

The Direct Selling Self Regulatory Council (DSSRC)

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The Advertising Industry's Self-Regulatory System

- 1971 – The self-regulatory system formed as a response to consumer activists pushing for increased government regulation of the advertising industry
- Three major advertising trade associations along with the Council of Better Business Bureaus created the system



Today...

- FTC points to the portfolio of self-regulation programs administered by the CBBB as an example of successful industry self-regulation in America
- CBBB are leaders in developing, managing and enforcing self-regulatory programs for other industries.
- The roster of CBBB National Programs includes:
 - The National Advertising Division
 - The Children Advertising Review Unit
 - BBB Auto Line
 - The Electronic Retailing Self Regulation Program
 - Interest Based Advertising Accountability Program
 - Children's Food and Beverage Advertising Initiative
 - EU Privacy Shield
 - Coalition for Better Ads
 - **The Direct Selling Self Regulatory Council**

Why Enhanced Self Regulation and the Direct Selling Industry?

- Marketplace conditions:
 - FTC enforcement actions
 - Increased number of industry critics
 - Increasing risks arising from social media
- Cure real and perceived issues
- Elevate direct selling's reputation
- Respond to the FTC recommendations regarding strong self-regulation enforcements
- Product Claims and Earning Claims

DSSRC'S Mission

- Provide independent, impartial and comprehensive monitoring of direct selling companies on an industry-wide basis.
- Address income representations (including lifestyle claims) and product claims by companies and salesforce members
- Enhance the reputation of direct selling and elevate confidence in DSA members

DSSRC Goals & Procedures

- Improve/restore consumer confidence in direct selling advertising
- Provide a quick and efficient mechanism for reviewing direct selling advertising claims with an emphasis on social media platforms
- Independent Monitoring
- Demonstrate to the regulatory agencies the direct selling industry's commitment to meaningful and effective self-regulation



Hallmarks of Effective Self-Regulation

- Objective standard of review
- Independent
- Transparent
- Accountable
- Support by industry
- Applicable to members and non-members

Issues & Claims

- Product Claims
- Social media
- Testimonials/Endorsements
- Before and After Depictions
- Weight Loss
- Health and Safety
- Disclosures

“The World’s Fastest Weight-Loss Solution”

“The #1 Doctor Recommended Joint Supplement”

“Within 7 days my acne completely disappeared”

“The Clinically Proven Weight Loss Supplement!”

Issues & Claims

- Earning Claims (Express and Implied)
 - Lifestyle Claims

“I Earned \$35,000 After The First 60 Days”

“Part Time Work, Full Time Pay”



“Quit your job, replace your income”

Standards of the Program

Standards are rooted in statutes, regulation, judicial precedent, self-regulatory decisions of the National Advertising Division, the Electronic Retailing Self-Regulation Program, the DSA Code of Ethics and the BBB Code of Advertising.

Initial Framework for Reviewing Advertising

- What claims does the advertisement or social media post convey to reasonable consumers?
- Does the material submitted by the company substantiate those claims?

Identifying General Principles of Substantiation

- Substantiate Before Disseminating
- Responsible for All Reasonable Interpretations
- Substantiate All Express and Implied Claims
- Levels of Substantiation Needed
- “Reasonable Basis” for Making Claims
- “Competent and Reliable” Scientific Evidence



Substantiation

Before disseminating an advertisement, the advertiser must substantiate all claims—express and implied—that the ad conveys to reasonable consumers.

Substantiation Policy Statement,
appended to Thompson Medical Co., 104 F.T.C. 648 (1984)

Advertisers are Liable for all Reasonable Interpretations

“To be considered reasonable, the interpretation does not have to be the only one. When a seller’s representation conveys more than one meaning to reasonable consumers, one of which is false, the seller is liable for the misleading interpretation.”

Deception Policy Statement, 103 F.T.C. 174 (1984)

Express and Implied Claims Need to be Substantiated

- The advertisement may imply more substantiation than it expressly claims
- The advertisement may imply to consumers that it has a certain type of support

How Much Substantiation is Needed?

The advertiser must possess at least the level of substantiation expressly or impliedly claimed in the advertisement:

“Tests Prove...”

“Doctors Recommend...”

“Studies Show...”

“Reasonable Basis” Standard

When an ad does not make an express or implied references to a certain level of support and, in the absence of other evidence indicating what consumer expectations would be, it is assumed that consumers expect that the advertiser had a “reasonable basis” for making the claims.

- “Reasonable Basis” Factors:
 - Type of claim
 - Type of product
 - The level of substantiation experts in the field would agree is reasonable
 - Net impression of the claim
 - How material is the claim to the purchasing decision of the consumer
 - Are the results stated in the claim something that can be “typically expected” by consumers?

Typicality Standard

FEDERAL TRADE COMMISSION 16 CFR Part 255

Guides Concerning the Use of Endorsements and Testimonials in Advertising

(b) An advertisement containing an endorsement relating the experience of one or more consumers on a central or key attribute of the product or service also will likely be interpreted as representing that the endorser's experience is representative of what consumers will generally achieve with the advertised product or service in actual, albeit variable, conditions of use. Therefore, an advertiser should possess and rely upon adequate substantiation for this representation. If the advertiser does not have substantiation that the endorser's experience is representative of what consumers will generally achieve, the advertisement should clearly and conspicuously disclose the generally expected performance in the depicted circumstances, and the advertiser must possess and rely on adequate substantiation for that representation.



Health and Safety Claims

- Require a high level of substantiation
- Competent and Reliable Scientific Evidence:
 - “tests, analyses, research, studies, or other evidence based upon the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results”

Competent and Reliable Scientific Evidence

What it Isn't:

- Anecdotal evidence from customers
- Newspaper or magazine articles
- Sales materials from the manufacturer
- Low return rate or money-back guarantee

What it Is:

- Tests, studies, other scientific research
- Based on expertise of professionals in field
- Objectively conducted by qualified people
- Using procedures accepted as accurate

Product Claims



The image shows an Instagram post from a user named 'joe.king'. The post features a central graphic with the text: 'Viruses (including the Flu) are no match for...'. Below this, a hand is shown holding a small glass bottle of essential oil, with a drop of oil being dispensed onto another hand. At the bottom of the graphic, it says 'We Sell Essential Oils! are you prepped for the season?'. The post has received several likes and comments. The caption reads: 'Winter is coming 🌨️ Are you ready? I've been using essential oils as a holistic alternative to pharmaceuticals and I haven't been sick in years! 😊 Purchase your #FluSeason pack from me today! Includes: ❤️ En Garde—supports healthy immune system 💙 Breathe—helps maintain respiratory function! 💚 Green Stuff—protects against seasonal threats! Stock up on #WeSellEssentialOils now, you won't regret it! #NoMore 🍷 #HealthyLiving ... more View all 16 comments'.

joe.king • Follow


Viruses
(including the Flu)
are no match for...

We Sell Essential Oils!
are you prepped for the season?

Liked by Casey.Deeya and 27 others

joe.king Winter is coming 🌨️ Are you ready?
I've been using essential oils as a holistic alternative to pharmaceuticals and I haven't been sick in years! 😊
Purchase your #FluSeason pack from me today! Includes:
❤️ En Garde—supports healthy immune system
💙 Breathe—helps maintain respiratory function!
💚 Green Stuff—protects against seasonal threats!
Stock up on #WeSellEssentialOils now, you won't regret it!
#NoMore 🍷 #HealthyLiving ... more
View all 16 comments


Product Claims


 **WeSell - Freeda Livery** Yesterday at 6:55pm · 🌐 ⋮




Ladies! Do you struggle with acne? Is your existence plagued by acne scars? 🙄

Try the #1 Doctor Recommended acne treatment, #WeSell #MiracleMask! Clinically proven to clear acne, lighten acne scars, and keep skin 100% moisturized! Get clearer skin after just ONE treatment!






Clear skin is beautiful skin, buy NOW! #clearskin #acnetreatment



 You, Justin and 4 others 96 shares

 Like  Comment  Share

[View 42 more comments](#)

 Write a comment ...    

Product Claims

 [_anita.bath](#) • [Follow](#)



400% longer lashes

♥ 🔍 🗑️ 📌

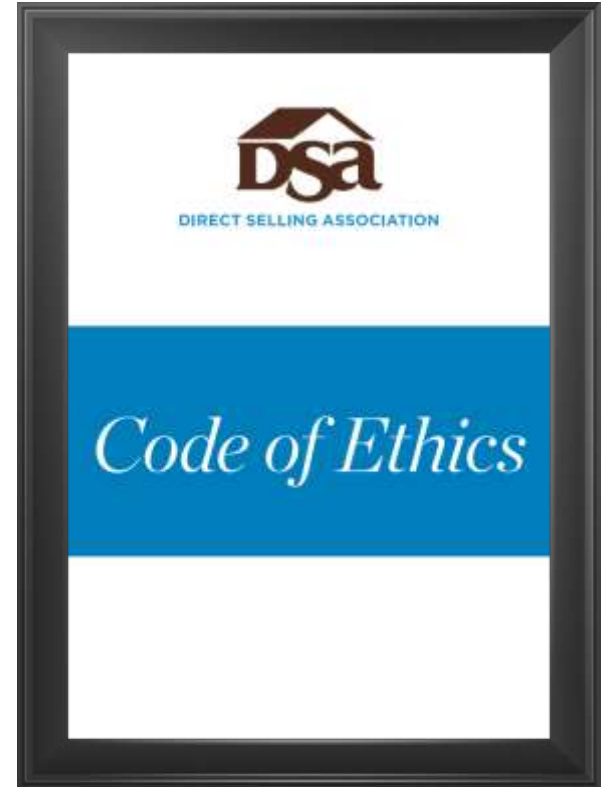
Liked by [joe.king](#) and 12 others

[_anita.bath](#) Want longer lashes? Look no further!
With [#WeSell](#) [#LashMagic](#) ✨ your lashes will grow 400% longer in just 1 week!
This 100% organic oil blend is clinically proven to help your lashes grow LONGER and FULLER! 🔥
DM me for details: [#organic](#) [#REALgrowth](#) [#longerlashes](#) ... more

[View all 16 comments](#)

Earnings Claims - Section 8

1. Any oral, written or visual claim that conveys expressly or by implications:
 - A specific level of range of actual or potential income
 - Gross or net income profits including:
 - Lifestyle purchases that are related to income earned
2. Hypothetical scenarios that may lead a potential salesperson or distributor to reasonably infer that he or she will earn a minimum level of income
3. Any chart, table, or mathematical calculation that demonstrates possible income or actual potential sales
4. Marketing materials or advertising explicitly describing or promising potential income
5. Any award or announcement of compensation describing the earnings or any current or past salesperson



Lifestyle Claims

- Statements that either expressly state or imply through visual images that participation in a direct selling business is likely to result in a lavish or extravagant lifestyle.
- “Quit your job”; “be set for life”; “earn a million dollars”; “make more money than you ever imagined or thought possible”; “realize unlimited income”; etc.
- Descriptions or images of opulent mansions, private helicopters, private jets, yachts, exotic automobiles, etc.

Lifestyle Claims


 **WeSell - Amy Stake** · Yesterday at 2:55pm · 🌐


Hey guys! 🤔 Do you want to quit your job and never work again?
👉 Become your own boss with WeSell! 🙌

TOP 5 REASONS TO #joinWeSell 🙌

- 🕒 Make your own schedule, work from anywhere!
- 💰 Lifetime product discounts up to 75% off!
- 💵 Earn an extra \$500 to 6 figures a year, the choice is yours!
- 🚗 Receive cars, jewelry, and more as rewards from WeSell!
- 🏖️ Enjoy company sponsored all-inclusive luxury vacations and events!

Message me if you're interested in learning more about WeSell and what our products can do for YOU! Financial Freedom is right around the corner, ladies! 🙌 #financialfreedom #WeSell #success #workingwoman #thankful



  You, James and 67 others · 246 shares

Lifestyle Claims



Lifestyle Claims



WeSell - Justin Thyme



Yesterday at 12:12pm · 🌐

Thanks #WeSell!

Only 6 months after joining WeSell, I've reached Regional Leader level and was awarded this #redFerrari! 🚗 Join my WeSell Squad and get your free car ASAP!

We're looking for motivated self-starters who aren't afraid to take control of their lives and their money 💰💰 WeSell will help you achieve your #moneygoals and live the lavish lifestyle you deserve! #newcar #financialfreedom #JoinToday



👍 You, Amy and 72 others

126 shares

Sources of Claims

1. Traditional Media
2. Websites
3. Social Media Platforms
 - Posts & Videos
 - Hashtags
 - Disclosures and hashtags pertaining to earnings claims that are not representative of the income that the typical customer or independent salesperson can expect to earn in the depicted scenario should be:
 - Clear
 - Conspicuous
 - Close proximity to the triggering claim
 - Be careful with icons and abbreviations

Sources of DSSRC Inquiries

- Consumer complaints
- Competitor complaints (member and non-member)
- Non-Governmental Organizations (NGOs) complaints
- Referrals from the DSA Code of Ethics Administrator
- Issues arising through independent monitoring
 - Periodic company reviews
 - Ongoing social media monitoring

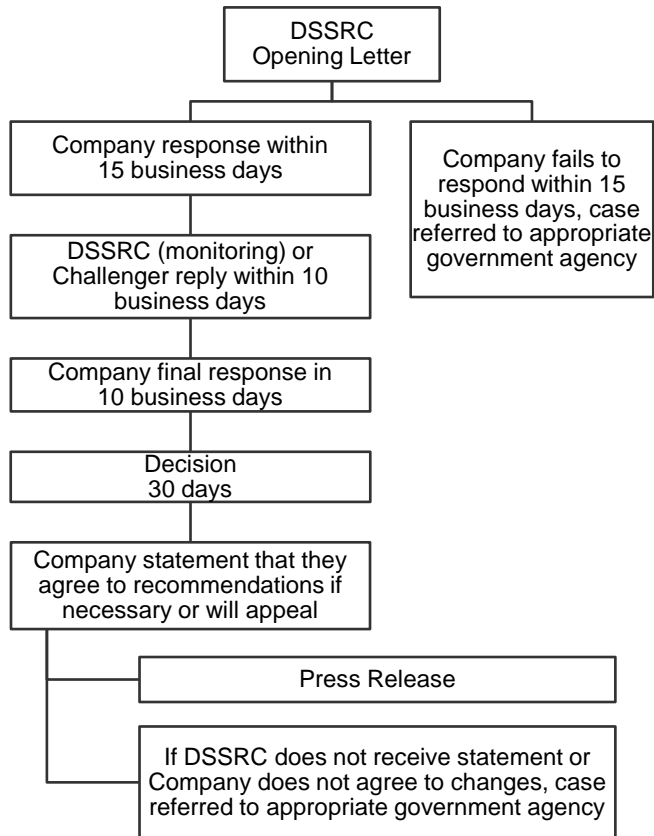
Independent Monitoring

- Review of direct selling companies and their salesforces of all available content including websites and social media. There will be focus on issues that appear to constitute a pattern.
- Problematic content will be identified for companies with the opportunity for the company to address issues
- Companies who do not agree on corrective measures, ignore the entity or do not participate will be referred to law enforcement

Competitor Challenges

- Companies can challenge the income representations and/or product claims of competitor companies with a submission addressing the content with reasonable level of specificity
- Company is given opportunity to address the challenged income representations and/or product claims and the DSSRC issues a decision which is then reported (so long as it has not been appealed).
- Should an advertiser appeal a decision, the case proceeds through the appellate process
- DSSRC reserves rights to reject the complaint as overly broad, if a party publicizes the case, if the matter is the subject of litigation or if the content has been withdrawn

The DSSRC Case Process



Decision

- Companies are given opportunity to screen the decision prior to publication
- Company may choose not to appeal the matter and the decision will be final
- If a company appeals, decision final after appeal process is conducted

Reporting: Summary of Program's Activities Reported in Case Reports

- Resolved matters from monitoring are not reported
- Unresolved matters from monitoring are reported
- Referrals to government agencies are reported
- Competitive challenge decisions are reported

Case Decisions

- DSSRC will draft a decision within 30 days of the last document received, prepare a case decision and invite the company to provide a responsive statement.
- Should DSSRC find that the claim(s) at issue are not adequately substantiated, the company submits a response indicating whether it:
 1. Agrees to comply with DSSRC's recommendations
 2. Will not comply with DSSRC's recommendations
 3. Will appeal all or part of DSSRC's decision
- Direct selling company will have an opportunity to review decision before it is posted

Case Decisions

- Case decisions which are completed after challenges or unresolved monitoring inquiries will include a summary of the claims at issue, a summary of each party's position, an analysis of the issues and a statement indicating whether a party complied or was unresponsive
- Case Reports will be available on a subscription basis for \$550 (free of charge to DSA members)

Appeals

- Companies whose advertising claims have been the subject of a DSSRC Review may appeal a DSSRC Decision
- The Appellate Board:
 1. One member chosen by DSA
 2. One member chosen by CBBB
 3. One member mutually chosen by DSA and CBBB

Reporting Aspects

- Program inquiries about “Patterns and Practices” of claims
 - Individual resolved matters from monitoring are not reported (Aggregated in Activity Reports omitting any company-identifying information)
 - What is reported?
 - Unresolved matters from monitoring are reported
 - Referrals to government agencies are reported
 - Competitive challenge decisions are reported

Press Release

- Cannot locate direct selling company
- Direct selling company refuses to participate
- Direct selling company does not adhere to DSSRC recommendations
- After appeal

Confidentiality Aspects

- CBBB proceedings are confidential except for case decisions, press releases regarding case decisions, referrals to government agencies and press releases announcing such referrals.
- Parties can take additional measures to redact confidential and proprietary information during the self-regulatory process.
- Parties agree to keep proceedings confidential, not to subpoena any witness or documents for future court proceedings, and to pay attorney fees and costs if there's an attempted violation of the provision.
- Retention: DSSRC will only retain the final case decision and/or press release.

THANK YOU

Questions?

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