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ASRC
Headline: NARC Nixed; Name Changed to Advertising Self-Regulatory Council
Adland's Self-Policing Unit Opts for Clear Name

Do you know what NARC is and what it does?

Don't feel bad if the answer is no. Despite having been around for 40 years, the National Advertising Review Council faces a perennial lack of awareness from both inside the Beltway and on Madison Avenue. In a bid to be unambiguous about its purpose, the organization has renamed itself the Advertising Self-Regulatory Council.

Even though it is all about the advertising industry, the council has somehow largely failed to market itself effectively.

"It is a great irony that we have not been better at making sure people understand what we do," said Lee Peeler, president-CEO or ASRC. "By clarifying our mission and our role, we believe it will be easier to demonstrate to the industry where these opportunities lie."

"I always felt that NARC was an unfortunate acronym," said Nancy Hill, president-CEO of the American Association of Advertising Agencies and an ASRC board member. "It has the connotation of people undercover, spying on drug dealers—and that's not at all what we do," she joked.

The industry's need to self-regulate is crucial when Congress has expressed interest in everything from online privacy to childhood obesity—areas in which the ASRC and its subgroups have been active.

"We cannot just hide and hope the benefits of self-regulation are understood within the industry," said Bob Liodice, president-CEO of the Association of National Advertisers and ASRC board director. "The reality is that many in the marketing ecosystem" have not grasped it, he said.

Eric Mower, chairman-CEO of Eric Mower & Associates and ASRC board chair, said that a "critically important" part of the rebranding will be a more consistent marketing and communications effort.

One of the challenges is keeping straight which groups are involved, said Mr. Mower, referring to the "alphabet soup" that falls under the ASRC umbrella, including CARU (Children's Advertising Review Unit), NAD (National Advertising Division), and ERSP (Electronic Retailing Self-Regulation Program).

Also confusing is how the Council of Better Business Bureaus relates to the ASRC. (The latter is the policy-setting body of the self-regulation system; the former administers the system and provides the ASRC with part of its funding).

Further complicating matters is that self-regulation grew beyond its original intent. When it was founded in 1971, NARC's aim was to review advertising for truth and accuracy, and to provide guidance to the industry. But its mission has expanded over time (see the alphabet soup above).

Digital, for example, "changes the relationship between producers, intermediaries—such as agencies—and consumers," said Randy Rothenberg, president-CEO of the Interactive Advertising Bureau and ASRC board member. "And that changing relationship ... requires increased vigilance. It's something we never had to deal with before."

NAD/Cosmetics
Headline: Marketers Reach for Wrinkle Cream as Cosmetic Claims Face Scrutiny
Industry Players Have Long Refused to Smear Each Other, but Government and NAD Are Focusing on $60B Sector

Cosmetics have for years taken a backseat to drugs, food and nutritional supplements when it comes to scrutiny from regulators and other watchdogs, but that is changing.

The Food and Drug Administration, Congress and the National Advertising Division of the Council of Better Business Bureaus are all focusing attention on what may be the fastest-growing regulatory frontier in marketing: cosmetics ingredients and claims.

The Obama administration's fiscal 2013 budget includes a proposal for nearly $19 million in user fees for the cosmetics industry to fund enhanced monitoring, which would include a switch to mandatory from voluntary registration of ingredients.

Justifying the moves, the FDA points to explosive growth in the U.S. cosmetics market, to $60 billion annually. That market is also increasingly global, with the number of imported cosmetic products nearly doubling between 2004 and 2010, to almost 2 million.

Tougher scrutiny is also needed to address rapidly changing technology and more-aggressive marketing claims for skin-care products, Michael Landa, director of the FDA's Center for Food Safety and Applied Nutrition, said in testimony last month before a House subcommittee.

Increased use of extremely small particles (often erroneously trumpeted as "nanotechnology") may result in products or ingredients that work far differently than their conventional forebears, Mr. Landa said. The FDA is researching, for example, whether metal oxides used in topical cosmetics may penetrate the skin and become toxic when users are exposed to sunlight.

"The industry often refers to these products as "cosmeceuticals,' " Mr. Landa said. Though that term "has no legal or regulatory definition in the U.S.," he said, it could lead to some anti-aging creams' crossing the line to be classified and regulated like drugs.

Anti-wrinkle component retinol wasn't registered with the FDA before 2005 but is now listed in 200 products, Mr. Landa said. And the skin-care industry has listed more than 95 new anti-aging peptide formulations in more than 1,200 product-ingredients statements in recent years.

In one sign of how relatively loose U.S. cosmetic regulations are, Rep. Jan Schakowsky, D.-Ill., said that only 10 cosmetic ingredients are banned in the U.S., compared with 1,200 in the European Union.

On the other hand, Rep. Joe Barton, R.-Texas, said social media could do a better job as watchdog than a bunch of new FDA inspectors armed with tougher regulations.

"Where's the fire that we have to have these new authorities and these user fees?" Mr. Barton asked. "All it takes is one Facebook or one Twitter message and that product is deader than a doornail."

NAD is also taking a much harder look at marketers of cosmetics and skin-care products.

"We always try to do about 25% of our case-load as monitoring cases, particularly with industries that aren't good at policing themselves," said NAD Director Andrea Levine,

Cosmetic and skin-care marketers have been reluctant to challenge one another's claims, for fear that one challenge may easily beget another. Seeing that reluctance, NAD has increased its monitoring case load for the industry, Ms. Levine said.

In the past year, the organization's focus has been not just on smaller players, which historically make some of the most aggressive direct-response claims, but on three heavyweights: Procter & Gamble, L'Oréal and Johnson & Johnson.

In two of the cases, NAD found L'Oréal's Lancôme and J&J's Neutrogena lacked substantiation for claims that their creams could, respectively, refill wrinkles in about an hour or eliminate them in a week. Both companies disagreed with the decisions, but both said they'd take them into account in future ads.

Though the Personal Care Products Council is not arguing against improved regulation, in congressional testimony it rejected the call for mandatory product and ingredient registrations or new user fees.

"While cosmetic products remain among the safest in commerce, the existing system for regulating our industry is overdue for a makeover," said PCPC President Lezlee Westine. The additional safeguards and processes her group proposes "will provide the added transparency that consumers are seeking," Ms. Westine said.

ERSP
Headline: But Wait, There's More! Gaining Trust in the Direct-Response Realm
As Industry Has Grown, So Has Need to Police Marketplace for False Advertising Claims
Byline: Julie Coons, President & CEO, ERA

The direct-response industry has some of the most colorful, entrepreneurial people in the world writing copy and millions of customers reading or watching those advertising claims.

We've come a long way since the days of the Flowbee (spinning blades to cut your hair and a vacuum cleaner to whisk away the mess -- who wouldn't want one?) and the beloved, much-parodied Ginsu knife infomercials. Even skeptical shoppers are fascinated by OxiClean's side-by-side demonstrations and the incredible speed of the Slice-O-Matic.

It's an amazing industry, and I have a great job. The Electronic Retailing Association serves more than 400 members, including Expedia, HSN, QVC and, yes, the folks who made the Snuggie.

This industry is a lot of fun, and it's still growing. The best available statistics indicate that direct-to-consumer marketing is a $350 billion-a-year business.

A greater need to police the marketplace for false advertising claims has accompanied that growth. In 2004, ERA launched its own initiative, the Electronic Retailing Self-Regulation Program, to give honest advertisers a level playing field and to guide the uninitiated toward better practices. A couple of examples:

Advertising often mirrors social issues, and these are challenging financial times for many consumers. We've seen a spike in get-rich-quick schemes and debt-relief plans, including a "debt-elimination" offer (Tim Durkop's Legal Credit Cures) that involved testimonials: "Eliminate all your debt in as little as 30 days." "Tim will teach you how to eliminate your debt in as little as 10 minutes." "Tim's Fast and Easy guide to keeping your stuff will teach you all the secrets to eliminate your debt and keep the stuff you want -- the car, the boat, the motorcycle."

Dietary supplements and weight-loss products sometimes promise much more than they can deliver to people desperate for solutions. LeanBean Coffee tantalized consumers with the possibility of eating all their favorites -- junk food, ice cream, bacon and eggs -- while losing weight.

I probably don't need to say that, in both cases, ERSP directed the advertisers to modify or stop making the claims.

ERSP is a great illustration of how a dynamic industry sector can work with a Better Business Bureau-administered self-regulation structure to provide credible self-policing. We need an infomercial for that!

The program has reviewed nearly 6,000 hours of infomercials, tracked more than 3,000 products, monitored more than 3,000 websites and published nearly 300 decisions. It looks at advertising claims made on Facebook pages and in Twitter feeds. It has even ventured into the virtual world of Second Life, calling out a company that claimed its "photo-blocking" spray rendered license plates invisible to traffic cameras.

ERSP has provided extensive guidance on matters that are vital to direct response, including testimonials.

Consumer testimonials were a persuasive staple in the industry. In 2009, the Federal Trade Commission revised "Endorsements and Testimonials" guidelines to require more detailed disclosures than the previously acceptable "results may vary."

To encourage industry-wide compliance, ERSP has issued decisions, provided tutorials, hosted webinars and made conference appearances.

ERSP is good for our customers. It monitors the marketplace, holds advertisers responsible for their claims and practices, and tracks emerging issues and trends.

Self-regulation is good for the direct-response industry because tough review of advertising claims helps build consumer trust. It is a mark of the industry's respect for self-regulation that ERSP has had to refer only 19 advertisers to the FTC for failure to participate in a review or refusal to comply with an ERSP decision.

And we ensure that prospective ERA members know how seriously we take the system. Our guidelines for membership require companies to abide by our code of ethics, participate in any inquiry launched by our counterfeit fact-finding program and comply with any request from ERSP for substantiation of their claims. We bounce companies that don't play fair.

In the end, our commitment to self-regulation comes back to customers.

My father was an early executive at McDonald's Corp., and my sister and I grew up as part of the McDonald's family. At our house, that meant learning at a young age the value of a customer's trust.

I'm grateful for those lessons.

CARU
Headline: More Companies Turn to CARU to Pre-Screen Ads Targeting Kids
Lego, Others Find It Easier and Cheaper to Clear Creative Ahead of Time

Creating children's advertising is full of potential regulatory pitfalls.

For instance: If you show children playing in a pool, you better make sure the ad includes a shot of adult supervision. Or if an ad animates a toy, it cannot mislead kids into thinking it moves on its own if it does not do so in real life.

Get it wrong and you might have to reshoot.

To avoid expensive mistakes and reprimands, more marketers are turning to the Children's Advertising Review Unit for assistance ahead of time.

It's called "prescreening" in industry parlance, and CARU is now doing it in 200 campaigns annually, compared with just a handful a few years ago, according to the unit, which oversees procedures established by the Advertising Self-Regulatory Council.

"It's really caught fire," said CARU Director Wayne Keeley. "By catching problems early on in these prescreens, we don't open up as many cases because we're basically finding issues and resolving them at earlier stages."

The unit handled 65 formal cases in both 2011 and 2010, vs. 72 in 2009 and 84 in 2008. The drop is significant given the growing number of online marketing avenues, which increases the odds for mistakes.

Established in 1974 and administered by the Council of Better Business Bureaus, CARU oversees all advertising directed to children 11 and younger (12 and younger for certain web oversight, such as online data collection). The 15-page rulebook covers a range of potential issues, including deception, misleading claims, sweepstakes, web content, data-collection practices and blurring of editorial content with advertising.

When violations are found, CARU relies on advertisers' voluntary cooperation to resolve problems. Some of the policies overlap with federal law, such as the Children's Online Privacy Protection Act. If marketers don't respond, the unit will sometimes refer the case to government agencies such as the Federal Trade Commission.

In February, for example, it notified the FTC about concerns that the "Kid Zone" on a website run by the Clearwater Aquarium could be collecting information from children without parental consent. The aquarium has since removed that portion of its site.

Marketers must be dues-paying CARU members to get prescreening, which is free. The unit has 75 marketer members, including Burger King, McDonald's, Coca-Cola and Kellogg. Membership fees range form $3,500 to about $60,000 a year, depending on kid-targeted media spending.

CARU staffers are asked to review campaigns at all stages in the creative process, Mr. Keeley said.

John Feldman, an advertising lawyer with Reed Smith, said there is resistance to prescreening in certain cases because "advertisers don't like to get their creativity stunted before it gets on the air."

Michele Totonis, a lawyer for longtime CARU member Lego, said the company regularly prescreens campaigns. In recent years, Lego has received advice on how to distinguish content, such as online mini-movies, from advertising. Her recommendation for other marketers is to run campaigns by CARU early in the process.

"You save money, and you save energy and effort," Ms. Totonis said.

Your Regulation-Resource Reference Guide

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