

# Summary of Testimony

*by*

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On behalf of the National Advertising Review Council and the Council of Better Business Bureaus, I want to thank you for inviting me to appear here today to describe the ongoing work of the advertising industry's system of self-regulation.

Advertising self-regulation plays a critical role as part of a comprehensive system for preventing misleading advertising. That system includes federal enforcement by the Federal Trade Commission, enforcement at the state level by state attorneys general, private litigation under the Lanham Act, active prescreening by broadcast networks and local advertising review by many of the 125 bureaus that compose the national Better Business Bureau system.

As outlined in my prepared testimony, there are three main investigative bodies in the self-regulation process – the National Advertising Division (NAD), Electronic Retailing Self Regulation Program (ERSP) and the Children's Advertising Review Unit (CARU). Each of these investigative units monitors advertising, and reviews complaints from consumers and competitors to identify potentially misleading advertising. If the challenged advertising claims are determined to be misleading or unsubstantiated, advertisers are required to halt such claims in future advertising and correct all materials – including packaging and labeling.

The system is fast and efficient. Our goal is to close each review within 60 business days.

The system is also transparent. All of its decisions, regardless of the findings, are publicly reported so that the government and consumers can review and evaluate our work and the industry can conform its conduct to the standards set out in each decision. Indeed, in its 40-year history, the self-regulatory systems has produced more than 5,000 decisions, perhaps the nation's largest body of advertising law. Those decisions deal in detail with standards for claims interpretation, evidence necessary to

substantiate advertising claims, standards for product testing and a wide range of other advertising issues.

A significant number of our cases come from companies that question the truth and accuracy of a competitor's advertising and file a challenge with the self-regulatory system. Competitors are in a unique position to monitor the marketplace. Calling foul on claims that may be deceptive or misleading encourages advertisers to self-police their claims. This is a healthy process that is good for competitors, consumers and the integrity of advertising.

In other instances, discrete industries have stepped forward to invite closer scrutiny. Concern about dietary supplement advertising, for example, led the Council for Responsible Nutrition to initiate a special program on dietary-supplements advertising which has significantly increased both the number of competitive challenges we receive and the total number of cases we are able to bring in this important area. The Electronic Retailing Association has funded a special program to examine claims made in electronic retailing.

Although compliance with self-regulatory decisions is voluntary, the programs have compliance rates of 90 percent or better. This is a remarkable record and strong indication of the industry's support for the self-regulation.

Those advertisers that refuse to participate in the process or refuse to comply with recommendations to modify or discontinue questionable claims are publicly identified and the advertising at issue is referred to the appropriate government agency, usually the Federal Trade Commission, for further review.

Throughout its history, the advertising self-regulatory system has received strong support from the FTC. The referral of advertising to the FTC often prompts the

advertiser to either discontinue the advertising at issue, or in cases of non-participation, return to the self-regulatory process.

In some cases, referrals have resulted in FTC lawsuits. The FTC obtained a district court order requiring the refund of \$2.5 million against one dietary-supplement manufacturer that refused to participate in the self-regulatory process. In another weight loss case that was referred to the FTC, the Commission obtained an order for \$3.7 million. FTC support has been critical to the success of self-regulation, and the self-regulatory process has, in turn, provided benefits to the FTC and to consumers. Self-regulation quickly and efficiently resolves many issues that might otherwise come before the agency, thus freeing FTC resources to focus on consumer fraud and other priority issues.

There are a number of trends that we see in our competitor challenge and monitoring cases.

One growing area has been green marketing cases. Here, building on the FTC Green Guides, we are creating a body of precedent that can help advertisers avoid misleading or unsubstantiated environmental marketing claims. In the current economy we are also seeing a growing number of savings and value claims coming through the system. Here again our decisions give guidance on the appropriate substantiation for these claims. And reflecting the nations aging population we see a steady number of health and appearance claims targeted to "boomer" market. We are active in separating the truthful claims from the non truthful ones.

Our Electronic Retailing Self Regulation program which monitors direct response advertising in all electronic media including the internet reports seeing a growth questionable weight-loss claims, efficacy claims for health products including dietary supplements and nutritional products,

claims regarding “credit rescue” and work-at-home opportunities. Of concern in internet advertising is the use of “affiliate marketing programs,” in which deceptive claims for a single product are made at multiple and seemingly unrelated Websites. Marketing for acai berry products is a recent example of this.

All of our self-regulatory programs are working to examine advertising in a new-media context, including claims made on the internet, YouTube and in virtual reality worlds. In addition, to see examples of paid advertising presented in formats that can be confused as editorial content.

Many local BBBs maintain active advertising monitoring programs in their communities under the BBB Code of Advertising. BBBs report geographic variations in the types advertising issues they see. The Better Business Bureau of Utah, for example, reports a high number of negative option complaints – low-cost trial offers that are accompanied by inadequately disclosed monthly billing commitments at a much higher price, deceptive rebate offers and questionable claims for nutritional products. The Better Business Bureau of Metropolitan New York reports a similar increase in “free trial” offers followed by surprising monthly bills, along with advance-fee mortgages and concern about misleading advertising for apartments. Recently, the New York BBB worked with the New York State Attorney General to identify and stop seven electronic retailers who allegedly advertised low prices for consumer electronics over the Internet and then would not ship products unless consumers ordered more expensive goods – classic bait and switch practices transferred to the Internet.

In conclusion, the advertising industry has a strong, longstanding commitment to self-regulation as a tool to foster high standards of truth and accuracy in advertising. Each year hundreds of advertisers voluntarily participate in our system and hundreds more scrutinize our decisions for

guidance. Despite this high level of support and commitment, there still is significant work to be done to prevent misleading advertising. Self-regulation has an important role in that effort.