



DIRECT SELLING ASSOCIATION

DSA Board of Directors

September 2018

www.dsa.org



DIRECT SELLING ASSOCIATION

A Vision for a Bold and Aggressive Approach to Ethics & Self-Regulation

www.dsa.org

September 2018

What Has DSA Designed ?

A revolutionary new self-regulation program

- Administered by a credible third-party
- Applicable to DSA members and non-members
- Incorporates Federal Trade Commission (FTC) Input

Why Do We Need This?

- Marketplace conditions:
 - FTC enforcement actions
 - Increased number of industry critics such as TINA
 - 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 enforcement

What are this Initiative's Design Features?

1. A bold and aggressive self-regulatory model
2. Higher standards and stronger enforcement
3. Create value for the industry
4. Industry-wide application
5. Transparent
6. Modeled after successful programs cited by the FTC
7. Third-party credibility

How Will DSA Deliver This Initiative?

- Partner with a credible third-party to create a program that manages:
 - Consumer complaints
 - Company complaints (including competitive challenges)
 - Non-Governmental Organizations (NGOs) complaints
 - Referrals from the DSA Code of Ethics Administrator or DSA staff
 - Issues arising through independent monitoring:
 - Periodic company reviews
 - Ongoing social media monitoring

Who are DSA's Partners?



Why the ASRC/CBBB?

ARSC/CBBB are leaders in developing, managing and enforcing self-regulatory programs for other industries including:



Framework Document

- Describes how the program will operate: sourcing of issues, fees, staffing, funding, processes, potential referral to law enforcement,
- Sets forth program standards,
- Includes information on confidentiality, the program's relationship with the DSA Code Administrator,
- Describes appellate procedures and composition of the Appellate Panel.

Purpose

- 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

Jurisdiction of the Program

Independent monitoring
of the direct selling
marketplace

Matters referred by the DSA
Code Administrator based
on a pattern and practice of
complaints identified, or
pursuant to media reports,
or matters identified by
consumers

Matters raised by
competitor challenges

Inquiries received from
distributors, customers
and other users of direct
selling companies
products or services

Complaints from Better
Business Bureaus
directed to DSCPC

Standards of the Program

Standards will be 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 .

What will the process be?

1. DSCPC Opening Letter
2. Company's Reply (if company doesn't participate, matter referred to government agency)
3. DSCPC Reply (may include suggested corrective measures, may find that the content at issue is substantiated)
4. Company's Response
5. 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
6. 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

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 to address issues.

Companies who do not agree on corrective measures, ignore the entity or do not participate will be referred.

Matters referred by Code Administrator, Pursuant to Media Reports, Inquiries

- DSCPC shall identify content of concern and the company will be given an opportunity to address within 15 business days. Companies can request additional time.
- If substantiation is not sufficient, DSCPC may request additional information, recommend corrective measures, remedial instruction to the salesforce.
- DSCPC will issue a case report with a summary of issues.
- Companies who are non-responsive or do not comply may be referred to appropriate government agencies

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 content and the DSCPC issues a decision which is then reported (so long as it has not been appealed).
- Should a company appeal a decision, the case proceeds through the appellate process.
- DSCPC reserves right 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.

- Any party to a DSCPC matter may appeal a DSCPC Decision.
- The Appellate Panel:
 1. One member chosen by DSA
 2. One member chosen by CBBB
 3. One member mutually chosen by DSA and CBBB

Case Decisions

- DSCPC 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 DSCPC find that the content at issue is not adequately substantiated, the company submits a response indicating whether it:
 - Agrees to comply with DSCPC's recommendations
 - Will not comply with DSCPC's recommendations
 - Will appeal all or part of DSCPC's decision

- Case decisions are published in Case Reports. The decision will include a summary of the content at issue, a summary of each party's position, whether a party complied or was unresponsive.
- Case Reports will be available on a subscription basis for \$550 (free of charge to DSA members)

Confidentiality Aspects

- ASRC/CBBB proceedings are confidential except for case decisions, publications 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 and witness or documents for future court proceedings, and to pay attorney fees and costs if there's an attempted violation of the provision.
- Retention: DSCPC will only retain the final case decision.

Structure, Staffing, Funding

- DSCPC will be an operating unit of CBBB
- DSA funds the costs of the program. DSA's agreement with CBBB may amended by DSA and CBBB.
- Staff will include an Executive Director, senior legal analyst and a staff attorney. DSCPC may utilize monitoring services at its discretion and in consultation with DSA.

What if the claims and/or representations are found to be inadequately substantiated ?

DSCPC may consider the substantiation sufficient and decline to pursue the matter further, in which case the DSCPC shall so notify the company.

Relationship with Code Administrator and DSA

- DSCPC may refer individual matters regarding member companies to the Code Administrator
- Code Administrator may refer matters to DSCPC if a pattern or practice of complaints is identified.
- Code Administrator shall serve as a consultative resource
- DSCPC Executive Director may recommend amendments to the DSA Code of Ethics based on DSCPC case analysis
- DSCPC shall consult DSA regarding hiring and training of DSCPC staff.

Salient Questions

Implications of Participation

Q: Does participation in the process or the issuance of a decision constitute a legal admission or finding?

A: *No.*

The procedures clearly state that participation is not an admission of anything and that decisions are not legal findings.

Confidentiality

Q: Will there be confidentiality aspects to the program?

A: *YES.*

All ASRC/CBBB proceedings are confidential except for publication of case decisions, press releases announcing disposition and referrals in the case of a non-responsiveness or non-compliance.

Discoverability

Q: Are the materials related to a self-regulatory action discoverable?

A: YES.

Yet, ASRC/CBBB programs demand that parties agree not to subpoena witnesses or documents regarding reviews and proceedings.

Fees

Q: Will the program have fees?

A: YES.

Competitive challenges will have a \$10,000 fee with 50% discount for DSA members .

DSA members will have free access to the library of self-regulatory decisions for the program.

Appeals will have a \$5,000 fee for all participants

Members vs. Non-Members

Q: Will all companies be treated the same?

A: YES.

The program will be industry-wide and will apply to members and non-members.

Members vs. Non-Members

Q: Will DSA members have a voice in this program?

A: YES.

DSA members have participated in the development of the program, its implementation and funding. They will also continue to help nurture and develop a direct relationship with our CBBB partners.

DSA Board Involvement

Q: Does the DSA Board of Directors play a role in this program?

A: *YES and NO.*

While the Board plays the same role as other member companies in shaping the program's development, the initiative will operate independently from DSA and the board once it is active.

DSA Code Administrator Involvement

Q: Will this program replace the DSA Code Administrator?

A: NO.

The DSA Code Administrator will continue to enforce the DSA Code of Ethics including one-off consumer complaints.

The Administrator will also support the program on a consultative basis.

Standards: Substantive Issues

Q: Are there standards that inform this program's substantive issues?

A: *YES.*

The standards of the DSA Code of Ethics are grounded in federal law regarding marketing, advertising, consumer protection.

ASRC/CBBB programs have a wealth of expertise and precedent in legal, regulatory and consumer affairs.

Standards: Product Claims

Q: Are there standards that will inform product claims?

A: *YES.*

The DSA Code of Ethics requires that companies substantiate their product claims, and that claims are truthful and non-misleading.

ASRC/CBBB programs have a wealth of expertise in product claims.

Standards: Income Claims

Q: Are there standards that outline income claims?

A: YES.

The DSA Code of Ethics requires that claims be truthful, documented and accurate.

ASRC/CBBB programs have experience in income claim evaluations.

Appeals

Q: Will there be an appellate program?

A: YES.

The ASRC/CBBB has templates for appeals processes and the appellate process and body is being developed to ensure proper staffing and expertise for an appellate panel.

The framework anticipates one panelist chosen by DSA, one panelist chosen by the CBBB and one mutually chosen by DSA and the CBBB.

Complaint Review

Q: Will all complaints be publicized?

A: *NO.*

Only those complaints that merit a full inquiry by the self-regulatory organization will be publicized. The ASRC/CBBB vets all consumer complaints. Complaints that show a potential pattern or practice will be given priority

Complaint Review

Q: Will final cases be publicized?

A: YES.

When a complaint or challenge gives rise to a full inquiry, the ASRC/CBBB will publish the final decision. Under certain circumstances, cases may be administratively closed and therefore not publicized.

Company Reviews

Q: Will the results of reviews be made public?

A: NO.

Existing ASRC/CBBB monitoring is not public.

If a company is unresponsive or non-compliant with recommendations, the review may give rise to an inquiry by the self-regulatory body.

Program Operation

Q: Will this new initiative have dedicated staff?

A: YES.

The current vision is for the program to be staffed by an executive director, a staff attorney and other professionals.

Program Launch

Q: Will DSA play a role in launching this initiative?

A: YES.

DSA will collaborate with program personnel to ensure the program's successful launch and roll-out.

Questions