

Thank you Robin, for allowing NAD to participate in this important event, and a special thanks also to Linda and to Beau for all of your work in creating these advertisements. Let me first say that these issues are certainly of a kind that we might encounter in the course of a self-regulatory review by NAD or by the Electronic Retailing Self-Regulatory Program (ERSP).

Whether the review results from a competitor's challenge or our own monitoring efforts, our priority will be to ensure that the advertising is truthful and not misleading, and that material information is clearly and conspicuously disclosed to consumers. We can probably all agree that certain pieces of information are material – the club membership, the monthly cost of the membership and the third-party billing. Here we see two alternative modes of conveying that information – two different executions of website advertising and including an offer for a product and also a club membership with a negative option.

In looking at the first advertisement (the one presented by Linda), one issue that arises is whether terms material to the offer – such as their enrollment in the recipe club and the costs associated with that – are disclosed where they should be. Is it sufficient to disclose this before financial obligation is incurred or is it necessary that this be clearly laid out before the ordering process begins? The traditional way of approaching this issue has been to ask if the material information is clearly and conspicuously disclosed – so it becomes a question of communication. But if we are considering the website ordering process as a process in time, we need to consider not only *what* needs to be disclosed and *where* it appears, but *when* it appears. If we look to FTC's Guide on Online Advertising, *Dot Com Disclosures*, we are advised to consider not only the "ordering page" but the steps leading up to it. For example, we should consider whether the material disclosures must be made before an item is added to the shopping cart. And so it may be that this particular issue is addressed more effectively in the second advertisement (the one prepared by Beau of Web Watch). That is not to say that the first advertisement is misleading or inadequate - again, *that* is the relevant issue that we, at NAD look at when we conduct a review.

On the other hand, the second advertisement contains a more lengthy, a more wordy disclosure. This of course raises the concern that it might be less likely to be read or understood by consumers. It might be that a balanced approach – some combination of the two is the best one. We certainly appreciate the challenge here - too much information invites criticism as does too little. As always, we will want to know what the research shows and of course if there is any relevant consumer research in general or consumer perception studies on the website in particular.

As far as the question concerning a pre-checked box, I would think that might raise some concern. It presents the matter of signing up for the club as a default condition, essentially inviting the consumer to opt out. Now it is true, as Linda says, that ultimately the consumer has to opt-in by affirmatively clicking in order to approve the particular financial transaction. Nevertheless, a pre-checked box – and this is just an initial reaction

here – instead of providing an effective disclosure may tell consumers that this something they shouldn't worry about. Again, it's not an issue we've specifically encountered and we'd want to look to the research in the area.

This is an important discussion to be having and it is certainly worthwhile for us to examine the best practices in this area. And while we encourage the best practices, our own focus and priority when we are conducting a review goes back to the more basic issue of truth and accuracy in advertising. For us, the relevant inquiry is relatively fundamental: Is the advertising misleading? Are the terms necessary to prevent the communication from being misleading, clearly and adequately disclosed? Are they understood by consumers?

Ultimately it still does become a question of communication and so we welcome the opportunity hear from the experts in this area – from people like Nathan and the other researchers we heard from earlier today, those who contribute to the science of how this manner of information is effectively communicated in this medium. On behalf of NAD, we appreciate the opportunity to be part of this dialogue.