

Sharing Best Practice in Self Regulation An International Workshop

Context of Self-Regulation in the Beverage Alcohol Industry

76 Portland Place, London, United Kingdom
28 & 29 October 2004

Remarks for:
Panel on Self-Regulation Process with External Bodies

By:
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Program

CHAIR: Mrs. Matti Alderson, Commissioner, Press Complaints Commission (UK), formerly (1990-2000) Director General of the Advertising Standards Authority (UK), and currently independent consultant on regulatory policy and strategy.

Context of Self-Regulation in the Beverage Alcohol Industry Franklin Room, Thursday, 28 October, 2004

13h00 – 13h20	Opening of Meeting and Welcome CHAIR
13h20 – 14h00	Responsible Advertising: A Matter of Reputation or Public Health ? A moderated discussion exploring common ground <i>Speakers:</i> Mark Leverton, Corporate Relations Director, Europe, Diageo Gerard Hastings, Director Institute of Social Marketing & Centre for Tobacco Control Research, University of Stirling and the Open University
14h00 – 15h00	Overview of Self-Regulation <i>Speakers:</i> Walter O'Brien, – Moderator, former CEO/DG International Advertising Association Graeme Willersdorf, Senior Vice President, Public Affairs, Foster's Group Limited Critical Reflections on Self-Regulation from a Public Health Perspective-Comments from an Observer from the World Health Organization
15h00 – 15h30	Break
15h30 – 16h45	Beverage Alcohol Industry Self-Regulation <i>Speaker:</i> Brett Bivans – Moderator, Director of Partnership Development, ICAP <i>Case Studies:</i> Adrian Botha, Public Affairs Manager, SABMiller David Gaudet, The BARS Program (USA) Tetsuya Shiarto, Manager, The Brewers Association of Japan
16h45 – 17h15	Discussion and Questions CHAIR
17h15 – 17h30	Visions for the Future <i>Speaker:</i> Marcus Grant, President, ICAP
17h30	Reception in the Herschel Room

**Best Practice of Self-Regulation:
Using External Bodies**

**The Better Business Bureau Advertising Pledge Program
Friday, 29 October, 2004
76 Portland Place, London, UK**

**Presentation of Charles I. Underhill
Senior Vice President, Dispute Resolution Division
Council of Better Business Bureaus
and
Chief Operating Officer, BBBOnline**

NOTE: The <> symbol used throughout represents a click to either move to a new slide in the accompanying PowerPoint presentation or to advance an element within a single PowerPoint slide.

<> Slide #1 – Introduction

Good morning. I'd like to thank you for this invitation to provide you with some background on the Better Business Bureau's Advertising Pledge Program. This has certainly been an illuminating conference, so far . . . and I hope my remarks will add to today's program.

I have somewhere between 12 and 15 minutes to brief you; being a New Yorker, I speak fast, so let's get started and see whether we can hit the timer's mark.

<> Slide #2 -- This Presentation

<> During this presentation, I'll explain the program; <> I'll quickly review the process we follow, <> and I'll use a specific case – decided last year – as an example. We'll take a look at the TV commercial that prompted a consumer challenge and <> review the decision that flowed from the case.

◊ Slide #3 -- The Program

As I indicated, this is really two programs that link together. ◊ One is the Advertising Complaint Evaluation (ACE) Program administered by Coors; ◊ the other is the BBB's Advertising Pledge Program (APP).

◊ Slide #4 -- Coors' ACE Program

The major elements of the Coors' ACE program (and, by extension, any other similar program) began ◊ with the creation of the company's actual advertising pledge. ◊ That pledge serves as one "benchmark" for the company's own internal monitoring of its own advertising. ◊ The company designed its own formal, internal advertising complaint process, ensuring that complaints that come to the company's attention through a variety of channels are properly routed and addressed. ◊ Finally the company built into its program an external, third party review process by the Better Business Bureau.

◊ Slide #5 -- Why the BBB?

Why did Coors select the BBB as its third-party administrator? There are really three major reasons: Our reputation, our expertise in consumer dispute resolution and our special expertise in advertising.

◊ Looking first at the reputation issue, there is simply no other North American consumer information and consumer dispute resolution mechanism that has earned such high name recognition or public credibility over such a long period of time as has the Better Business Bureau. Period.

In a 1988 Roper survey, 94% of all consumers reported knowing of the

BBB, and the response rate went up to 99% as the responses moved up the economic/education scale. In a 1996 Gallup survey, 98% of all consumers and 100% of all businesspersons had heard of the BBB. The BBB system is just concluding a major survey with Princeton Research. While the results are not finalized, they continue to reflect similarly enviable BBB brand recognition by consumers.

◇ The BBB system has been handling consumer complaints almost since its inception in 1912. During 2003, the BBB system handled nearly 2 million complaint calls, processed over 980,000 written consumer complaints, and administered a program to resolve automobile warranty disputes for over 30 manufacturers' brands, mediating more than 30,000 cases and formally arbitrating over 6,000 of those cases.

◇ Finally, the BBB system has a particular expertise in advertising issues. The organization was initially formed – and its early growth fostered – by the advertising industry's local advertising clubs to police truth and accuracy in advertising. The BBB's National Advertising Division (NAD) serves as operating arm of the National Advertising Review Council and it administers the Children's Advertising Review Unit (CARU) to deal with specialized issues of advertising and children. It recently established the Electronic Retailing Self-Regulatory Program to deal with truth and accuracy of claims in direct response marketing.

◇ Slide #6 -- BBB Advertising Pledge Program

Let's take a look at the BBB's Advertising Pledge Program. ◇ The program is designed to settle disputes involving a participating company's compliance with its pledge concerning its marketing and advertising

practices. <> Remedies and forward looking and corrective, not punitive or monetary. <> The program is transparent – statistics and decisions are publicly reported. <> Finally, the program is designed to be available for other beverage industry members and firms in other sectors that might wish to make a similar public pledge backed with a third-party dispute resolution system.

<> Slide # 7 -- Case Eligibility

There are certain requirements for case eligibility. <> The complainant must be an individual resident of any of the fifty United States or the District of Columbia and must be legally able to purchase the product or service that is the subject of the complaint. In addition, complaints must: <> 1) Concern advertising or marketing materials that are funded in whole or part by the company, its licensees or authorized distributors. <> 2) Concern advertising or other marketing materials that are in current use. <> 3) Allege that the company has failed to comply with a specific provision of its "Company Advertising Pledge"; and <> 4) State the basis for the allegation that the company has failed to comply with the identified provision of the company's CAP, and include any relevant documentation.

<> Slide #8 -- Case Eligibility

Not all cases are eligible for the program. <> The program will **not** consider a complaint, or any part of a complaint, that: <> 1) Makes a claim of any injury to the complainant or other individual; <> 2) Alleges criminal activity by the company; <> 3) Is the subject of any current or pending litigation, arbitration or other form of dispute resolution; <> 4) Is based on materials that are not for the purposes of marketing or advertising (i.e.

materials targeted at preventing excessive or inappropriate use of the product or service; or corporate communications that are of a non-branded, generic nature.) <> 5) Falls within the purview of the BBB's National Advertising Division relating to the truth and accuracy of advertising; or, <> 6) Has been resolved by litigation, arbitration, the APP or other form of dispute resolution.

<> Slide 9 -- Case Eligibility
Key element:

There are two other key elements that deserve a mention here. <> First, a consumer may bring a complaint to the Program only after making a good faith effort to resolve the complaint through a direct contact with the company, and are subsequently dissatisfied with the company's response. <> Second, if this has not taken place, the Program will assist the consumer in contacting the appropriate person(s) at the company.

<> Slide 10 -- Program Rules

<> Finally, all cases administered under the BBB's APP Rules and Procedures. <> These Rules are available online and we also provided them in hard copy to individual complainants when they are deciding whether to file a grievance.

<> Slide 11 -- The Case

Before discussing one single case, let's take a look at the program's statistics for the year 2003 – the first year of the program's operation. During that period, 16 formal cases were filed with the program – nearly all on a referral from Coors itself. Of those 16 cases, <> 3 went through the entire process to a formal decision. <> 13 cases were deemed by the program as ineligible.

Of those 13, <> the largest group (10) failed to submit their formal complaint. I'll take a moment to explain that. Most of the complainants were simply unable to relate their complaint to a specific standard (or standards) within Coors pledge that had been violated – in other words, they may have been personally offended by some element of the advertising, but couldn't relate that to a specific pledge element.

<> In two cases, ads were discontinued during the complaint process.

<> One case was deemed ineligible based on the fact that the program had already made a decision on an identical advertisement and challenge.

<> Slide #12 -- The Case

The best way to illustrate the process in the time we have is to discuss a specific case from 2003. Of the 3 cases decided by the program, two were decided in Coors' favor; one was not. I'm going to use the adverse decision as an example.

The complainant alleged that the ad violated 9 specific elements of Coors' Advertising Pledge. These were:

- <> That symbols, language, music, graphics, etc. had a primary appeal to those under 21
- <> That the audience for the ad was not at least 60% adult 21 or over
- <> That the ad portrayed high risk activities
- <> That the ad portrayed excessive drinking
- <> That the ad portrayed violence or inappropriate physical aggression
- <> That the ad suggested that drinking was necessary to achieve social success

- ◇ That the ad portrayed sexual passion or amorous activity
- ◇ That the actors were not dressed in a manner consistent with the occasion or contemporary standards of taste
- ◇ That the ad used images the complainant considered to be lewd or indecent

◇ Slide #13 --The Case

- ◇ If a picture is worth a thousand words
- ◇ . . then a clip is worth a full-length book.

Rather than try and describe the 60-second TV commercial to you, I'm going to play the commercial here for you (if our technology is willing). Since this is copywritten material, I want to let you know that we have reproduced and are playing this piece with Coors' specific permission.

◇ Slide #14 --The Case VIDEO

- ◇ (CLICK ON SCREEN TO PLAY VIDEO)

◇ Slide #15 -- The Analysis and Decision

Of the 9 alleged pledge violations, the Program dismissed 3, finding no violation of Coors pledge not to:

- ◇ Use any symbols or graphics that have primary appeal to those under 21
- ◇ Place television buys where the audience was not at least 60% adult 21+
- ◇ Use language or images considered to be lewd or indecent, based on generally accepted

◊ Slide # 16 -- The Analysis and Decision

Of the 6 remaining alleged pledge violations, the Program's decision made two preliminary observations:

- ◊ “When each “vignette” in the commercial and each standard implicated by the complainant is separately considered, a case can be made that, with the exception discussed below – none of the standards has been violated; however,
- ◊ The conduct depicted . . . is at best borderline under many of the standards, does violate one specific standard and, more broadly, is at variance with two of the pledges made by Coors – that Coors ‘**will not condone overconsumption or irresponsible drinking**’ (emphasis added) and that Coors’ ‘**advertising and marketing will be responsible and in good taste.**’ “

◊ Slide # 17 -- The Analysis and Decision

The decision went on to state that ◊ “As Coors’ materials properly note, we (the BBB) and Coors ‘*in applying this pledge to advertising or marketing materials*’ consider ‘*specific creative elements . . . in their overall context.*’ Advertising is intended to be absorbed by the viewer as a whole, not clinically analyzed for the sum of its individual parts. Context is critical in evaluating advertising, particularly when the issues raised involve the more subjective matters of responsibility and behavior.”

◊ Slide #18 -- The Analysis and Decision

The decision establishes a principle in the “responsibility” arena that is undoubtedly familiar to advertising professionals from the “truth and

accuracy” context – that is:

- ◇ An advertisement may be considered misleading even though each statement, separately considered, is literally true.
- ◇ Similarly, an advertisement may not pass a threshold test of “responsibility” even though each element of the advertisement, dissected and analyzed separately, might meet one or another (or all) specific standards in the company’s advertising pledge.

◇ Slide #19 -- The Analysis and Decision

Time doesn’t permit a full review of the 6-page decision here. The decision found:

- ◇ That the challenged commercial violated Coors’ specific pledge not to condone “overconsumption”
- ◇ That, overall, the advertising violated the pledge to advertise and market responsibly.
- ◇ Recommended that the advertisement be discontinued.

◇ Slide #20 -- The Analysis and Decision: Coors’ Response

Under the Program rules (which are similar to our rules governing “truth and accuracy” issues), an advertiser must notify us whether it intends to comply with an adverse decision and may include a short statement related to the case. Here’s what Coors’ said following the decision:

◇ “Coors is committed to adhere to our Advertising and Marketing Pledge and the self-regulatory process. We agree the subjectivity involved in this matter may cause reasonable persons to differ in their

conclusions. In our view, “Because We Can” is an ad having to do with empowerment and freedom of the young adult generation, and little to do with traditional expectations or conformity.

◇ “Specifically, we crafted the “Because We Can” advertisement to comply with our pledge, and we believe we did so. We could marshal any number of arguments in support of that claim. But such arguments are somewhat beside the point. ◇

◇ **We respect the APP process and believe that it provides an important point of view about how some consumers see this ad. These sensitivities are meaningful and useful to us as we advertise and market our products in the future.**

“Accordingly, and in the spirit of cooperation and respect for the APP mechanism, we will no longer run the “*Because We Can*” advertisement.”

◇ Slide #21 -- Learnings

Overall, we’re quite pleased with the operation of the program in its first year, with the exception of one area, and that is “timeliness” of the process. We’ve had a number of learnings in this area. ◇ First, consumers often take quite a bit of time between the moment they first contact the program and the time when they actually file a formal, written claim. ◇ Second, the complaints, once filed, often lack specificity, requiring the program to recontact the consumer for additional information. ◇ That is often related to another problem – that consumers often include (and sometimes blend) several different advertisements into one claim. ◇ This can lead to multiple requests for additional information and/or documentation. We struggled with these and other issues in the first few cases we handled.

However, both the BBB and Coors have a common commitment to ensuring that the program does reach timely decisions (if decisions are necessary), and we've made some changes as we've moved forward. While the case I described took a total of something over 8 months to handle, the most recent case that went to decision took a bit over 4 months – that included some fairly significant delays by the consumer in the case.

◁ Slide #22 -- Conclusion

Let me conclude by enumerating what I believe are four major benefits of the Advertising Pledge Program: ◁ First, the company that participates retains full control of its own advertising policies and execution of its advertising and marketing strategy. ◁ Second, the company retains, in a sense, a “right of first refusal” – the right to have the opportunity to evaluate and respond to its own customers before a third-party challenge and evaluation goes forward. ◁ Third, the Program serves as an important “safety valve” for complaints regarding the company’s pledge. The simple act of acknowledging that it might not be infallible and providing its customers with access to a “third party” mechanism, we believe, sends a strong, positive message to customers, the regulatory community and the public. ◁ Finally, and perhaps of greatest importance, we believe that the existence of the program becomes an ongoing, internal “presence” at company marketing and advertising discussions and reviews -- even though the program does not itself “pre-screen” any advertising.

◁ Slide #23 -- End

I'd like to thank you for the opportunity to explain the program today.

◁ A complete copy of this presentation – and important materials relating

to the program – are all available online at: www.bbb.org/app_London.
And you may contact me by email at: cunderhill@cbbb.bbb.org

Best Practice of Self-Regulation:
Using External Bodies



**The Better Business Bureau
Advertising Pledge Program**



Friday, 29 October, 2004
76 Portland Place, London, UK

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This Presentation

- ✓ The Program
- ✓ The Process
- ✓ The Case
- ✓ The Analysis and Decision

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The Program

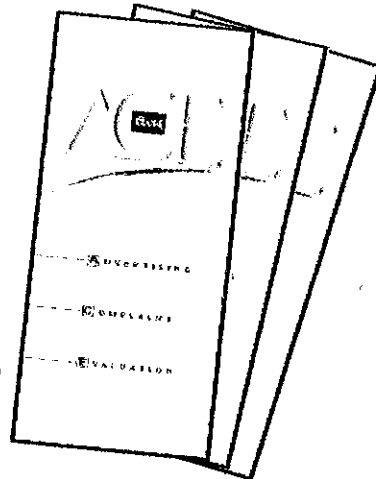
- The Advertising Complaint Evaluation (ACE) Program at Coors
- The Advertising Pledge Program (APP) at the BBB

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Coors' ACE Program

- ✓ Creation of company's advertising pledge
- ✓ Pledge serves as one "benchmark" for internal monitoring
- ✓ Specialized internal advertising complaint process
- ✓ External, "third-party" review process by BBB



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Why the BBB?

Three Reasons:

- ✓ **BBB reputation**
 - ✓ **Trusted**
 - ✓ **Wide brand recognition—90-96%**
- ✓ **Expertise in consumer dispute resolution**
 - ✓ **2 million complaints annually**
 - ✓ **Almost 1 million sent for business response—high resolution rate**
 - ✓ **More than 6000 arbitrations**
- ✓ **Special expertise in advertising**
 - ✓ **Industry supported advertising self-regulation--NARC**
 - ✓ **NAD, CARU, ERSRP**



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BBB Advertising Pledge Program

- ✓ **Resolve disputes over compliance with company's advertising and marketing pledge**
- ✓ **Remedies are forward-looking and corrective--not punitive or monetary**
- ✓ **Transparent--statistics and final decisions are publicly reported**
- ✓ **Designed to be available for other beverage industry members and other sectors**

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Case Eligibility

- ✓ Complainant must be an individual resident of any of the fifty United States or the District of Columbia and must be legally able to purchase the product or service that is the subject of the complaint. Complaints must:
 - ✓ Concern advertising or marketing materials that are funded in whole or part by the company, its licensees or authorized distributors.
 - ✓ Concern advertising or other marketing materials that are in current use.
 - ✓ Allege that the company has failed to comply with a specific provision of its "Company Advertising Pledge"; and
 - ✓ State the basis for the allegation that the company has failed to comply with the identified provision of the company's CAP, and include any relevant documentation.

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Case Eligibility

- ✓ The program will **not** consider a complaint, or any part of a complaint, that:
 - ✓ Makes a claim of any injury to the complainant or other individual;
 - ✓ Alleges criminal activity by the company;
 - ✓ Is the subject of any current or pending litigation, arbitration or other form of dispute resolution;
 - ✓ Is based on materials that are not for the purposes of marketing or advertising (i.e. materials targeted at preventing excessive/inappropriate use of the product or service; or corporate communications that are of a non-branded, generic nature.)
 - ✓ Falls within the purview of the BBB's National Advertising Division relating to the truth and accuracy of advertising; or,
 - ✓ Has been resolved by litigation, arbitration, the APP or other form of dispute resolution.

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Case Eligibility

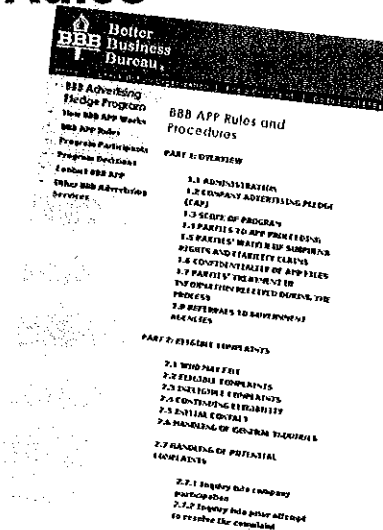
Key element:

- ✓ Consumer may bring a complaint to the Program only after making a good faith effort to resolve the complaint through a direct contact with the company, and are dissatisfied with their response.
- ✓ If this has not taken place, the Program will assist the consumer in contacting the appropriate person(s) at the company.

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Program Rules

- ✓ All cases administered under APP Rules and Procedures
- ✓ Rules available online and also provided in hard copy to individual complainants by BBB



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The Case

In 2003:

- ✓ 3 formal decisions made
- ✓ 13 cases deemed ineligible:
 - ✓ 10 failed to submit complaint
 - ✓ 2 ads discontinued
 - ✓ 1 prior decision rendered

2003 APP Program Statistical Report

In accordance with the Advertising Pledge Program reporting requirements, the following is a summary of the number and nature of contacts from the public and the actions taken by the APP staff with respect to those contacts:

During 2003, a total of 16 complaints were received by the APP.

- Three formal program decisions were made. [Click here to review those decisions.](#)
- Thirteen other cases were deemed ineligible as described below.
 - Ten cases were ruled ineligible, because the complainant failed to submit a claim form and/or information sufficient to process a claim.
 - Two cases were deemed ineligible, because the ad was discontinued.
 - One case was deemed ineligible, because a prior decision had been rendered on the same pledge/same ad.
- There were no instances in which a participating company either failed to submit a timely response or declined to participate in the APP process.

A complete set of the Advertising Pledge Program Rules are available by [clicking here.](#)

www.bbb.org

The Case

9 Alleged pledge violations:

- ✓ Symbols/graphics primary appeal to those under 21
- ✓ Audience was not at least 60% adult 21+
- ✓ Portrayal of high risk activities
- ✓ Portrayal of excessive drinking
- ✓ Portrayal of violence or inappropriate physical aggression
- ✓ Suggestion that drinking is necessary to achieve social success
- ✓ Portrayal of sexual passion or amorous activity
- ✓ Actors not dressed in a manner consistent with occasion or contemporary standards of taste
- ✓ Use of images considered to be lewd or indecent

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The Case

If a picture is worth a thousand words



Why do we party?

... then a clip is worth a full-length book.

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The Analysis and Decision

Of the 9 Alleged pledge violations, the Program dismissed 3, finding no violation of Coors' pledge not to:

- ✓ Use any symbols or graphics that have primary appeal to those under 21
- ✓ Place television buys where the audience was not at least 60% adult 21+
- ✓ Use language or images considered to be lewd or indecent, based on generally accepted contemporary standards

The Analysis and Decision

Of the 6 Alleged pledge violations, the Program's decision made two preliminary observations:

- ✓ "When each "vignette" in the commercial and each standard implicated by the complainant is separately considered, a case can be made that, with the exception discussed below -- none of the standards has been violated; however,
- ✓ The conduct depicted . . . is at best borderline under many of the standards, does violate one specific standard and, more broadly, is at variance with two of the pledges made by Coors -- that Coors '**will not condone overconsumption or irresponsible drinking**' (emphasis added) and that Coors' '**advertising and marketing will be responsible and in good taste.**' "

The Analysis and Decision

The decision goes on to state:

"As Coors' materials properly note, we and Coors 'in applying this pledge to advertising or marketing materials' consider 'specific creative elements . . . in their overall context.' Advertising is intended to be absorbed by the viewer as a whole, not clinically analyzed for the sum of its individual parts. Context is critical in evaluating advertising, particularly when the issues raised involve the more subjective matters of responsibility and behavior."

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The Analysis and Decision

The decision establishes a principle familiar to advertising professionals from the "truth and accuracy" context – that is:

- ✓ An advertisement may be considered misleading even though each statement, separately considered, is literally true.
- ✓ Similarly, an advertisement may not pass a threshold test of "responsibility" even though each element of the advertisement, dissected and analyzed separately, might meet one or another (or all) specific standards in the company's advertising pledge.

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The Analysis and Decision

Time doesn't permit a full review of the 6-page decision here. The decision found:

- ✓ That the challenged commercial violated Coors' specific pledge not to condone "overconsumption"
- ✓ That, overall, the advertising violated the pledge to advertise and market responsibly.
- ✓ Recommended that the advertisement be discontinued.

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The Analysis and Decision: Coors' Response

- ✓ "Coors is committed to adhere to our Advertising and Marketing Pledge and the self-regulatory process. We agree the subjectivity involved in this matter may cause reasonable persons to differ in their conclusions. In our view, "Because We Can" is an ad having to do with empowerment and freedom of the young adult generation, and little to do with traditional expectations or conformity.
- ✓ "Specifically, we crafted the "Because We Can" advertisement to comply with our pledge, and we believe we did so. We could marshal any number of arguments in support of that claim. But such arguments are somewhat beside the point.
- ✓ **We respect the APP process and believe that it provides an important point of view about how some consumers see this ad. These sensitivities are meaningful and useful to us as we advertise and market our products in the future.**
- ✓ "Accordingly, and in the spirit of cooperation and respect for the APP mechanism, we will no longer run the "Because We Can" advertisement."

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Learnings

Timeliness:

- ✓ Consumers often take weeks or even months from the date of first contact to the date of filing
- ✓ Filed complaints often lack specificity
- ✓ Multiple ads may be implicated in a single complaint
- ✓ Multiple requests for documentation and incomplete documentation require additional time

Timeliness is improving:

Conclusion

Program benefits are fourfold:

- ✓ Company retains full control of its own advertising policies and execution
- ✓ Company retains "right of first refusal" – to have the opportunity to evaluate and respond to its own customers before a third-party challenge and evaluation goes forward
- ✓ Program serves as an important "safety valve" for complaints regarding the company's pledge
- ✓ Of greatest importance, the existence of the program becomes an ongoing, internal "presence" at company marketing and advertising discussions and reviews even though the program does not itself "pre-screen" any advertising.

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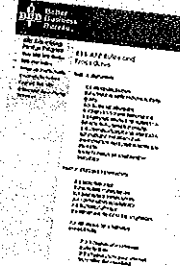
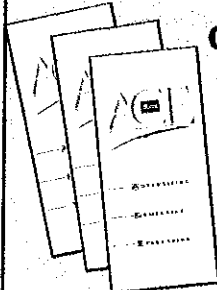
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The Better Business Bureau Advertising Pledge Program

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