



On April 2, 2020 the [National Advertising Division](#) (NAD) launched its [Fast-Track SWIFT](#) (Single Well-defined Issue Fast Track) resolution process, promising to resolve single-issue cases in 20 business days.

An overview follows. **What is NAD?** NAD is an organization within the Better Business Bureau (part of the BBB National Programs) which evaluates the truth and accuracy of national advertising. Matters heard by NAD may be initiated by a competitor or by NAD itself. After briefing and oral argument, NAD issues reasoned opinions with recommendations about whether the advertiser should modify or discontinue the challenged advertising. While compliance is voluntary, brands that do not comply are referred to the Federal Trade Commission (FTC) for a second look. NAD reports a compliance rate of 95%, and the FTC reports that it examines every case referred to it by NAD. **What is NAD's standard process?** Until now, NAD cases generally took about 3 months, involved several rounds of briefing and included oral argument. There was no ability to

accelerate the process. **What is the Fast-Track SWIFT process?** The Fast-Track Swift process allows a company to challenge a competitor's advertising on an accelerated timeline and achieve resolution within 20 business days. The process is meant to encompass only single, "well-defined" issues that do not involve claim substantiation. **Why might I consider NAD's Fast-Track SWIFT process?** At a time when courts are closed across the country with varying degrees of access and getting a timely hearing may be difficult, NAD's accelerated process may provide a viable alternative to challenging certain kinds of advertising. Even after closures, the NAD's SWIFT process is a cost and time-efficient method of challenging false and misleading competitor advertising claims. **What are the details of the SWIFT process? Claim must be a single, well-defined issue:**

- Cannot require review of complex evidence or argument
- Cannot involve claim substantiation
- Examples of eligible claims include:
 - Influencer & incentivized review disclosures
 - Misleading sales and pricing claims
 - Native Advertising disclosures

Filings and Timeline are Condensed: To achieve the 20-business day resolution, the resolution timeline and the length allowed for filings is highly condensed (days exclude holidays and weekends):

- Day 0**
 - Challenge filed – *Limited to 5 pages (cf. 20 pages for standard track)*
 - NAD reviews to determine if appropriate for SWIFT – *NAD has 2 business days to make initial determination that case is appropriate for SWIFT*
 - NAD transmits challenge to advertiser

- Day 4**
 - Advertiser may object to SWIFT process – *NAD will decide in 2 business days*

- Day 10**
 - Advertiser's substantiation is due – *objection to SWIFT process does not toll due date for substantiation.*

- Day 11-15**
 - Meetings at NAD's discretion – *Meetings do not toll time to decision*

- Day 20**
 - NAD decision rendered

There is also an accelerated appeals process with briefing finished in 17 days, oral argument, and a decision issued within 3 days after argument. For a BBB National Partner, the filing cost for the Fast-Track SWIFT process is \$30,000. For non-BBB National Partner members, the filing cost is between \$15,000 and \$40,000 depending on the challenger's gross annual revenue. However, brands who use the SWIFT challenge process will reduce overall NAD case-related legal fees because the process does not include multiple rounds of briefings.

Key Takeaways: NAD presents an effective alternative to litigation in court for many advertising matters. With the introduction of the Fast-Track SWIFT process, companies can now also achieve speedy resolution of discrete advertising issues for reduced legal fees. This can be a good strategy to level the playing field and moderate overly aggressive competitor advertising claims.

Authors



[Jason S. Howell](#)

Partner

JHowell@perkinscoie.com [206.359.3134](tel:206.359.3134)

Explore more in

[Consumer Protection](#)

Blog series

Consumer Protection Review

Consumer Protection Review helps businesses that market and sell to consumers navigate federal and state legal issues related to advertising, privacy, promotions, products liability, government investigations, unfair competition, class actions and general consumer protection.

[View the blog](#)