



Advanced Media and Technology Law

Advertising Disputes Law



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ASRC Announces Changes to NAD and NARB Procedures Following Working Group Recommendations

The Advertising Self-Regulatory Council board has announced changes to the adjudicatory processes of the National Advertising Division and the National Advertising Review Board. The changes, announced at the NAD's annual conference on September 29, 2015, adopt a number of recommendations made by a working group of the Advertising Disputes and Litigation and Consumer Protection Committees of the American Bar Association. (Read our earlier [alert](#) on the working group's comprehensive analysis and recommendations. Loeb & Loeb partner David Mallen, co-chair of the firm's Advertising Disputes practice and former Deputy Director of the NAD, served as one of three leaders coordinating the working group's review.)

The Working Group recognized the value of the self-regulatory process in resolving disputes between advertisers and in promoting high standards of truth and accuracy in advertising. The changes are designed to increase the speed and efficiency of the NAD process. At the same time, the ASRC also announced upgrades to the NAD's online archive database.

Some of the changes the ASRC has announced include:

- An effort to streamline the NAD process by:
 - Establishing a scheduling process at the beginning of each competitive challenge case.
- Limiting the scope of claims in challenge cases to those set out by the challenger.
- Limiting the parties' submissions to 20 double-spaced pages.
- Changes and clarifications to the NARB appeal process:
 - Limiting participation in the appeal to the challenger and advertiser. NAD will not write a brief and will only participate if requested by the NARB Panel Chair.
 - Confirming that the parties can make new legal arguments on appeal to take into account the NAD's decision even though they cannot expand the evidentiary record.
 - Confirming that the NARB review panel will apply a de novo standard of appeal to all appeals.
 - Clarifying that the NARB will oversee any questions regarding an advertiser's compliance with an NARB decision.
- Amendments to NAD procedures to allow for private settlements between parties that will not result in a press release from the NAD.

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At the NAD conference, Mary Engle, the Associate Director of the Federal Trade Commission's Division of Advertising Practices, expressed strong support for NAD self-regulation and announced an update to the FTC's website in response to the ABA Working Group report. The changes will make it easier to locate the FTC staff's letters resolving NAD's referrals to the FTC. The letters are located in the Commission and Staff Public Letters and Statements section of the FTC's website, tagged under the heading "Resolution of Referrals from the National Advertising Division (NAD) of the Council of Better Business Bureaus," [found here](#).

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