

Advertising & Media Alert

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NAD Begins Monitoring Ads for Negative Social Stereotypes

For the first time in its 50-year history, the National Advertising Division (NAD) plans to hold brands accountable for advertising that portrays or encourages harmful and misleading “social stereotyping, prejudice, or discrimination.” NAD, a division of BBB National Programs, is now monitoring not just the truth and accuracy of advertising claims about products and brands but explicit and implied social messaging.

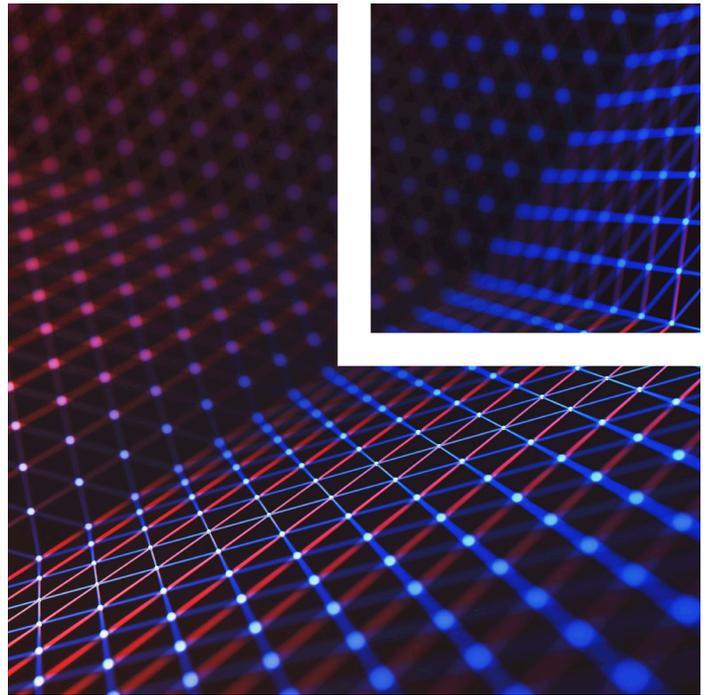
What that means for brands is still very much up in the air.

NAD announced, at its annual conference on Sept. 19, that it revised a provision in “[The Advertising Industry’s Process of Voluntary Self-Regulation](#)” to reflect its additional new focus. The document outlines the review processes used by NAD and the National Advertising Review Board (NARB) to resolve complaints related to the truth and/or accuracy of national advertising.

The revised procedures state that NAD is responsible for analyzing “national advertising that is misleading or inaccurate due to its portrayal or encouragement of negative harmful social stereotyping, prejudice, or discrimination.” NAD may weigh in on whether an advertisement contains misleading negative social stereotyping, prejudice, or discrimination as part of its routine monitoring process or as the result of a challenge filed with the division.

Following CARU’s Lead

The expansion of NAD’s scope follows a similar move by the Children’s Advertising Review Unit (CARU). CARU began monitoring advertising directed at children to ensure it does not contain negative stereotyping as of Jan. 1.



Under CARU’s revised Self-Regulatory Guidelines for Children’s Advertising, advertisers must strive to create content that is welcoming to children of all races, religions, cultures, genders, sexual orientations, and physical and cognitive abilities. CARU brought the first two cases under its revised guidelines in July and August, which involved T-shirts with gendered slogans and “makeover” dolls targeted at girls. (Read our alert on CARU’s decisions [here](#).)

U.S. vs. U.K. Guidance

NAD’s new focus on advertisements’ social messaging also follows a path set by other countries with self-regulatory standards that prohibit stereotyping in advertising, including the U.K. NAD’s guidance for advertisers is less specific than the guidance provided by the U.K.’s counterpart, however.

The Advertising Standards Authority (ASA) is the U.K.’s independent advertising regulator. The Committee of Advertising Practice (CAP), the ASA’s sister organization, is responsible for writing the industry’s Advertising Codes. CAP’s “Advertising Guidance on Depicting Gender Stereotypes Likely to Cause Harm or Serious or

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Widespread Offence” addresses both what is prohibited as well as what is allowed under the regulations in terms of social messaging. The 10-page document outlines CAP’s guiding principles and provides scenarios illustrating those principles.

For example, one principle states that ads may feature people in gender-stereotypical roles, but cautions that such ads should avoid suggesting that stereotypical roles or characteristics are always uniquely associated with one gender; the only options available to one gender; and/or never carried out or displayed by another gender. So, an ad that shows a man relaxing with his feet up as other family members are creating a mess while a woman is solely responsible for cleaning up would not be allowed in the U.K.

Questions Raised

In expanding its mission to monitor advertisements’ gender-related social messages, NAD raises questions that present challenges for advertisers. Two of the biggest questions are:

1. What standards will NAD use to assess advertisements for negative social stereotypes through routine monitoring or following the filing of a complaint? While NAD’s U.K. counterpart looks at whether an ad causes “widespread offense,” NAD will be looking at whether ads depict negative gender stereotypes that are “misleading.” So, for example, is an ad for a cleaning product that shows a woman cleaning a kitchen promoting a misleading negative stereotype? How is that determined?
2. What role will the Federal Trade Commission (FTC) play? Ordinarily, when an advertiser refuses to participate in a NAD investigation or follow the division’s recommendations, NAD refers the case for further investigation to the relevant government agency, most often the FTC. However, there is no precedent for the FTC finding negative stereotyping in advertising to constitute a violation of law under Section 5 of the FTC Act.

Like CARU’s revised Self-Regulatory Guidelines for Children’s Advertising that took effect on Jan. 1, NAD’s expanded scope requires that brands evaluate their advertising messaging in new ways to avoid negative social stereotyping. In light of such a substantial development, it’s likely NAD will be offering more comprehensive guidance for brands and advertising agencies; but until more information is issued about how ads are assessed, a conservative approach to gender-focused advertising is warranted.

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