

The Direct Selling Self-Regulatory Council: What it Means for Multi-Level Marketers

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Earlier this week, the Direct Selling Self-Regulatory Council (DS-SRC) opened its doors for business. Its objective is to provide independent, impartial, and comprehensive monitoring of direct selling companies on an industry-wide basis, address income misrepresentations (including unsubstantiated lifestyle claims) and false product claims by companies and salesforce members, and enhance the reputation of direct selling.

The DS-SRC will be administered by the Advertising Self-Regulatory Council (ASRC), which operates under the Council of Better Business Bureaus. This should help the new self-regulatory body achieve its goals, considering the great success of ASRC and the programs it currently administers, including the National Advertising Division (NAD), Children's Advertising Review Unit (CARU), National Advertising Review Board (NARB), Electronic Retailing Self-Regulation Program (ERSP) and Online Interest-Based Advertising Accountability Program (Accountability Program.).

Peter Marinello, Vice President of CBBB, will serve as Executive Director of the DS-SRC, and will oversee the program and its staff. Additional staffing will include a senior legal analyst, and a staff attorney. DS-SRC may utilize monitoring services at its discretion, and in consultation with the Direct Selling Association (DSA).

DS-SRC's will have jurisdiction over the following:

- Independent monitoring of the direct selling marketplace;
- Matters referred by the DSA Code Administrator based on a pattern and practice of complaints identified, or pursuant to media reports, or matters identified by consumers;
- Matters raised by competitor challenges;
- Inquiries received from distributors, customers and other users of direct selling companies products or services; and
- Complaints from Better Business Bureaus directed to DS-SRC.

DS-SRC's legal standards will be rooted in case decisions, FTC guidance, self-regulatory decisions of the National Advertising Division and the Electronic Retailing Self-Regulation Program, the DSA Code of Ethics, and the BBB Code of Advertising. DS-SRC's independent monitoring will allow for the review of relevant promotional content created by direct selling companies and their salesforces,

including websites and social media. Any problematic content will be identified, and companies will be provided an opportunity to address the issues. When a matter is referred by the DSA Code Administrator, pursuant to media reports, or inquiries, DS-SRC will identify content of concern, and the company will be given an opportunity to address these concerns within 15 business days. In the event that substantiation is not sufficient, DS-SRC may request additional information or recommend corrective measures or remedial instruction to the salesforce. It will also issue a case report with a summary of issues. With respect to competitor challenges, DS-SRC will allow companies to challenge the income representations and/or product claims of competitor companies, with a submission addressing the content with a reasonable level of specificity. A company will also be given the opportunity to address content, and the DS-SRC will issue a decision which will then be reported publicly (so long as it has not been appealed). DS-SRC reserves the right to not hear a case if the complaint is overly broad, if a party publicizes the case while pending, if the matter is the subject of litigation, or if the content has been withdrawn. Companies that do not agree to implement corrective measures, ignore the inquiry, or do not participate, may be referred to the appropriate government agency, most likely the Federal Trade Commission. DS-SRC will issue case decisions within 30 days of the last document received, prepare a case decision, and invite the company to provide a responsive statement. Should the DS-SRC find that the content at issue is not adequately substantiated, the company will have to submit a response indicating whether it (1) agrees to comply with DS-SRC's recommendations; (2) will not comply with DS-SRC's recommendations; or (3) will appeal all or part of DS-SRC's decision. Once a case decision has been made, they will be published in Case Reports. The decision will include a summary of the content at issue, a summary of each party's position, and the ultimate resolution (including whether a party complied or was unresponsive). The formation of the DS-SRC responds directly to statements made by FTC commissioners, bureau directors, and senior staff over the years, and should be viewed as a very positive step for an industry that is frequently the subject of regulatory attention. Expect greater self-regulatory focus on income misrepresentations and lavish lifestyle claims in the months ahead, with the objective of promoting truthful and accurate advertising among direct selling companies and, in turn, raising the credibility of the industry.