

FTC Associate Director for Advertising Practices Elucidates the Commission's Handling of Referrals From NAD

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The advertising industry's self-regulatory system may be "voluntary," but ignoring NAD's recommendations—or declining to participate when asked—buys advertisers a prompt referral to the Federal Trade Commission. NAD often touts its close working relationship with the FTC. But what becomes of these referrals from the self-regulatory system? At NAD's annual conference last month, Mary Engle, the FTC's Associate Director for Advertising Practices, pulled back the curtain on the Commission's treatment of referrals from NAD.

Engle noted that the FTC has received 50 referrals from NAD between January 1, 2011 and August 17, 2016. Not surprisingly, post-referral outcomes vary a great deal. In some cases, the FTC staff takes no action at all. Far more often, however, the FTC delves into NAD's case file. Sometimes the Commission's post-referral role involves urging advertiser back to NAD. Other times, FTC staff launches a formal investigation.

Looking back at referrals from NAD over the past five and a half years, Engle provided the following statistics:

- 22%: Company returned to NAD at the FTC's recommendation
- 22%: Outcome unclear, or FTC staff decided to take no action
- 20%: FTC staff resolved the matter short of an investigation
- 14%: Matter remains under review by FTC staff
- 8%: FTC staff initiated a formal investigation, which it subsequently closed
- 8%: Matter related to existing FTC investigation/litigation
- 2%: Referral resulted in FTC law enforcement action
- 2%: FTC took no action because matter related to non-FTC litigation

The moral of Engle's story? Don't dismiss the self-regulatory body too quickly. Refusing to participate, or to comply with NAD's recommendations, risks unwanted attention from the FTC.