or advertise products that are unsafe for young children to use. CARU examines advertising in all media, including electronic media, and monitors Websites to assure that they are compliant with CARU's guidelines.

- ERSP – Developed with the Electronic Retailing Association, the Electronic Retailing Self-Regulation Program (ERSP) examines the truth and accuracy of core claims made in electronic direct-response advertising. ERSP monitors the \$170 billion direct-response marketplace, providing a strong self-regulatory presence on the frontier of electronic commerce.

**ASRC programs are funded** through a variety of sources — membership dues to the CBBB make up a substantial portion. The remainder is provided through the support of industry associations (ERA, CRN, Digital Advertising Alliance), the direct support of children's advertisers and child-directed media and revenue from the sale of products and services.

## National Advertising Division

### **Nutrisystem (Pinterest)**

#### **"Real Consumers. Real Success."**

Case # 5479 (6.29.12)

NAD, following its review of "Real Consumers. Real Success." – a Pinterest board maintained by Nutrisystem, Inc. – determined that the weight-loss success stories "pinned" to such boards represent consumer testimonials and require the complete disclosure of material information. NAD noted its appreciation that Nutrisystem took immediate steps to provide such disclosures.

Nutrisystem's "Real Consumers" pinboard featured photos of "real" NutriSystem customers and highlighted their weight-loss successes. The customer's name, total weight loss and a link to the NutriSystem website appeared below each photo.

Claims at issue in NAD's review included:

- "Christine B. lost 46lbs on Nutrisystem."
- "Michael H. lost 125 lbs. on Nutrisystem."
- "Lisa M. lost 115 lbs. on Nutrisystem."
- "Christine H. lost 223 lbs. on Nutrisystem."

Upon receipt of NAD's inquiry, the company asserted that necessary disclosures were inadvertently omitted from Pinterest. The advertiser stated that the testimonials at issue had appeared on Pinterest for less than two months, and said the disclosures were added immediately upon receipt of NAD's letter.

### **CHIPOTLE MEXICAN GRILL (YouTube)**

#### **Chipotle Restaurants**

Case # 5450 (4.18.12)

NAD determined that Chipotle Mexican Grill could support implied claims made in an animated feature, "Back to the Start," that all animals which provide the meat for Chipotle products are naturally raised.

The advertising at issue appeared on the YouTube website, online at Chipotle.com, on Chipotle's Facebook page, in movie theaters in advance of feature films, and on television. It uses stop-motion animation to depict a farmer's journey to sustainable farming.

NAD requested that the advertiser provide substantiation for two implied messages:

- *Chipotle's goal is to exclusively use "naturally-raised" meat in its restaurants*
- *Chipotle has already achieved this goal and all of the animals which provide the meat (pork, chicken and beef) for Chipotle products are, in fact, "naturally-raised."*

The video – a first for Chipotle – was directed by London-based John Kelly and featured a cover of the Coldplay song “The Scientist,” sung by music icon and family farm advocate Willie Nelson.

Following its review of the evidence in the record, NAD found that the advertiser provided a reasonable basis for the two messages implied in the “Back to the Start” film – both its aspirational message and the message that all of the animals which provide the meat for Chipotle are, in fact, “naturally-raised” according to Chipotle’s own definition of the term.

However, NAD cautioned the advertiser that, although its implied messages are currently substantiated, to the extent that supply constraints result in shortages of “naturally-raised” meats in particular markets, future advertising may need to disclose this fact.”

**LALA-USA, Inc. (YouTube)**  
**La Crème Real Dairy Creamer**  
*Case #5359 (08.08.11)*

This case involved in part a series of “Cow Tip” vignettes that claimed competing non-dairy creamers contained ingredients also found in paint, glue, shampoo and shaving cream, and that some non-dairy creamers are flammable and contain trans fat. The vignettes were also linked to YouTube videos where non-dairy creamers were shown as a replacement for glue or paint. During the course of NAD’s review, the advertiser said it would permanently discontinue the challenged vignettes and claims, action that NAD found necessary and proper.

NAD determined that the challenged advertisements did not convey an implied all-natural claim and concluded that the advertiser could support the claims “100% Dairy” and “Real Dairy.”

**BRIDGESTONE GOLF (Twitter)**  
**Golf Balls**  
*Case # 5357 (08.02.11)*

Acushnet, Inc., the maker of Titleist brand golf ball, challenged before NAD the claim made by competitor Bridgestone, Inc., to be the “#1 ball fitter.”

The parties to this case employ different methodologies in “fitting” golfers with the appropriate golf balls. Acushnet utilizes an On-Course Evaluation Process – a self-evaluation performed by the golfer, who is directed to compare golf balls first on partial swing iron shots hit into and around the green, followed by full swing iron shots, and finally hitting from the tee with the driver.

The advertiser’s process requires the consumer to hit his current model golf ball into a net with his driver while Bridgestone’s “Science Eye Live Launch Monitor” records the ball’s

launch angle, spin rates, speed and distance. Based on the ball flight characteristics, a Bridgestone technician will either confirm that the consumer is playing with the correct golf ball or recommend a Bridgestone ball that better suits the golfer's game. The consumer will then hit the recommended golf ball and the technician will compare and review the launch monitor data with the consumer. The consumer is given a print-out of the data and a two-ball pack of the recommended golf ball for an on-course validation.

In reaching its determination, NAD reviewed surveys submitted by both the advertiser and the challenged to assess the messages conveyed by the claim at issue. NAD noted that the surveys did not test the exact claim in the context in which it appeared. Instead, the surveys essentially queried consumers about their perceptions of which manufacturer is the leader in golf-ball fittings.

**Coastal Contact, Inc. (Facebook)  
Like-Gated Ad Campaign**

*Case #5387 (10.25.11)*

In a case of first impression, NAD determined that the display of the total number of "likes" on the Facebook page of Coastal Contacts, Inc., conveys a general social endorsement.

NAD determined that the display of Facebook "likes" on a company's Facebook fan page can mean many things to consumers, including that consumers like the company, product or service, that the individual who "liked" the content entered a like-gated promotion contest or sweepstakes, or that the consumer wanted to share some content on the company's page with their "friends."

Because actual consumers "liked" the Coastal page, and those consumers who participated in the like-gated promotion received the benefit of the promotion, NAD determined that Coastal does in fact have the general social endorsement that the "likes" convey. NAD noted for the record, however, that the outcome of the case would have been quite different if the evidence in the record demonstrated that consumers who participated in the like-gated promotion could not or did not receive the benefit of the offer, or that the advertiser used misleading or artificial means to inflate the number of Facebook "likes."

With respect to the statements made in press releases to the investor community, NAD recommended that Coastal clarify that the number of Facebook "fans" or "likes" noted in the press releases is based on the total number of "fans" or "likes" the Company has received from all of its Facebook pages globally.

NAD further recommended that Coastal Contacts, Inc., discontinue an "up to 70 percent" savings claims and modify advertising that promoted "free" products.

## Children's Advertising Review Unit

### **Twitter, Inc.**

**www.twitter.com**

*Case #5245 (11.15.10)*

CARU determined that based on its structure and appearance that [www.twitter.com](http://www.twitter.com) was not directed to children under 13 nor should it expect a significant number of visitors under the age of 13.

CARU was concerned that twitter.com, a social media and micro-blogging service, was allowing children to register and provide personally identifiable information to the site and others without screening for age or obtaining parental consent.

Twitter informed CARU that it does not direct its services to children under 13, makes no effort to appeal to any users under the age of 13, does not request age and has no knowledge that a significant number of such users are on the site. It further noted that its privacy policy expressly states that its service is *not* directed toward children. The operator stated that when it determines that a user under 13 has registered, it terminates the child's account and deletes his or her information.

### **Magic Box International**

**Gogocrazybones.com**

*Case #5353 (7.13.11)*

CARU recommended that Magic Box International modify its website, [www.crazybones.com](http://www.crazybones.com), to better protect the online privacy of children. The company agreed to do so.

CARU was concerned that the website, which was directed to children under 13, was collecting personally identifiable information from these children without first obtaining parental consent. CARU was also concerned that this child-directed website contained hyper-links to Twitter, a site that is not intended for children and does not screen for age.

The operator agreed to bring its website into compliance with CARU's Guidelines and COPPA. The operator also agreed to remove the link to Twitter.

### **SPIL Games, BV**

**Girlgogames.com**

*Case # (1.9.13)*

CARU recommended that the SPIL Games, NV, operator of the website, girlgogames.com, modify its site to better protect the privacy of child visitors. The company agreed to do so.

CARU was concerned that the website, which allows members to create profiles, view profiles of others, allowed children under 13 to disclose personally identifiable information without first providing parental notice or obtaining parental consent. CARU was also

concerned that the site invited children to register for the site using social media tools, such as Facebook and Twitter, which do not permit participation by children under age 13.

The operator agreed to make the changes recommended by CARU, including the disabling of its feature that allowed log-in through social media and removed links to Twitter.

## **Electronic Retailing Self-Regulation Program (ERSP)**

### **LIQUID HCG DIET, LLC (Twitter)**

*Liquid HCG Diet*

*Case #246 (6.16.10)*

Claims for the homeopathic Liquid HCG Diet product appeared on Twitter. In particular, the twitter claims attested to the effectiveness of the Liquid HCG Diet. The marketer argued that they were not behind the posting of messages related to their product on twitter, and were unaware of how the messages appeared on the Twitter page of "jessicastewart9."

ERSP looked to the FTC Guides Concerning the Use of Endorsements and Testimonials in Advertising, which point out that an advertisement that contains an endorsement that relates to the experience of one or more consumers on a central or key attribute of the product will be interpreted as representing that the endorser's experience is representative of what consumer can generally expect to achieve. ERSP determined that the weight-loss and diet success results attested to on individual Twitter pages is considered advertising for the purpose of communicating general expectation of the product. According to ERSP, without any information to the contrary which may lead consumers to understand that the statements are unrepresentative of typical product performance, these representations must be independently supported by the marketer. In addition, ERSP noted that the fact that the marketer did not know about a consumer making a particular claim does not absolve the marketer from responsibility of the accuracy of the claims.

### **URBAN NUTRITION, LLC (Blogs)**

*WeKnowDiets.com (and affiliated websites)*

*Case #219 (8.11.09)*

In this case, ERSP examined advertising claims on the marketer's websites, which were formatted as independent product-review sites.

The challenger argued that the marketer presented itself as an unbiased and independent resource for consumers when there was a potentially material connection between the marketer, the websites and the products reviewed. The challenger also argued that the marketer failed to disclose that it had compensated the individuals writing the product reviews.

Preliminarily, ERSP pointed out that the language on the weknowdiets.com website would appear to indicate that the information was based upon independent assessments of the products. However, the marketer conceded to ERSP that it owned and controlled the weknowdiets.com site, along with other affiliated websites.

It was clear to ERSP that because the marketer owned not only the websites, but several products being reviewed on the site, this relationship constituted a “material connection” that would have a significant effect on the weight or credibility given to the endorsement by that audience. ERSP also concluded that because the marketer hosts and exercises editorial control over the websites for the purposes of disseminating reviews of products that directly compete with the marketer’s own products, it is imperative that the placement of the disclosures regarding material connections be of such prominent nature that consumers understand the relationship of the marketer and the products being reviewed immediately upon visiting the site.

**INNOVATIVE MEDIA, INC. d/b/a [www.PhantomPlate.com](http://www.PhantomPlate.com) (Second Life)**

PhotoBlocker Spray  
Case #196 (12.3.08)

ERSP’s first case involving advertising that appeared in social media. The advertising at issue was found in Second-Life, which is an internet-based, 3D virtual community that allows users to explore, meet other residents, socialize and create and trade items with each other. ERSP determined preliminarily that advertising within online games may be considered national advertising.

The product, Photoblocker Spray, is designed to be sprayed onto the face of motor vehicle license plates, which will conceal the license plate numbers and/or letters from photo-radar traffic cameras. ERSP concluded that the legality of the product is a material condition in consumers purchasing the product – marketers must inform consumers that the product may not be used legally in certain states.



# Subscribe to the ASRC Online Archive

The ASRC Online Archive provides vital guidance to national advertisers who want to ensure their advertising claims are truthful and accurate. The Archive, a searchable database of cases, provides an in-depth examination of key advertising issues and careful guidance to advertisers seeking to assure their claims are substantiated.

The Archive is a critical tool for companies seeking to challenge a competitor's advertising before NAD, CARU or ERSP. By reviewing established precedent, parties appearing before NAD, CARU, ERSP or NARB are better prepared to defend their positions.

Subscribers to the ASRC Online Archive include law firms and law schools, national advertisers, government agencies and non-profit organizations.

The Archive includes decisions that address puffery, the adequacy of disclosures, the standards for scientific evidence and the proper use of endorsements.

A wide range of industries utilize the self-regulatory system. The Archive includes decisions on advertising for appliances, automotive products, cosmetics and beauty products, over-the-counter drugs and dietary supplements, food and beverages, financial services, household products, toys and games, travel, leisure and entertainment products and many more.

ERSP reports are individual self-regulatory reviews that include determinations about whether core claims disseminated in direct response advertising are substantiated by evidence submitted by the marketer.

Access to the Archive is available only by subscription.

For more information, or to subscribe, please contact Reshma Persaud, [rpersaud@asrc.bbb.org](mailto:rpersaud@asrc.bbb.org) or 212.705.0113.