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NAD Reveals Initial Plans for 2020 Fast-Track Process



The [National Advertising Division](#) recently revealed its plans to launch a fast-track resolution process to resolve certain false advertising claims in a mere 2-4 weeks.

This fast-track process will provide a useful tool for companies that want to quickly and efficiently challenge certain competitor advertising practices. In an email to BBB National Partners, the self-regulatory forum explained that certain claims would be eligible for the fast-track process separate from the standard NAD process, and would neither modify nor amend the current NAD standard process. The proposal for a fast-track process arose from the sheer speed with which advertising claims come and go from the marketplace in digital marketing, particularly on social media. NAD plans to refine the process in early 2020, but its current proposal provides a glimpse into NAD's current thinking. Here are key takeaways on the current proposal:

- **Eligible Claims:** Fast-track challenges would be limited to single-issue claims that do not require complex substantiation (e.g., clinical studies or technical product testing) or consumer perception studies. The fast-track process may start as a pilot limiting claims to the following categories (potentially to be expanded over time):
 - Disparagement
 - Failure to disclose material connections between influencers/brands
 - "New" and "free" claims
 - #1 claims (e.g., best in class)
 - Product demonstration and image-based claims
 - Ratings and reviews
 - Testimonials
 - Pricing claims (e.g., long-term or never-ending sales)
 - Claims in clear violation of FTC guidelines
 - Insufficient disclosures
- **Decisions in 2-4 Weeks:** Fast-track decisions will still be public, but will be shorter and less detailed.

- **Appeals Process Uncertain:** NAD anticipates further review and discussion on whether advertisers can appeal fast-track decisions. If a related appeal process is put in place, it would also be expedited.
- **Four-Step Process:**
 - ***The challenger gets one submission:*** The challenger's initial filing would be its only submission and include (a) the challenged advertising, (b) a brief statement regarding fast-track eligibility, (c) a brief description of facts showing that the advertiser likely controls the advertising, (d) supporting exhibits, and (e) advertiser contact information.
 - ***Initial process determination:*** If based on the complaint NAD determines the challenged claim is not appropriate for the fast-track process, the challenger can still file a standard-track NAD complaint.
 - ***Advertiser's response due in 5 business days:*** The advertiser must submit a response in 5 business days or voluntarily and permanently discontinue the claim or agree to modify the claim as requested by the advertiser. Short extensions may be granted. The advertiser can object to the fast-track process.
 - ***Final Process Determination in 2-3 business days:*** NAD will make the advertiser's submission available to the challenger, only after NAD determines that the fast-track process appropriate. If NAD does not find that the fast-track option is appropriate, the case will be administratively closed, and the challenger will not be permitted to see the advertiser's evidence. The challenger could still file a standard NAD challenge.
- **Pricing to be Determined**

The fast-track proposal resulted from a workshop with corporate National Partners at the NAD Annual Conference in September 2019, but will evolve this year. NAD invites companies to send feedback to NADfasttrack@bbnp.org. We will keep you posted on further developments as they arise.

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