

**Prepared remarks of C. Lee Peeler  
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Thanks very much to Bob Liodice, Dan Jaffe and the Association of National Advertisers for the opportunity to speak to you this morning.

Although I've spoken about the benefits and future of self-regulation many times in the past, this is my first opportunity to talk about self-regulation after seeing it up close for the four months since I became President of the National Advertising Review Council and Executive Vice-President of the Council of Better Business Bureaus.

Lots of people ask me what is the biggest surprise about my new job. Well, certainly one is the number of people who want me to tell them how it feels to be on the "other side." Maybe I just listened too closely to Dan Jaffe, Carla Michelotti, Wally Snyder and Dick O'Brien, but leading a self-regulatory program that promotes truth and accuracy in advertising doesn't feel like "the other side." The desire for truth and accuracy in advertising is common ground among advertisers, the government and consumers.

My observations of the panels of reviewers in National Advertising Review Board appeals confirm this view. These five-member panels are made up of representatives from advertisers and ad agencies, as well as one public member. They are every bit as dedicated to ensuring that advertising claims are truthful and substantiated as the government, and to an extent even more so, because they understand misleading advertising reflects directly on their own industry. These NARB panel members – like the terrific professional staff of the National Advertising Division, Children's Advertising Review Unit and Electronic Retailing Self-Regulation Program – take their responsibility for ensuring truth in advertising very seriously. Being able to watch these panels in action would be an eye-opening opportunity for any critic of self-regulation.

### **The Year in Self-regulation**

We are just closing our books on the 2006 calendar year. Even a preliminary assessment shows it was a very busy year for self-regulation. On the production side, the National Advertising Division handled 185 cases. This is up from 170 cases in 2005. In 2006, 70 of the cases were challenges filed by competitors and 39 were NAD-initiated monitoring cases. Both types of cases are important to the program.

The results of the Electronic Retailing Self-Regulation Program were similarly impressive. This program makes quick, non-appealable determinations about "core claims" in direct-response advertising. Last year, it handled 58 cases, including 17 challenges by competitors. Despite the fact that ERSP is a new program, often dealing with companies less familiar with self-regulation, there were only three referrals to government agencies last year.

The Children's Advertising Review Unit was similarly active, monitoring 12,000 television advertisements and issuing 76 case decisions.

Finally the National Advertising Review Board, the self-regulatory appellate review body, handled 7 appeals in 2006, a record number.

This productivity is a good indicator of a strong, healthy self-regulatory system. Two other key indicators are the speed with which we handle cases and the level of compliance with our decisions.

Both indicators are good.

With respect to the timing of decisions: Overall in 2006, the average case took approximately 65 to 70 days from start to finish. Although challenger cases continued to take somewhat longer to resolve than other cases, I can assure you that everyone on the NAD staff appreciates the importance of moving these cases to completion, and the weekly case progress reports are as carefully scrutinized as earnings reports in the private sector.

With respect to compliance, Christopher Cole of Manatt, Phelps & Phillips, in a presentation to the NAD 2006 Conference, reviewed compliance with NAD decisions during a three-year period.<sup>1</sup> His review found that:

- The overall number of referrals during the period remained steady.
- A significant percentage of parties declining to participate cited pending related litigation or regulatory proceedings as the reason for not participating.
- The overall number of referrals to government agencies remains very low in comparison to the number of compliance challenges initiated.

At the same conference, we heard strong expressions of support for the self-regulatory system from FTC Commissioner Bill Kovacic and senior FTC staff attorney Lesley Fair. Ms. Fair also described a variety of steps, short of formal action, that the FTC staff routinely takes to back up self-regulation.

Commissioner Kovacic's and Ms. Fair's were underscored by the FTC's recent multi-million-dollar weight-loss settlement, which the FTC noted contained some cases brought to the attention of the Commission by NAD.<sup>2</sup>

I am confident that the FTC – while applying its own case-selection standards – will want to continue to reinforce the value of voluntary participation in the self-regulatory process. Each case we handle is one the Commission doesn't need to spend time or resources reviewing.

In addition to its case-related accomplishments, the program saw three major non-case related accomplishments.

First, building on the success of the Electronic Retailing Self-Regulation Program, which was developed with financial support and cooperation of the Electronic Retailing Association, NARC and the Council for Responsible Nutrition announced in September a new effort directed toward dietary supplement advertising, a continuing hot spot for advertising claims. This program will add a new NAD attorney to pursue cases in the dietary-supplements industry.

Second, as you heard yesterday, under the leadership of former FTC Bureau of Consumer Protection Director Jodie Bernstein, the NARC and the CARU Supporters Council instituted a comprehensive review of the Children's Advertising Review Unit's *Self-Regulatory Guidelines for Children's Advertising*.

The results of that review are a comprehensively revised and updated set of guidelines, as well as the creation of the groundbreaking Children's Food and Beverage Advertising Initiative.

### **Challenges for the Future**

Notwithstanding this impressive record of accomplishments, there are clear challenges for the coming year. Expectations for industry self-regulation have always been high, and they are becoming higher.

A consistent challenge is to increase the visibility of the self-regulatory process, an issue FTC Chairman Majoras addressed in her keynote speech yesterday. The place to start is with members of the advertising industry. Self-regulation cannot reach its full potential unless companies moving into advertising within new media are aware of the process and participate in it.

We can't expect self-regulation to have a better profile with the public and the press unless it has a high profile across industry sectors that it serves or potentially could serve.

Here, I am asking for your help. Whenever you speak, be sure to mention industry self-regulation. We're happy to get you PowerPoint slides that describe the program and its advantages.

Second, there is no such thing as a "free lunch" or "free self-regulation." We need to maintain and continue to grow the resources available to self-regulation. One of many pleasant surprises when I joined NARC was learning what a good job my predecessor, Jim Guthrie, had done, with your support, in building the resources available for self-regulation. Making sure that a broader range of industry members are aware of the benefits and advantages of self-regulation is essential to continuing to build support for the program.

Third, no matter how good the program, we must always be ready to adapt it to address new issues. We are aware that advertising messages are increasingly appearing in new media, blogs, on social networking sites and in word-of-mouth advertising.

Just today, NAD published a decision in which it determined that video placed by an advertiser on You Tube, which contained a comparative product demonstration, constituted advertising requiring claims substantiation.

Here again, we could use your help. Monitoring claims made on these new media can be challenging. If you see advertising on these media that we should be looking at, let us know.

The challenges faced in the area of children's advertising are particularly important. Our Children's Advertising Review Unit must carefully implement the new provisions in the *Guidelines*. CARU has also been asked by the Board of the National Advertising Review Council to continue to explore issues surrounding product placement and the advertising to children of paid-for telephone services, such as ring tones. It is particularly important to successfully launch the new Children's Food and Beverage Advertising Initiative, and build on that new self-regulatory effort.

Finally I can assure that, despite the excellent job that the NAD staff already does in moving cases forward, it understands that the timeliness of its decisions is one of the unique advantages of the self-regulatory process and will continue to focus on maintaining and enhancing that advantage.

### **Future of Self-Regulation**

So, I believe the future of self-regulation is strong. That is important to the advertising industry on two levels. The NARC advertising programs serve an important purpose themselves: preserving the truth and accuracy of national advertising. In addition, the success of the NARC programs has also provided the intellectual capital for other advertising self-regulation efforts.

During the past 10 years, new or improved advertising self-regulatory programs have been launched by the distilled spirits industry, the beer industry, the movie industry, the video-game industry and the pharmaceutical industry. Each self-regulatory program must stand or fall on its own merit, but when evaluating such programs, the NARC/NAD model provides the yardstick against which these programs are measured by the FTC staff. They ask whether the program is transparent, whether it has an adequate level of independence from the industry it regulates and whether it provides for consequences for non-compliance. These are all characteristics that the advertising industry had the wisdom and foresight to build into the NAD process in 1971.

Even in non-advertising areas – like the question of how automobile manufacturers and independent repair shops resolve disputes over access to the computer codes that have replaced carburetors in today’s high-tech cars – the FTC will turn to this basic self-regulatory model when it is looking for fast, flexible, non-regulatory solutions to marketplace issues.<sup>3</sup>

Thus, although I am honored to have the opportunity to serve as President of NARC, I am also aware of the responsibility to move the program forward. I appreciate the support I have received since beginning this job, and look forward to working with you in the future to ensure that the advertising industry continues to maintain its hard-earned reputation for leadership, objectivity and excellence in self-regulation.

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<sup>1</sup> Presentation of Christopher Cole, Esq., Mannatt, Phelps & Phillips, LLP. Annual NAD Conference, New York, NY, Sept. 25, 2006.

<sup>2</sup> <http://www.ftc.gov/opa/2007/01/weightloss.htm>

<sup>3</sup> Federal Trade Commission, prepared testimony before House Committee on Energy and Commerce, 2004.