



**National
Programs**
Direct Selling
Self-Regulatory Council

2022 Activity Report

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

*January 1, 2022
through December 31, 2022*

Introduction

The Direct Selling Self-Regulatory Council's (DSSRC) 2022 Program Activity Report provides details on the significant endeavors of DSSRC in 2022, including its monitoring of direct selling advertising and marketing, its case work, and DSSRC's efforts to provide ongoing industry education for the direct selling industry.

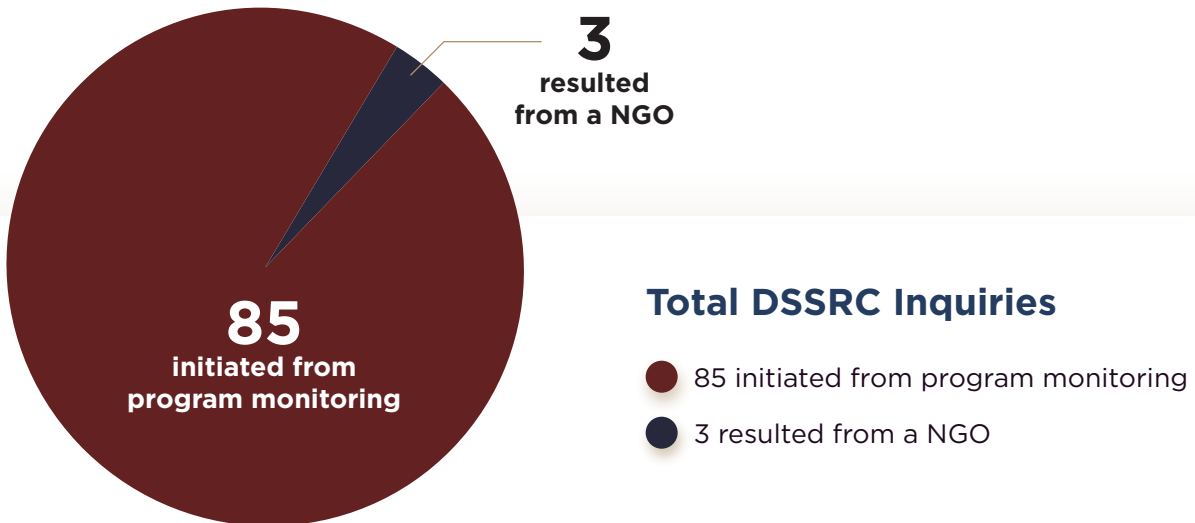
In 2022, DSSRC provided ongoing oversight of product and business opportunity claims for direct selling companies and their salesforce members with continued attention on any representations related to COVID-19. DSSRC also commenced its 385th case inquiry, presented its second annual Direct Selling Summit, revised its Policies and Procedures, and published its revised Earnings Claim Guidance for the Direct Selling Industry. In addition to providing educational presentations about its self-regulatory program, in 2022, DSSRC engaged with a number of state and federal government agencies regarding its work with the direct selling industry and has spoken with dozens of direct selling companies in an effort to provide guidance and instruction regarding earnings and product claims and compliance supervision.

DSSRC Casework

DSSRC has continued focusing its efforts to monitor direct selling marketing and identifying false and misleading claims regarding the amount of income that salesforce members may generally expect to receive from the direct selling business opportunity and claims that explicitly or implicitly convey the efficacy of how a product will perform in a depicted context. DSSRC's claim review comes as regulatory agencies continue to issue warning letters to direct selling companies making such claims and the Federal Trade Commission (FTC) contemplates rulemaking to pursue false earnings claims regarding business opportunities in the gig economy as well as revising its Guide on the Use of Endorsements and Testimonials in Advertising.

DSSRC commenced 88 case inquiries in 2022, including three compliance inquiries and 22 pending inquiries. DSSRC posted 41 formal case decisions and 43 administrative closing summaries on the BBB National Programs' website in 2022 (some of which were carried over from inquiries commenced in 2021) as of year's end. 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 Notice of Inquiry), 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 88 inquiries that were initiated in 2022, all but three have originated from program monitoring, with those three inquiries having been brought to DSSRC's attention by a



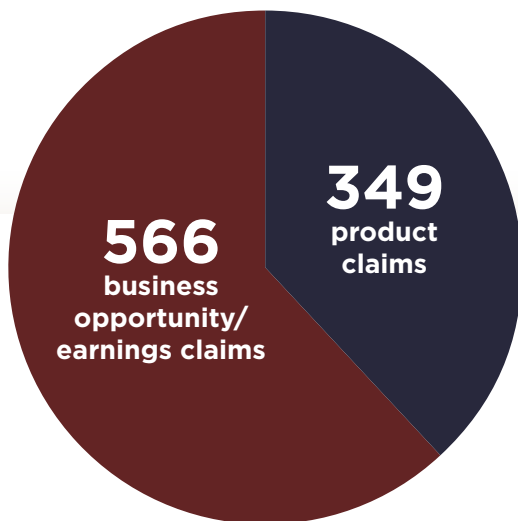
non-governmental organization. Additionally, 32 of the inquiries opened in 2022 involved member companies of the Direct Selling Association (DSA) and 56 inquiries involved non-member companies.

DSSRC also referred six matters that included patterns of business opportunity and product performance claims (including several COVID-19 claims) to the FTC and State Attorneys General offices for enforcement.

In 2022, DSSRC identified 915 representative claims for direct selling companies, including 349 product claims and 566 business opportunity/earnings claims (which also include express and implied earnings claims made through lavish lifestyle representations). While representative claims are specifically identified in DSSRC's Notice of Inquiry sent to direct selling companies, DSSRC requests that direct selling companies also address any similar claims in their marketing materials beyond those specifically identified by DSSRC.

Most of the inquiries pertaining to earnings claims involved issues of unqualified earnings representations (e.g., "unlimited income") or inadequate disclosures of qualifying and material information for atypical earnings claims and the necessity of providing such disclosures clearly, conspicuously, and in close proximity to the triggering claim. With respect to the earnings claims at issue in DSSRC inquiries, companies participating in the DSSRC self-regulatory forum have either discontinued such claims or modified the claims by including reference to the amount of income that can be generally expected by typical program participants in the depicted scenario.

Similarly, direct selling companies have addressed the issue of unqualified company bonus and incentive claims with the inclusion of disclosures indicating the number (i.e., percentage) of program participants obtaining such a reward by communicating directly with active salesforce members to remove certain social media posts or including the appropriate disclosure language. DSSRC has also seen an increase in direct selling companies requesting that posts be disabled by attempting to communicate directly with the social media platforms on which the claims are published.



Claims Brought to the Attention of Direct Selling Companies

- 566 business opportunity/earnings claims
- 349 product claims

Claims Found on Social Media

- 85% originated from direct selling company salesforce member social media accounts
- 15% identified on company websites



Approximately 85% of claims identified by DSSRC in 2022 inquiries originated from direct selling company salesforce member social media accounts (77% of the claims were found on Facebook) with the remainder of claims found on company websites, several of which derived from “success story” videos from salesforce members or company spokespersons. With respect to the claims identified on the social media accounts of salesforce members, 15% included claims disseminated on a video platform (e.g., YouTube).

Apart from the six 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 Notice of Inquiry, the companies contacted DSSRC and engaged in telephone/video calls to discuss the DSSRC process and express their support for participating in the forum of voluntary self-regulation.

According to DSSRC’s monitoring, the number of claims disseminated by direct selling companies and/or its salesforce members referencing COVID-19 has significantly subsided. DSSRC commenced nine inquiries in 2022 that included claims pertaining to COVID-19 as compared to 39 COVID-related inquiries in 2021. In those inquiries, DSSRC reviewed 23 product performance claims that referenced COVID-19 and 15 claims that referenced COVID-19 in the context of a business opportunity.

Of the nine COVID inquiries, five were administratively closed, three resulted in formal DSSRC decisions, and one inquiry is pending.

DSSRC Monitoring

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 as well as on the various websites of companies in the direct selling industry. DSSRC works with a third-party monitoring company to review weekly reports of analytical data to identify 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 (e.g., YouTube, Vimeo, etc.) increased by 85% in 2022 and accounted for almost 21% of all potential infractions in 2022 (up 6% from this same period in 2021). There has been a significant decrease (66%) in the total number of COVID-19 posts that have been identified in comparison to the same 12-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 from making claims associated with COVID-19.

As was the case in previous years, Facebook continues to net the most potential infractions, with over 62.5% of all potential social media infractions.

From January 1 through December 31, 2022, DSSRC monitoring identified:

- ◆ approximately **523,017** Unique URLs
- ◆ **10,119** Unique URLs Reviewed aka Potential Incidents
- ◆ **2,775** Facebook Posts/Claims
- ◆ **243** Instagram Claims
- ◆ **904** YouTube Videos
- ◆ **2,019** Health-Related Product Posts/Claims
- ◆ **2,214** Business Opportunity Income Posts/Claims
- ◆ **53** COVID-19 Posts/Claims

Direct Selling Summit: Building Brand Trust

DSSRC hosted direct selling industry business leaders, legal professionals, advertising experts, and salesforce members at its second annual Direct Selling Summit on July 27. The virtual Summit was an educational event that provided attendees with an inside look at the FTC's rulemaking process with specific focus in 2022 on how the FTC's proposed earnings claim rule may impact the direct selling channel. The Summit also highlighted some of the unique challenges faced by smaller direct selling companies and start-ups.

The Summit included keynote speaker Utah Attorney General Sean Reyes as well as three panels that consisted of in-house and outside counsel and company compliance executives.

PANEL 1

Participants in the first panel, **An Expert Discussion: The FTC's Rule-Making Process Regarding Earnings Claims**, moderated by BBB National Programs' Executive Vice President, Policy Mary Engle, focused on the FTC's Advanced Notice of Proposed Rulemaking with respect to a potential rule to address deceptive or unfair marketing using earnings claims for business ventures, including direct sellers, gig or other work opportunities, or educational, coaching, or training offerings. The panel provided insight on how the FTC's rule-making process works as well as what this process may mean for direct selling companies and their independent salesforce members and the legal challenges they may face regarding how earnings claims, and business opportunity claims are disseminated.

PANEL 2

The second panel, **Real Expectations: Tips on Appropriately Communicating the Business Opportunity** focused on how proper claim dissemination and the training, monitoring, and enforcement of salesforce members remains a core responsibility of all direct selling companies. This panel, moderated by DSSRC's Howard Smith, discussed those responsibilities as well as key issues regarding the proper communication of earnings claims such as the dissemination of atypical earnings claims, what constitutes an effective disclosure, disclosures necessary to prevent deception, and the utility of income disclosure statements to provide greater transparency regarding the earnings that can be generally expected at the various levels within a direct selling company. The panel also discussed the implications that an FTC earnings claim rule would have on the direct selling channel.

KEYNOTE SESSION

In the keynote session, Utah Attorney General Sean Reyes shared his and his family's experience working at a direct selling company and provided the audience with several fundamental principles that will help make for a successful direct selling business opportunity. The principles included trusting the product, being passionate about the work and giving back to the community. AG Reyes also reiterated the importance of communicating truthful and accurate claims and the necessity of having reliable and reproducible evidence to support the representations being communicated to the public. AG Reyes noted that when the Utah Attorney General's office receives a complaint about a direct selling company and its alleged business practices, the initial step that his staff is trained to take is to review the context in which the claims are being disseminated by the company in the marketplace.

PANEL 3

The final panel, **One Size Doesn't Fit All: The Unique Challenges for Small Direct Selling Companies**, moderated by Katrina Eash from Winston and Strawn, closed the event by discussing some of the unique challenges facing smaller direct selling companies as they train, monitor, and enforce their policies to their salesforce members regarding the dissemination of product and earnings claims. Panel dialogue was focused on how the core principles regarding proper claim dissemination apply equally to all direct selling companies regardless of size and that the challenges faced by direct selling companies of different sizes vary significantly. The topics that were covered by the panel included distributor agreements, compensation plans, and the utility of income disclosure statements.

DSSRC appreciated the direct selling industry's support of the Direct Selling Summit and DSA's valuable assistance in helping promote the event. More than 100 industry professionals registered for the event, including registrants from 28 different DSA member companies.

Socializing the Industry's Commitment to Advertising Self- Regulation

DSSRC had several opportunities to share the commitment of the direct selling industry to independent self-regulation with state and federal government agencies and industry thought-leaders in 2022. Through each of these opportunities, the DSSRC team was able to discuss its work in providing guidance and instruction to direct selling companies regarding claims of product performance and income opportunity.

On February 1, BBB National Programs' Mary Engle testified before the Senate Subcommittee on Consumer Protection, Product Safety, and Data Security, chaired by U.S. Senator Richard Blumenthal (D-CT), during a hearing titled, "Stopping Fraud and Price Gouging." The hearing examined the ongoing proliferation of scams and price gouging related to and enabled by the pandemic, highlighting efforts to educate consumers about COVID-related scams and exploring proposals to strengthen FTC enforcement against unfair and deceptive practices. During her testimony, Mary provided the Subcommittee with statistics regarding DSSRC casework evaluating and removing unsupported COVID-19 claims from the direct selling marketplace.

Also in February, DSSRC spoke with the DSA General Counsel Committee and DSA's newly formed Compliance Council regarding DSSRC's revision of its Guidance on Earnings Claims for the Direct Selling Industry and, later that month, DSSRC's Peter Marinello spoke on a panel entitled "What to Say When You Can't Say Anything: Messaging for the Field" at the 2022 Direct Selling Legal and Compliance Summit held in Austin, Texas.

After meeting with several direct selling professionals at DSA's Annual Conference in June in Boca Raton, Florida, Peter presented on a panel at the Attorney General Alliance annual meeting in Sun Valley, Idaho. The panel was titled "The Direct Selling Industry: Oversight & Self-Regulation" and was moderated by Utah Attorney General Sean Reyes. The panel explored the building blocks of a successful self-regulation program and how industry self-regulation and law enforcement can partner together to protect consumers. Joining Peter on the panel was Jonathan Jackman, Vice President, Legal Advertising and Contracts at Herbalife Nutrition and Kyle George, the Deputy Attorney General of Nevada.

In June, DSSRC spoke with a group of representatives from local Better Business Bureaus during a webinar hosted by the BBB International Review Alliance pertaining to CBD health claims. DSSRC's Peter Marinello and Howard Smith discussed the current regulatory landscape of the regulation of CBD products and the problematic health claims that are being disseminated in the marketplace.

DSSRC's work, impact, and specific cases were mentioned more than 30 times in 2022 and was the subject of several articles that ran in various publications.

In August, Howard Smith met with over a dozen State Attorneys General at the annual Republican Attorneys General Association (RAGA) meeting in Colorado Springs. Howard discussed how the work of DSSRC can complement the work being done at State Attorneys General offices and how their offices can refer matters to DSSRC. Among those in attendance at the meeting were Attorneys General from the states of Virginia, Utah, Ohio, South Carolina, Nebraska, Kentucky, Alabama, Alaska, Mississippi, Arkansas, and Georgia.

In September, Howard also presented on a panel at BBB National Programs' National Advertising Division's annual conference in Washington DC. Howard joined the panel "Truth In Advertising in the Metaverse" to discuss the impact of this emerging platform on the direct selling industry and ways to implement truth-in-advertising principles into advertising in the metaverse, including how to ensure that material connections are adequately disclosed and how to protect vulnerable populations without stifling creativity.

Later in September, Howard and Peter spoke at DSA's Legal and Regulatory Conference in Washington DC and provided the audience with an update on program activity in 2022, revisions that DSSRC made to its Earnings Claim Guidance, and projects that DSSRC will be working on in 2023 to further educate and provide resources to the industry.

DSSRC also had several occasions in 2022 to speak with Sam Levine, Director of the FTC's Bureau of Consumer Protection as well as with staff members at the FTC's Division of Marketing Practices regarding recent DSSRC initiatives and casework.

DSSRC's work, impact, and specific cases were mentioned more than 30 times in 2022 and was the subject of several articles that ran in Social Selling News, Direct Selling News, HBW Insight, and NutraIngredients, among other publications.

Providing Ongoing Guidance to the Direct Selling Industry

DSSRC spoke individually with many direct selling companies in 2022 as part of its ongoing mission to provide guidance and instruction to the direct selling industry.

Revised Earnings Claim Guidance

On June 2, 2022, DSSRC published its revised Earnings Claim Guidance for the Direct Selling Industry. The revision came approximately two years after the publication of DSSRC's original Earnings Claim Guidance and was drafted after DSSRC had the opportunity to speak with over two dozen direct selling companies and after receiving comments from the FTC's Division of Marketing Practices.

Among other modifications to the original document, the revised Earnings Claim Guidance includes several new mock social media posts and the addition of several phrases to the Earnings Claim Guidance's list of prohibited terms. The revised Earnings Claim Guidance also reinforces that salesforce and consumer testimonials are considered earnings claims that must be supported "as if" the statement were communicated by the direct selling company itself and included "hashtags" and "emojis" as examples of words and images that will contribute to net impression.

To alleviate any potential confusion, DSSRC noted that while it has drawn upon several regulatory sources in creating the guidance, the document is intended only to provide more detail on how DSSRC reviews and evaluates earnings claims and should not be construed as providing any guidance or advice as to how state or federal regulators may interpret earnings claims and/or applicable law.

Revised DSSRC Policies & Procedures

On October 15, 2022, DSSRC announced the revision of its Policies & Procedures (the Procedures). In addition to re-organizing the Procedures to provide more clarity to program participants, the revised document also includes a new Compliance section that will allow DSSRC to ascertain if subsequent actions taken by a direct selling company to adhere to DSSRC recommendations and the commitment the company has made to DSSRC in its

Company Statement to either remove or adequately modify product and/or income claims were appropriate.

The revised Procedures were also changed to specify that only the direct selling company “whose claims are subject to a DSSRC decision shall, within seven business days make a request for a referral to the Appeals Administrator and specify any issues for its appeal...” and that “A challenging company may request that the Administrator allow it to appeal a DSSRC decision but may not appeal a DSSRC decision by right.” The Procedures also include a new section to provide greater specificity regarding when DSSRC will administratively close an inquiry and how summaries of the administratively closed cases will be reported.

A challenging company may request that the Administrator allow it to appeal a DSSRC decision but may not appeal a DSSRC decision by right.

DSSRC Comments Regarding FTC Initiatives

In May, DSSRC provided written comments to the FTC as it considers proposing a rule to address deceptive or unfair marketing using earnings claims, and in September, DSSRC also contributed to BBB National Programs’ collective written comments that were submitted regarding the FTC’s proposed revisions to its Guides Concerning the Use of Endorsements and Testimonials in Advertising.

DSA Code Administrator

In 2022, DSSRC also assumed the role of Code Administrator for the enforcement of DSA Code of Ethics complaints. DSSRC worked with DSA to establish and implement transparent complaint handling procedures to ensure prompt resolution of all complaints. The complaint handling procedures include the review and determination of whether a violation of the Code of Ethics has occurred and for the Code Administrator to answer as promptly as possible all queries relating to the Code of Ethics and its application.

In August, pursuant to its duties as Code Administrator, DSSRC sent a memorandum to DSA Code Responsibility Officers reinstating the moratorium during which DSA companies selling CBD-infused ingestible products would not be cited for DSA Code of Ethics violations for that sale until such time that the Food and Drug Administration provides further detailed, regulatory guidance for marketers regarding the legal sale and marketing of CBD-containing products. It was also noted that any DSA member that communicates product efficacy claims regarding any products containing CBD that are not supported by reliable and competent evidence will be deemed to be in violation of the DSA Code of Ethics.

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.