

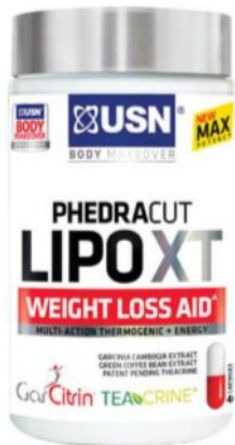
Decision of the ADVERTISING REGULATORY BOARD

Complainant	Dr Harris Steinman
Advertiser	Ultimate Sports Nutrition Pty Ltd t/a USN
Consumer/Competitor	Consumer
File reference	435 USN Phedrocut Lipo XT
Outcome	Upheld
Date	15 October 2019

The Directorate of the Advertising Regulatory Board has been called upon to consider a complaint lodged by Dr Steinman against the packaging for USN Phedrocut Lipo XT, as it appeared as a special in a Dischem television commercial.

Description of the advertising

The Complainant provided the following image of the packaging:



Complaint

In essence, the Complainant takes issue with the claims:

- “weight loss aid”
- Multi action “thermogenic”

The Complainant submitted that:

- These claims are unsubstantiated;
- The previous regulatory entity, the ASA, ruled against them;
- The ASA in the UK has ruled against this product;

Response

Despite attempts, the ARB was unable to secure a response from the Advertiser.

Application of the Code of Advertising Practice

The following clauses were considered in this matter:

Substantiation – Clause 4.1 of Section II

Misleading claims – Clause 4.2.1 of Section II

Decision

Having considered all the material before it, the Directorate of the ARB issues the following finding.

Jurisdiction

The Advertiser has not responded in this matter and the ARB will therefore assume that it does not consider itself bound by the ARB and the Code of Advertising Practice.

The Memorandum of Incorporation of the ARB states:

“3.3 The Company has no jurisdiction over any person or entity who is not a member and may not, in the absence of a submission to its jurisdiction, require non-members to participate in its processes, issue any instruction, order or ruling against the non-member or sanction it. However, the Company may consider and issue a ruling to its members (which is not binding on non-members) regarding any advertisement regardless of by whom it is published to determine, on behalf of its members, whether its members should accept any advertisement before it is published or should withdraw any advertisement if it has been published.”

In other words, if you are not a member and do not submit to the jurisdiction of the ARB, the ARB will consider and rule on your advertising for the guidance of our members.

The ARB will, however, rule on whatever is before it when making a decision for the guidance of its members. This ruling will be binding only on ARB members and on broadcasters in terms of the Electronic Communications Act.

The ARB will therefore proceed to consider this matter for the guidance of its members.

Merits

The complaint in this matter is simple – the Complainant calls for substantiation of the claims that USN Phedrocut Lipo XT results in weight loss and fat burning. He has provided the Directorate with persuasive *prima facie* evidence that this claim is not substantiated, in the form of the previous ASA decision, and the ASA UK decision.

Clause 4.1 of Section II requires that advertisers should hold documentary evidence to support claims that are capable of objective substantiation. In a case like this one it must

emanate from or be evaluated by a person or entity which is independent, credible and an expert in the relevant field.

The Advertiser has chosen not to respond to the complaint. This places the Directorate in a position that we have no choice but to accept the evidence provided by the Complainant. There is nothing before the Directorate to indicate that the claims are substantiated.

In the circumstances, the Directorate has no choice but to find that the claims are unsubstantiated and in breach of Clause 4.1 of Section II and Clause 4.2.1 of Section II.

Sanction

Members of the ARB are advised not to accept advertising for USN Phedrocut Lipo XT making claims regarding weight loss and thermogenics, in any medium.