

2021 Activity Report

**Activity Report
for the Direct Selling
Self-Regulatory Council**

*January 1, 2021
through July 31, 2021*

Introduction

The Direct Selling Self-Regulatory Council's (DSSRC) 5th Program Activity Report provides details on the significant endeavors of DSSRC in the first seven months of 2021 including the program's monitoring of direct selling advertising and marketing, its case work, and providing ongoing industry education for the direct selling industry.

In 2021, DSSRC has provided ongoing oversight of product and business opportunity claims for direct selling companies and their salesforce members (with an ongoing focus on representations related to COVID-19). DSSRC also commenced its 250th case inquiry, presented its inaugural DSSRC Summit, and was the recipient of the Best Sectoral Initiative award from the International Council of Advertising Self-Regulation. In addition to providing educational presentations about this self-regulatory program, DSSRC has spoken with state and federal government agencies about its work with the direct selling industry. DSSRC has also spoken with dozens of direct selling companies to provide guidance and instruction regarding earnings and product claims and compliance supervision.

DSSRC Casework

COVID-19 Casework

With the ongoing impact that the global pandemic has brought to all sectors of the business community, direct selling companies continue to face the added pressure of ensuring that their independent salesforce members are not seeking to boost sales by making unauthorized health-related claims and business opportunity claims related to the pandemic. DSSRC has continued focusing its monitoring efforts on identifying false and misleading claims about a product's ability to treat or prevent COVID-19 and how the pandemic has presented an opportunity for company salesforce members to earn significant income. This targeted effort comes as both the Food and Drug Administration (FDA) and the Federal Trade Commission (FTC) continue to issue warning letters to companies making such claims.

Since January 1, DSSRC commenced 34 inquiries that involved claims pertaining to COVID-19. In those inquiries, DSSRC has reviewed 68 product performance claims that reference COVID-19 and three claims that discuss the pandemic as an earnings opportunity for direct selling companies. Of the 34 cases that have been commenced by DSSRC that included COVID-19 claims, 25 have been administratively closed, three have resulted in formal DSSRC decisions and six matters remain pending.

DSSRC also referred four matters that included COVID-19 claims to the FTC and the appropriate State Attorneys General Office for enforcement.

As the impact of the pandemic on advertising law became clear, BBB National Programs began to compile information about DSSRC and National Advertising Division case decisions where the focus of the case was on removing false or misleading COVID-19 claims from circulation. The result of this effort was a document outlining the volume of such cases as well as the key trends that emerged from them. Several leading publications, including the Wall Street Journal, have used the data collected by BBB National Programs as a source for their reporting.

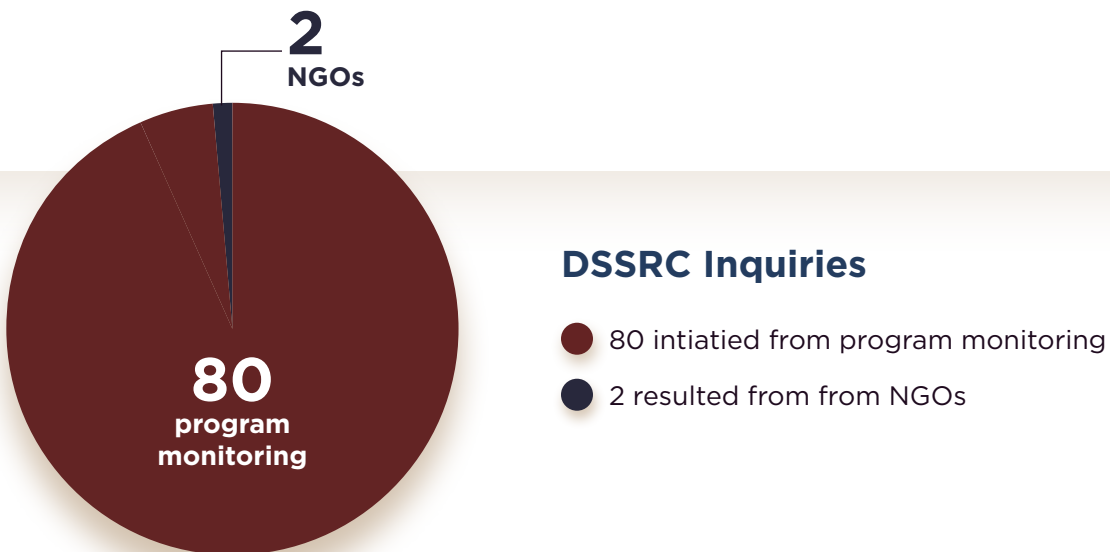
General Casework

DSSRC has opened 82 inquiries since January 1, 2021 (including the COVID-19 inquiries discussed above) with 20 inquiries currently pending. Of the 82 inquiries that have been commenced, 58 matters have been (or are in the process of being) administratively closed – as the companies involved in those inquiries have either withdrawn or significantly modified the claims that were the basis of the DSSRC inquiry. DSSRC will administratively close an inquiry if the direct selling company in its initial response (i.e., within 15 business days from receipt of DSSRC’s opening letter) commits to discontinue or significantly modify the claims at issue. If DSSRC does not receive such a commitment, the matter will transition into a formal case review.

Of the 82 inquiries that have been initiated, all but two have originated from program monitoring, with those two cases having been brought to DSSRC’s attention by non-governmental organizations (NGO). 48 of the inquiries involve DSA-member companies and 34 involve non-member companies.

With respect to the claims at issue in those inquiries, in the past seven months, DSSRC has brought 340 representative claims in total to the attention of direct selling companies, including 184 product claims and 156 business opportunity/earnings claims (which also include express and implied earnings claims made through lavish lifestyle representations). While the representative claims have been specifically identified in DSSRC’s Notice of Inquiry to direct selling companies, direct selling companies have discontinued or significantly modified many similar claims other than those identified by DSSRC as part of these self-regulatory inquiries.

DSSRC also referred four matters that included a number of business opportunity and product performance claims (including several COVID-19 claims) to the FTC, State Attorneys Generals and the FDA for enforcement.

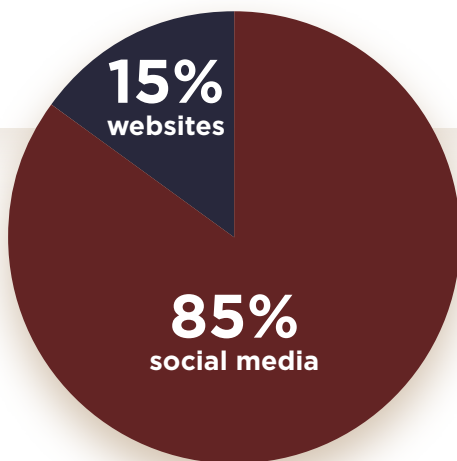


Almost all of the non-COVID-19 inquiries involve issues pertaining to the use of unauthorized health-related claims and inadequate disclosures of qualifying and material information including the necessity of providing such disclosures clearly and conspicuously and in close proximity to the triggering claim. With respect to earnings claims, companies participating in the DSSRC self-regulatory forum have modified such claims by including reference to the amount of income that can be generally expected by program participants in the depicted scenario. Similarly, direct selling companies have addressed the issue of unqualified company bonus and incentive claims with inclusion of disclosures indicating the number (i.e., percentage) of the program participants obtaining such a reward. Direct selling companies have also informed DSSRC that they have been in direct contact with active salesforce members to remove certain posts or to include disclosure language that has been approved by the direct selling company.

Approximately 85 percent of claims identified by DSSRC originated from social media platforms of direct selling company salesforce members (approximately 77% were found on Facebook) with the remainder of claims found on company websites. 15% of the inquiries included claims disseminated on a video platform (e.g., YouTube). The remainder of the claims were disseminated on company websites – several of which derive from the use of lavish lifestyle depictions on the website or from “success story” videos from salesforce members or company spokespersons.

With the exception of the four case referrals, all of the direct selling companies that have been the subject of a DSSRC inquiry have been responsive and participated in the forum. In each inquiry, following its receipt of the DSSRC opening letter, the companies have reached out to the DSSRC and have engaged in telephone/video calls to discuss the DSSRC process and express their support for participating in the forum of voluntary self-regulation.

As noted earlier, 58 matters have been (or are in the process of being) administratively closed – as the companies involved in those inquiries have either withdrawn the claims at issue or have made significant modifications to the claims.



Claims Identified by DSSRC

- 85% originated from social media platforms
- 15% were disseminated on company websites

DSSRC Monitoring

The DSSRC independently monitors earnings claims and product claims disseminated by all members of the direct selling industry. DSSRC monitors and tracks such claims on various social media platforms from direct selling company salesforce members, as well as the various websites of companies in the direct selling industry. DSSRC works with a third-party monitoring company that provides weekly monitoring reports to DSSRC which include analytical data with respect to the number of online URLs that are discovered and calls DSSRC’s attention to potential claim infractions of pertinent FTC rules and regulations for further review by program staff.

According to DSSRC’s monitoring data, the number of claims that have been identified as potential infractions originating from video platforms (i.e., YouTube) has risen significantly (76%) over the last 12 months and accounted for 15% of all identified incidents in the first half of 2021 (up 10% from this same period last year). There has also been a significant decrease (64%) in the total number of COVID-19 posts that have been identified in comparison to the same 7-month period from last year. The decrease in COVID-19 claim infractions may be attributed to the increased scrutiny and attention given to such claims by regulatory agencies such as the FTC and self-regulatory bodies such as DSSRC, as well as the efforts taken by direct selling companies to educate their salesforce members and caution them to refrain from making claims associated with COVID-19.

As was the case in 2019 and 2020, Facebook continues to net the most infractions, with over 63% of all infractions being found on this social media platform.

From January 1 through July 31, 2021, DSSRC monitoring identified:

- ◆ approximately **900,000** Unique URLs;
- ◆ **12,886** unique URLs Reviewed aka potential incidents;
- ◆ **1,116** Facebook Claims;
- ◆ **268** YouTube Videos;
- ◆ **762** Health-Related Product Claims;
- ◆ **655** Business Opportunity Income Claims;
- ◆ **75** COVID-19 Posts

DSSRC Summit: Industry Education as a Vehicle to Increasing Consumer Trust

DSSRC hosted direct selling industry business leaders, legal professionals, advertising experts, and salesforce members at its inaugural Direct Selling Summit on July 27. The virtual Summit was an educational event intended to provide the direct selling industry with an inside look at how their advertising is monitored and reviewed by DSSRC. The Summit outlined the critical responsibility of direct selling companies to protect consumers from misleading advertising and to prioritize the training and education of their independent salesforce members to ensure that all consumers receive truthful messages regarding the companies' products and the direct selling business opportunity.

The Summit included three panels that consisted of in-house and outside counsel as well as company compliance executives. The Summit's keynote featured BBB National Programs Executive Vice President, Policy, Mary Engle's interview with the FTC's Beth Delaney, Attorney Advisor for FTC Commissioner Noah Phillips.

PANEL 1

Participants in the first panel, *Between the Lines: Keeping Clear of Legal Trouble*, focused their conversation on a wave of compliance that has swept the direct selling industry in recent years, embracing a posture that focuses on the consumer. More specifically, the panel discussed the FTC advocating for increased use of its penalty offense authority, which puts companies on notice of acts or practices held to be deceptive in litigated administrative cases and then seeks civil penalties against notice recipients if they subsequently engage in those acts or practices. The panel also discussed the FTC's announcement that it is going to review the Business Opportunity Rule, doing so amid calls for a revised rule that would cover direct selling companies and provide a basis to obtain civil penalties against those companies for deceptive earnings claims.

PANEL 2

The second panel, Partnering for Success: Working Together to Educate and Empower, addressed the important relationship between the legal and compliance teams in a direct selling company. The panelists provided insights regarding the challenge of recognizing the success of salesforce leaders while remaining cognizant of concerns about depicting atypical success in a direct selling business opportunity. The panel also explored how companies approach compliance oversight of international salesforce members who may not be subject to U.S. rules and regulations.

In the keynote session, On the Record with the FTC, Beth Delaney indicated that she expects to see increased rule-making at the FTC in the future. In her interview with Mary Engle, Ms. Delaney noted that greater latitude in its rule-making would allow the FTC greater flexibility in implementing creative and extensive relief remedies with a greater emphasis on consumer redress and legally mandated repayment of ill-gotten gains received by wrongdoers.

Ms. Delaney stated that the FTC is considering bringing cases in collaboration with State Attorneys General who have the ability to pursue monetary redress as well as pursuing consumer redress in federal district court using Section 19 of the FTC Act. Ms. Delaney stated that the FTC's regulatory review of the Business Opportunity Rule could result in increased disclosure requirements. She noted that some at the FTC now prefer the issuance of comprehensive rules rather than case-by-case enforcement.

Ms. Delaney also reiterated that self-regulation programs are an important way for the FTC to leverage its resources and that Commissioner Phillips has often noted the importance of self-regulatory industry programs such as DSSRC. Ms. Delaney referenced Commissioner Phillips' comments from a conference this spring hosted by The College of New Jersey School of Business recognizing that DSSRC and DSA have reiterated to direct selling companies not to make false, misleading, or unsubstantiated representations and to monitor their participants so they do not make such misrepresentations.

PANEL 3

The final panel, Salesforce Best Practices: Strengthening the Branches, closed the event by continuing the important conversation about open lines of communication between sales leaders and their downline sales teams. This panel reiterated many of the points made by earlier panels about the critical need for salesforce monitoring, adhering to social media best practices, and the key role a salesforce plays in strengthening a direct selling company's brand integrity. The panelists also shared proactive efforts that all companies can take to get in front of some of the most critical challenges that direct selling companies face today.

DSSRC was thankful for the direct selling industry's support of the Direct Selling Summit and DSA's valuable assistance in helping promote the event. 117 industry professionals registered for the DSSRC Summit including seven FTC staff members. According to post-event survey results, 100% of attendees who responded to the survey were "satisfied" or "extremely satisfied" with the event and 100% of attendees who responded to the survey were "satisfied" or "extremely satisfied" with the knowledge they gained, the speakers, and the content delivered at the event.

ICAS “Best Sectoral Initiative” Award

On June 15, the International Council for Advertising Self-Regulation (ICAS) awarded DSSRC with its Best Sectoral Initiative Award. The objective of the ICAS Awards is to reward initiatives that contribute to the promotion of effective and meaningful self-regulation, and the encouragement of ethical and responsible marketing and advertising practices.

ICAS winners were selected by an international independent jury of self-regulatory experts, chaired by Ms. Angela Mills Wade, Executive Director, European Publishers Council.

The ICAS judges reviewed Best Sectoral submissions from self-regulatory organizations representing a number of countries that were aimed at strengthening advertising self-regulation in a given industry sector. Criteria for the award included: a) effectiveness - the initiative has achieved tangible results and fulfilled its initial purpose; b) innovativeness - the initiative is unprecedented or original or makes an interesting use of new technologies; c) global relevance - the initiative complies with global standards (e.g. ICC Code or others) and it could be easily transposed into another market, and: d) cost efficiency - the initiative has made an optimal use of available resources, the impact is proportionate to the resources invested and/or the initiative has had a positive contribution on the SRO budget.

DSSRC was awarded Best Sectoral Initiative following a written submission and virtual presentation to the ICAS judges. DSSRC was gratified that ICAS recognized the commitment and support of the direct selling industry to promote truth and transparency in direct selling advertising and marketing practices.

Socializing the Industry's Commitment to Advertising Self-Regulation

The 50-year anniversary of advertising self-regulation has provided DSSRC and BBB National Programs with an opportunity to speak with state and federal government agencies and industry thought-leaders in the first half of 2021 about its work in providing guidance and instruction to direct selling companies regarding claims of product performance and income opportunity.

In February, DSSRC spoke with Annabel Brody, Associate Manager of Consumer and Advertising Product Policy at Facebook, who provided DSSRC with an online mechanism to report content on Facebook that was in violation of a company's intellectual property rights that DSSRC shared with a number of direct selling companies.

Following the appointment of Lina Kahn as FTC Chairman, BBB National Programs met with Samuel Levine, the Acting Director of the FTC's Bureau of Consumer Protection, and his team to discuss BBB National Programs' oversight of self-regulation programs for various industries including the direct selling industry.

In April, DSSRC had the opportunity to speak with the Associate Directors of several of the divisions at the FTC including: Malini Mithal (Division of Financial Practices); James Kohm (Division of Enforcement); Maneesha Mithal (Division of Privacy and Identity Protection); Serena Viswanathan (Division of Advertising Practices) and Lois Greisman (Division of Marketing Practices) regarding the work of BBB National Programs.

This spring, April Alexandrow, Amy Abernethy and several staff members from the FDA participated in a listening session with DSSRC to hear an overview of its self-regulatory work with the direct selling industry. In July, DSSRC also communicated with staff members at the Attorney General's offices in the states of Utah, Florida and Texas regarding industry self-regulation.

DSSRC also spoke individually with dozens of direct selling companies in the first half of 2021 as part of its ongoing mission to provide guidance and instruction to the direct selling industry.

About the Direct Selling Self-Regulatory Council

The Direct Selling Self-Regulatory Council (DSSRC), a division of BBB National Programs, provides independent, impartial monitoring, dispute resolution, and enforcement of product claims and income representations made by direct selling companies and their salesforce members across digital platforms. The DSSRC seeks to establish high standards of integrity and business ethics for all direct selling companies in the marketplace.

About BBB National Programs

BBB National Programs is where businesses turn to enhance consumer trust and consumers are heard. The non-profit organization creates a fairer playing field for businesses and a better experience for consumers through the development and delivery of effective third-party accountability and dispute resolution programs. Embracing its role as an independent organization since the restructuring of the Council of Better Business Bureaus in June 2019, BBB National Programs today oversees more than a dozen leading national industry self-regulation programs, and continues to evolve its work and grow its impact by providing business guidance and fostering best practices in arenas such as advertising, child-directed marketing, and privacy. To learn more, visit bbbprograms.org.