



- [Home](#)
- [Contact Us](#)
- [Events](#)
- [Press Releases](#)
- [ASRC Leadership, Support](#)
- [ASRC Presentations, Publications](#)
- [ASRC Procedures](#)
- [Online Archive](#)
- [CARU »](#)
- [ERSP »](#)
- [NAD »](#)
- [NARB »](#)
- [The Accountability Program »](#)



[Home](#) » [ASRC Press Releases](#) » NAD Recommends DraftKings Discontinue 'Largest U.S.-Based' Claims Following FanDuel Challenge

# NAD Recommends DraftKings Discontinue 'Largest U.S.-Based' Claims Following FanDuel Challenge

*New York, NY – March 17, 2015* – The National Advertising Division has recommended that DraftKings, Inc., discontinue claims that the company’s website, DraftKings.com, is the “largest U.S.-based” fantasy sports or online gaming destination. The claims at issue were challenged by FanDuel.com, owner of a competing fantasy sports website.

NAD is an investigative unit of the advertising industry’s system of self-regulation. It is administered by the Council of Better Business Bureaus.

In this case, FanDuel challenged the express claims:

- DraftKings is the “largest U.S.-based destination for daily fantasy sports.”
- DraftKings is the “the largest, US-based online gaming destination where players engage in

daily fantasy sports competitions across fantasy professional football, baseball, golf, basketball, hockey and soccer, and college football and basketball.”

NAD also considered whether the advertising at issue implied that FanDuel is not a “U.S.-based” website.

The parties to this case did not contest that FanDuel operates a substantially larger fantasy sports website. Rather, the issue was whether it is the largest “U.S.-based” fantasy sports website. Rather, the dispute centered on what it means for a company or website to be “U.S.-based” and what standard NAD should apply in determining whether the challenger is “U.S.-based.”

NAD noted in its decision that American consumers, the exclusive consumers for both FanDuel and DraftKings, “often care very much about the domestic nature of products that they purchase, and such sentiments are likely to also be felt about services that they patronize.”

The advertiser asserted that NAD should apply the “nerve center test” used by federal courts to determine where a corporation is based for the purposes of diversity jurisdiction. The challenger contended that NAD should assess the advertiser’s claim by stepping into the shoes of reasonable consumers.

In a 2010 case, the U.S. Supreme Court concluded that corporation’s location for the purposes of diversity jurisdiction should be considered:

“the place where a corporation’s officers direct, control, and coordinate the corporation’s activities ... in practice it should normally be the place where the corporation maintains its headquarters – provided that the headquarters is the actual center direction ... and not simply an office where the corporation holds its board meetings.”

While NAD found the “nerve center” test instructive, it determined that its inquiry should focus on whether the advertising messages at issue conveyed supported, non-misleading messages to consumers. Accordingly, NAD focused on what “U.S.-based” means to consumers, and then sought to determine if the evidence in the record reasonably supported those meanings.

The challenger contended that most of its staff, including a significant majority of its senior staff, is located in the U.S. While the CEO keeps his home in Scotland and works from both the U.S. and Scotland, the Chief Marketing Officer, Chief Product Officer, Chief Financial Officer and 74 percent of the next leadership tier are based in the U.S. Further, FanDuel noted, the company is incorporated in Delaware, has its bank accounts in the U.S., and maintains its headquarters in New York City. The company’s website and mobile application are hosted on servers within the U.S., and the terms of use and privacy policy are governed by U.S. law.

While some evidence in the record supported the advertiser’s position that the challenger’s company functions, at least in part, in Scotland, NAD determined that, taken as a whole, the advertiser’s evidence did not support its claims.

NAD recommended that DraftKings discontinue the challenged claims.

DraftKings, in its advertiser’s statement, said the company respectfully disagreed with NAD’s

decision.

“We value the self-regulatory process, however, and will take the NAD’s recommendations into consideration in future press releases and advertising,” the company said.

## Follow Us!



## ASRC Digests

Click below to download ASRC digests, excerpts from industry-specific cases.



Cosmetics



Dietary  
Supplements



Environmental



Social Media



Telecommunications



Website Privacy

## Blogroll

- [CARU Blog](#)
- [ERSP Blog](#)

## Quick Search

Select Category

**Do's and Don'ts  
in Advertising**

The Landmark Resource for  
Advertising and Marketing Laws!

PUBLISHED BY CCH *Click to purchase*

## Privacy Policy

This site is hosted by the Council of Better Business Bureaus. You can read the CBBB privacy policy [here](#).

## Follow Us!



## Search

## Copyright and Trademark

©2012 Council of Better Business Bureaus NAD®, CARU® and ERSP® are registered trademarks of the Council of Better Business Bureaus.