

**Commissioner Maureen K. Ohlhausen<sup>1</sup>**  
**Success in Self-Regulation: Strategies to Bring to the Mobile and Global Era**  
**BBB Self-Regulation Conference**  
**June 24, 2014**

---

Good Morning! Thank you for that kind introduction. I am delighted to be here today to talk about the important role of self-regulation. I have worked on self-regulation matters for many years and spent a lot of time on the issue during my time as the head of the Office of Policy Planning at the FTC from 2004 to 2008. I also recently had the pleasure of addressing the BBB's 2014 Advertising Review Training Conference in Dallas. I know that some of you attended that event as well and it is great to be with you again. I am a fan of the BBB and the FTC could not have a better partner in the work you do on behalf of American consumers.

Before proceeding further, I should add that my remarks today are my own and may not necessarily reflect the views of my fellow Commissioners.

The fact that the Council of Better Business Bureaus is hosting a conference devoted to self-regulation is not a surprise. The CBBB continues to provide an excellent example of how to develop and implement best practices for self-regulation in advertising and other areas of potential concern to consumers. The Advertising Self-Regulation Council (ASRC), created by the advertising industry and administered by the BBB, stands out as an effective advocate for American consumers and an ally of the FTC.

The BBB and the FTC have parallel missions in consumer protection, as evidenced by our collaboration in so many areas. Last year, 21% of consumer complaints in the FTC's Consumer Sentinel Database were submitted by BBBs nationwide – the single largest source of

---

<sup>1</sup> The views expressed in these remarks are my own and do not necessarily reflect the views of the Federal Trade Commission or any other Commissioner.

complaints.<sup>2</sup> Local BBBs also provide critical assistance to the Commission during consumer protection investigations, and they are an important distributor of our consumer and business education materials. New challenges to consumers require the FTC to partner with like-minded organizations and to use all of our available tools, including non-enforcement tools such as policy research, consumer education, and support for self-regulation initiatives.

When I say “self-regulation,” I mean a “broad concept that includes any attempt by an industry to moderate its conduct with the intent of improving marketplace behavior for the ultimate benefit of consumers.”<sup>3</sup> That concept includes a range of possible forms and types of self-regulatory activity, including trade groups, industry organizations, and “third-party” certifiers. The discipline imposed on companies by a competitive market allows consumers to choose businesses that are truthful and provide quality products and services, generally ensuring a high level of consumer satisfaction among businesses that succeed.

However, where that market mechanism falters because of a lack of information or for other reasons, self-regulation is one of the many tools available to improve the market because it gives consumers access to information so they can make better-informed decisions about products and services.

This morning I would first like to examine the benefits and limitations of self-regulation, then discuss examples of what self-regulation looks like in action, as well as how the FTC has supported self-regulatory efforts in the past. Finally, I will ask how we can use what we know

---

<sup>2</sup> FED. TRADE COMM’N, CONSUMER SENTINEL NETWORK DATA BOOK FOR JANUARY – DECEMBER 2013, at 7 (2014), available at <http://www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-data-book-january-december-2013/sentinel-cy2013.pdf>.

<sup>3</sup> See e.g., Chairman Deborah Platt Majoras, *Self-Regulatory Organizations and the FTC* (April 11, 2005), available at [http://www.ftc.gov/sites/default/files/documents/public\\_statements/self-regulatory-organizations-and-ftc/050411selfregorgs.pdf](http://www.ftc.gov/sites/default/files/documents/public_statements/self-regulatory-organizations-and-ftc/050411selfregorgs.pdf).

about successful self-regulation to approach new challenges in advertising, marketing, and consumer protection in an increasingly mobile and global context.

### Advantages of Self-Regulation

Compared to traditional government regulation, self-regulation has the potential to be more prompt, flexible, and responsive when business models or technologies change. Self-regulatory frameworks are easier to reconfigure than major regulatory systems that must be adjusted via legislation or agency rulemaking. Self-regulation can also be well attuned to market realities where self-regulatory organizations have obtained the support of member firms. Their accumulated judgment and hands-on experience in their industries help create rules that are workable for companies. The self-regulatory process also helps prompt compliance by allowing corporations to “buy-in” to the process. It may also offer a less adversarial, more efficient dispute resolution mechanism than formal legal procedures. Self-regulatory compliance mechanisms are a useful option to resolve consumer concerns, so that government enforcement resources can be preserved for the most egregious cases of consumer harm. Furthermore, the cost burden of a self-regulatory process falls on industry participants rather than American taxpayers.

Self-regulation may also be the only option for certain types of activity where government intervention is limited by the First Amendment. For example, in 2011, the Supreme Court struck down on First Amendment grounds a California law that had prohibited the sale or rental of violent video games to minors and had required their packaging to be labeled 18 and over.<sup>4</sup> Traditional government regulation cannot restrict activities that involve the exercise of free speech, including the creation and distribution of various forms of media and entertainment.

---

<sup>4</sup> See *Brown v. Entertainment Merchants Association*, 31 S. Ct. 2729 (2011).

Self-regulation, such as that done by the Entertainment Software Rating Board for video games, is an effective way for companies to modify their behavior to protect consumers where the government could or should not act.

### Limits of Self-Regulation

However, self-regulation is not a perfect solution, nor can it be a complete substitute for traditional regulation. I commend the work of the ASRC, through the BBB, for working to improve self-regulatory frameworks so that they can better serve consumers and generate more participation and compliance from businesses. Participation in self-regulatory organizations must by definition be voluntary, although the most effective self-regulatory initiatives have industry-wide membership that encourages participation from all of the key players. Compliance can be improved where companies realize that consumer trust and satisfaction is good for their business in both the short term and the long term.

Where self-regulatory frameworks lack clear or workable standards, however, they cannot adequately protect consumers or generate compliance from companies. Improving the quality and clarity of standards contained in self-regulatory codes will also contribute to the overall success of the framework. Additionally, insufficient financial resources can lead to dependence on member firms' financial influence. Thus, it is critical that self-regulatory organizations are funded from a range of sources, with governance and enforcement mechanisms independent from member companies.

### Examples of Self-regulation

Self-regulatory initiatives exist across a range of industries to address consumer protection issues unique to each sector. I would like to highlight a few in the remainder of my remarks.

## Advertising

In the advertising industry, the ASRC is a key example of a self-regulation success story. Created by the advertising industry, and administered by the BBB to ensure independence, the ASRC sets standards for truth and accuracy in advertising that are enforced by the National Advertising Division (NAD) and appealed to the National Advertising Review Board (NARB). On average, the process issues about 200 decisions each year, using FTC advertising substantiation standards in its work.<sup>5</sup> Unlike the government process, which, at times, can move slowly, the goal of the ASRC process is to resolve cases in 60 to 90 days.<sup>6</sup> If the advertiser refuses to comply, then the NAD refers the matter to the appropriate government agency, often the FTC, for review.<sup>7</sup> The NAD not only alleviates some of the FTC's burden in monitoring deceptive advertising, but, through a transparent process, it issues self-regulatory decisions that provide useful guidance to advertisers going forward.

Advertisements for weight-loss miracle products have made headlines recently, and, just last week, the FTC and the BBB testified together at a hearing before the Senate Commerce Committee on weight-loss scams. The FTC's testimony and the CBBB's testimony confirmed how well the two organizations work together to protect consumers from false and deceptive advertising for weight-loss products.<sup>8</sup> In another example of self-regulation, the FTC seeks

---

<sup>5</sup> Testimony of C. Lee Peeler, Hearing on Protecting Consumers from False and Deceptive Advertising of Weight-Loss Products before the U.S. Senate Committee on Commerce, Science, and Transportation (June 17, 2014), available at [http://www.commerce.senate.gov/public/?a=Files.Serve&File\\_id=35ec6f12-a143-47f5-b310-bced79eb83ad](http://www.commerce.senate.gov/public/?a=Files.Serve&File_id=35ec6f12-a143-47f5-b310-bced79eb83ad).

<sup>6</sup> *Id.*

<sup>7</sup> ADVERTISING SELF-REGULATORY COUNCIL, THE ADVERTISING INDUSTRY'S PROCESS OF VOLUNTARY SELF-REGULATION, at 11 (Jan. 1, 2014), available at <http://www.asrcreviews.org/wp-content/uploads/2012/04/NAD-CARU-NARB-Procedures-revised-1-1-141.pdf>.

<sup>8</sup> See Prepared Statement of the Federal Trade Commission On Protecting Consumers From False and Deceptive Advertising of Weight-Loss Products (June 17, 2014), available at <http://www.ftc.gov/public-statements/2014/06/prepared-statement-federal-trade-commission-protecting-consumers-false-0>; Testimony of C. Lee Peeler, Hearing on Protecting Consumers from False and Deceptive Advertising of Weight-Loss Products

cooperation from media outlets on this issue and asks them to screen advertisements that are facially false. The “Gut Check reference guide” advises media outlets on seven common claims that are – outside the realm of prescription remedies – just too good to be true.<sup>9</sup> I hope that advertisers and media outlets can continue to work toward effective self-regulation mechanisms for weight-loss advertising to protect consumers as well as legitimate weight-loss product sellers.

In recent years, both entertainment and food companies have adopted measures to combat the epidemic of childhood obesity through changes in advertising. The Children’s Food and Beverage Advertising Initiative (CFBAI) is a self-regulatory initiative established in 2006 by the BBB. It is designed to change the kinds of foods and beverages advertised to children under 12 to encourage healthier eating and lifestyles.<sup>10</sup> A 2012 FTC report found that companies participating in the CFBAI self-regulatory program accounted for 82% of spending on children’s food marketing in 2006, and 89% of spending in 2009. The average nutritional profile of CFBAI-member products improved from 2006 to 2009, suggesting that participation in self-regulation in this area is growing and leading to positive results for consumers.<sup>11</sup>

---

before the U.S. Senate Committee on Commerce, Science, and Transportation (June 17, 2014), *available at* [http://www.commerce.senate.gov/public/?a=Files.Serve&File\\_id=35ec6f12-a143-47f5-b310-bced79eb83ad](http://www.commerce.senate.gov/public/?a=Files.Serve&File_id=35ec6f12-a143-47f5-b310-bced79eb83ad).

<sup>9</sup>FED. TRADE COMM’N, GUT CHECK: A REFERENCE GUIDE FOR MEDIA ON SPOTTING FALSE WEIGHT LOSS CLAIMS (Jan. 2014), *available at* <http://www.business.ftc.gov/documents/0492-gut-check-reference-guide-media-spotting-false-weight-loss-claims#claims>

<sup>10</sup> Press Release, Fed. Trade Comm’n, FTC Releases Follow-Up Study Detailing Promotional Activities, Expenditures, and Nutritional Profiles of Food Marketed to Children and Adolescents (Dec. 21, 2012), *available at* <http://www.ftc.gov/news-events/press-releases/2012/12/ftc-releases-follow-study-detailing-promotional-activities>. *See also* FED. TRADE COMM’N, A REVIEW OF FOOD MARKETING TO CHILDREN AND ADOLESCENTS: FOLLOW-UP REPORT, at 93 (2012), *available at* <http://www.ftc.gov/sites/default/files/documents/reports/review-food-marketing-children-and-adolescents-follow-report/121221foodmarketingreport.pdf>.

<sup>11</sup> *Id.* at ES-7-8.

## Entertainment and Media

As I noted earlier, entertainment and media is an area where traditional government regulation is restricted by First Amendment concerns. Thus, a robust self-regulatory framework is particularly important in this sector. To respond to public concerns about violent content and suitability for children, the motion picture (MPAA), music recording (RIAA), and electronic game (ESA) industries have each implemented a self-regulatory system that rates or labels products.<sup>12</sup> Their systems govern the placement of advertising for (restricted) R-rated movies, (mature) M-rated games and explicit-content labeled recordings, and they require the disclosure of rating and labeling information in advertising and on product packaging. The most recent FTC report on this issue in 2009 found that all three industries generally comply with their own standards regarding the display of ratings in advertising and labeling.<sup>13</sup> The electronic game industry continues to have the strongest self-regulatory code and enforcement of restrictions on marketing, advertising, and selling mature-rated games to younger audiences.<sup>14</sup> The Commission has recommended that industry standards and best practices be updated and tightened, particularly to adapt to the increasing distribution of entertainment material online.

---

<sup>12</sup> MOTION PICTURE ASSOCIATION OF AMERICA, *FILM RATINGS: UNDERSTANDING THE FILM RATINGS* (2014), available at <http://www.mpa.org/film-ratings/>; RECORDING INDUSTRY ASSOC. OF AMERICA, *PARENTAL ADVISORY: PARENTAL ADVISORY LABEL PROGRAM* (2014), available at [http://riaa.com/toolsforparents.php?content\\_selector=parental\\_advisory](http://riaa.com/toolsforparents.php?content_selector=parental_advisory); ENTERTAINMENT SOFTWARE RATING BOARD, *ESRB RATINGS* (2014), available at <http://www.esrb.org/ratings/index.jsp>.

<sup>13</sup> FED. TRADE COMM'N, *MARKETING VIOLENT ENTERTAINMENT TO CHILDREN: A SIXTH FOLLOW-UP REVIEW OF INDUSTRY PRACTICES IN THE MOTION PICTURE, MUSIC RECORDING, AND ELECTRONIC GAME INDUSTRIES*, at i (December 2009), available at <http://www.ftc.gov/sites/default/files/documents/reports/marketing-violent-entertainment-children-sixth-follow-review-industry-practices-motion-picture-music/p994511violententertainment.pdf>.

<sup>14</sup> *Id.* at i – iii.

## The Alcohol Industry

Turning to the alcohol industry, the three major industry trade associations – the Distilled Spirits Council of the United States (DISCUS), the Beer Institute (BI), and the Wine Institute (WI) – have promulgated guidelines to address concerns about underage exposure to alcohol marketing and to limit where alcohol advertising and marketing may appear. In a report we issued earlier this year, the FTC found that all three of the trade associations required that at least 70 percent of the audience for advertising consist of legal drinking age adults,<sup>15</sup> and that 93 percent of advertising placements met this standard.<sup>16</sup> I am pleased that two of the three alcohol industry trade associations, DISCUS and BI, have adopted guidelines for their members' marketing practices on digital media – an excellent example of the flexibility afforded by self-regulation.<sup>17</sup> Additionally, since 2006, all three trade associations have implemented procedures for the external review of complaints. DISCUS's review board has been active and successful – all members, and 90% of non-members, found to have violated the code agreed to take appropriate responsive action.<sup>18</sup>

## Emerging Issues

As I mentioned earlier, successful self-regulatory initiatives share several features: clear requirements; widespread industry participation; active monitoring programs; effective enforcement mechanisms; procedures to resolve conflicts; a transparent process; responsiveness to a changing market and to consumers; and sufficient independence from direct control by

---

<sup>15</sup> See FED. TRADE COMM'N, SELF-REGULATION IN THE ALCOHOL INDUSTRY: REPORT OF THE FEDERAL TRADE COMMISSION, at 12 (2014), available at <http://www.ftc.gov/reports/self-regulation-alcohol-industry-report-federal-trade-commission-0>.

<sup>16</sup> *Id.* at 14.

<sup>17</sup> *Id.* at 15.

<sup>18</sup> *Id.* at 26-27.

industry. As we encounter new consumer protection issues in online marketing, advertising, and data collection, it is important to apply the lessons we have learned to date.

The online and mobile landscape changes quickly, and those who understand it best are the companies who are using new technologies to advance customer value. Self-regulation allows consumers as well as industry members to benefit from these advances without unintentionally slowing the pace of innovation.

The ASRC's Online Interest-Based Advertising Accountability Program is a cutting edge example of how self-regulation can be effective in the new online frontier. The Program recognizes the interlocking responsibilities of parties in an Online Behavioral Advertising campaign, including the advertiser, media agency, and ad network. To date, the Accountability Program has announced 37 formal inquiries.<sup>19</sup> Most recently, on June 5, 2014, the Accountability Program released the results of four inquiries concerning the omission of the AdChoices Icon from some ads in a LifeLock interest-based advertising campaign.<sup>20</sup>

Additionally, industry organizations such as the Network Advertising Initiative (NAI) are doing critical work by exploring how companies can protect consumers' privacy online while still using data about their interests and preferences to provide them with relevant services and drive value in advertisements, which adds value to the internet economy as a whole. The NAI's Self-Regulatory Code of Conduct imposes notice, choice, transparency, education, and data

---

<sup>19</sup> Advertising Self-Regulatory Council, Press Release, Accountability Program Catches Dropped Ball in LifeLock OBA Campaign: Requires All Players in Ad Ecosystem to Work as a Team to Ensure Compliance (June 5, 2014), available at <http://www.asrcreviews.org/2014/06/accountability-program-catches-dropped-ball-in-lifelock-oba-campaign-requires-all-players-in-ad-ecosystem-to-work-as-a-team-to-ensure-compliance/>.

<sup>20</sup> *Id.*

security requirements on members, along with other obligations with respect to the collection and use of data for interest-based advertising and in mobile applications.<sup>21</sup>

Over the last decade, the FTC has encouraged the development of a strong self-regulatory framework in the realm of online behavioral advertising so that consumers' potentially sensitive personal information is protected.<sup>22</sup> We recognize the efforts of the NAI and other associated organizations such as the Digital Advertising Alliance (DAA) to develop principles and standards that prioritize consumer consent and notice and strive to provide clear opt-out mechanisms. I am confident that their collective institutional knowledge will help create solutions to gain consumer trust in a fast-changing and data-driven landscape while providing clear and workable standards for companies.

### The International Context

Our economy has become increasingly global and self-regulation must follow suit. This afternoon, Stacy Feuer, of the FTC's Office of International Affairs will discuss how best to coordinate self-regulatory efforts around the world. Self-regulation is well suited to protect the international consumer because it does not require the agreement of many different countries with myriad political systems. Self-regulation in the international context is an area with much potential, and the expertise of the CBBB and the important work already underway bode well for a successful outcome.

---

<sup>21</sup> See NETWORK ADVERTISING ALLIANCE, NAI CODE OF CONDUCT (2013), available at [http://www.networkadvertising.org/2013\\_Principles.pdf](http://www.networkadvertising.org/2013_Principles.pdf).

<sup>22</sup> See *Self-Regulation, The Advertising Industry's Commitment to Truth and Substantiation in Advertising*, 15 THE METROPOLITAN CORPORATE COUNSEL (May 2007); see also Hunton & Williams LLP, *FTC to Focus on Self-Regulation by Behavioral Advertising Industry*, PRIVACY AND INFORMATION SECURITY LAW BLOG (Oct. 22, 2010), available at: <https://www.huntonprivacyblog.com/2010/10/articles/ftc-to-focus-on-self-regulation-by-behavioral-advertising-industry/>; Grant Gross, *FTC Sticks with Online Advertising Self-Regulation*, PC WORLD TECH EVENTS BLOG, (Feb. 12, 2009), available at <http://www.pcworld.com/article/159458/article.html>.

## Conclusion

I want to leave sufficient time for the terrific panel coming up, so I will quickly sum up. Self-regulation programs can provide tremendous benefits for consumers. To be effective, they must have strong standards supported by the industry that are independently enforced. In addition, there must be public accountability for those who violate the standards. The BBB is the gold standard for effective self-regulation, and I am grateful for your efforts.

Thank you again for inviting me to speak. I look forward to expanding on these themes in our panel discussion.