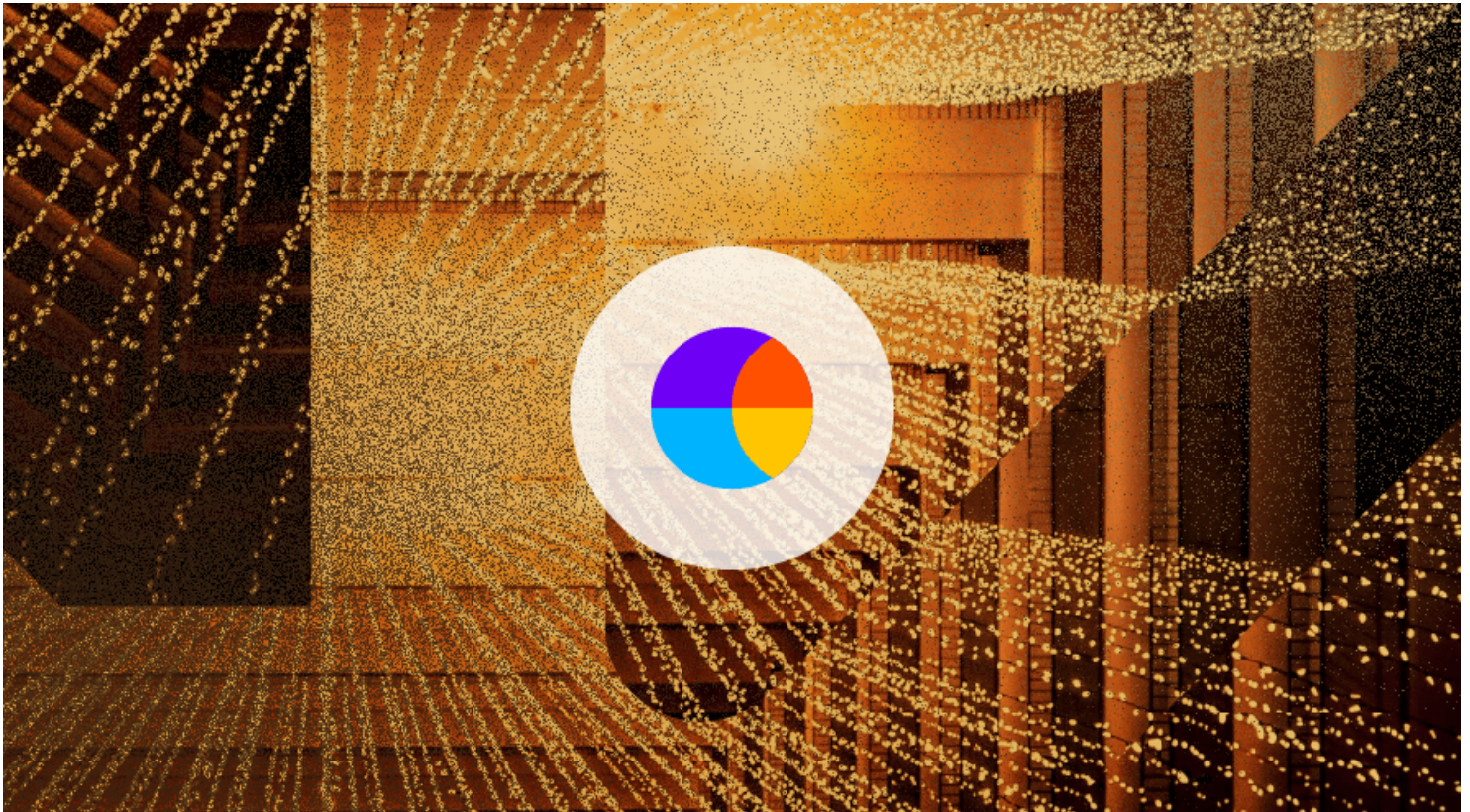


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BBB NATIONAL PROGRAMS

Direct Selling Self-Regulatory Council

Case #159-2024: Administrative Closure – Xyngular Corporation

Company Description

The Xyngular Corporation ("Xyngular or the "Company") is a multi-level direct selling company that offers a range of health and wellness products, including supplements, meal replacement shakes, energy drinks, and weight loss programs. The Company is headquartered in Lehi, Utah and was founded in 2009.

Basis of Inquiry

The Direct Selling Self-Regulatory Council ("DSSRC") is a national advertising self-regulation program administered by BBB National Programs. This matter was commenced by DSSRC pursuant to its ongoing independent monitoring of advertising and marketing claims in the direct selling industry. This inquiry concerned five representative earnings claims and five representative product performance claims.

The following claims identified by DSSRC were found on Facebook, Instagram, Loom, and on the Company website.

Earnings Claims

- “Take a peak at the average monthly income for this rank... such a blessing!! ❤️

For 6 1/2 years she’s worked hard through all the ups and downs and never lost sight of her goals and dreams for her family... Inspiring people to change their health, and showing people how to build a flexible, residual income from anywhere!! She’s an incredible leader, God girl, and one of the best things that God has sent to me thru my Xyngular journey... and when her and her team do this again this month, she will be headed out on an all expenses paid trip for two to Dubai!!! 🙏”

- “extra income; world travel (free); monthly bonus”
- “Learn how to earn up to \$500 in 5 days”
- “What would \$500+ a month do for you?”
- “Daily pay, monthly cash bonuses & time freedom...#financialfreedom”

Product Performance Claims

- Before and after, weight loss depiction – “Down 20 pounds”
- Before and after, weight loss depiction - “8 days || 11.2 pounds and “4 months ||58 lbs||
- Before and after, weight loss depiction - “down 8 lbs in 8 days”
- Before and after, weight loss depiction - “86 POUNDS [down] in 124 DAYS!”
- “Lose up to 15 pounds in your first 8 days.”

Company Position

Xyngular promptly addressed the inquiry from DSSRC. Rather than attempting to substantiate the social media posts, the company took immediate action by contacting the salesforce members responsible for the posts and requesting their removal. Xyngular successfully removed all of the social media posts in question. Regarding the weight loss claim on the Xyngular website (“Lose up to 15 pounds in your first 8 days”), the Company acknowledged that the claim conveyed atypical results. As such, the Company added a disclosure that it believed appropriately qualified the claim at issue.

Administrative Closing

DSSRC acknowledged the good faith efforts of Xyngular to address its concerns and confirmed the removal of the nine social media posts that communicated earnings and product performance claims and the modification of the one weight loss claim at issue on the Company website. DSSRC concluded that the Company's actions were both necessary and appropriate.

Earnings Claims

In its Guidance on Earnings Claims for the Direct Selling Industry (“the Guidance”), DSSRC cautions direct selling companies and their independent salesforce members against the use of any words or images communicating that a direct selling business opportunity will result in earnings beyond what can be generally expected by the typical salesforce member in the depicted circumstances.

Moreover, section 6(A) of the Guidance states that “Some words or phrases carry a particularly high risk of being misleading to consumers when communicated in a general context. Such words and phrases include but are not limited to “financial freedom,” and “time freedom.”

Although the Company proposed qualifying several of the earnings claims with a hyperlink to its income disclosure statement (IDS), DSSRC determined that, by itself, a hyperlink to the Xyngular IDS would not suffice as an appropriate disclosure. A hyperlink to an IDS is intended to *complement* the disclosure of generally expected results and provide additional context to the testimonial, but it cannot be used as a substitute for a disclosure of generally expected results for the typical business opportunity participant.

With respect to incentive claims, including travel rewards, a direct selling company and/or its salesforce members should clearly and conspicuously disclose the context related to the award or earnings to ensure that the net impression is truthful and not misleading. The information required to be disclosed should be evaluated on a case-by-case basis and should convey generally expected results.¹ For example, an atypical incentive trip claim should be accompanied by a clear and conspicuous disclosure that highlights the number of salesforce members who typically earn company incentive trips.

DSSRC appreciated the Company’s actions to remove all of the social media posts at issue that communicated earnings claims, including the post referencing Company incentives.

Product Performance Claims

In addition to the actions taken to remove the social media posts communicating atypical weight loss claims, DSSRC recognized Xyngular's efforts to include a disclosure to qualify the weight loss claim on the Company website to indicate that “*Typical results*

following the 8-Day Jumpstart are 1-2 lbs. lost per week.” However, DSSRC also concluded that the disclosure, which was presented at the bottom of the webpage, did not meet the criteria of being clear and conspicuous or in close proximity to the weight loss claim that triggered it.

Accordingly, In the spirit of voluntary self-regulation, Xyngular made further modifications to the webpage by relocating the disclosure directly below the relevant claim. DSSRC agreed that the disclosure was now prominent, worded in a manner understandable to consumers, placed where consumers are likely to see it, immediately below the claim, and would not be easily overlooked.

Administrative Closure

Based upon the Company’s good faith efforts to address the claims identified, DSSRC administratively closed the inquiry.

Company Statement

“Xyngular is committed to promoting the business opportunity truthfully and with transparency. We will continue to identify and act on opportunities to provide further compliance trainings and tools to our sales force. We understand maintaining compliant content is an ongoing process for direct sales companies and will continue to monitor our field for any non-compliant material.

(Administrative Closure #159, closed on 05/03/24)

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[1] According to the FTC’s revised 2024 Business Guidance Concerning Multi-Level Marketers (MLM), MLMs and their participants should not suggest that a trip or car will be offered for “free” if the person will have to pay for the item. The word “free” suggests that the person will pay nothing. Thus, it is reasonable for someone to view a “free vacation” offer as providing for free all material costs of the vacation (like airfare, hotel, and a rental car). If that is not true, the MLM and its participants should either refrain from using the word “free” or from misstating what is “free.” Thus, it is reasonable for someone to view a “free vacation” offer as providing for free all material costs of the vacation (like airfare, hotel, and a rental car). If that is not true, the MLM and its participants should either refrain from using the word “free” or from misstating what is “free.” (For example, if only a free hotel room is being provided, the offer should specify that: “Free hotel room stay for X nights.”) DSSRC notes that the term “all expenses included” would be interpreted synonymously with the word “free.”

May 17, 2024

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