

The Direct Selling Self-Regulatory Council: What Your Business Should Know

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Self-regulatory policing by an independent body is a longstanding tradition in many industries that has now made it to the direct selling world. But, since its inception, we've fielded many questions from our direct selling clients about what the Direct Selling Self-Regulatory Council (DSSRC) is and what its impact will be. Here, we take a few pages to explain more about the DSSRC and provide a few tips for companies as they begin to interact with it.

Launched earlier this year, the DSSRC is a national advertising self-regulatory organization created by the Direct Selling Association (DSA) and BBB National Programs, Inc. to enhance the direct selling industry's reputation by showing regulators that the industry is committed to self-regulation.^[1] Importantly, after its creation, the DSSRC tasked itself with monitoring income, earning, and product claims throughout the entire direct selling industry—DSA members and DSA non-members alike.^[2] The latter is not a point to be missed. The DSSRC has announced that it will be investigating DSA and non-DSA member companies concerning claims made by the companies that appear to be false or misleading. If the DSSRC is unable to resolve its concerns with the company being investigated, the DSSRC will report its concerns to the FTC for it to investigate and prosecute. Through its own efforts and tips from third parties, so far, the DSSRC has conducted at least 25 inquiries into direct selling organizations, issued seven decisions on its recommendations to direct selling companies, and made two referrals to the FTC for enforcement.^[3]

So what are some steps your organization can take to avoid being the subject of DSSRC scrutiny? While the list is too long to enumerate in a blog post and you should call an attorney for a full consultation, below are three practical tips to help you avoid being the next DSSRC target.

First, train your distributors and consultants to provide the proper income disclosures any time they make an income or lifestyle claim on social media. Most of DSSRC's investigations have been into distributor income claims on social media, particularly Facebook.^[4] According to DSSRC, distributors are either posting inadequate disclosures (such as pro forma statements like "results not typical" or "results may vary") or no disclosures at all.^[5] DSSRC has stated in multiple case decisions and in presentations that income and lifestyle claims must come with disclosures that are clear and conspicuous and that affirmatively provide the generally expected results or annual average income of consultants.^[6] Importantly, DSSRC has emphasized that both express and implicit income and lifestyle claims must include disclosures because "an advertiser [which includes an organization's distributors] has

the burden to support all reasonable interpretations of its claims and not simply the messages it intended to convey.”^[1]

Second, include disclosures as close in proximity as possible to actual income or lifestyle claims, even in videos. The DSSRC has directed companies to “include a clear and conspicuous disclosure at the beginning and end of the videos which indicates the amount of annual income that the average [consultant] has earned *and a similar disclosure should appear in the video any time a reference is made. . . to income that has been or can potentially be earned as a [consultant]*.”^[2] While disclosure during the video has been a clear directive from DSSRC, it is less clear that the FTC would find lack of disclosure during the video to be dispositive on whether an improper income claim was made if disclosures were made at the beginning and end of the video.

Finally, respond and engage in the review process with DSSRC. Engaging in the inquiry process with DSSRC is your best chance to avoid being referred to the FTC for enforcement. The only two cases the DSSRC has referred to the FTC for enforcement are cases in which the direct selling company failed to or stopped engaging DSSRC in the inquiry process.^[9]

If your company is the target of a DSSRC inquiry and you would like specific advice tailored to the particular circumstances, we are happy to be of assistance.

[1] See Peter C. Marinello, VP of Direct Selling Self-Regulatory Council, and Howard J. Smith, Attorney for Direct Selling Self-Regulatory Council, Presentation at the DSA Legal & Regulatory Seminar (October 8, 2019), at 2; *Direct Selling Self-Regulatory Council*, Direct Selling Association (DSA), <https://www.dsa.org/dssrc/direct-selling-self-regulatory-council> (last visited on Oct. 22, 2019).

[2] See Marinello, at 2.

[3] See *id.* at 21; *Direct Selling Self-Regulatory Counsel: Case Decisions*, BBB National Programs, <https://bbbprograms.org/programs/dssrc/dssrc-decisions> (last visited on Nov. 19, 2019).

[4] Marinello, at 21. Notably, we have not addressed product claims in this blog post, but you should be aware that the DSSRC is honing in on product claims just about as often as lifestyle/earning/income claims.

[5] *Id.* at 24.

[6] *Id.* at 34-35, 41; *Direct Selling Self-Regulatory Counsel: Case Decisions*, BBB National Programs, <https://bbbprograms.org/programs/dssrc/dssrc-decisions> (last visited on Oct. 22, 2019).

[7] *Direct Selling Self-Regulatory Counsel: Case Decisions—Case No. 2-2019 HJS*, BBB National Programs, <https://bbbprograms.org/programs/dssrc/dssrc-decisions/case-number-2-2019> (last visited on Oct. 22, 2019).

[8] See *id.* at *Case No. 3-2019 PCM*, <https://bbbprograms.org/programs/dssrc/dssrc-decisions/case-number-3-2019> (last visited on Oct. 22, 2019) (emphasis added).

[9] See *id.* at *Case Nos. 5-2019 HJS, 6-2019 HJS*, <https://bbbprograms.org/programs/dssrc/dssrc-decisions/case-number-5-2019>, <https://bbbprograms.org/programs/dssrc/dssrc-decisions/case-number-6-2019>.

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