

Revised effective June 1, 2019

THE ADVERTISING INDUSTRY'S PROCESS OF VOLUNTARY SELF-REGULATION

Policies and Procedures by
Better Business Bureaus (BBB) National Programs

Procedures for:

**The National Advertising Division
(NAD)**

**The Children's Advertising Review Unit
(CARU)**

**The National Advertising Review Board
(NARB)**



1.1 Definitions

A. The term “national advertising” shall include any paid commercial message, in any medium (including labeling), if it has the purpose of inducing a sale or other commercial transaction or persuading the audience of the value or usefulness of a company, product or service; if it is disseminated nationally or to a substantial portion of the United States, or is test market advertising prepared for national campaigns; and if the content is controlled by the advertiser.

B. The term “advertiser” shall mean any person or other legal entity that engages in “national advertising.”

C. The term “advertising agency” shall mean any organization engaged in the creation and/or placement of “national advertising.”

D. The term “public or non-industry member” shall mean any person who has a reputation for achievements in the public interest.

2.1 NAD/CARU

A. Function and Policies

The National Advertising Division (NAD) , and the Children’s Advertising Review Unit (CARU)of the Better Business Bureaus (BBB) National Programs shall be responsible for receiving or initiating, evaluating, investigating, analyzing (in conjunction with outside experts, if warranted, and upon notice to the parties), and holding negotiations with an advertiser, and resolving complaints or questions from any source involving the truth or accuracy of national advertising, or consistency with CARU’s *Self-Regulatory Program for Children’s Advertising*.

NAD, CARU and the National Advertising Review Board (NARB) are investigative or appellate units of the advertising industry’s system of voluntary self regulation. Policies and procedures are established by BBB National Programs. A decision by NAD/CARU/NARB 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.

Any questions or concerns related to a pending case at NAD or CARU should be directed to the NAD or CARU Vice President. Questions or concerns regarding closed NAD or CARU cases should be directed to the BBB National Programs Executive Vice President, Policy and Program Development.

B. Advertising Monitoring NAD and CARU are charged with independent responsibility for monitoring and reviewing national advertising for truthfulness, accuracy and, in the case ARU, consistency with CARU’s *Self-Regulatory Program for Children’s Advertising*.

C. Case Reports

The BBB National Programs shall publish at least ten times each year the *Case Reports*, which will include the final case decisions of NAD, CARU and NARB, and summaries of any other matters concluded since the previous issue. Each final NAD, CARU and NARB case decision shall identify the advertiser, challenger, advertising agency, product or service, and subject matter reviewed. It shall also include a summary of each party’s position, NAD/CARU/NARB’s decision and its rationale, and a concise Advertiser’s Statement, if any (See Section 2.9).

CARU shall publish in the *Case Reports* a summary of CARU’s actions, other than formal cases, during the preceding month (Activity Report). Included in this Activity Report shall be the following:

- (1) Inquiries—summaries of informal inquiries under CARU’s Expedited Procedures (see Section 2.13 below);
- (2) Pre-Screening/Submissions—summaries of story-boards or videotapes of proposed advertising submitted to CARU for prescreening.

D. Guidance to the Public

From time to time, after consultation with the General Counsel:

(1) NAD or CARU may inform the public, through the *Case Reports* and other media, of trends, principles and interpretations derived from previously published case decisions.

(2) After consulting with the General Counsel, CARU may also inform the public of new interpretations of its guidelines that believes would provide appropriate advance notice of the application of CARU guidelines to existing industry practices maintained by multiple advertisers. Prior to publication of any such interpretation, CARU will prepare appropriate explanatory materials for the BBB National Programs and may publish the interpretation in the *Case Reports* and other media if, after 30 days, BBB National Programs has not scheduled a meeting to consider the matter. If such a meeting is scheduled, CARU may publish the interpretation after BBB National Programs' consideration unless BBB National Programs revises CARU's *Self-Regulatory Program for Children's Advertising* in a manner that moots the interpretation.

E. Confidentiality of NAD/CARU/NARB Proceedings

(1) NAD, CARU, and NARB proceedings are confidential except for:

(a) publication of final case decisions and summaries of other actions, as provided by these Procedures;

(b) NAD, CARU, and NARB press releases announcing final case decisions and summaries;

(c) referrals by NAD, CARU, or NARB to government agencies as provided by these Procedures; and

(d) actions taken by NAD or CARU under Sections 2.1(F)(2) and (F)(3) of these Procedures.

(2) Published NAD, CARU, and NARB decisions are the only permanent records required to be kept as to the basis of an inquiry, the issues defined, the facts and data presented, and the conclusions reached by NAD/CARU/NARB.

(3) By participating in a proceeding, parties agree:

(a) to keep the proceedings confidential throughout the review process;

(b) not to subpoena any witnesses or documents regarding the review proceeding from NAD, CARU, NARB, BBB National Programs or the BBB National Programs in any future court or other proceeding (except for the purposes of authentication of a final, published case decision); and

(c) to pay attorney's fees and costs if a subpoena is attempted in violation of Section (b) above

F. Parties' Agreement/Referrals to Law Enforcement Agencies

(1) It is the policy of NAD, CARU, NARB, and BBB National Programs not to endorse any company, product, or service. Any decision finding that advertising has been substantiated should not be construed as an endorsement. Similarly, an advertiser's voluntary modification of advertising, in cooperation with NAD/CARU/NARB self-regulatory efforts, is not to be construed as an admission of any impropriety.

(2) By participating in a NAD, CARU, or NARB proceeding, parties agree:

(a) not to issue a press release regarding any decisions issued; and/or

(b) not to mischaracterize any decision issued or use and/or disseminate such decision for advertising and/or promotional purposes. NAD/CARU/NARB may take whatever action it deems appropriate if a party violates this provision, including the issuance of a public statement for clarification purposes.

(3) When NAD or CARU commences a review pursuant to Section 2.2 of these procedures, and the advertiser elects not to participate in the self-regulatory process, NAD/CARU shall prepare a review of the facts with relevant exhibits and forward them to the appropriate federal or state law enforcement agency. Reports of such referrals shall be included in the *Case Reports*.

G. Academic and Other Expert Advisors CARU may establish a panel of academic and other experts as needed from which CARU may obtain advice pertinent to advertising, cognitive ability, nutrition and other matters, and on the application of CARU's Self-Regulatory Program for Children's Advertising.

2.2 Filing a Complaint

A. Any person or legal entity may submit to NAD/CARU any complaint regarding national advertising, regardless of whether it is addressed to consumers, to professionals or to business entities. Likewise, NAD/CARU may initiate a proceeding as part of their monitoring responsibility pursuant to Section 2.1(B) of these Procedures. All complaints (except those submitted by consumers), including any supporting documentation, must be submitted in duplicate hard copy and in an electronic format (including evidentiary exhibits when possible.) Challengers should limit the length of their submissions to 20 typewritten pages (12 point type) excluding evidentiary exhibits, and must identify all express and implied claims to be considered by NAD/CARU. A challenger may further expedite the

review of the contested advertising by waiving its right to reply (see Section 2.6(B)) or by requesting an "Expedited Review" pursuant to Section 2.11 of these Proceedings.

(1) **BBB National Partner Filing Fees**

Competitive challenges before NAD by BBB National Partners shall be filed together with a check, made payable to BBB National Programs, in the amount of \$17,500 for companies that have been National Partners of BBB National Programs (or formerly the Council of Better Business Bureaus) for one year or less and \$ 15,000 for companies that have been BBB National Programs, or formerly the Council of Better Business Bureaus for more than one year.

(2) **Non-National Partner Filing Fees**

Competitive challenges before NAD by companies that are not National Partners shall be filed together with a check, made payable to BBB National Programs in the amount of: (a) \$20,000, if the challenger's gross annual revenue is less than \$1 billion; (b) \$25,000, if the challenger's gross annual revenue is \$1 billion or more.

The filing fee shall be accompanied by a statement indicating the category into which the challenger's revenues fall. In the case of a challenge filed by a subsidiary, the filing fee is determined by the gross annual revenue of the parent company.

(3) **CARU Filing Fees**

Competitive challenges before CARU shall be filed together with a check made payable BBB National Programs, in the amount of \$2,500 (for National Partners) or \$6,000 (for non-National Partners or CARU Supporters).

(4)

The Executive Vice President, Policy and Program Development of BBB National Programs shall have the discretion to waive or reduce the fee for any challenger who can demonstrate economic hardship. If an NAD or CARU case is administratively closed for any reason other than consent of the parties pursuant to Section 2.2(E), fifty percent of the filing fee will be refunded.

B. Upon receipt of any complaint, NAD/CARU shall promptly acknowledge receipt of the complaint and, in addition, shall take the following actions:

(1) If, at the commencement or during the course of an advertising review proceeding, NAD/CARU concludes that the advertising claims complained of are: (a) not national in character; (b) the subject of pending litigation or an order by a court; (c) the subject of a federal government agency consent decree or order; (d) permanently withdrawn from use prior to the date of the complaint and NAD/CARU receives the advertiser's assurance, in writing, that the representation(s) at issue will not be used by the advertiser in any future advertising for the product or service; (e) of such technical character that NAD/CARU could not conduct a meaningful analysis of the issues; or (f) without sufficient merit to

warrant the expenditure of NAD/CARU's resources, NAD/CARU shall advise the challenger that the complaint is not, or is no longer, appropriate for formal investigation in this forum. Upon making such a determination, NAD/CARU shall advise the challenger that a case will not be opened, or in the event that an advertising review proceeding has already been commenced, shall administratively close the case file and report this action in the next issue of the Case Reports. When it can, NAD/CARU shall provide the challenger with the name and address of any agency or group with jurisdiction over the complaint.

(2) If the complaint relates to matters other than the truth or accuracy of the advertising, or consistency with CARU's Self-Regulatory Program for Children's Advertising, NAD/CARU shall so advise the challenger, as provided above, and where a significant national advertising issue is raised, shall forward a copy of the complaint to the BBB National Programs Executive Vice President, Policy and Program Development who, in consultation with the NARB Chair, shall consider whether the complaint is appropriate for a consultive panel.

(3) If, in its discretion, NAD/CARU determines that a complaint is too broad or includes too many issues or claims to make resolution within the time constraints prescribed by these Procedures feasible,

NAD/CARU may request that the challenger limit the issues or claims to be considered in the review proceeding, or, in the alternative, advise the challenger that the matter will require an extended schedule for review.

(4) If a complaint challenges advertising for more than one product (or product line), NAD/CARU may return the complaint to the challenger and request that separate complaints be submitted for each of the advertised products.

(5) If the complaint relates to the truth or accuracy of a national advertisement, or consistency with CARU's Self-Regulatory

Program for Children's Advertising, NAD/CARU shall promptly forward the complaint by facsimile, overnight or electronic mail to the advertiser for its response.

(6) Complaints regarding specific language in an advertisement, or on product packaging or labels, when that language is mandated or expressly approved by federal law or regulation; political and issue advertising, and questions of taste and morality (unless raising questions under CARU's Self-Regulatory Program for Children's Advertising), are not within NAD/CARU's mandate. If the complaint, in part, relates to matters other than the truth and accuracy of the advertising, or consistency with CARU's Self-Regulatory Program for Children's Advertising, NAD/CARU shall so advise the challenger.

(7) NAD/CARU reserves the right to refuse to open or to continue to handle a case where a party to an NAD/CARU proceeding publicizes, or otherwise announces, to third parties not directly related to the case the fact that specific advertising will be, is being, or

has been, referred to NAD/CARU for resolution. The purpose of this right of refusal is to maintain a professional, unbiased atmosphere in which NAD/CARU can affect a timely and lasting resolution to a case in the spirit of furthering voluntary self regulation of advertising and the voluntary cooperation of the parties involved.

C. Complaints originating with NAD shall be considered only after the General Counsel of the NARB has reviewed the proposed complaint and has determined that there is a sufficient basis to proceed. Complaints originating with CARU that would apply a new interpretation or application of CARU's Self-Regulatory Program for Children's Advertising shall be considered only after the General Counsel of NARB has reviewed the proposed interpretation or application and has determined that there is a sufficient basis to proceed.

D. In all cases, the identity of the challenger must be disclosed to NAD/CARU who shall advise the advertiser of the identity of the challenger.

E. NAD/CARU will administratively close a case if, prior to NAD/CARU providing a copy of its decision to the advertiser, the challenger and advertiser consent in writing to closure of the case. Cases closed based on consent of the parties will be reported in the NAD/CARU Case Reports as "Administratively Closed on Consent of Parties." If a case is administratively closed based on consent of the parties, NAD/CARU shall not be precluded from filing a complaint based on the same or similar claims as part of NAD/CARU's monitoring responsibility pursuant to Section 2.1(B).

2.3 Parties to NAD/CARU/NARB Proceedings

A. Except as provided in Section 2.3(B), the parties to the proceeding are (i) NAD/CARU acting in the public interest, (ii) the advertiser acting in its own interest, and (iii) the challenger(s), whose respective rights and obligations in an NAD/CARU/NARB proceeding are defined in Sections 2.2, 2.4, 2.5, 2.6, 2.7, 2.8, 2.9, 2.10, 2.11, 2.12, 3.1, 3.2, 3.3, 3.5, and 4.1 of these Procedures.

B. NAD/CARU shall not be a party to an NARB proceeding except in cases where NAD/CARU filed the complaint as part of its monitoring

responsibility. When NAD/CARU is not a party to an NARB proceeding, NAD/CARU representatives may attend the NARB hearing to answer questions from the panel when requested by the NARB Panel Chair.

2.4 Information in NAD/CARU Proceedings

A. All information submitted to NAD/CARU by the challenger and the advertiser, pursuant to Sections 2.4 through 2.11 of these Procedures shall be submitted in duplicate hard copy and in an electronic format (including evidentiary exhibits when possible). Upon receipt of a filing by any party, NAD/CARU shall forward a copy to the other party by messenger, facsimile, electronic or overnight mail. All transmittals by NAD/CARU during the course of an advertising review proceeding shall be paid for by the challenger, unless the challenger is a consumer or otherwise demonstrates economic hardship, in which case all transmittals shall be paid for by NAD/CARU.

B. Time periods for all submissions to NAD, CARU and NARB shall commence on and include the first day of business following the date of delivery of the triggering document and shall not include Saturdays, Sundays or Federal holidays.

C. NAD/CARU shall not consider any data submitted by a challenger that has not been made available to the advertiser, and any materials submitted by a challenger on condition that they not be shown to the advertiser shall promptly be returned. In the case of studies, tests, polls and other forms of research, the data provided should be sufficiently complete to permit expert evaluation of such study, test, poll or other research. NAD/CARU shall be the sole judge of whether the data are sufficiently complete to permit expert evaluation. If a party initially submits incomplete records of data that is then in its possession, and later seeks to supplement the record, NAD/CARU may decline to accept the additional data if it determines that the party's failure to submit complete information in the first instance was without reasonable justification.

D. An advertiser may submit trade secrets and/or proprietary information or data (excluding any consumer perception communications data regarding the advertising in question) to

NAD/CARU with the request that such data not be made available to the challenger, provided it shall:

- (1) clearly identify those portions of the submission that it is requesting be kept confidential in the copy submitted for NAD/CARU's review;
- (2) redact any confidential portions from the copy submitted by the advertiser to the challenger;
- (3) provide NAD with both a redacted and unredacted copy of the submission;
- (4) provide a written statement setting forth the basis for the request for confidentiality;
- (5) 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
- (6) attach as separate exhibit to NAD/CARU's and the challenger's copy of the submission 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 advertiser in its rebuttal of the challenge. Failure of the advertiser to provide this information will be considered significant grounds for appeal of a decision by a challenger. (See Section 3.1)

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

F. Whenever CARU has consulted an expert from the panel established under Section 2.1(G), or otherwise, in connection with the filing of a complaint, consideration of a complaint, or pre-

screening, the expert's opinion shall be in writing, or summarized in writing by CARU. The expert's opinion and a brief description of the expert's qualifications shall be made available to the parties promptly. The advertiser or challenger may respond to the expert's opinion in any submission under Sections 2.5, 2.6, 2.7 or 2.8. When furnished to the advertiser or challenger, CARU shall inform the parties that there has been no final determination by CARU on any matter contained in the expert's opinion.

2.5 The Advertiser's Substantive Written Response

The advertiser shall, within 15 business days after receipt of the complaint, submit to both NAD/CARU and the challenger, one hard copy and one electronic format copy (including exhibits when possible), of its written response that provides substantiation for any advertising claims or representations challenged, any objections it may have to the proceedings on jurisdictional grounds, as defined in Sections 2.2(B)(1), together with copies of all advertising, in any medium, that is related to the campaign that includes the challenged advertising. Where the written response prepared by the advertiser for the challenger shall have any material designated as confidential redacted, it shall include, as a separate exhibit, a comprehensive summary of the redacted information in the manner set forth in Section 2.4(D) above. NAD is to receive both the redacted and unredacted versions of the written response as well as the separate comprehensive summary.

The advertiser may not include a counter challenge (i.e., a request that NAD/CARU review advertising claims made by the challenger) in its response. Such a request must be filed as a separate complaint as described in Section 2.2 of these Procedures. Advertisers should limit the length of their response to 20 typewritten pages (12 point type), excluding evidentiary exhibits. Advertiser responses addressed to the issue of NAD/CARU jurisdiction should be submitted as soon as possible after receipt of the complaint, but in any event, must be submitted no later than 15 business days after the advertiser receives the initial complaint. (See also Section 2.10 Failure to Respond.)

2.6 The Challenger's Reply

A. Within ten business days of receipt of the advertiser's response, the challenger may submit to both NAD/CARU and the advertiser, one hard copy and one electronic format copy (including exhibits when possible), of its reply, if any. Challengers should limit the length of their reply to 20 typewritten pages (12 point type), excluding evidentiary exhibits. If the challenger does not submit a reply, NAD/CARU shall proceed to decide the challenge upon the expiration of the challenger's time to reply, subject to a request by NAD/CARU for additional comments or data under Section 2.8(A).

B. Expediting Review by Waiving the Reply

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

2.7 Advertiser's Final Response

Within ten business days after receipt of the challenger's reply, the advertiser shall submit a response, if any, to both NAD/CARU and the challenger, one hard copy and one electronic format copy (including exhibits when possible). Advertisers should limit the length of their response to 20 typewritten pages (12 point type), excluding evidentiary exhibits.

2.8 Additional Information and Meetings with the Parties

A. In the event that NAD/CARU deems it necessary and requests further comments or data from an advertiser or challenger, the written response must be submitted within six business days of the request. NAD/CARU will immediately forward the additional response to the advertiser or challenger, who will be afforded six business days to submit its own response to the submission.

Unless NAD/CARU requests further comments or data under this paragraph, no additional submissions will be accepted as part of the case record, and any unsolicited submissions received by NAD/CARU will be returned.

B. NAD/CARU, in its discretion, may, in addition to accepting written responses, participate in a meeting, either in person or via teleconference, with either or both parties. In the event that NAD/CARU participates in a meeting in which only one party participates, NAD/CARU shall notify the other party that a teleconference or meeting has been scheduled to take place. Where feasible, upon request, an advertiser shall be afforded the opportunity to schedule its meeting with NAD/CARU after the date of the challenger's meeting. All meetings with the parties shall be held within 15 business days of NAD's receipt of the Advertiser's Final Response (Section 2.7).

C. Except upon request by NAD, as provided in Section 2.8(A) of these Procedures, no new evidence may be submitted for inclusion in the record at these meetings. Any non-requested information provided during a meeting that is not already in the submissions of the party (including visual demonstrations, summaries and other documentary evidence) will not be included in the record and will not be considered by NAD/CARU in making its decision or by an NARB Panel in reviewing NAD's decision on appeal.

D. The period of time available for all communications, including meetings and written submissions, shall not exceed the time limits set forth in Sections 2.4 through 2.8 above except upon agreement of NAD/CARU and the parties.

2.9 Decision

A. The Final Case Decision

Within 20 business days of its receipt of the last document authorized by Sections 2.5 to 2.8 above, or, if the parties elect to meet with NAD/CARU, upon completion of the final meeting, NAD/CARU will formulate its decision on the truth and accuracy of the claims at issue, or consistency with CARU's Self-Regulatory Program for Children's Advertising; prepare the final case decision; provide a copy to the advertiser; and invite the advertiser to

add an Advertiser's Statement within five business days of receipt.

B. Advertiser's Statement

In the event that NAD/CARU decides some or all of the advertising claims at issue are not substantiated, the advertiser shall, within five business days of receipt of the decision, submit an Advertiser's Statement that initially states whether the advertiser:

- (1) agrees to comply with NAD/CARU's recommendations, or
- (2) will appeal all or part of NAD/CARU's decision to the NARB as specified in Section 3.1.

The Advertiser's Statement may include a concise supporting statement, no longer than one-half of one double-spaced typewritten page (12 point type), which does not reargue the merits of the case, mischaracterize the decision, or contain new facts. NAD/CARU reserves the right, following consultation with the advertiser, to edit for length or inappropriate material. In the event that the advertiser fails to submit an Advertiser's Statement as required by this Section, NAD/CARU may refer the matter to an appropriate government agency for review and possible law enforcement action.

C. Publication of the Decision

Upon receipt of the final version of the Advertiser's Statement, NAD/CARU shall provide copies of the final case decision to the advertiser and the challenger, by facsimile, electronic or overnight mail or messenger, and make the decision available to the public through press announcements and publication of the decision in the next Case Reports.

D. Case Report Headings

NAD/CARU's decisions in the Case Reports shall be published under the headings:

- Advertising Substantiated
- Advertising Referred to NARB
- Advertising Modified or Discontinued
- Advertising Substantiated/Modified or Discontinued
- Administrative Closing
- Advertising Referred to Government Agency

- No Substantiation Received
- Compliance

E. Annual Summary

The first issue of the Case Reports each calendar year shall include a summary, prepared by NAD/CARU, which includes the number, source and disposition of all complaints received and cases published by NAD/CARU during the prior year.

2.10 Failure to Respond

A. If an advertiser fails to file a substantive written response within the period provided in Section 2.5 above, NAD/CARU shall release to the press and the public a "notice" summarizing the advertising claims challenged in the complaint, and noting the advertiser's failure to substantively respond.

B. If the advertiser fails to file a substantive written response within an additional 15 business days, NAD/CARU 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 in the next issue of the Case Reports.

C. If a challenger fails to file a reply within the time provided by Section 2.6, or an advertiser fails to file a response within the time provided in Section 2.7, the untimely document shall not be considered by NAD/CARU, or by any panel of the NARB.

2.11 Expedited Proceeding

A challenger may, with the consent of the advertiser, request that NAD/CARU engage in an expedited review of the contested advertising. This request must be made in the challenger's initial challenge letter to NAD/CARU, which shall not exceed four double-spaced typewritten pages. Based on the complexity of the challenge, NAD/CARU shall determine whether the matter is appropriate for an expedited review. If a challenger's request for an expedited proceeding is accepted, the challenger automatically waives its right to reply to the Advertiser's substantive written response. The

advertiser will have 15 business days in which to respond to NAD/CARU's inquiry. NAD/CARU will forward the advertiser's response to the challenger. Thereafter, NAD/CARU may, in its discretion, request additional information from either party. NAD/CARU will issue a summary decision within 15 business days after the close of the evidentiary record. If NAD/CARU determines that the advertising should be modified or discontinued, the advertiser may then request a full review (with any additional submissions permitted by these Procedures) and a detailed decision. In such a case, the advertiser will be required to discontinue the challenged advertising until the final decision is issued. In an expedited proceeding, the parties' rights to appeal (as described in Sections 3.1(A) and 3.1(B) of these Procedures) attach only in the event that the advertiser requests a full review and after a detailed decision is issued on the merits.

2.12 Requests for Product

When CARU's monitoring identifies an advertisement which may raise concerns under the

Guidelines, but only physical inspection of the product or packaging can determine whether such concerns exist, CARU will request a sample of the product from the advertiser. If the advertiser complies with CARU's request within five business days, and inspection of the product reveals no questions of non-compliance with the Guidelines, no inquiry will be opened.

2.13 CARU Expedited Proceeding

Notwithstanding Sections 2.2 through 2.11 above, in instances of incorrect commercial placement or technical error, if the advertiser responds within five business days of receipt of an inquiry regarding non-compliance with CARU's

Guidelines and the advertising is substantiated, or if within an additional five business days any violation of the Guidelines is remedied, no formal case will be opened, and the results will be published in the CARU Activity Report.

3.1 Appeal

A. When an advertiser does not agree to comply with NAD/CARU's decision on one or

more issues involved in a case, the advertiser shall be entitled to panel review by the NARB. To appeal an NAD/CARU decision, an advertiser shall make a request for a referral to the NARB and specify any and all issues for its appeal in the Advertiser's Statement it prepares in response to NAD/CARU's decision pursuant to Section 2.9(B). All advertiser requests for an appeal to NARB shall be submitted together with a check made payable to BBB National Programs in the amount of \$20,000. In such cases, NAD/CARU shall publish its decision and the Advertiser's Statement in the next Case Reports under the heading "Advertising Referred to NARB". The Executive Vice President, Policy and Program Development of BBB National Programs shall have the discretion to waive or reduce the fee for any appellant who can demonstrate economic hardship.

B. Within ten business days after the date of receipt of a copy of NAD/CARU's final case decision, the challenger may request review by the NARB by filing a letter, not to exceed 20 double-spaced pages plus any relevant attachments from the NAD/CARU case record, explaining its reasons for seeking review. The letter shall include a non-refundable review fee of \$5,000 in a check made payable to BBB National Programs, which will be credited toward the filing fee required by Section 3.1(C) if the review is granted, and should be addressed to the Chair, National Advertising Review Board (NARB), 112 Madison Ave., 3rd Floor, New York, NY 10016. The challenger shall send a copy of this letter to the advertiser and to NAD/CARU. Within ten business days after receipt of the copy of the request for review, the advertiser may and NAD/CARU shall submit a response to the NARB Chair, not to exceed 20 double-spaced pages plus any relevant attachments from the NAD/CARU case record. A copy of the advertiser's and NAD/CARU's responses shall be sent by the advertiser and NAD/CARU, respectively, to the other parties, except that portions of the case record that were submitted to NAD/CARU on a confidential basis shall not be sent to the challenger unless the advertiser consents. No other submissions shall be made to the NARB Chair. These letters, together with the relevant sections of the case record provided by the parties, will be reviewed by the NARB Chair, who within

ten business days after the time for the last submission under this rule has expired shall proceed to appoint a review panel as outlined in Section 3.3 if the Chair determines there is a substantial likelihood that a panel would reach a decision different from NAD/CARU's decision. The NARB Chair shall return the record to NAD/CARU after (s)he makes his or her determination.

C. When an advertiser appeals to the NARB pursuant to Section 3.1(A), or if the NARB Chair grants a challenger's request for NARB review pursuant to Section 3.1(B), the appellant shall pay a filing fee by check made payable to BBB National Programs in the amount of \$20,000. The Executive Vice President, Policy and Program Development of BBB National Programs shall have the discretion to waive or reduce the fee for any appellant who can demonstrate economic hardship. NAD/CARU shall prepare the relevant portions of the case record and forward them to the NARB within five business days of the issuance of the press release. The NARB shall thereafter make copies of and mail the case record to the parties, except that portions of the case record that were submitted to NAD/CARU on a confidential basis shall not be sent to the challenger unless the advertiser consents. The appellant shall pay for all NARB copying and transmittal costs incurred as a result of an appeal or request for appeal pursuant to Sections 3.1 through 3.6 of these Procedures. Where the advertiser and the challenger both appeal, these costs shall be divided equally between them. In any event, the NARB shall pay these costs for any party that can demonstrate economic hardship.

D. In the event that the advertiser shall exercise its right to an appeal under Section 3.1(A), the challenger shall have the right to appeal any additional issues considered by NAD/CARU that have not been appealed by the advertiser. In the event that a challenger's request to appeal is granted by the NARB Chair under Section 3.1(B), the advertiser may appeal any additional issues considered by NAD/CARU that have not been appealed by the challenger, notwithstanding that its time to file an appeal as of right has expired. The challenger or advertiser may exercise the right to appeal under this paragraph by submitting a letter to the NARB at the address listed in

Section 3.1(B), requesting the appeal and specifying the additional issues it wishes to appeal. The cross-appellant shall pay a filing fee by check made payable to BBB National Programs in the amount of \$20,000. Executive Vice President, Policy and Program Development of BBB National Programs shall have the discretion to waive or reduce the fee for any cross-appellant who can demonstrate economic hardship. In the case of the challenger, the letter shall be due within five business days of receipt of the final case decision with the advertiser's statement indicating the advertiser's election to appeal; in the case of the advertiser, the letter is due within five business days of the date of receipt of the NARB Chair's determination granting the challenger's request to appeal. Copies of these letters shall be sent by the issuing party to all of the other parties.

E. Submission Schedule

(1) **Submissions when there is no cross-appeal.** The party appealing shall, within ten business days of receipt of the case record prepared by NAD/CARU, submit to the NARB Chair, addressed as indicated in Section 3.1(B) with a copy to NAD/CARU, a letter not to exceed 30 double-spaced pages explaining its position. The appellant shall send a copy of the letter to the opposing party who shall have ten business days after its receipt to submit a response, not to exceed 30 double-spaced pages, to the NARB Chair with copies to the other party and also to NAD/CARU. No other submissions shall be made.

(2) **Submissions when there is a cross-appeal.** Each party shall, within ten business days of receipt of the case record prepared by NAD/CARU, submit to the NARB Chair, addressed as indicated in Section 3.1(B) with a copy to NAD/CARU, a letter not to exceed 15 double-spaced pages explaining its position with respect to its appeal. Each party shall send a copy of the letter to the opposing party who shall have ten business days after its receipt to submit a response, not to exceed 15 double-spaced pages, to the NARB Chair with copies to the other party and also to

NAD/CARU. No other submissions shall be made.

3.2 Content of Submissions to NARB

The written submissions to the NARB may contain new arguments and cite to applicable legal precedent, including NAD, CARU, or NARB precedent, even if it was not cited in submissions to NAD or CARU. The written submissions to NARB may not contain any evidence or facts that are not in the case record forwarded to NARB pursuant to Section 3.1(C) of these Procedures. In the event that the NARB Chair, after consultation with the parties, determines that a party has included evidence or facts outside this record in its submission to NARB, the Chair may, in his/her discretion:

(a) return the brief to the party with a request that it redact any information that NARB has identified as outside the record and resubmit its brief within three business days. If the party fails to submit a properly redacted brief within three days, it shall be deemed to have defaulted on its appeal; or

(b) remand the matter to NAD/CARU for a determination on whether the additional information constitutes “newly discovered evidence” sufficient to warrant reopening of the case under the “extraordinary circumstances” provisions of Section 3.8 of these Procedures. If NAD or CARU determines that it is not appropriate to reopen the case, NAD/CARU shall return the brief to the NARB Chair who shall handle any information outside the record in the manner provided by Section 3.2(a) above.

3.3 Appointment of Review Panel

The NARB Chair, upon receipt of an appeal by an advertiser, or upon granting a request to appeal by a challenger, shall appoint a panel of qualified NARB members and designate the panel member who will serve as panel Chair.

3.4 Eligibility of Panelists

An “advertiser” NARB member will be considered as not qualified to sit on a particular panel if his/her employing company manufactures or sells a

product or service which directly competes with a product or service sold by the advertiser involved in the proceeding. An “agency” NARB member will be considered as not qualified if his/her employing advertising agency represents a client that sells a product or service which directly competes with the product or service involved in the proceeding. A NARB member, including a non-industry member, shall disqualify himself/herself if, for any reason arising out of past or present employment or affiliation, (s)he believes that (s)he cannot reach a completely unbiased decision. In addition, the NARB Chair shall inform the parties of their right to object, for cause, to the inclusion of individual panel members, and to request that replacement members be appointed. Requests will be subject to approval by the NARB Chair. If the NARB Chair is unable to appoint a qualified panel, (s)he shall complete the panel by appointing one or more alternate NARB member(s).

3.5 Composition of Review Panel

Each panel shall be composed of one “public” member, one “advertising agency” member, and three “advertiser” members. Alternates may be used where required. The panel will meet at the call of its Chair, who will preside over its meetings, hearings and deliberations. A majority of the panel will constitute a quorum, but the concurring vote of three members is required to decide any substantive question before the panel. Any panel member may write a separate concurring or dissenting opinion, which will be published with the majority opinion.

3.6 Procedure of Review Panel

A. As soon as the panel has been selected, the NARB Chair will inform all parties as to the identity of the panel members. At the same time, (s)he will mail copies of all submissions under Section 3.1(C) to each of the panel members, and will, in like manner, send them any response or request submitted by any other party or parties. Within ten days after receiving copies of the appeal, the panel members shall confer and fix the time schedule that they will follow in resolving the matter.

B. The panel, under the direction of its Chair, should proceed with informality and speed. If any

party to the dispute before NAD/CARU requests an opportunity to participate in the proceedings before the panel, (s)he shall be accommodated. All parties to a matter before the panel shall be given ten days notice of any meeting at which the matter is to be presented to the panel. Such notice shall set out the date and place of the meeting, and the procedure to be followed.

C. The case record in NAD, CARU and/or NARB proceedings shall be considered closed upon the publication of the final case decision as described in Section 2.9. No factual evidence, arguments or issues will be considered within the case record if they are introduced after that date.

D. NARB Decision

- (1) The decision of the panel will be based upon the portion of the record before NAD/CARU which it has forwarded to the panel, the submissions under Section 3.1(E), and any summaries of the record, facts and arguments based thereon which are presented to the panel during its meeting with the parties. A party may present representatives to summarize facts and arguments that were presented to NAD/CARU, and members of the panel may question these persons. If the advertiser has declined to share any of its substantiation with the challenger, the panel will honor its request for confidentiality, even though the challenger may have instituted the appeal. The challenger will therefore be excluded from the meeting during the time when such confidential substantiation is being discussed by the panel with NAD/CARU and the advertiser.
- (2) The panel will consider no evidence or facts if they are outside the evidence and facts presented to NAD/CARU. In making its decision, the panel shall exercise its own independent judgment on the issues presented and shall not give deference to NAD or CARU's findings and recommendations.

3.7 Timing and Reporting of Panel Decisions

A. When the panel has reached a decision, it shall notify the NARB Chair of its decision and the rationale behind it in writing and shall endeavor to do so within 15 business days. The Chair, upon receipt of a panel's decision, shall transmit such decision and rationale to NAD/CARU and then to the advertiser. The advertiser shall, within five business days of receipt of the decision, submit an Advertiser's Statement that initially states whether or not the advertiser agrees to comply with the panel's recommendations. The Advertiser's Statement may include a concise supporting statement, no longer than one-half of one double-spaced typewritten page (12 point type), which may not reargue the merits of the case, mischaracterize the decision, or contain new facts. The NARB Chair reserves the right, following consultation with the advertiser, to edit for length or inappropriate material. Thereafter, the Chair shall notify other parties to the case of the panel's decision, incorporating therein the response from the advertiser, and make such report public.

B. In the event that a panel has determined that an advertising claim has not been substantiated or is untruthful and/or inaccurate, and the advertiser fails to indicate that the specific advertisement(s) will be either withdrawn or modified in accordance with the panel's findings within a time period appropriate to the circumstances of the case, the Chair will issue a Notice of Intent to the advertiser that the full record on the case will be referred to the appropriate government agency. If the advertiser fails to respond or does not agree in writing to comply with the decision of the panel within ten days of the issuance of the Notice of Intent, the Chair shall so inform the appropriate government agency by letter, shall offer the complete NARB file upon request to such government agency, and shall publicly release his/her letter. The Chair of the NARB shall report to the NARB at its annual meeting on, among other things, the number, source and disposition of all appeals received by NARB.

3.8 Closing a Case

When a case has been concluded with the publication of a NAD/CARU decision or, when a panel has turned over a decision to the NARB Chair, and when the Chair has executed the procedures in Section 3.7 of these Procedures, except as provided for in Section

3.9, the case will be closed and, absent extraordinary circumstances, no further materially similar complaints on the claim(s) in question shall be accepted by NAD/CARU.

3.9 Reopening a Case

A. A closed NAD or NARB case may be reopened if the NAD Director, in his/her sole discretion, determines that extraordinary circumstances warrant the reopening. In making this determination, the NAD Vice President shall take into account (1) the advertiser's compliance with any recommendations by NAD or NARB relating to the claims at issue; (2) if the reopening is requested based on new evidence, whether there is a satisfactory showing that the new evidence was not reasonably available to the party at the time the NAD record was closed; (3) if the reopening is requested based on new evidence, whether the new evidence would have likely changed the NAD or NARB decision in a material way; and (4) whether the request has sufficient merit to warrant the expenditure of NAD resources.

B. A petition requesting that a case be reopened may be submitted by either party to the underlying proceeding to the NAD Vice President together with a non-refundable initial petition to reopen fee of \$5,000.

C. If the NAD Vice President grants the petition to reopen, the petitioning party shall pay an additional nonrefundable filing fee equal to the applicable NAD Challenge Fee minus the \$5000 initial petition to reopen fee. NAD will send notice to any parties to the prior case of NAD's decision to reopen, together with any supporting evidence. Fee waivers can be submitted to the BBB National Programs Executive Vice President, Policy and Program Development pursuant to 2.2 (A) (4).

D. Any reopened case will proceed as though a challenge was filed on the reopened claims in accordance with Sections 2.2 – 3.8 of these procedures, beginning with a submission from the challenger in the original case and concluding with a final case decision (as provided in Section 2.9) that may be appealed as set out in Sections 3.1-3.8 of these procedures. Should a challenger elect not to participate in the reopened case, the case will proceed as though NAD opened the matter on its own

initiative. The petition requesting that a case be reopened will not be incorporated into the newly reopened case record.

4.1 Compliance

After an NAD, CARU or NARB panel decision requesting that advertising be "Modified or Discontinued" is published, together with an Advertiser's Statement indicating the advertiser's willingness to comply with NAD, CARU or the NARB panel's recommendations, or an advertiser agrees to modify or discontinue advertising pursuant to Section 2.13 CARU Expedited Proceeding, NAD/CARU or the NARB, either on its own or at the behest of a challenger or a third party, may request that the advertiser report back, within ten business days, on the status of the advertising at issue and explain the steps it has taken to bring the advertising into compliance with the decision. Any evidence that NAD/CARU or the NARB relies on as a basis for its request for a report on compliance shall be forwarded to the advertiser together with the request for a status report.

In response to a request that the advertiser report on its compliance with a NAD or NARB decision, as described in the preceding paragraph, an advertiser may file a petition to reopen the case under Section 3.9 of these procedures and providing notice to any party in the case sought to be reopened that a petition to reopen has been filed. If a petition to reopen is filed, the compliance inquiry shall be suspended until the NAD Vice President makes a determination as to whether the case will be reopened. If the petition to reopen is denied, the compliance inquiry shall resume and a response to the compliance inquiry shall be provided within ten business days after the request to reopen is denied. If the petition to reopen is granted, the compliance inquiry shall be terminated and the termination shall be reported in the NAD/CARU Case Reports.

A. Compliance with NAD/CARU decisions. If, after reviewing the advertiser's response to a request for a status report on compliance with an NAD/CARU decision, and after reviewing the current advertising, NAD/CARU determines that:

(1) the advertising is in compliance with NAD/CARU recommendations, NAD or CARU shall make a determination that no further action is required and close the compliance inquiry and shall continue to monitor for compliance;

(2) the advertiser, after a reasonable amount of time, has not made a bona fide attempt to bring its advertising into compliance with NAD/CARU recommendations and/or the representations made in the Advertiser's Statement, or the advertiser fails to respond to the compliance inquiry, NAD or CARU shall refer the file to the appropriate government agency, release information regarding the referral to the press and the public, and report the referral in the Case Reports. The amount of time considered reasonable to modify or discontinue the advertising in question will vary depending

on the advertising medium involved;

(3) The advertiser has made a reasonable attempt to comply with a NAD/CARU decision, but NAD/CARU remains concerned about the truthfulness and accuracy of the advertising as modified, NAD or CARU will notify the advertiser, in writing, detailing these concerns and making further recommendations. The advertiser will have five business days to respond.

(a) If NAD/CARU finds that the advertiser has accepted and agreed to promptly implement the recommendations, NAD or CARU shall determine that no further action is required, close the compliance inquiry, and report this in the Case Reports and continue to monitor for compliance;

(b) If NAD/CARU finds that the advertiser has not agreed to promptly implement the recommendations, after notification to the advertiser, NAD or CARU shall refer the file to the appropriate government agency, release information regarding the referral to the press and the public, and report the referral in the Case Reports.

B. Compliance with NARB decisions. After reviewing the advertiser's response to a request for a status report on compliance with an NARB decision, and after reviewing the current advertising, NAD/CARU shall submit to the NARB Chair the file relating to compliance along with NAD/CARU's recommendations. If the NARB Chair determines that:

(1) the advertising is in compliance with the NARB panel's recommendations, the NARB Chair shall make a determination that no further action is required and close the compliance inquiry;

(2) the advertiser, after a reasonable amount of time, has not made a bona fide attempt to bring its advertising into compliance with the NARB panel's recommendations and/or the representations made in the Advertiser's Statement, or the advertiser fails to respond to the compliance inquiry, the NARB Chair shall refer the file to the appropriate government agency, release information regarding the referral to the press and the public, and report the referral in the NAD/CARU Case Reports. The amount of time considered reasonable to modify or discontinue the advertising in question will vary depending on the advertising medium involved;

(3) the advertiser has made a reasonable attempt to comply with an NARB panel decision, but the NARB Chair remains concerned about the truthfulness and accuracy of the advertising as modified, the NARB Chair will notify the advertiser, in writing, detailing these concerns and making further recommendations. The advertiser will have five business days to respond.

(a) If the NARB Chair finds that the advertiser has accepted and agreed to promptly implement the NARB Chair's recommendations, the NARB Chair shall determine that no further action is required, close the compliance inquiry, and report this in the NAD/CARU Case Reports.

(b) If the NARB Chair finds that the advertiser has not agreed to promptly implement the NARB Chair's recommendations, after notification to the advertiser, the NARB Chair shall refer the file to the appropriate government agency, release information regarding the referral to the press and the public, and report the referral in the NAD/CARU Case Reports.

GENERAL PROVISIONS

5.1 Amendment of Standards

Any proposals to amend any advertising standards which may be adopted by the NARB may be acted on by a majority vote of the entire membership of the NARB at any special or regular meeting, or by written ballot distributed through the United States mail, provided that the text of the proposed amendment shall have been given to the members 30 days in advance of the voting date. Once the NARB voting is completed and tallied, the BBB National Programs Executive Vice President, Policy and Program Development shall take it to the BBB National Programs Board of Directors for approval.

5.2 Use of Consultive Panels for Matters Other Than Truth and Accuracy, or Consistency with CARU's Self-Regulatory Program for Children's Advertising

From time to time, the NARB may be asked to consider the content of advertising messages in controversy for reasons other than truth and accuracy, or consistency with CARU's Self-Regulatory Program for Children's Advertising, or BBB National Programs or the NARB may conclude that a question as to social issues relative to advertising should be studied. In such cases, the procedures in Sections 5.3 through 5.8 shall be employed to deal with such issues.

5.3 Consultive Panels

The NARB Chair may consult regularly with the BBB National Programs Executive Vice President, Policy and Program Development, the BBB National Programs Board of Directors or with the NARB to determine whether any complaints have

been received, or any questions as to the social role and responsibility of advertising have been identified, which should be studied and possibly acted upon. If so, a consultive panel of five NARB members shall be appointed, in the same proportions as specified for adjudicatory panels in Section 3.5 above.

5.4 Panel Procedures

Consultive panels shall review all matters referred to them by the NARB Chair and may consult other sources to develop data to assist in the evaluation of the broad questions under consideration. No formal inquiry should be directed at individual advertisers.

5.5 Confidentiality

All panel investigations, consultations and inquiries shall be conducted in complete confidence.

5.6 Position Paper

If a consultive panel concludes that a position paper should be prepared to summarize its findings and conclusions for presentation to the full NARB, the paper shall be written by one or more members of the panel, or by someone else under its direction. The contents of the paper should reflect the thinking of the entire panel, if possible, but any panel member may write a separate concurring or dissenting opinion, which will be published with the panel report, if it is published.

5.7 Voting on Publication

Any such report prepared by a consultive panel will be submitted to the NARB Chair, who will distribute copies to the full NARB for its consideration and possible action. The members of the NARB will be given three weeks from the date of such distribution within which to vote whether to publish the report or not. Their votes will be returned to the Chair of the NARB. If a majority of the NARB members vote for its publication, the report will be distributed to BBB National Programs for its review and will be published only if a majority of BBB National Programs Board of Directors votes for its publication.