

Decision of the ADVERTISING REGULATORY BOARD

Complainant	Dr Harris Steinman
Advertiser	Homemark (Pty) Ltd
Consumer/Competitor	Consumer
File reference	Homemark Aragon Oil – Dr Harris Steinman
Outcome	Upheld
Date	13 March 2019

The Directorate of the Advertising Regulatory Board has been called upon to consider a complaint lodged by Dr Steinman against the website advertising for Homemark's Aragan Secret Nail Treatment.

Description of the advertising

The claim in question is found at <https://homemark.co.za/products/remedy-aragan-secret-nail-fungus-repair-oil-10ml>.

It states:

With a low PH level, the formula does not only keep your nails smooth and attractive but also helps fight fungus and eczema

Complaint

In essence, the Complainant submits that the advertised product has no proven efficacy for eczema or nail fungus. He submitted detailed research that he conducted on the ingredient, submitting that he can find no support for the claimed efficacy in material on alternative medications.

Response

Despite numerous 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

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 claim that Aragan Oil helps fight eczema and nail fungus as claimed on the website. The Complainant conducted a literature review of articles relating to the product and could find no evidence of this benefit. Indeed, one article indicated that the active ingredient in the product *causes* eczema.

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 it is forced to accept the Complainant's submissions, and it has nothing before it to indicate that the claim is substantiated.

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

Sanction

Members of the ARB are advised not to accept advertising for Aragan Secret Nail Treatment that claims “helps fight fungus and eczema”.