

# THE ELECTRONIC RETAILING SELF- REGULATION PROGRAM

## POLICY & PROCEDURES

Policy Oversight By:

**The Advertising Self-Regulatory Council**

**(ASRC)**

Administered By:

**The Council of Better Business Bureaus, Inc.**

**(CBBB)**

*As amended 06.07.17*



### ASRC Partners



## MISSION

The mission of the Electronic Retailing Self-Regulation Program (hereinafter "ERSP") is to enhance consumer confidence in advertising and marketing by electronic retailing, to offer the electronic retailing industry an expeditious system for review of that advertising and marketing, to discourage advertising and marketing in the electronic retailing industry that contain unsubstantiated claims, and to demonstrate the strong commitment of the electronic retailing industry to meaningful and effective self-regulation.

### 1.1 Definitions

For purposes of this *Policy & Procedures*:

**A.** The terms "*direct response advertisement*" or "*direct response advertising*" shall mean any commercial message, in any electronic medium of dissemination, in which consumers are asked to place an order or obtain additional information regarding a product or service by any means utilizing an electronic device, such as a toll-free telephone number, e-mail or online request, or interactive TV. Direct response advertising is also customarily and synonymously referred to in the electronic retailing industry as "electronic retailing".

The current primary media of direct response advertising are television, radio and the Internet and, accordingly, these forms of advertising will be the primary focus of ERSP. Nevertheless, the ERSP review of advertising claims may include other media used in conjunction or in connection with advertising on television and/or radio, including, without limitation, product packaging, labeling, print advertising, online marketing and direct mail.

**B.** The term "*national direct response advertisement*" or "*national direct response advertising*" shall mean any direct response advertisement or direct response advertising that is disseminated in a substantial section of the United States or is a test market advertisement or advertising prepared for national campaigns.

**C.** The term "*primary claims*" or "*core claims*" in a national direct response advertisement shall mean those representations which are deemed by ERSP to be most significant and fundamental in the marketer's communication of a product's or service's attributes or characteristics. The "primary" or "core" claims in a direct response advertisement may include, but shall not be limited to, claims of monadic and/or comparative performance, evidence-based claims, consumer testimonials, health and safety claims and/or claims involving the sales price of a product or service.

D. The term “*marketer*” shall mean any person or other legal entity that engages in national direct response advertising.

E. The term “*government agency*” shall mean any federal or state law enforcement agency which may include, but is not limited to, the Federal Trade Commission, the Food and Drug Administration and/or any state Attorney Generals’ office.

## **1.2 Organization**

The ERSP is managed as a separate program under ASRC auspices and policy oversight, and administered for ASRC by the CBBB under the direction of the ASRC President.

## **2.1 ERSP - General Information/Overview**

With the exception of the ERSP Press Release and the ERSP final decision, all deliberations, meetings, proceedings and records of the ERSP process shall be confidential except when disclosure is specifically authorized by these rules. An ERSP final decision and the ERSP press release are the only permanent records required to be kept for each case.

Upon request, confidential materials submitted to ERSP during the pendency of a case shall be returned to the submitting party when the case is closed.

### **A. Functions and Policies**

ERSP shall be responsible for receiving and/or initiating inquiries regarding the truthfulness and accuracy of claims that are communicated in national direct response advertising (such inquiries by ERSP or others being hereinafter referred to as “inquiries”), and for evaluating, investigating, analyzing and resolving such inquiries (such activities being hereinafter referred to as “reviews”). As the resources of ERSP are limited, it is generally anticipated that its inquiries and reviews will focus on primary or core efficacy or performance claims, but ERSP inquiries and reviews shall not necessarily be limited to such claims.

ERSP is an investigative unit of the advertising industry’s system of voluntary self-regulation. Policies and procedures are established by ASRC and the system is administered by the Council of Better Business Bureaus. A decision by ERSP does not constitute a finding that the law has been violated. An advertiser’s voluntary participation in the self-regulatory process is not an admission and shall not be interpreted to constitute an admission by the advertiser or a finding that the law has been violated.

## **B. Case Decisions**

Upon completion of a review (a completed review being hereinafter referred to as a “case”), ERSP will publish a final case decision which will identify the marketer, the product or service advertised, and the advertising claims that were reviewed in the course of the review, and include the written decision of ERSP. The final case decision will also include a summary of the marketer’s position, the rationale for ERSP’s decision and, if submitted by the marketer, a brief statement from the marketer documenting its agreement to comply with any recommendations made by ERSP for changes to the marketer’s advertising.

It is the policy of ERSP not to endorse any marketer, product or service, and a favorable decision regarding advertising claims for the products or service of a particular marketer should in no way be construed as an endorsement. Similarly, a marketer’s modification of advertising, in cooperation with ERSP’s self-regulatory efforts, should not be construed as an admission of any impropriety.

## **C. Press Releases**

Upon completion of an ERSP review, the Advertising Self-Regulatory Council (“ASRC”) will issue a press release that will be disseminated to the press and interested members of the electronic retailing industry. The press release will include a brief summary of the final case decision. The press release may not be used by any person or entity as a form of promotion for any marketer or any particular product or service.

## **D. Confidentiality and Publicity/Agreement of Participants**

It is the policy of the ERSP not to endorse any company, product, or service, and an ERSP decision stating that the advertising has been substantiated should not be construed as such. Correspondingly, a marketer’s voluntary modification of advertising, in cooperation with ERSP’s self-regulatory efforts, is not to be construed as an admission of any impropriety. To ensure the integrity and cooperative nature of the ERSP review process, challengers and marketers participating in ERSP reviews (hereinafter referred to as “participants”) agree:

- (i) except as required by law, to keep the proceedings confidential throughout the ERSP review process;
- (ii) not to issue a press release regarding any decisions issued by ERSP;
- (iii) not to subpoena any witnesses or documents from ERSP, CBBB or the ASRC regarding the ERSP review in any future court or other proceeding;

(iv) to pay attorneys fees and costs if a subpoena is attempted in violation of section (iii) above.

(v) after a final case decision has been published, not to mischaracterize any ERSP final case decision or use and/or disseminate any ERSP final case decision or press release for any advertising and/or promotional purposes.

(vi) ERSP, ASRC, and the CBBB (including their employees) shall not be liable for any act or omission in connection with any inquiry or review.

If a marketer or any agent of a marketer violates any of the provisions of this confidentiality and publicity section, ERSP shall have the discretion to close a review by referring the matter to the appropriate government agency and issuing a press release setting forth the details of the breach of confidentiality.

Moreover, ERSP may issue a public statement, for clarification purposes, if any person or entity mischaracterizes any ERSP case decision or uses and/or disseminates any ERSP final case decision or press release for any advertising and/or promotional purposes after a final case decision has been published.

## **E Non-Participation Referrals to Law Enforcement Agencies**

When ERSP commences an review pursuant to Section 2.2, and the marketer elects not to participate in the ERSP review, ERSP may compile a record of the facts obtained and the allegations made regarding the claims asserted in the advertising, review and evaluate the record, and forward the record and ERSP's conclusions to the appropriate government agency. Reports of such referrals shall be included in ERSP press releases.

### **2.2 Filing an Inquiry**

**A.** Any person or entity (including ERSP as part of its monitoring responsibility) may submit to ERSP any inquiry regarding national direct response advertising it believes worthy of ERSP's review. All inquiries (except those submitted by consumers or initiated by ERSP), should be submitted in both hard copy and in electronic format and should be no longer than eight (8) double-spaced typewritten pages. ERSP encourages all persons or entities filing inquiries to include, when applicable, a videotape and transcript of the national direct response advertisement.

All inquiries submitted by, or on behalf of, companies that are not members of the Electronic Retailing Association (ERA) shall be filed together with a check, made payable to the Council of Better Business Bureaus, Inc., in the amount of

\$5,000, as a filing fee to help defray some of the administrative costs associated with the advertising review process.

All inquiries submitted by, or on behalf of, ERA member companies shall be filed together with a check, made payable to the Council of Better Business Bureaus, Inc., in the amount of \$2,000. The President of ASRC shall have the discretion to waive the fee for any challenger who can demonstrate economic hardship.

If a review is administratively closed, the filing fee will be \$1,500 for non-ERA member companies and \$1,000 for ERA member companies. The difference between these administrative closing fees and the initial filing fee will be refunded to the challenger.

**B.** ERSP encourages those persons or entities filing inquiries to limit any and all arguments to the primary or core efficacy or performance claims in the national direct response advertising. The person or entity filing the inquiry is not required to submit supporting data with the inquiry.

**C.** Upon receipt of any inquiry, ERSP shall promptly acknowledge receipt and take such of the following actions as may be appropriate:

(i) forward the inquiry to the appropriate marketer responsible for the national direct response advertisement at issue and officially open the review (hereinafter referred to as a “notice of review”) (see Section 2.5 for “The Marketer’s Written Response”);

(ii) advise the person or entity filing the inquiry that the matter is not at that time, or is no longer, appropriate for review by ERSP if, at the time of the inquiry or during the course of a review, ERSP determines that:

(a) the advertising complained of is not a national direct response advertisement, as defined in Section 1.1 (A) and (B);

(b) the advertising complained of is the subject of pending litigation or an order by a court;

(c) the advertising claims that are the subject of the inquiry are the subject of a federal government agency review, consent decree or order;

(d) the advertising claims that are the subject of the inquiry have been permanently withdrawn from use and ERSP receives the marketer’s assurance, in writing, that the representation(s) at issue will not be used by the marketer in any future national direct response advertising for the product or service;

(e) the inquiry is without sufficient merit to warrant the expenditure of ERSP's resources; or

(f) ERSP cannot dedicate the appropriate time and resources necessary to expeditiously resolve the review.

Upon making such a determination, ERSP shall advise the person or entity filing the inquiry that a review will not be opened, or in the event that a review has already been commenced, shall administratively close the review file. If the inquiry relates to matters other than the truth or accuracy of the national direct response advertising or does not pertain to claims in the national direct response advertisement, ERSP shall so advise the person or entity filing the inquiry as provided above; or

(iii) advise the person or entity filing the inquiry that the matter is not at that time, or is no longer, appropriate for review by ERSP if, at the time of the inquiry or during the course of a review, ERSP determines that specific language in a national direct response advertisement is mandated or expressly approved by federal law or regulation, or relates to political and issue advertising, and questions of taste and morality which are not within ERSP's mandate. If the inquiry, in part, relates to matters other than the truth and accuracy of the advertising, ERSP shall so advise the person or entity filing the inquiry.

**D.** ERSP reserves the right to refuse to open or to continue to handle a review when a person or entity filing an inquiry publicizes, or otherwise announces, to parties other than ERSP and the marketer the fact that advertising will be, is being, or has been, referred to ERSP for resolution (See Section 2.1 (D) on "Confidentiality and Publicity"). The purpose of this right of refusal is to maintain a professional, unbiased atmosphere in which ERSP can effect a timely and lasting resolution to an inquiry in the spirit of furthering voluntary self-regulation of national direct response advertising and the voluntary cooperation of the parties involved.

**E.** The ERSP review process should be completed no later than sixty (60) calendar days after the date in which notice of the inquiry is mailed to the marketer.

**F.** Any and all determinations that are rendered pursuant to Section 2.2 shall be at the sole discretion of ERSP.

### **2.3 Selection of Inquiries and Reviews**

Notwithstanding the specific filing contingencies discussed in Section 2.2 (C), ERSP will have sole and exclusive authority to select, accept or reject matters

with respect to which it will conduct reviews based upon criteria that include, but are not limited to, the number of consumers affected by the national direct response advertising, the type of claim(s) being made in the national direct response advertising, and the prominence of the claim(s) in the national direct response advertising.

## **2.4 Information in an ERSP Review**

**A.** Time periods specified in this *Policy & Procedures* for any aspect of an ERSP review shall commence on and include the first day of business following the date of the triggering event or delivery of the triggering document.

**B.** The person or entity that files the inquiry will have the option of actively participating in the ERSP review. The identity of the person or entity that files an inquiry and wishes to actively participate in the ERSP review (hereinafter referred to as the “challenger”) will be disclosed to the marketer in the notice of review. Similarly, it will be disclosed to the marketer if the inquiry is initiated by ERSP or is filed by a consumer. However, the identity of a consumer filing an inquiry will not be made public.

(i) A person or entity that files an inquiry and wishes to actively participate in the ERSP review will advise ERSP of its decision and its agreement to comply with the provisions of Section 2.1(D) in writing when filing the inquiry and shall be privy to the marketer’s non-confidential submission pursuant to Section 2.5 and may add comments to the record pursuant to Section 2.8 (A).

(ii) A person or entity that files an inquiry and does not wish to actively participate in the ERSP review will advise ERSP of this decision in writing when filing the inquiry and will not receive any substantiating information provided by the marketer during the review.

**C.** All written materials submitted to ERSP by a challenger will be made available by ERSP to the marketer; however, any materials submitted by a challenger on condition that they not be shown to the marketer may instead be returned to the challenger by ERSP, and in such event ERSP shall not consider any such materials in connection with its review.

**D.** Except as otherwise provided herein, all written materials submitted to ERSP by a marketer will be made available by ERSP to the challenger, if applicable. A marketer may submit trade secrets and/or proprietary information or data (excluding any consumer perception communications data regarding the advertising in question) to ERSP with the request that such data not be made available to the person or entity filing the inquiry, provided it shall:



- (i) clearly identify those portions of the submission that it is requesting be kept confidential in the copy submitted for ERSP's review;
- (ii) redact any confidential portions from the duplicate copy submitted to ERSP that will be forwarded to the challenger;
- (iii) provide a written statement setting forth the basis for the request for confidentiality;
- (iv) affirm that the information for which confidentiality is claimed is not publicly available and consists of trade secrets and/or proprietary information or data; and
- (v) attach a comprehensive summary of the proprietary information and data (including as much non-confidential information as possible about the methodology employed and the results obtained) and the principal arguments submitted by the marketer in its rebuttal of the inquiry as an exhibit to the submission.

**E.** Prior to the transfer of data to the marketer or challenger, ERSP shall obtain assurances that the recipients agree that the materials are provided exclusively for the purpose of furthering ERSP's review; circulation should be restricted to persons directly involved in the review, and recipients are required to honor a request at the completion of the review that all copies be returned.

**F.** In the case of studies, tests, polls and other forms of research, the data provided should be sufficiently complete to permit a comprehensive evaluation of the protocol and methodology of such study, poll, test or other research. ERSP shall be the sole judge of whether the data is sufficiently complete to permit such an evaluation.

**G.** A marketer submitting third party publications or abstracts as substantiation for its advertising claims must make specific reference to the page or pages in the submitted materials where the claim substantiation can be found.

**H.** If the marketer is relying on testing that does not involve the advertised product, the burden will be on the marketer to demonstrate to ERSP the relevance of that test to the advertised product.

## **2.5 The Marketer's Written Response**

**A.** The marketer shall, within fifteen (15) calendar days after receipt of notice of the review, submit to ERSP, in hard copy and in electronic format (including exhibits when possible), a written response that provides substantiation for any

advertising claims that are the subject of the review, any objections it may have to the review on jurisdictional grounds, as defined in Sections 2.2 C (ii) and (iii) together with copies of all national direct response advertising, in any medium, that is related to the advertising claims that are the subject of the review. This should include both long and short forms of any taped national direct response advertisement. Submissions by the marketer should include only supporting evidence that is directly relevant to the claims that are at issue in the review. To help ensure a timely review, marketers should strive to limit the length of their submissions to no more than eight (8) double-spaced typewritten pages (excluding evidentiary exhibits).

Marketer responses that address the issue of ERSP jurisdiction should be submitted as soon as possible after receipt of the notice of review, but in any event, must be submitted no later than fifteen (15) calendar days after the marketer receives the notice of review. (See also Section 2.6 "Failure to Respond."). A response addressing jurisdiction does not obviate the need for a timely substantive response under this paragraph.

**B.** ERSP will exercise its discretion to review only evidence that is directly relevant to the claims that are the subject of the review and a marketer is expected to provide complete substantiation for the claims in response to ERSP's initial notice of review.

## **2.6 Marketer's Failure to Respond**

**A.** If a marketer fails to file a substantive written response within the period provided in Section 2.5(A), ERSP shall release to the press and the public a "notice" summarizing the advertising claims that were the subject of the review, and indicating the marketer's failure to substantively respond.

**B.** If the marketer fails to file a substantive written response within an additional ten (10) calendar days, ERSP may refer the file to the appropriate government agency and release information regarding the referral to the press, the public, and the media in which the advertising at issue has appeared, and shall report the referral on the Advertising Self-Regulatory Council website.

## **2.7 Failure to Locate a Marketer**

If, after exercising reasonable due diligence, ERSP is unable to locate a mailing address for a marketer whose national direct response advertising is under review, ERSP may refer the file to the appropriate government agency and release information regarding the referral to the press, the public, and the media in which the advertising at issue has appeared, and may report the referral on

the Advertising Self-Regulatory Council website. ERSP referrals pursuant to this section may be made either individually or collectively.

## **2.8 Reply of the Challenger**

**A.** If a person or legal entity has indicated to ERSP that it wishes to be designated as a challenger pursuant to Section 2.4(B)(i), ERSP shall promptly forward a copy of the marketer's written response to the challenger that shall have any material designated as confidential redacted, and shall include, as an exhibit, a comprehensive summary of the redacted information in the manner set forth in Section 2.4 (D) above.

Within ten (10) calendar days after receipt of the marketer's response, the challenger shall submit in duplicate hard copy and an electronic format (including exhibits when possible) its reply, if any, to ERSP. To help ensure a timely review, challengers should strive to limit the length of their reply to eight (8) double-spaced typewritten pages (excluding evidentiary exhibits). If the challenger does not submit a reply, ERSP shall proceed to decide the review upon the expiration of the challenger's time to reply, subject to a request by ERSP for additional comments or data under Section 2.11.

**B.** After the challenger has reviewed the marketer's first substantive written response; it may notify ERSP in writing that it elects to waive its right to add to the record thereby expediting the review. In the event that a challenger waives its right to reply, additional information from either party may be submitted only upon request from ERSP and shall be treated in the same manner as requests for additional comments or data under Section 2.8(A) and any meetings with the challenger and/or the marketer other than meetings pursuant to Section 2.10 will be held at the discretion of the ERSP.

## **2.9 Marketer's Final Response**

If the challenger submits a reply pursuant to section 2.4 (B)(i), ERSP shall promptly forward a copy of that reply to the marketer. Within ten (10) calendar days after receipt of this reply, the marketer shall submit a response, if any, in duplicate hard copy and an electronic format (including exhibits when possible). To help ensure a timely review, marketers should strive to limit the length of their response to 8 double-spaced typewritten pages (excluding evidentiary exhibits)

## **2.10 Meetings with the Marketer**

A. If a marketer whose national direct response advertising is the subject of a review requests, within the fifteen (15) calendar day period after receiving the notice of inquiry, to meet with ERSP, ERSP will conduct a meeting, either in person or by teleconference, within fifteen (15) calendar days after the request. A meeting under this paragraph does not increase the time in which a response under 2.5(A) must be submitted.

B. The meeting between ERSP and the marketer will not be conducted in lieu of the submission of a written response, but the meeting shall, instead, be conducted to further elaborate on the marketer's substantiating evidence.

### **2.11 Additional Responses**

A. In the event that it is deemed necessary by ERSP, within ten (10) calendar days after ERSP's receipt of the marketer's written response pursuant to Section 2.5 (A), ERSP may send the marketer a written list of questions or comments regarding the marketer's substantiating evidence.

B. If ERSP does not request further comments or data under this paragraph, no other additional submissions will be accepted as part of the record, unless as provided by Section 2.8 (A), and any unsolicited submissions received by ERSP will not be considered by ERSP, and will be returned to the person or entity that submitted them.

C. In the event that ERSP does request further information from the marketer pursuant to Section 2.8 (A), the marketer will have ten (10) calendar days from receipt of ERSP's request to submit a written reply to those questions or comments.

### **2.12 Time Extensions**

A. In order to maintain the program objective of facilitating an expeditious review of a marketer's national direct response advertising, extensions to the time specifications stated in this *Policy & Procedures* will only be granted in the most urgent and meritorious of occasions.

B. Requests for time extensions will not result in a tolling of the time for submissions unless the extension is granted. Any time extensions granted by ERSP shall be limited to forty-eight (48) hours (two calendar days) unless the marketer can demonstrate extraordinary cause for a greater amount of time. The request for a time extension shall be in either hard copy or electronic form and shall include a justifiable reason for the time extension requested.

### **2.13 Final Decision**

A. Within fifteen (15) calendar days after its receipt of the last document authorized by this *Policy & Procedures*, ERSP will formulate its decision on the truth and accuracy of the claims at issue; prepare the final case decision; provide a copy to the marketer and invite the marketer to add a Marketer's Statement within five (5) calendar days after receipt of ERSP's written determination.

B. In the final case decision, ERSP will state whether the claims that were investigated have been sufficiently supported by the marketer's evidence and will recommend whether the claims that were investigated should be modified or discontinued.

C. ERSP may distinguish between claims that do not appear capable of substantiation at all, even if made or qualified in some manner other than the form in which they appeared in the national direct response advertising that was reviewed and those claims that might be capable of substantiation if properly qualified. ERSP may make recommendations as to how claims should be modified or qualified, however this determination will ultimately be the responsibility of the marketer.

D. An ERSP review that does not result in a recommendation that claims be discontinued or modified will not constitute approval of the national direct response advertisement or other advertising claims that were investigated, and marketers may not state or imply in any way that their advertising claims have been approved.

E. An ERSP review that does not result in a recommendation that claims be discontinued or modified will not assure the marketer that some other action, filing or adverse finding will not occur in another regulatory forum including the Federal Trade Commission and the National Advertising Division.

F. ERSP will apply this *Policy & Procedures* to any person or entity that subsequently acquires the ownership rights of a product or service that has been the subject of an ERSP review and continues to disseminate the same national direct response advertising that ERSP had recommended be modified or discontinued.

### **3.1 Marketer's Statement**

A. In the event that ERSP decides that some or all of the advertising claims at issue are not substantiated, the marketer shall, within five (5) business days of receipt of the final case decision, submit a Marketer's Statement stating whether the marketer agrees to modify or discontinue the advertising. The Marketer's

Statement is not the venue to reargue the merits of the review, bring in new facts, or restate or summarize ERSP's conclusions.

**B.** In the event that ERSP decides that all of the advertising claims at issue have been substantiated, a marketer may elect not to submit a Marketer's Statement to ERSP.

**C.** The Marketer's Statement should be concise and may not exceed one (1) double spaced page in length. ERSP reserves the right to edit for length or inappropriate material.

**D.** In the event that the marketer fails to submit a Marketer's Statement as required by Section 3.1(A) stating that it agrees to modify or discontinue the advertising, ERSP may refer the matter to an appropriate government agency for review and possible law enforcement action.

### **3.2 Publication of the Final Case Decision**

Upon receipt of the final version of the Marketer's Statement, ERSP shall provide a copy of the complete final case decision to the marketer and all interested parties, including the Electronic Retailing Association ("ERA"), and shall also make the final case decision available through press announcements in various industry and trade publications.

### **3.3 Closing a Review**

When a review has been concluded with the publication of an ERSP final case decision, the review will be closed and, absent extraordinary circumstances, no further materially similar inquiries on the claim(s) in question shall be accepted by ERSP, except as provided for in Section 4.1.

### **4.1 Compliance**

**A.** Thirty (30) calendar days after an ERSP decision requesting that advertising be modified or discontinued is published, together with a Marketer's Statement indicating the marketer's agreement to comply with ERSP's recommendations, ERSP may notify the marketer and request a report back on the status of the advertising at issue which shall include an explanation about the steps the marketer has taken to bring its national direct response advertising into compliance with ERSP's final case decision

**B.** If, after reviewing the marketer's response to a request for a status report on compliance, pursuant to Section 4.1, or, if the marketer fails to respond after notice that ERSP has independently reviewed the current advertising, ERSP

determines that the marketer has not made a good faith or bona fide attempt to bring its advertising into compliance with the recommendations in ERSP's final case decision and/or the representations with respect to compliance made in its Marketer's Statement, ERSP may refer the file to the appropriate government agency and release information regarding the referral to the press, the public, and to the media in which the advertising at issue has appeared, and shall report the referral on the Advertising Self-Regulatory Council website.

C. If ERSP determines that the marketer has made a reasonable attempt to comply with ERSP's final case decision, but remains concerned about the truthfulness and accuracy of the advertising as modified, ERSP will notify the marketer, in writing, detailing its concerns. The marketer will have ten (10) calendar days after receipt of ERSP's notice to respond.

Within ten (10) calendar days after receipt of the marketer's response, ERSP will make one of the following determinations regarding the marketer's compliance:

(i) if ERSP concludes that the advertising is in compliance with ERSP's final case decision, ERSP will notify the marketer and close the compliance inquiry;

(ii) if ERSP recommends that further modifications be made to bring the advertisement into compliance with ERSP's final case decision, ERSP will notify the marketer of its findings and any further recommendations.

(a) If the marketer accepts ERSP's compliance findings and agrees to discontinue the advertising at issue until it makes further modifications as recommended by ERSP, ERSP shall report this on the Advertising Self-Regulatory Council website.

(b) If the marketer indicates that it disagrees with ERSP's compliance findings and refuses or fails to make the further modifications recommended, ERSP may document such non-compliance and refer the matter to the appropriate government agency, report this action to the press, the public, and any medium in which the advertising at issue appeared and shall report its findings on the Advertising Self-Regulatory Council website.

D. When a marketer has made a good faith or bona fide attempt to comply with ERSP's decision, but has yet to fully implement the recommendations in a modified advertisement within the time parameters stated in this section, ERSP reserves the right to make subsequent compliance inquiries of the marketer and, depending upon the actions that the marketer has taken to comply with the final case decision within a reasonable period of time, ERSP will proceed with the enforcement mechanisms pursuant to Sections 4.1 (B) and (C).

E. Any final case decision by ERSP with respect to claims at issue in a review shall apply with full force and effect to the dissemination of the same claims in other forms of national direct response advertising for the product or service, and also to the dissemination of the same claims on product packaging or in any other advertising.

*Procedural Note:* ASRC reserves the right to interpret, change, modify, amend or rescind this *Policy & Procedures* in whole, or in part, at any time upon consultation with the ERA.