

- [Vendor Privacy Program](#)
- [Volkswagen Car-Net & Audi Connect](#)

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[What Is BBB National Programs?](#)

1. [Home](#)
2. [Programs](#)
3. [Advertising Self-Regulation](#)
4. [Direct Selling Self-Regulatory Council \(DSSRC\)](#)
5. [Administratively Resolved](#)
6. [Case #184-2024: Xyngular Corporation](#)

Case #184-2024: Administrative Closure – Xyngular Corporation

BBB NATIONAL PROGRAMS

Direct Selling Self-Regulatory Council

Case #184-2024: Administrative Closure – Xyngular Corporation

Company Description

Xyngular Corporation (“Xyngular” or the “Company”) is a direct selling company that sells vitamins and other dietary supplement products. The Company was founded in 2009 and is headquartered in Lehi, UT.

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 DSSRC’s ongoing independent monitoring of advertising and marketing claims in the direct selling industry.

This inquiry involved five earnings claims communicated in twelve different social media posts and three product performance claims communicated in four social different social media posts. The claims were disseminated on Facebook, Instagram, and TikTok.

DSSRC was concerned that the challenged earnings claims conveyed unsupported claims regarding the significant income a typical salesforce member could earn from the Company's business opportunity, including incentive claims and claims that the typical salesforce member could earn career level, life-changing income, and/or obtain financial freedom through the Company's business opportunity.

DSSRC also identified three social media posts containing product performance claims that DSSRC was concerned may be interpreted as meaning that the Company's products are efficacious in treating a number of serious health conditions.

Earnings Claims

- "Living a Life of Adventure For FREE" 🛩️ 🌴 ☀️ take a peek 👁️ into our resort... Living a life of adventure. Period. Luxury destinations and activities I would have never had the opportunity to experience are now OUR reality because of an opportunity to help others look and feel their best." (Video of luxurious vacation)
- "The encouragement, resources, and shared experiences within the Xyngular family have empowered me to consistently earn \$2000 to \$2500 a month." [1]
- "I'm passionate about sharing both fantastic products and life-changing income opportunities with you. I think YOU deserve it." [2]
- "Whether it was coaching them to lead a healthier lifestyle or mentoring them to create a life changing income, this is something I love & will now get to do on a global scale! I'm ready to take what I've learned & spread it world wide."
- "I get paid commissions DAILY. I travel the world for free. It's the future of time & financial freedom."

Product Performance Claims

- "I lost 55 pounds in 4 and a half months"
- Before and after, weight loss. "Happy Monday...today is day 1...we are all losing up to 15 pounds in the next 8 days...I'm so excited for everyone 🙌" [3]
- "Gut health- if you haven't taken a look at your gut health you need to (no bloating, dropping lbs-22 since March to be exact)"

Company Position

Xyngular promptly responded to the inquiry and specified the steps it took to address DSSRC's concerns. The Company was successful in either modifying the social media posts at issue or having them removed in their entirety.

More specifically, Xyngular facilitated the removal of eight of the 12 posts making earnings claims and modified four others by either removing reference to "life changing income" and/or including a disclosure to indicate that the income stated in the post was atypical and provided a link to the Xyngular income summary.

With respect to the product performance claims, the Company had one post removed and included a disclosure regarding the weight loss that could be generally expected by the typical Xyngular consumer to the three posts that remain publicly available.

Analysis

Pursuant to the Federal Trade Commission's (FTC) Guides on the Use of Endorsements and Testimonials in Advertising, "An advertisement containing an endorsement relating the experience of one or more consumers on a central or key attribute of the product or service also will likely be interpreted as representing that the endorser's experience is representative of what consumers will generally achieve with the advertised product or service in actual, albeit variable, conditions of use. Therefore, an advertiser should possess and rely upon adequate substantiation for this representation. If the advertiser does not have substantiation that the endorser's experience is representative of what consumers will generally achieve, the advertisement should clearly and conspicuously disclose the generally expected performance in the depicted circumstances, and the advertiser must possess and rely on adequate substantiation for that representation." [4]

Earnings Claims

DSSRC appreciated the voluntary actions taken by Xyngular to address its concerns regarding the earnings claims communicated in the social media posts at issue. DSSRC recognized the Company's good faith efforts in removing eight of the posts identified by DSSRC and eliminating the atypical claim in three of the modified posts that the Xyngular business opportunity provides "life changing income." DSSRC determined that the Company's actions were necessary and appropriate.

Notwithstanding, DSSRC remained concerned with one of the modified posts. In that post, although the Company facilitated the removal of the "life changing income" language. The modified post states that the Company's business opportunity, "empowered me to consistently earn around the amount of a house payment a month!"

In addition, the disclosure added to the post does not reference the amount of income that could be generally expected by the typical Xyngular salesforce member and states only that: "I am the rank of Ambassador she is rank of Gold Manager. These earnings are

gross earnings and do not include expenses such as monthly product purchases and other expenses incurred in building business. www.xyngular.com/xis”

According to section 9 of DSSRC’s Guidance on Earnings Claims for the Direct Selling Industry (the “DSSRC Earnings Claim Guidance”), for purposes of a DSSRC inquiry, when evaluating express and implied messages communicated by an earnings claim, DSSRC will review the totality of the claim including the takeaway message conveyed to the audience. The post before DSSRC was disseminated on social media to the general public and DSSRC determined that it would be reasonable for consumers to interpret the post as conveying that the typical Xyngular salesforce member will earn significant income (i.e., “the amount of a house payment a month!”), a message that has not been supported.

DSSRC further determined that the disclosure language used to qualify the income claim does not clearly and conspicuously disclose the amount of income that could generally be expected by the typical Company salesforce member.

Lastly, DSSRC did recognize that, in the disclosure, the Company included a hyperlink to Xyngular’s 2022 Income Summary. Notwithstanding this modification, DSSRC concluded that it did not adequately serve as a clear and conspicuous disclosure of the amount of income that could be expected by the typical salesforce member. As noted in the FTC’s Dot Com Disclosure Guide, “Disclosures that are an integral part of a claim or inseparable from it should not be communicated through a hyperlink. Instead, they should be placed on the same page and immediately next to the claim, and be sufficiently prominent so that the claim and the disclosure are read at the same time, without referring the consumer somewhere else to obtain this important information.”

Similarly, section 13(B) of the DSSRC Earnings Claim Guidance states that “hyperlink disclosures may be acceptable in some circumstances, but disclosures necessary to prevent deception should not be hidden behind a hyperlink. Accordingly, an advertisement, including a social media post, that includes an earnings claim disclosure should clearly and conspicuously disclose any material information related to the claim to ensure that the net impression is truthful and not misleading. An advertisement or social media post may use a hyperlink to complement generally expected results stated in an atypical earnings disclosure...”

Accordingly, DSSRC recommended that the Company either remove the earnings representation from the subject post or, alternatively, modify the existing disclosure to clearly and conspicuously inform consumers of the amount of income that can be generally expected by the typical Xyngular salesforce member.

Product Performance Claims

DSSRC recognized the good faith efforts of Xyngular to address its concerns regarding the atypical weight loss claims communicated in the social media posts at issue and determined that the Company’s actions to remove one of the four posts and modify the remaining three posts to disclose the generally expected weight loss that the typical consumer would receive from using the product and adhering to Xyngular’s 8-Day Jumpstart program.

DSSRC noted that in the three modified posts, the disclosure language (“Individual results may vary based on personal variables and adherence to the program/product use. Typical results following the 8-Day Jumpstart are 1-2 lbs. lost per week.”) appears in close proximity to the weight loss representations and viewers of the post do not have to scroll down to find the disclosure. As stated in the FTC’s Dot.Com Disclosures Guide, “On a Web page, the disclosure is more likely to be effective if consumers view the claim and disclosure together on the same screen. Even if a disclosure is not tied to a particular word or phrase, it is more likely that consumers will notice it if it is placed next to the information, product, or service to which it relates.”

DSSRC concluded that the weight loss claims in the three modified posts at issue were presented in a context that was concise and straightforward and the disclosure qualifying these claims is noticeable and easily understandable by consumers.

Accordingly, it was determined that Xyngular appropriately addressed DSSRC’s concerns by removing one of the product performance claims at issue and modifying the remaining posts by including a clear and conspicuous disclosure of the results that can be generally expected by consumers who adhere to the directed use of the Company’s program/product.

Conclusion

Xyngular removed eight of the 12 social media posts that included earnings claims and modified four others by either removing reference to “life changing income” and/or including a disclosure to stating that the income referenced in the post was atypical accompanied by a link to the Xyngular income disclosure statement. With respect to the modified post that referenced earning “around the amount of a house payment a month,” DSSRC recommended that the Company either remove the earnings representation from the social media post or, alternatively, modify the existing disclosure to clearly and conspicuously disclose the amount of income that can be generally expected by the typical Company salesforce member.

It was also determined that Xyngular adequately addressed DSSRC’s concerns regarding the truth and accuracy of the atypical weight loss claims communicated in three social media posts by removing one post and including a disclosure of typical product results in the three remaining posts at issue.

Company Statement

“Xyngular Corporation appreciates the DSSRC’s recognition of our consistent and proactive efforts to address concerns and ensure compliance with industry standards.

As a company committed to ethical advertising and transparency, Xyngular has always prioritized compliance oversight and education for our salesforce members.

In response to the DSSRC's inquiry, Xyngular promptly acted to remove or modify the identified posts, fully addressing all recommendations. These actions demonstrate our ongoing dedication to maintaining compliance and integrity in our practices.

We will continue to refine our processes to uphold transparency, compliance, and the trust of our consumers.”

(Case #184-2024, closed on (11/21/2024)

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[1] This claim was communicated by the same Xyngular salesforce member twice on Facebook in two different posts in July 2024.

[2] This claim was communicated by seven different Xyngular salesforce members on Facebook on July 24, 2024.

[3] This claim was communicated by two different Xyngular salesforce members on January 4, 2024.

[4] 16 CFR Part 255.2(b).

December 16, 2024

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