

BBB National Programs' National Advertising Division in Practice: A Discussion with NAD's New Vice President

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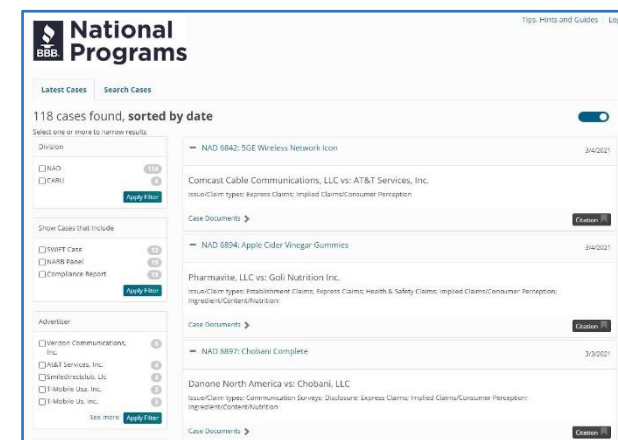
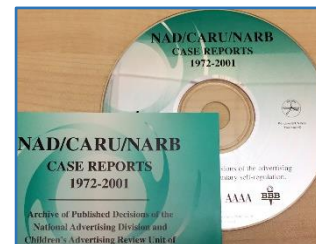
Agenda

- National Advertising Division: Background / A Refresher
- NAD Process in Practice: Initiating and Defending a Challenge
- Q&A with Phyllis Marcus

National Advertising Division: Background / A Refresher

National Advertising Division: Background

- The National Advertising Division (NAD) monitors national advertising in all media, enforces high standards of truth and accuracy, and efficiently resolves disputes to build consumer trust and support fair competition.
- NAD reviews advertising based on challenges from businesses or complaints from consumers, or on its own monitoring initiative covering a wide variety of both industries and issues.
- NAD's decisions are the single largest body of advertising decisions in the United States. [BBB National Programs Online Archive](#)



National Advertising Division: Background (cont.)

- The majority of NAD cases today result from competitor challenges.
- NAD pursues a monitoring program where it reviews advertising via its own initiative.
- The NAD process resolves advertising disputes efficiently and quickly.
 - There is no document discovery, there are no depositions, and there are no counterclaims.
 - [NAD Procedures](#)

National Advertising Division: Background (cont.)

- NAD provides advertisers with certainty:
 - NAD has a published body of case precedent that provides advertisers with guidance on claim substantiation and how NAD reviews certain types of claims.
 - NAD is staffed by decision makers with experience in resolving advertising disputes.
 - NAD provides a process for appealing adverse decisions to the National Advertising Review Board.
- NAD is a mechanism for resolving disputes, no matter the size of the company.
- NAD has experience adjudicating advertising disputes across many industries.

National Advertising Division and FTC Interplay

- The FTC encourages the self-regulation process.
 - After cases are referred to the FTC, the FTC generally encourages the advertiser to participate in the NAD process or initiates its own inquiry.
- The FTC will sometimes open an inquiry or investigation, including issuing a civil investigative demand, into advertisers that do not participate in the proceeding or that do not comply with NAD's recommendations.
- NAD often analyzes claims that are later the subject of FTC action.

Interplay: National Advertising Division and Federal Trade Commission

- Advertisers that refuse to participate in the NAD process, or that refuse to comply with NAD recommendations, are referred to the applicable government agency.
 - Federal Trade Commission (FTC)
 - Federal Food and Drug Administration (FDA)
 - Federal Communications Commission (FCC)
- FTC chooses whether to open an investigation or otherwise take action against the advertiser.

[FTC Resolution of Referrals from BBB National Programs](#)



Partnership with Meta Platforms

- Partnership with Meta Platforms to strengthen truth-in-advertising enforcement on the social network's U.S. platform.
- The partnership enables NAD to share case outcomes addressing Facebook advertising directly with Meta, allowing Facebook and Instagram enforcement teams to then act on those ads that violate their policies.



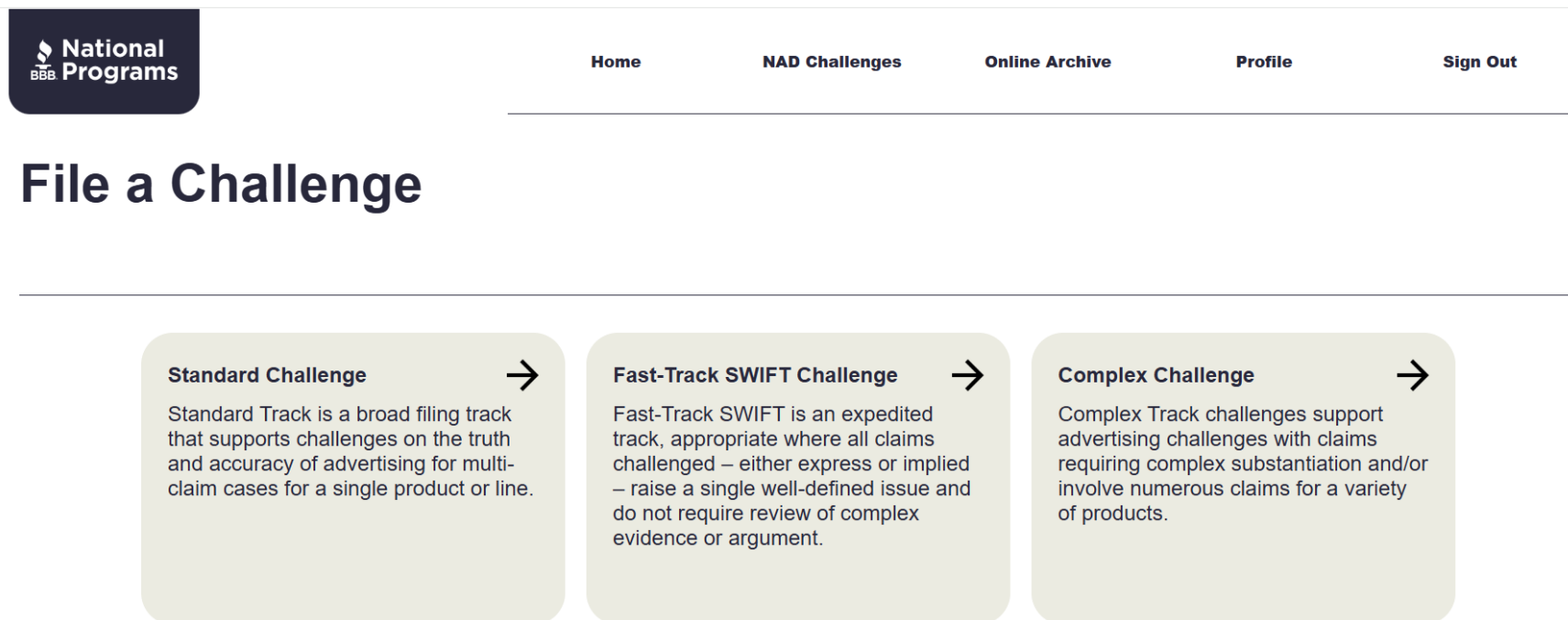
NAD Process in Practice: Initiating and Defending a Challenge

NAD Challenge: Three Tracks

	SWIFT Standard Fast-Track SWIFT	SWIFT Disclosure Fast-Track SWIFT	Standard Track	Complex Track
Briefings	1 Round	1 Round	2 Rounds	2 Rounds +
Challenge Letter	≤ 5 pages	Optional	≤ 20 pages	≤ 30 pages
Eligibility	Single, well-defined issue	Sufficiency of disclosures	Multiple issues: single product/line	Multiple issues; complex substantiation
Evidence	≤ 5 exhibits	Optional	Unlimited	Unlimited
Filing Fees	National Partners: \$12,000-\$42,400 Non-National Partners: \$15,000-\$53,000	\$11,200 - \$14,000	National Partners: \$8,000-\$38,400 Non-National Partners: \$10,000-\$48,000	National Partners: \$24,000-\$63,200 Non-National Partners: \$30,000-\$79,000
Party Meetings	1 Round	1 Round	1 Round	2 Rounds
Time to Decision (Business Days)	20	20	Final Meeting + 20	Final Meeting + 30

Filing an NAD Challenge

- Online challenges can be filed at:
<https://portal.bbbnp.org/Primary/folders/?FolderId=01JD5DHX7D6FAHBN1PB7058VQD>



The screenshot shows the 'National BBB Programs' website. At the top, there is a navigation bar with links: Home, NAD Challenges, Online Archive, Profile, and Sign Out. Below the navigation bar, the main heading is 'File a Challenge'. Under this heading, there are three cards representing different challenge tracks:

- Standard Challenge** →
Standard Track is a broad filing track that supports challenges on the truth and accuracy of advertising for multi-claim cases for a single product or line.
- Fast-Track SWIFT Challenge** →
Fast-Track SWIFT is an expedited track, appropriate where all claims challenged – either express or implied – raise a single well-defined issue and do not require review of complex evidence or argument.
- Complex Challenge** →
Complex Track challenges support advertising challenges with claims requiring complex substantiation and/or involve numerous claims for a variety of products.

Filing an NAD Challenge: The NAD's Perspective on Effective Challenges

Filing an NAD Challenge

Advertiser Contact Information

To the best of your ability, provide a contact person in the advertiser's organization responsible for these types of complaints. For example, the advertiser's in-house counsel may be the appropriate contact person.

Add Contact

Edit Contact

Remove Contact

🔍 ↺ ⋮

EmailFirst NameLast NameContact TitleCompany NameTelephoneOutside Law Firm Name

No data to display

Upload Documents

Description for Upload Documents

5GB File Size Limit. Videos should be in MP4 Format.

Select File

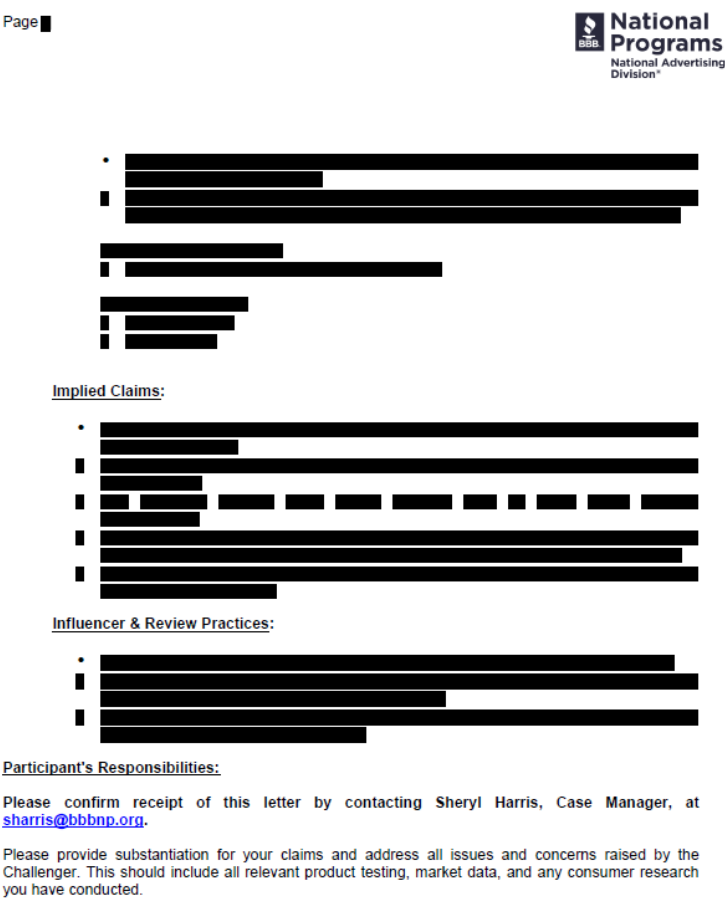
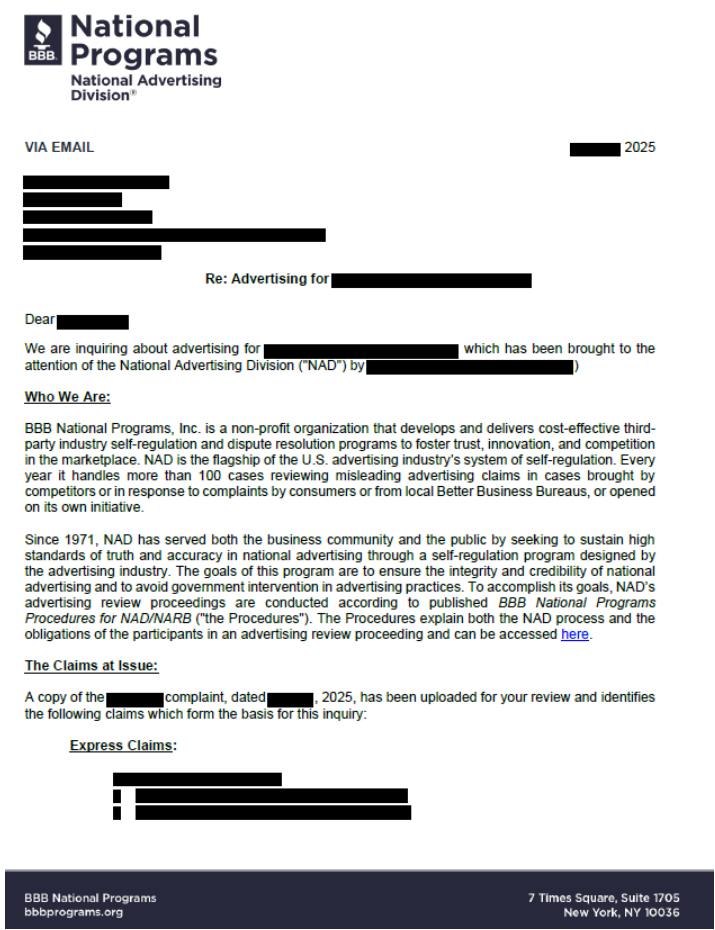
Document Type

Document Tag

Add File

Remove File

NAD Sends the Advertiser an Opening Letter



NAD Proceedings: Next Steps

- Written briefing
- Submit evidence
- Multiple rounds of briefing (depending on the track)
- Meeting with NAD staff attorneys
- Written decision provided to advertiser
- Advertiser provides written Advertiser Statement
- Written decision published on case library and press release issued

NAD Final Decision and Press Release

Case #7364 (04/10/2025)

1Up Sports Marketing

Advertising by Skims Body, Inc.

Challenger: *National Advertising Division*

Product Type: *Clothing / Fabric / Fashion Accessories*

Issues: *Disclosure; Endorsements*

Disposition: *Modified / Discontinued*

BBB NATIONAL PROGRAMS

NATIONAL ADVERTISING DIVISION

NATIONAL ADVERTISING DIVISION,
Challenger,

1UP SPORTS MARKETING,
Advertiser.

Case No. 7364
Closed (04/10/2025)

FINAL DECISION

I. Basis of Inquiry

The advertising industry established the National Advertising Division (“NAD”) and the National Advertising Review Board (“NARB”) in 1971 as an independent system of self-regulation designed to build consumer trust in advertising. NAD reviews national advertising in all media in response to third-party challenges or through inquiries opened on its own initiative. Its decisions set consistent standards for advertising truth and accuracy, delivering meaningful protection to consumers and leveling the playing field for business.

As part of its routine, ongoing monitoring program, Challenger National Advertising Division (“NAD” or “Challenger”) challenged advertising by Skims Body, Inc. (“Skims”) and its influencer Brittany Mahomes. The inquiry centered on whether the paid relationship between the brand and the influencer is clearly and conspicuously disclosed and that the content disseminated is advertising. Given the references to Skims in the challenged Instagram posts, NAD inquired about the relationship between Skims and Ms. Mahomes and what measures 1Up Sports Marketing takes to

it. The FTC makes it clear that just like any other endorsement, a social media post tagging a brand may require a material connection disclosure if the influencer has a relationship with that brand.⁶

NAD noted that although Ms. Mahomes’ Instagram posts did not mention or tag Skims in the description accompanying the post, when a viewer put their cursor over the picture, the brands and people that are tagged appear and the Skims brand appears as tagged. This tagging of Skims qualifies both posts as endorsements. Ms. Mahomes and Skims have a financial relationship that qualifies as a material connection that needs to be clearly and conspicuously disclosed to the audience.

During the pendency of NAD’s inquiry Brittany Mahomes changed each challenged post to include material connection disclosures. One disclosure states “paid partnership with skims” right under Brittany’s Mahome’s name on Instagram (@brittanylynne). The second disclosure is featured in the description portion of Ms. Mahomes post and states “Cozy Season #skimspartner #paid” or “Fam #skimspartner #paid.”

The voluntary modifications Ms. Mahomes made to her posts will be treated for compliance purposes, as though NAD recommended the modifications, and 1Up Sports Marketing and Ms. Mahomes agreed to comply.⁷

III. Conclusion

The voluntary modifications Ms. Mahomes made to her posts will be treated for compliance purposes, as though NAD recommended the modifications and 1Up Sports Marketing and Ms. Mahomes agreed to comply.

IV. Advertiser’s Statement

1UP Sports Marketing agrees to follow NAD’s recommendations and welcomes the opportunity to work with NAD in upholding high standards of truth and accuracy. **(#7364 JS, closed 04/10/2025)**

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The NAD's Perspective on Effective Challenges and Defenses

NAD Press Release

National Programs

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Media & Resources

National Partners

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Decision Summaries

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Decision Summaries

Sort By:

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Categories

☐ Advertising Self-Regulation

☐ Children's Initiatives

☐ Privacy Accountability

Programs

+

Topics

+

Advertising Self-Regulation

National Advertising Division (NAD)

National Advertising Division Finds Certain Boxed Water is Better® Environmental Claims Supported; Recommends Others be Modified or Discontinued

6.6.25

New York, NY – June 6, 2025 – The National Advertising Division determined Boxed Water is Better supported recyclability, tree planting, and certain environmental impact claims, but recommended it modify or discontinue other claims related to renewable materials and sustainable sourcing.

Advertising Self-Regulation

National Advertising Division (NAD)

In National Advertising Division Challenge, Bayview Pharmacy Voluntarily Discontinues Claims for its Compounded Semaglutide

6.4.25

New York, NY, June 4, 2025 - Following a National Advertising Division inquiry, Bayview Pharmacy discontinued claims for its compounded semaglutide products.

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Q&A with Phyllis Marcus

Changes to the Process?

NAD's Self-Regulation Enforcement Priorities?



New Standards with New Laws, Regulations, and Rules?

Looking Ahead

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NAD 2025: Leading the Way in Ad Law: [Register](#)



Questions? Contact Us



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Helpful Resources and Links



Advertising Law Tool Kit | 13th Edition

Explore this collection of tips and checklists designed to help marketers identify potentially problematic advertising practices. Topics range from copyright protection to native advertising and surviving an FTC investigation. Get your copy at [Venable.com/AdLawToolKit](https://venable.com/AdLawToolKit).



NAD 2025 Annual Conference

For more information on the National Advertising Division's Annual Conference, please scan the QR Code to register or navigate to their website [here](https://www.nadadvertising.com).





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