

# Better Business Bureau: Protecting Consumers and Dealing with Organizational Ethics Challenges

## INTRODUCTION

The National Advertising Division (NAD) was created to ensure the credibility and truthfulness of advertising claims. It is a part of the Better Business Bureau (BBB), one of the best known self-regulatory trade associations in the United States. Self-regulation expresses a commitment on a company's part to adhere to certain rules that demonstrate best practices and social responsibility. Although their standards do not have the force of law, companies that engage in self-regulation agree to go beyond what is legally required. Trade associations such as the Better Business Bureau create self-regulatory programs for their members. The BBB uses its website, newspapers, and the media to inform consumers of businesses who violate these standards. They may also receive low ratings in BBB reliability reports, and accredited members can be expelled from the association. The BBB consists of hundreds of local chapters across the United States and Canada that operate independently but work together through the umbrella organization called the Council of Better Business Bureaus (CBBB).

Because the CBBB recognizes the importance of advertising's influence on consumers, it established the National Advertising Review Council (NARC) in 1971 in conjunction with the Association of National Advertisers (ANA) and other advertising associations. The NARC establishes policies and procedures for the investigatory arm of the Council, the National Advertising Division (NAD).

The NAD is an important form of self-regulation in developing a transparent marketplace between businesses and consumers. The division has helped many consumers avoid falling prey to advertising scams, and it provides important information on the ethical practices of an organization. Those companies failing to resolve consumer complaints often have their ratings downgraded, a practice that alerts consumers to exert caution in dealing with them. Conversely, accredited members of the BBB or non-accredited members with high ratings are generally perceived to be more honest. Businesses that wish to become members of the BBB agree to comply with eight ethical principles to promote trust in the marketplace. Accredited members must pay a fee to be a member.

The NAD and the BBB are not without their share of critics. Although they claim to rate both members and nonmembers objectively, some argue that the fee structure could taint the perceived objectivity of their ratings. Misconduct committed by certain chapters cast a cloud over the BBB's reputation. BBB chapters collect information and report on businesses within their district, and each chapter must maintain objectivity stand-

ards. These standards provide the BBB with its credibility as a trustworthy resource. However, it is difficult for the large organization to monitor every branch for appropriate conduct. Allegations arose that the BBB and the NAD sometimes engage in questionable conduct. A pay-for-play scheme in one of the BBB's chapters damaged the reputation of this self-regulatory organization. Some also questioned the objectivity and effectiveness of the NAD.

This case provides a brief background of the BBB. As we demonstrate, the BBB is not complete without discussing the importance of advertising to the organization that eventually led to the creation of the NAD. We then consider how the BBB became such a noteworthy organization. We examine major cases of business and advertising conflicts the BBB and NAD resolved. We then analyze some ethical challenges the BBB and NAD have faced in their history, particularly in the past few years. We conclude with a description of the actions the BBB and NAD are taking to address these ethical challenges.

## HISTORY

The NAD is such a large part of the BBB because the organization owes its existence to self-regulation in the advertising industry. In the nineteenth and the early twentieth centuries, false or exaggerated advertising was the norm. In one particular trial on false advertising involving Coca-Cola, Samuel C. Dobbs, Coca-Cola's sales manager, was moved to the breaking point when the company's lawyer remarked, "Why, all advertising is exaggerated. Nobody really believes it." Dobbs set out to create standards for the advertising industry to ensure the truthfulness of advertising claims and later became president of the Associated Advertising Clubs of America in 1909.

John Irving Romer took Dobbs's idea further, suggesting that Vigilance Committees be set up across the country to monitor the advertising industry and eliminate abuses. These precursors to the BBB culminated in the creation of a National Vigilance Committee in 1912, which is the officially recognized birth date of the BBB. In 1921 the name was changed to the National Better Business Bureau of the Associated Advertising Clubs of the World. Eventually, after several name changes, it was shortened to the Better Business Bureau.

In 1912 the Vigilance Committees first began investigating cases of advertising and selling abuses and helping those involved come to satisfactory resolutions. The committees also worked with the pharmaceutical industry to tackle the industry-wide practice of false advertising. As a result of their efforts, the American Pharmaceutical Association adopted voluntary standards for the industry. Early issues the BBB addressed included deceptive advertising, bait advertising, overcharges for automobile collision insurance, and protection for servicemen against fraudsters. Many of these standards first set forth by the BBB were later adopted by the Federal Trade Commission.

As consumers began to grow in power and importance, the BBB began advising businesses to adopt ethical practices. Over the years the BBB has been praised by a number of presidents for promoting trust and transparency in the marketplace as well as protecting consumers from fraud. The BBB has become a well-known name among consumers. Research shows that consumers recognize the BBB name over that of the Fed-

eral Trade Commission, and one Internet survey revealed that 90 percent of respondents would report a deceptive advertisement to the BBB.

In 1971 the NAD was created as the investigatory arm of the NARC. The NARC establishes policies and procedures for the NAD. The NAD provides services to companies that run national advertising campaigns. These services typically involve advertisement review services usually handled within 60 days, completed by professional counsel. The services are low-cost when compared to the cost of legal proceedings. As such, the NAD relies on advertisers' support of the NAD and their willingness to voluntarily abide by its decisions, which helps ensure honesty and openness in advertising. When companies decide to use the NAD's services rather than taking an issue into the court system, they save money that potentially would have been spent on litigation. As such many advertisers voluntarily follow the NAD's rulings.

The NAD's secondary purpose is to aid the Federal Trade Commission (FTC). If the NAD did not investigate the accuracy of advertisements, this responsibility would fall solely upon the FTC. Therefore, the NAD saves resources and time for the FTC so it can focus on more significant issues. As part of its responsibilities, the NAD investigates nationally run advertisements. These ads include a wide variety of media types such as broadcast or cable television, radio, magazines, newspapers, the Internet, and commercial online services. Types of ads investigated include product performance claims, superiority claims against competitive products, and various scientific and technical claims. These claims are either proven or disproven through scientific tests, studies, or alternative forms of investigation such as evidence provided by the advertising company.

The NAD does not investigate locally (state or citywide) run ads. When the NAD finds inaccuracies in an advertisement's claims, it reports the issue to the local BBB office in the area that the ad was run. In addition, the organization does not investigate complaints that address concerns about the good taste of ads, moral questions about products, political, or issue advertising. The mission of the NAD is "to review national advertising for truthfulness and accuracy and foster public confidence in the credibility of advertising." It investigates cases of deceptive ads and inaccurate claims that are reported, while simultaneously completing investigations and screenings of advertisements that make claims without expressly being requested to do so.

## STRUCTURE OF THE BBB

Currently there are 113 BBBs independently governed by their own boards of directors. Each local BBB must meet international BBB requirements that the CBBB monitors and enforces. The CBBB is governed by leaders of local BBBs, senior executives from major American corporations, and community leaders. The majority of BBB funding comes from corporate partnerships or membership fees. The National Council of Better Business Bureaus receives franchise fees and funding from corporate partners and sponsors. As a nonprofit organization, the BBB must seek funding from fundraisers, service offerings, and outside sources such as memberships. Although memberships and corporate sponsorships are necessary for the successful operation of the BBB, questions arose whether the BBB (and the NAD) can be truly objective when it depends so heavily upon accreditation fees.

BBB reliability reports are accessed by consumers millions of times each year. Consumers can view these reports online or request paper copies. The BBB website also offers fraud protection along with charity accountability and effectiveness education. Other services include consumer and business education; advertising review services; a BBB Military Line to support military families with questions regarding finances, insurance, and additional topics; a resource library; and recent articles on a wealth of information. The organization has a self-regulation program to enhance consumer confidence in electronic retailing.

The BBB is not limited to businesses; it can be used by nonprofit organizations as well. The BBB Wise Giving Alliance is meant to help donors make informed decisions about charities. Instead of providing reliability reports, the BBB Wise Giving Alliance provides Wise Giving Reports that evaluate organizations on the basis of 20 standards it feels must be met for charity accountability. Some of these standards include proper oversight by charity board members and financial statements that break down how the charity handles expenses.

The BBB provides a BBBOnLine seal for approved businesses to place on their websites. The seal indicates to users that the website belongs to a BBB-accredited business. Internet users on e-commerce sites can feel reassured that the company is approved by the BBB when making purchases online. Businesses who post the BBBOnLine seal on their websites commit to respecting the privacy of users on their site and working with customers and the BBB to resolve disputes.

Through these different outlets, the BBB warns consumers about questionable businesses as well as fraud. Often the different branches post information to alert consumers to be aware of certain scams. For example, local bureaus often publish a list of the top 10 scams to guard against. College students and the elderly are of particular concern to the BBB as they tend to be more likely to fall prey to fraudsters. The organization posts up-to-date news on scams targeting these two demographics to alert vulnerable consumers to current scams.

The mission of the BBB is “to be the leader in advancing marketplace trust” by creating a community of trustworthy businesses, setting standards for marketplace trust, encouraging and supporting best practices, celebrating marketplace roles, and denouncing substandard marketplace behavior. To become an accredited organization under the BBB, members must abide by the BBB Standards of Trust. These standards encompass both organizational performance and integrity. The BBB Standards for Trust are to build trust, advertise honestly, tell the truth, be transparent, honor promises, be responsive, safeguard privacy, and embody integrity.

## BBB ACCREDITATION AND RATINGS SYSTEMS

BBB accreditation does not mean the BBB supports or endorses a business’s products. In fact, the BBB prides itself on its objectivity toward both accredited and non-accredited businesses. Accreditation means a business promises to commit to the BBB’s Code of Business Practices, which incorporates the Standards of Trust, as well as making an effort to resolve customer disputes and complaints.

The process to become accredited starts with applying to the local BBB branch. The BBB reviews the business's practices, and if it decides these meet the organization's high standards, the business can receive accreditation. To become fully accredited, a business must become a member and pay a membership fee to cover accreditation expenses. Accredited businesses can display the BBB logo on their websites and literature.

The BBB rates businesses based on criteria including the number of complaints filed against a business, the severity of the complaints and whether the company takes adequate steps to address the issues, and the experience the BBB has had with the organization. Prior to 2009 the BBB used a Satisfactory/Unsatisfactory rating system. Those businesses with few complaints, or which had complaints that were promptly and adequately resolved, tended to be rated as Satisfactory. Those that had many complaints and failed to follow up with consumers might be given an unsatisfactory rating.

After June 1, 2009, the BBB revised its rating system to reflect the different types of businesses in the marketplace. The BBB developed a formula of seventeen different metrics used to arrive at a business's rating. This new system was devised to encourage businesses to improve in any way possible. The ranking system includes A+ to A- (excellent ratings signaling the highest in reliability), B+ to B- (good business rankings for companies that manage their complaints satisfactorily), C+ to C- (average rankings indicating satisfactory customer transactions), D+ to D- (cautionary rankings), and F (reliability is seriously questioned). Other companies remained unranked for certain reasons. Going from a B to an A signifies major improvement overall. The reliability reports expand upon these lettered grades by explaining why a business received the assigned rating.

## BBB CASES AND INVESTIGATIONS

While many complaints to the BBB relate to advertising, the BBB is also concerned with making sure certain companies operate in a fair and equitable manner. For instance, in 2015 the BBB gave marine contractor Docks Plus, Inc. in Cornelius, North Carolina an F rating. According to the BBB, Docks Plus had a number of complaints filed against it that remained unresolved. The complaints alleged that contracts were not completed in a timely or expected manner. However, low ratings are not set in stone. Companies that get low ratings can change their scores by addressing customer complaints, and many companies do so because they do not want to lose their client base. Thus, investigations by the BBB are important in helping customers make an informed decision about doing business with a certain firm.

In 2015 the BBB of St. Louis found that Matlock Contracting Inc. refused to address a complaint that it had failed to complete interior work. It did not provide a refund or address the complaint satisfactorily, although the BBB had alerted it frequently about unresolved complaints. As a result, the BBB expelled Matlock Contracting Inc. for violating its standards.

## NAD CASES AND INVESTIGATIONS

The NAD rules on cases involving advertising claims that range from batteries to telecommunications to consumer products. The following cases are issues reported to the NAD by competitors. The need for constant examination is important to maintain transparency and ensure accurate communications between businesses and customers. While some NAD investigations result in recommendations to change an advertisement, others are deemed to be truthful and transparent. While not all advertising is necessarily false, some claims could confuse consumers about the message. The NAD is therefore an important organization for consumer protection. After these investigations are complete, companies are given guidance on how to alter inaccurate ads, or they are given approval if all aspects are concise.

#### PROCTER & GAMBLE VS. ENERGIZER

The dispute between Procter & Gamble (P&G) and Energizer Holding, Inc. centered on whether P&G's claims about its batteries' superiority were misleading. P&G used head-to-head advertising to compare its Duracell brand Coppertop and Quantum batteries with Energizer Max batteries. Specifically, it made claims that its batteries are "up to 35% longer lasting vs. Energizer Max" or "up to 15% longer lasting vs. Energizer Max." Energizer took the claim to the NAD. The NAD focused on whether there were a sufficient number of consumers who would receive the "benefits" of longer-lasting Coppertop and Quantum batteries to justify the "up to" claims.

After examining the evidence, the NAD determined that P&G could adequately support its "up to" claims in its advertising. It supported the validity of a test that P&G used to make these claims. However, the NAD did recommend to P&G that it improve disclosure to inform consumers that results of the batteries will vary based upon usage patterns and device.

#### SPRINT VS. T-MOBILE USA

The telecommunications market is highly competitive, resulting in the NAD having to examine numerous claims from this area. In this case, T-Mobile USA challenged Sprint's claims that its network was "brand new" and "all-new." It also disputed Sprint's claim that it "is the most improved U.S. company in customer satisfaction, across all 43 industries, over the last six years."

The issue for the NAD was not to determine whether Sprint had made improvements to its network. Improvements had clearly been made. However, NAD believed that the messages were too broad. It ruled that there is no industry standard to measure "newest" and recommended that Sprint discontinue these claims in its advertising. It also recommended that Sprint make clear that its improved performance was in comparison to its prior network, not to its rivals'. Sprint agreed to take the NAD's recommendations into account.

#### DOLLAR SHAVE CLUB VERSUS ENERGIZER PERSONAL CARE

Dollar Shave Club (DSC) has become famous for its slapstick advertising that markets its lower prices and poke fun at its higher-priced rivals. However, Energizer Personal Care,

the maker of Schick razors, filed a complaint with the NAD stating that DSC advertising implied its razors worked just as well as its higher-priced brand-name rivals and that the humorous advertisements “falsely denigrated” competing products. After looking over the claims, the NAD determined that the DSC’s humorous ads were not implying that DSC’s cheaper razors were as good as its brand-name competition, nor that it communicated false disparaging comments about rival products. However, DSC did agree to discontinue certain claims rather than provide evidence to the NAD about their accuracy.

## BBB FACES ETHICAL CHALLENGES

One controversy surrounding the BBB has to do with its rating system. Wolfgang Puck is nationally recognized as a great chef with a solid reputation. Ritz-Carlton Hotels are renowned for their superior customer service. Yet some of Puck’s restaurants and the Boston branch of the Ritz-Carlton both received “F” ratings from the BBB in the past. Many consumers were left puzzled as to why such prestigious figures and companies known for their service received such poor grades. The answer, according to some (including Puck), was employees of the BBB awarded higher grades to businesses that paid to be accredited BBB members, while punishing those who did not pay with lower ratings (both Puck and the Ritz-Carlton do not pay dues to the BBB). This accusation led critics, including Connecticut Attorney General Richard Blumenthal, to allege the BBB is operating a “pay-for-play” scheme. Pay-for-play is a type of fraud wherein organizations and individuals pay for favorable treatment at the expense of other entities. In the case of the BBB, which claims to award objective ratings despite accreditation, this entails giving favorable “A” ratings to those who pay membership dues while discriminating against those who do not.

Defenders of the BBB claimed some of Puck’s restaurants were downgraded because they never addressed customer complaints. Failure to address complaints within a designated time period can downgrade a business’s ratings. The reliability report on the Wolfgang Puck restaurant in Beverly Hills gave the restaurant an F grade, signifying the restaurant had not addressed all of its customer complaints or that its response was inadequate. Ratings for this restaurant were suspended while the BBB investigated potential misconduct in the Los Angeles branch. The Wolfgang Puck Café in Orange, California, however, received a much higher ranking, since the BBB received no complaints.

An investigation into the rating system suggested misconduct. Most of the problems occurred within the Los Angeles chapter, the largest branch in the BBB. Business owners within the Los Angeles branch reported the BBB gave their businesses low grades, despite the fact that the number of complaints against their business was low and/or complaints were resolved. They also reported they were told by BBB agents that in order to get a higher grade, they had to become members. Those that chose to do so saw their grades changed the next day. A subsequent investigation by *ABC News* indicated at least some of these claims were true. It was later discovered certain groups subsequently revealed to be businesses masquerading as fictional organizations received high grades from the BBB. One fictional group was dubbed Hamas. The group was registered at a fictional address with the Los Angeles BBB president William Mitchell listed as the leader of the group. After paying accreditation fees of \$425, Hamas received an A- rating. In

another case, a blogger created a fictional racist skinhead website entitled Stormfront, with the president listed as Aryn Whiting. After paying \$425, the website was awarded an A+ rating.

Criticism continued to grow after it was revealed William Mitchell received a salary of \$400,000 per year, which many believed was too high for someone in a nonprofit organization. Mitchell was the person who devised the grading system for southern California that replaced the old “satisfactory/unsatisfactory” rating system in 2009. After the BBB was sued, Mitchell admitted the Los Angeles branch employed more than 30 sales representatives to sell memberships to business owners. Those selling memberships to first-year members earned a 45 percent commission. Mitchell resigned following the *ABC News* investigation.

The BBB has also been criticized for being too friendly with businesses. In the past the BBB received fees for performing activities of which consumers were not aware. For instance, in 2005 Cingular paid the BBB \$50,000 for information on customer complaints and concerns regarding the company. When consumers came to the BBB with complaints about their cell phone carriers, the BBB requested additional information on their complaint forms. The organization then sold this information to cell phone carriers. The BBB claims this information was being used by cell phone carriers to improve the weak spots in their businesses. When this fact became public, however, many consumers were upset, believing the BBB had not provided adequate disclosure about how their information was being used.

The BBB also launches partnerships with certain businesses that prove profitable for both parties. In 2008 the organization worked with eBay to publish three books; eBay later won the BBB President’s Award for “sustained superior performance.” The BBB claimed the award had nothing to do with the book deals. Other non-accredited businesses claim the BBB does not work as hard as an intermediary between customers and businesses that refused to pay accreditation dues.

## CHALLENGES FOR THE NAD

The NAD is a vehicle for providing a self-regulatory mechanism. Advertisers’ willingness to support NAD and voluntarily adhere to its decisions helps to ensure an honest and open playing field in advertising. However, there are also many challenges the NAD faces when promoting truthfulness and accuracy in national advertising campaigns. A few major challenges the NAD faces is voluntary self-regulation among companies, its lack of authority, and the cost associated with doing business with the NAD.

As a non-government agency, the NAD is restricted in the actions it can take. The NAD does not have the authority to issue subpoenas, hold hearings, or levy damages. The NAD cannot pull unsubstantiated advertising and therefore must rely on other governing agencies to enforce their decisions. Failure for a company to comply with a decision from the NAD is referred to the FTC. However, referrals to the FTC do not necessarily guarantee the company will be forced to comply with the NAD’s recommendations. The FTC independently examines each case and makes its own decisions. Hence, a company in violation of the NAD’s recommendations might not be penalized.

Even though the FTC followed through with some of the NAD decisions presented to it, there has not been a significant number of cases published to support the idea that non-compliance with the NAD results in discipline from the FTC. The FTC publicized five out of 21 cases referred to it involving companies refusing to follow NAD recommendations. Some believe this lack of publicity suggests the FTC recognizes the negative repercussions a disagreement could have on the NAD's credibility, thereby exposing the challenge of the NAD's inability to force firms to modify their advertising claims.

The NAD's lack of authority makes the voluntary self-regulation from companies a challenging issue. The Advertising Self-Regulatory Council (ASRC) was created in order to help companies self-regulate and avoid unnecessary investigations by creating policies and procedures when developing advertisements. The idea is to get all companies to self-regulate their advertisements voluntarily, before the NAD has to step in and provide guidance for an organization. However, there will always be companies unwilling to voluntarily self-regulate. This is why the imminent need for guidelines and procedures are present, to enable competitors to report on these companies. Because the NAD cannot force companies to self-regulate, the NAD sometimes must report unresolved issues to the FTC if it deems a deceptive advertisement could create consumer harm.

Much like issues with the BBB as a whole, there are issues revolving around the cost of doing business with the NAD. First of all, there are costs associated with filing a complaint, and those costs vary depending upon whether the reporting business is a CBBB Corporate Partner. A partner must pay a \$5,000 filing fee. A non-partner can pay as much as \$20,000 for filing a complaint. The high price is a form of control to keep trivial challenges at bay. Many businesses believe the costs are still less than taking the issue to court. Although it used to be common to get a resolution on an advertising dispute within 60 days, it has been taking longer for complaints to get reviewed. However, the amount of time it takes to settle a major dispute with the NAD is still often less than what it might take in litigation.

## CONCLUSION

The BBB implemented changes in an attempt to reestablish its credibility. The BBB expelled the Southland branch of the BBB serving the Los Angeles area for its participation in the pay-to-play fraud. Three BBB chapters later expanded to serve the Los Angeles area, and a new full-service office was opened within the city. The BBB also changed its point system to eliminate the extra points awarded for accreditation, streamlined its processes for receiving complaints, implemented additional procedures for investigating complaints, agreed to review its processes for accrediting businesses, and instituted a procedure requiring an independent third party to help in the review process. While the NAD was not specifically involved in the BBB pay-to-play scandal, its affiliation with the BBB as well as the challenges it faces in regulating advertising has increased the need for the division to ensure the integrity of its objective processes when monitoring advertisements. It is important for the BBB as a whole to consider its own ethics and compliance program to equip bureau leaders to identify misconduct. Furthermore, the Council of Better Business Bureaus could step up the monitoring and auditing of chapters. With so many bureaus, it is unlikely misconduct will be eliminated completely. Yet through effective changes, the BBB could greatly reduce its risk of ethical disasters.

## QUESTIONS

1. Which is the National Advertising Division's most important stakeholder, businesses or consumers?
2. Do you believe the BBB can be truly impartial given its financial dependence on businesses?
3. What actions would you take to ensure an ethical misconduct disaster such as the pay-for-play scheme does not happen again?

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