



**National
Programs**

Direct Selling
Self-Regulatory Council

2021 Activity Report

**The Direct Selling
Self-Regulatory Council
2021 Year-End Program
Activity Report**

Introduction

The Direct Selling Self-Regulatory Council (DSSRC) 2021 Year-End Program Activity Report provides details on the significant initiatives of DSSRC in 2021, including monitoring of advertising and marketing across the direct selling industry, case work, and ongoing education for the industry. This past year, the change of administration at the Federal Trade Commission (FTC) and the ongoing impact of COVID-19 on the business community underscored the importance of the direct selling industry's commitment to independent industry self-regulation.

In 2021, DSSRC provided ongoing oversight of product and earnings claims for direct selling companies and their salesforce members, with a continuing dedication to addressing any representations related to COVID-19. DSSRC also commenced its 275th case inquiry, hosted the inaugural Direct Selling Summit, and was the recipient of the prestigious Best Sectoral Initiative award from the International Council of Advertising Self-Regulation. In addition to providing educational presentations about the self-regulatory program, DSSRC has spoken with numerous state and federal government agencies about its work with the direct selling industry and with dozens of direct selling companies to provide guidance and instruction regarding earnings and product claims and compliance supervision.

I. DSSRC Casework

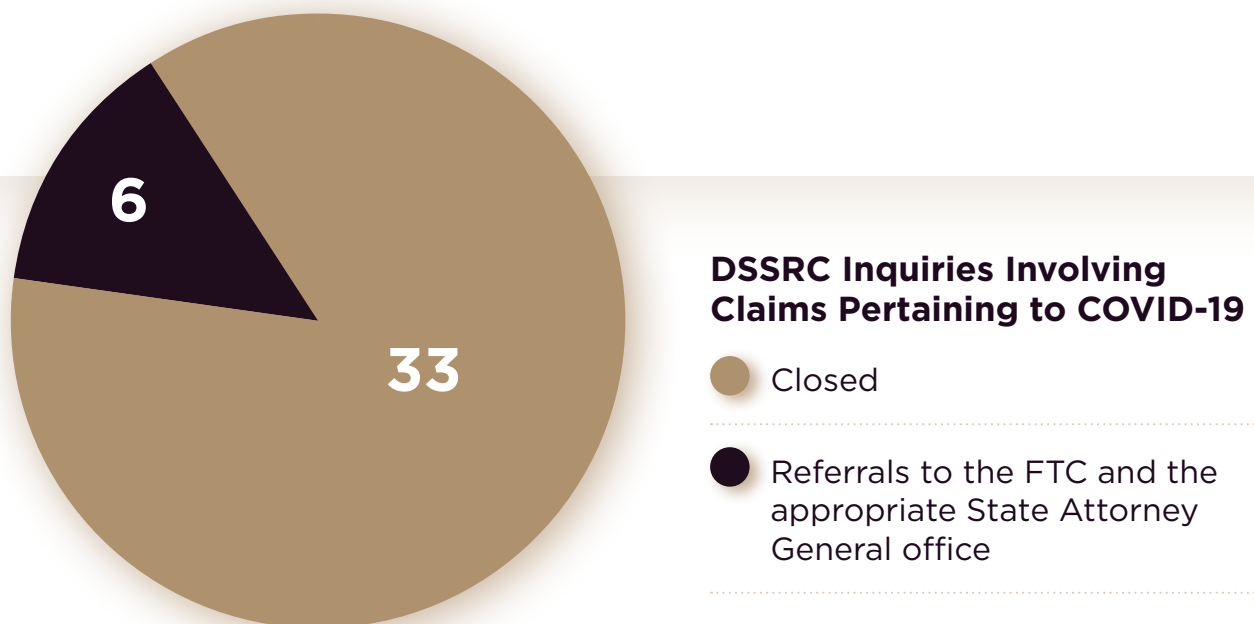
A. COVID-19 Casework

As COVID-19 continues to significantly impact all sectors of the business community, direct selling companies face the added pressure of ensuring that their independent salesforce members are not seeking to boost sales by making unauthorized health-related and/or business opportunity claims related to the pandemic. DSSRC has focused its monitoring efforts on identifying false and misleading claims about a product's ability to treat or prevent COVID-19, and claims related to how the pandemic has presented an opportunity for company salesforce members to earn significant income.

In 2021, DSSRC commenced 39 inquiries that involved claims pertaining to COVID-19. In those inquiries, DSSRC reviewed 66 product performance claims that referenced COVID-19 and 10 claims that discussed the pandemic as an earnings opportunity for direct selling company salesforce members.

Of those 39 cases, 33 were administratively closed, and six resulted in referrals to the FTC and the appropriate State Attorney General office for enforcement.

As the impact of the pandemic on the advertising industry became clear, BBB National Programs began to compile information about DSSRC and National Advertising Division

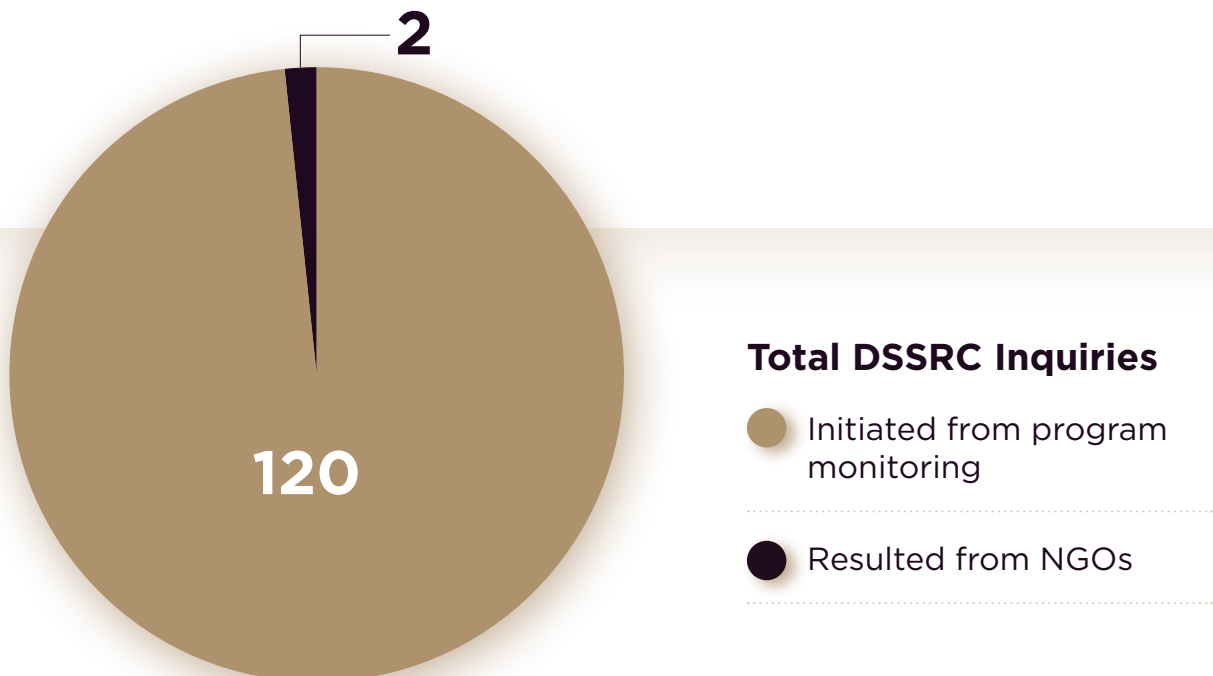


inquiries where the focus of the case was on removing false or misleading COVID-19 claims from circulation. The result of this effort was a document outlining the volume of such cases as well as the key trends that emerged from them. Several leading publications, including The Wall Street Journal, have used the data collected by BBB National Programs as a source for their reporting.

B. General Casework

DSSRC opened 122 inquiries in 2021, including the COVID-19 inquiries discussed above, and has 21 inquiries currently pending. Of the 122 inquiries commenced, 87 matters have been, or are in the process of being, administratively closed. The companies involved in those inquiries have either withdrawn or significantly modified the claims that were the basis of the DSSRC inquiry. DSSRC administratively closes 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 transitions into a formal case review. In 2021, three inquiries involved compliance matters in which DSSRC requested that companies that were the subject of prior DSSRC inquiries provide detailed information regarding efforts taken to adhere to DSSRC's previous recommendations.

Of the 122 inquiries initiated, all but two originated from program monitoring, with those two cases having been brought to DSSRC's attention by non-governmental organizations (NGOs). 60 of the inquiries involved DSA-member companies while 62 involved non-member companies.



In those inquiries, DSSRC brought 709 representative claims to the attention of direct selling companies, comprising 331 product claims and 378 business opportunity/earnings claims, including express and implied earnings claims made through lavish lifestyle representations. In addition, direct selling companies discontinued or significantly modified many similar claims other than those specifically identified in DSSRC's Notice of Inquiry.

In 2021, DSSRC referred seven matters to the FTC, State Attorneys General, and the Food and Drug Administration (FDA) for enforcement. Those referrals included both business opportunity and product performance claims, including several COVID-19 claims.

Outside of COVID-19 inquiries, almost all 2021 inquiries involved the issue of inadequate disclosures of material information and the necessity to provide such disclosures clearly, conspicuously, and in close proximity to the triggering claim. With respect to earnings claims, companies participating in the DSSRC self-regulatory process 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.

DSSRC's review and commencement of inquiries involving business opportunity claims was of heightened importance in 2021, in light of the FTC's Notice of Penalty Offense Concerning Money-Making Opportunities, placing 1,100 businesses (including more than 700 direct selling companies) on notice that engaging in claims about money-making opportunities that run counter to prior FTC administrative cases could result in civil penalties.



96% of claims DSSRC brought to the attention of direct selling companies originated on social media platforms of direct selling companies and/or their salesforce members, with 60% of those claims found on Facebook. 25% of DSSRC’s inquiries included claims disseminated on a video platform (i.e., YouTube and Vimeo). The remainder of the claims were disseminated on company websites – several of which derived from “success story” videos from salesforce members or company spokespersons.

Except for the seven case referrals, all direct selling companies that have been the subject of a DSSRC inquiry have been responsive and participated in the self-regulatory process. In each inquiry, following receipt of the DSSRC opening letter, the companies have engaged with the DSSRC team to discuss the DSSRC process and express their support for participating in voluntary industry self-regulation.

C. DSSRC Monitoring

DSSRC independently monitors earnings 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 that provides weekly reports that help call DSSRC’s attention to potential claim infractions of pertinent FTC rules and regulations.

According to DSSRC’s monitoring data, the number of claims identified as potential infractions originating from video platforms (e.g., YouTube, Vimeo, etc.) has risen significantly (276%) over the last 12 months and accounted for more than 15% of all incidents in 2021 (up 6% from 2020). However, significantly fewer (63%) COVID-19 posts were identified in comparison to 2020.

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 FDA 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 about making claims associated with COVID-19.

From January 1 Through July 31, 2021, DSSRC Monitoring Identified:

- ◆ **585,908** unique URLs
- ◆ **45,779** unique URLs reviewed aka potential incidents
 - **2,414** Facebook posts/claims
 - **496** videos
 - **1,639** health-related product posts/claims
 - **1,362** business opportunity income posts/claims
 - **124** COVID-19 posts/claims

As was the case in the past two years, in 2021 Facebook posts continued to net the most infractions, accounting for approximately 78% of all potential infractions found through our monitoring.

II. Direct Selling Summit: Industry Education as a Vehicle to Increasing Consumer Trust

In July, DSSRC hosted direct selling industry business leaders, legal professionals, advertising experts, and salesforce members at its inaugural Direct Selling Summit. The virtual event was intended to provide practitioners in the direct selling industry with an educational inside look at how direct selling advertising is monitored and reviewed by DSSRC. The event's overarching theme was 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 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's 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 include direct selling companies and provide a basis to obtain civil penalties against them for deceptive earnings claims.

PANEL 2

The second panel, **Partnering for Success: Working Together to Educate and Empower**, addressed the important relationship between 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.

KEYNOTE SESSION

In the keynote session, **On the Record with the FTC**, Beth Delaney indicated that Americans can expect 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 an emphasis on consumer redress and legally mandated repayment of ill-gotten gains received by wrongdoers. Ms. Delaney's comment proved prophetic in light of the FTC's Penalty Offense Notices that were sent out to a number of direct selling companies in October.

Ms. Delaney added that the FTC is considering bringing cases in collaboration with State Attorneys General who do 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 reiterated that self-regulation programs are an important way for the FTC to leverage its resources and that Commissioner Phillips has frequently noted the importance of self-regulatory industry programs such as DSSRC. Ms. Delaney referenced Commissioner Phillips' comments from a conference in the spring of 2021 hosted by The College of New Jersey School of Business, where he recognized DSSRC and the DSA for their consistent guidance to direct selling companies about the critical need to avoid 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 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 direct selling companies face today.

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

III. ICAS Best Sectoral Initiative Award

On June 15, 2021, 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 around the world 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) innovation—the initiative is unprecedented, original, or makes an interesting use of new technologies; c) global relevance—the initiative complies with global standards (e.g. ICC Code) and it could be transposed into another market, and; d) cost efficiency—the initiative has made 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 received the Best Sectoral Initiative award following a written submission and virtual presentation to the ICAS judges. DSSRC was gratified that ICAS recognized the commitment of the direct selling industry to promote truth and transparency in advertising and marketing practices.

IV. Socializing the Industry's Commitment to Advertising Self-Regulation

In 2021, the 50-year anniversary of advertising self-regulation provided DSSRC and BBB National Programs with an opportunity to speak with state and federal government agencies and industry thought leaders about its work 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. BBB National Programs is committed to continue its dialogue with Facebook and other social media platforms to discuss ways that we can collaborate to address those social media posts that communicate egregious and unsupported product and business opportunity claims.

Following the appointment of Lina Kahn as FTC Chair, BBB National Programs spoke with Samuel Levine, then Acting Director (and now 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.

In May, April Alexandrow, Amy Abernethy, and several FDA staff members 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 of Attorneys General in the states of Utah, Florida, and Texas regarding industry self-regulation.

In November, DSSRC attended the Democratic Attorneys General Association conference in Scottsdale, Arizona and had an opportunity to speak with several State Attorneys General about our self-regulation mission, including Massachusetts Attorney General Maura Healey. DSSRC is committed to continue its future outreach to State Attorneys General as part of its efforts to demonstrate the commitment of the direct selling channel to independent industry self-regulation.

In addition to the above outreach, DSSRC provided an update of its casework at the DSA Legal and Regulatory Seminar in October and spoke individually with dozens of direct selling companies throughout 2021 as part of its ongoing mission to provide guidance and instruction to the direct selling industry.

Lastly, in 2021, DSSRC had 29 national publication media hits, including regular references to the program by Direct Selling News and Social Selling News. With a 100% positivity or neutral rating regarding the tone used when referring to DSSRC, new outlets such as the Huffington Post, HBW Insight, Ethical Marketing News and Business Wars Daily covered DSSRC's work for the first time. DSSRC also gained international coverage when outlets covered DSSRC's 2021 Best Sectoral Initiative award from ICAS in June.

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.

BBB National Programs

1676 International Drive, Suite 550
McLean, VA 22102