

# THE CHALLENGER'S PERSPECTIVE TO POLICING COMPETITORS' ADVERTISING CLAIMS

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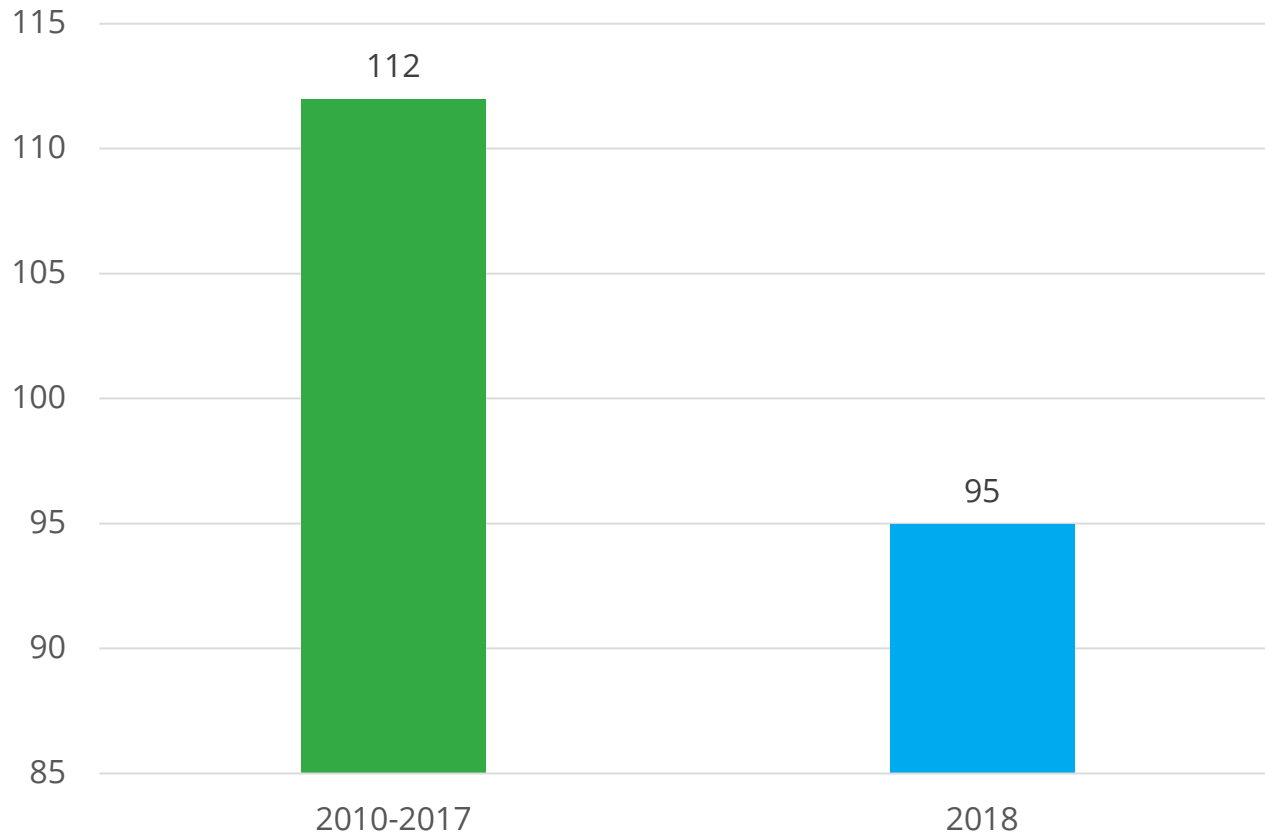
Partner, Kelley Drye & Warren LLP



*Q: What are the principal considerations that inform the decision to file an NAD complaint?*

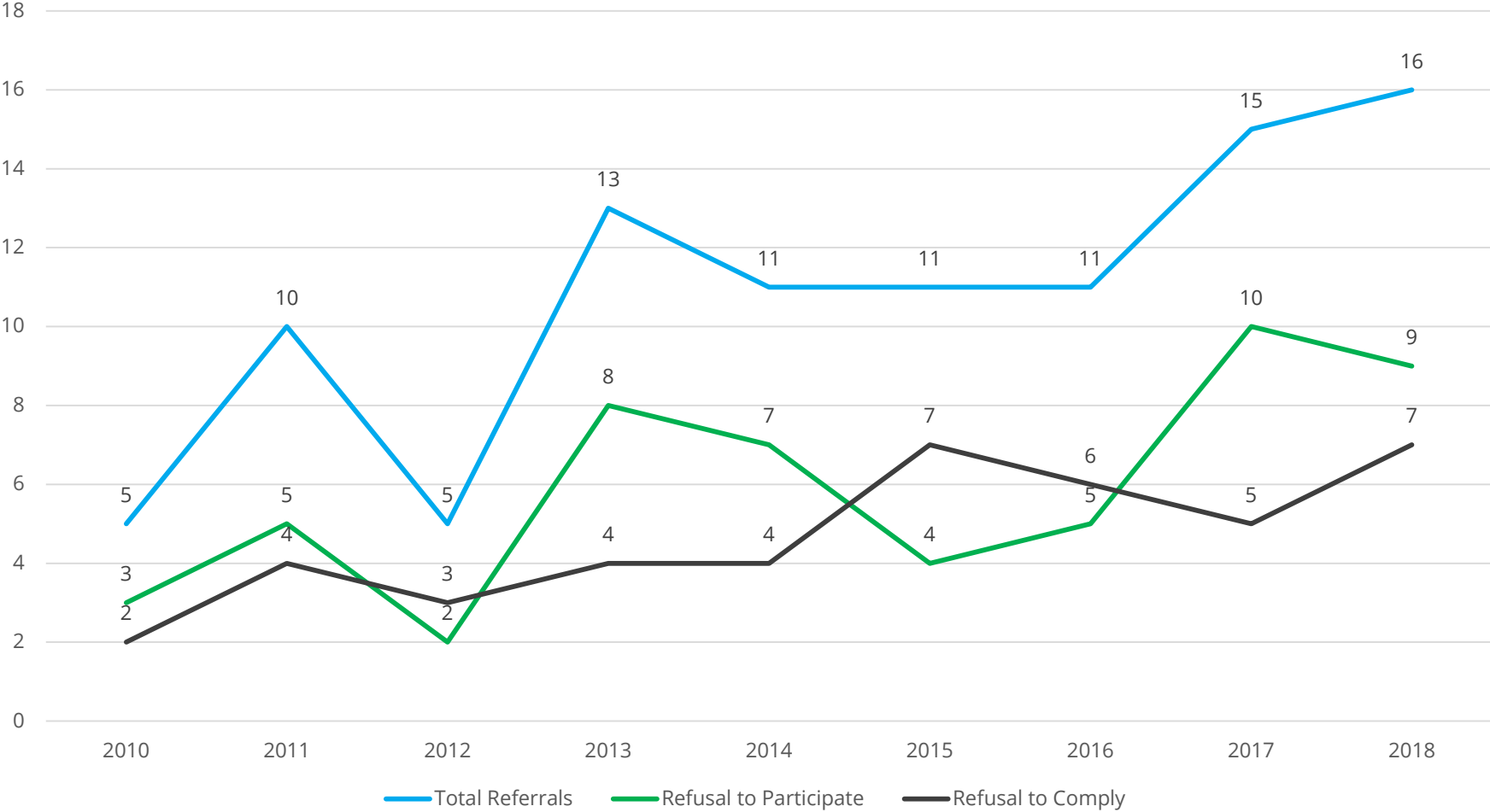
*Q: How does timing to decision affect the decision to file an NAD complaint?*

## Average # of Days to Decision



*Q: As a challenger, how concerned are you that an advertiser will refuse to participate or comply?*

# NAD Referrals to the FTC by Year and Reason



*Q: How real is the risk that a company will be investigated by the FTC and subject to an order?*



musical.ly



Tik Tok



LG



*Q: How relevant is the size and stature of a competitor to the decision to file a complaint?*

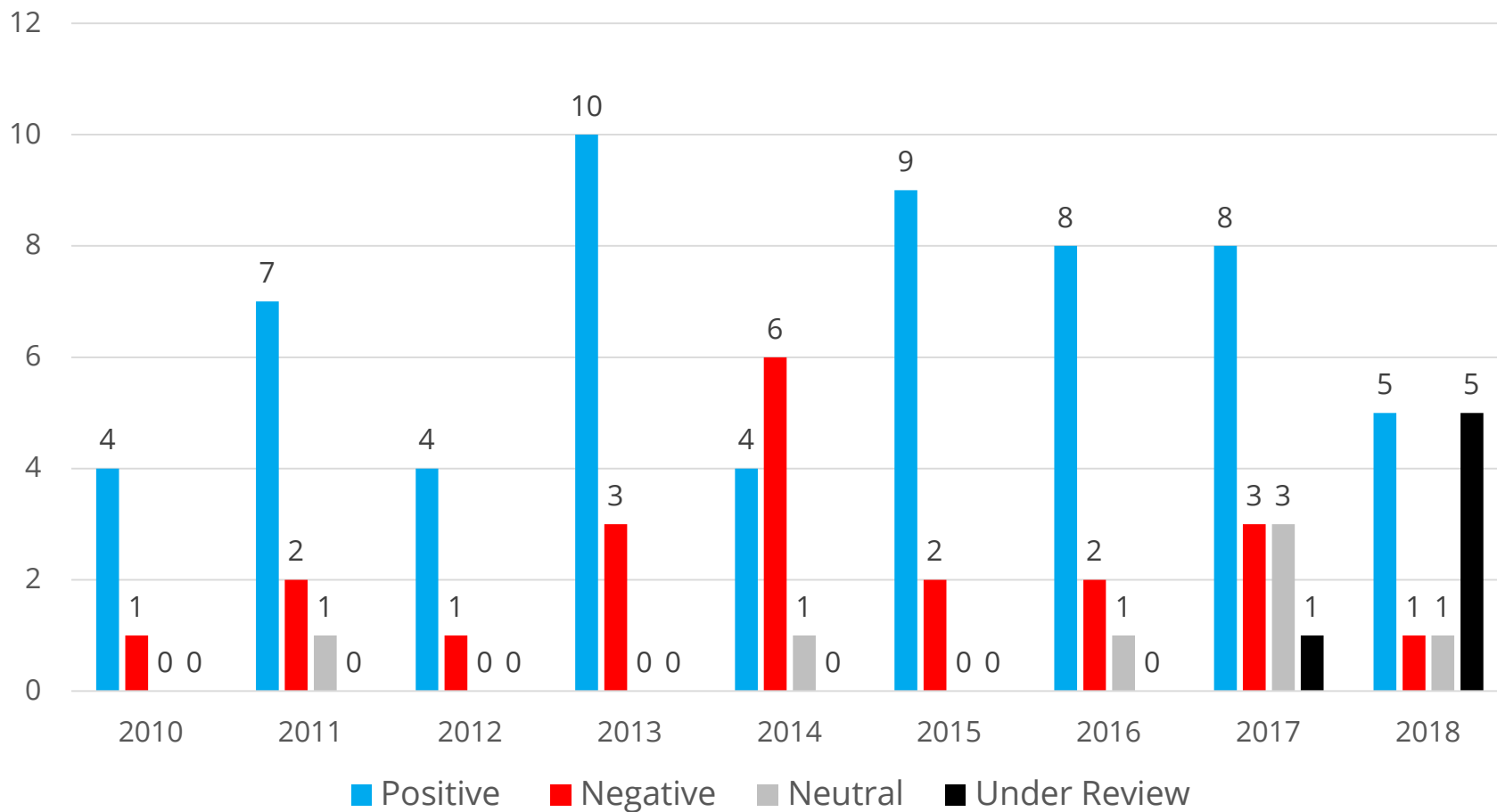
**CONAIR**



**verizon**✓

*Q: What factors should be carefully weighed before refusing to participate or comply?*

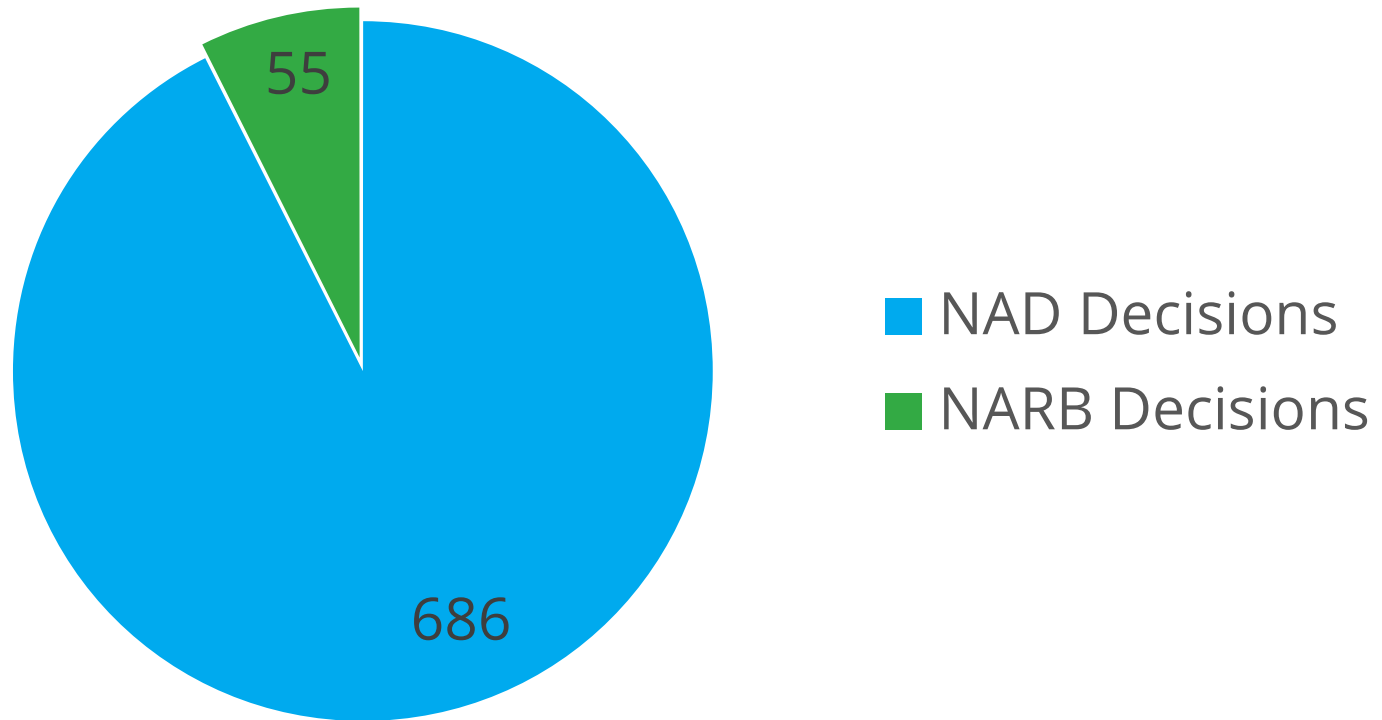
# FTC Responses to Referrals



12

*Q: What factors should be considered before deciding whether to pursue a NARB appeal?*

## Decisions Since January 1, 2012



*Q: Have rule changes resulted in an increased number of appeals or different outcomes?*

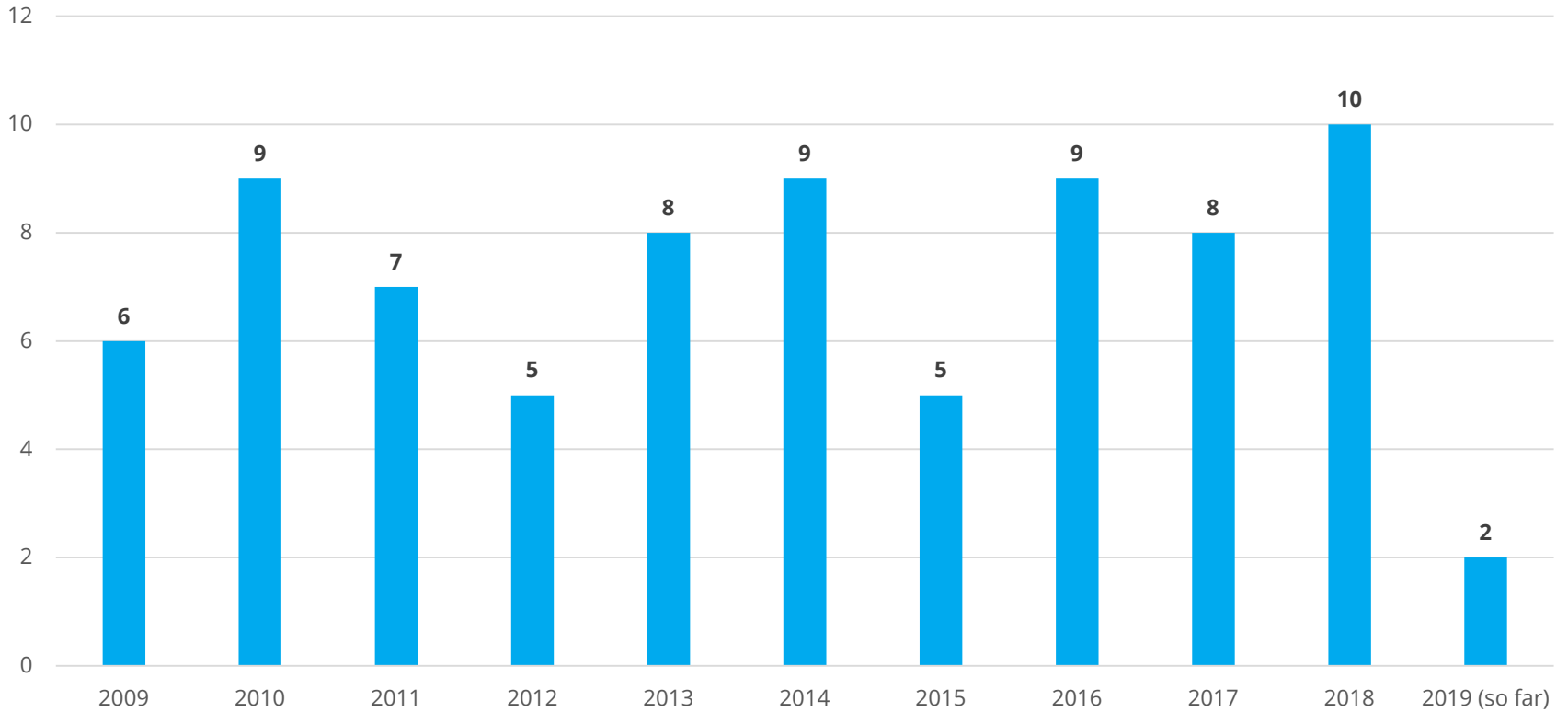
## Revisions Following ABA Working Group Report (2015)

- Formal criteria for monitoring cases adopted.
- Joint case management conferences now held.
- Complaint limited to challenger's claims.
- Challenges can be settled and cases closed on consent of parties.
- Online archive functionality improved.
- Outside experts not consulted without knowledge of the parties.
- Advertiser's statements simplified.
- NAD no longer a party on appeal.
- Appeals allow new argument but not new evidence.
- New evidence can be considered after a case is closed.
- Claims withdrawn post-complaint not addressed substantively.



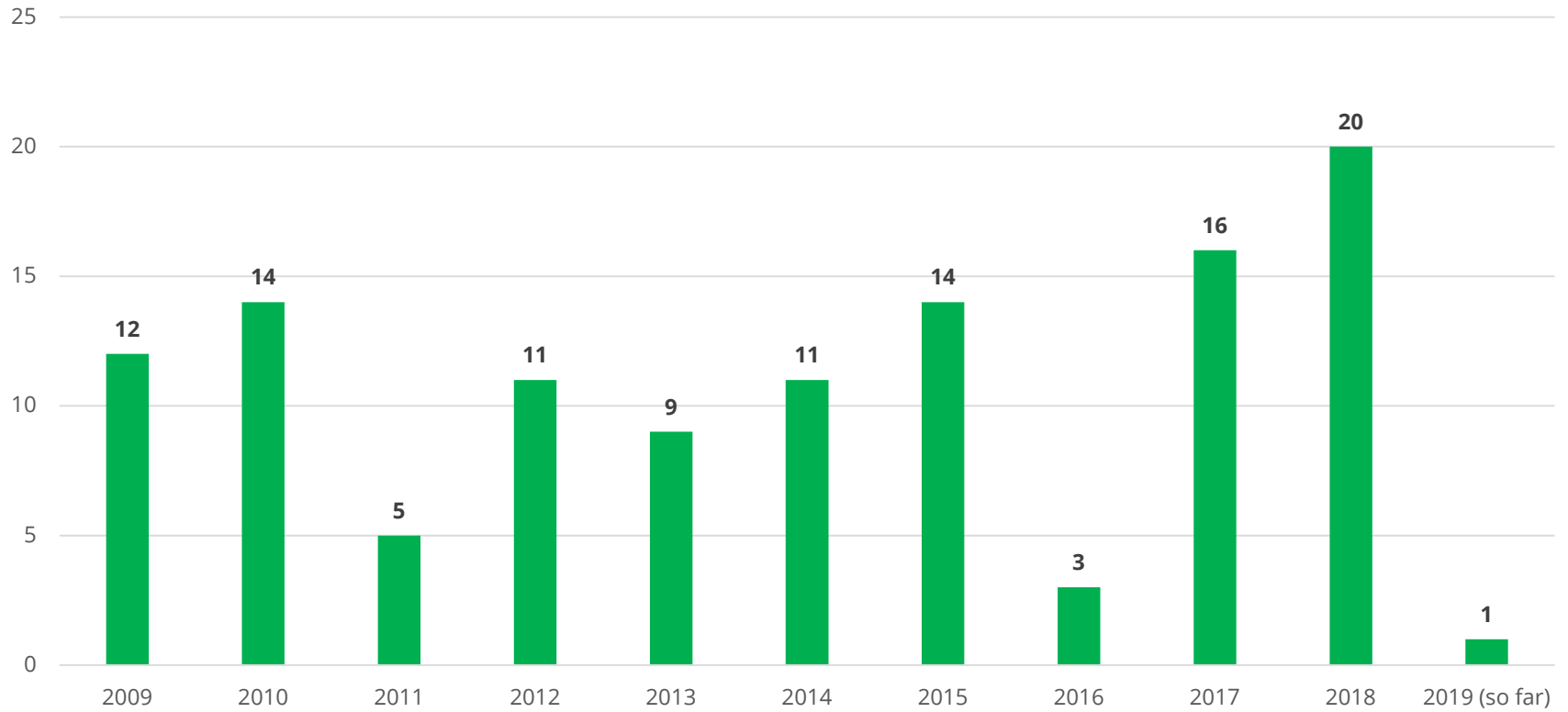
*Q: Are more appeals being decided?*

## NARB Decisions by Year



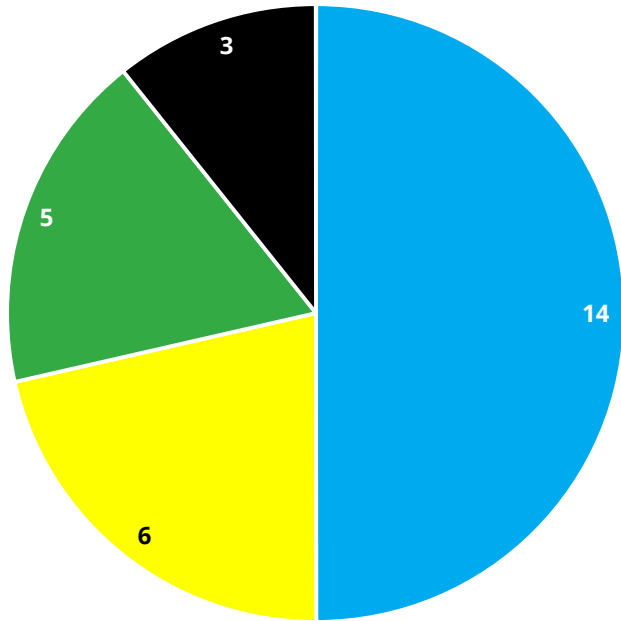
*Q: Are more advertisers filing appeals?*

## NARB Appeals Filed by Year



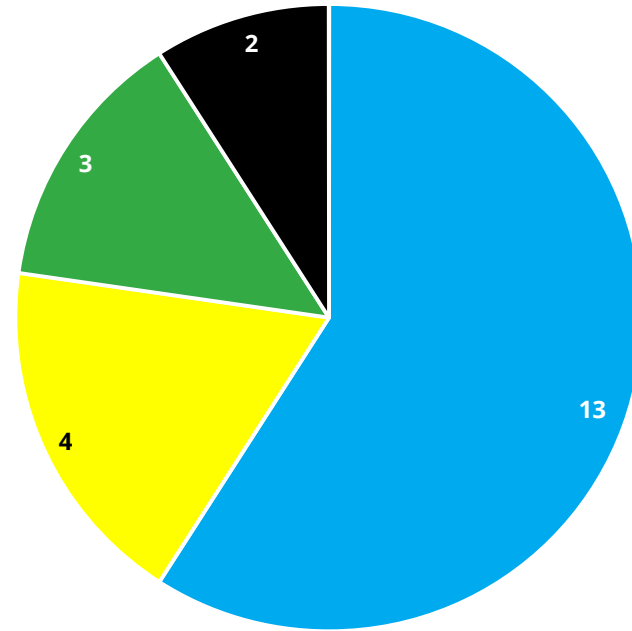
*Q: How likely is NARB to affirm the NAD Decision?*

NARB Decisions Post Rule Change (Sept. 2015)



- Affirmed
- Affirmed with Minor Differences
- Affirmed with Some Differences
- Affirmed in part; different result in part

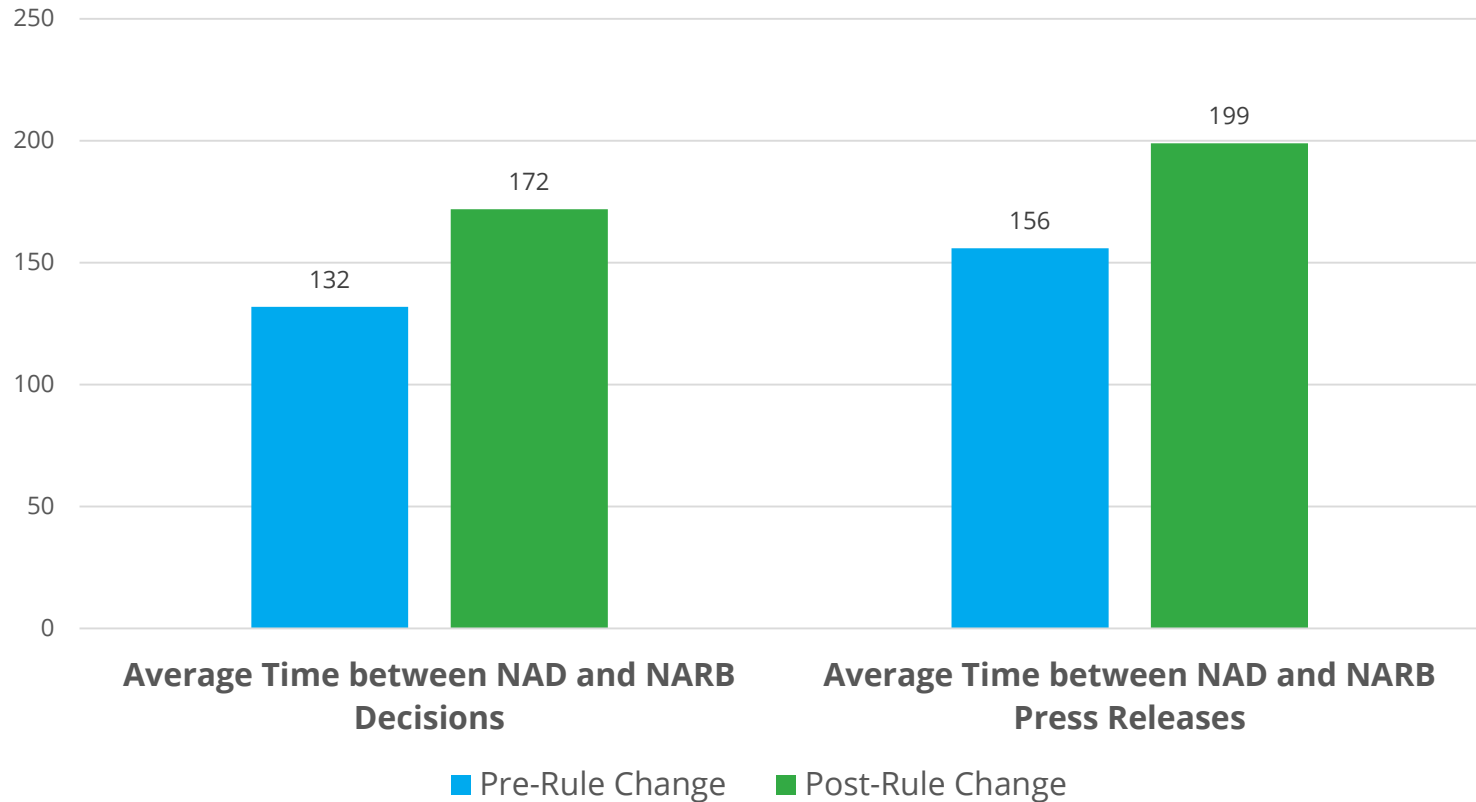
NARB Decisions Pre Rule Change (Sept. 2015)



- Affirmed
- Affirmed with Minor Differences
- Affirmed with Some Differences
- Affirmed in part; different result in part

*Q: How has timing to decision affected a challenger's decision to file an NARB Appeal?*

# Days Between NAD and NARB Completed Proceedings





*Q: Are there procedural reforms that are being considered that will further improve the process?*



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## ASRC Announces New Leadership for National Advertising Review Board

*Kenneth A. Plevan will chair the appellate body*

*For Immediate Release*

**Contact: Lee Peeler, CEO, ASRC**

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