



# Advanced Media and Technology Law

Advertising Disputes Law



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## NARB Panel Cautions Use of Online Consumer Reviews to Substantiate Claims

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A recent ruling by the National Advertising Review Board (NARB) cautions companies about using online customer reviews to support “most recommended” claims, reminding advertisers that are eager to leverage customer feedback and online reviews for marketing purposes that they must adhere to principles of claim substantiation and should be careful not to distort or overrepresent the substantiating data. The decision involved a challenge brought by vacuum manufacturer Dyson against its competitor Euro-Pro. Euro-Pro claimed in its television and Internet-based advertising that its Shark vacuum brand was “America’s Most Recommended Vacuum” and “America’s Most Recommended Vacuum Brand,” based on “percentage of consumer recommendations for upright vacuums on major national retailer websites through August 2013, U.S. Only.”

In making these claims, Euro-Pro relied on an analysis of online customer reviews culled from a variety of retail sites. Ruling on Dyson’s challenge, the National Advertising Division (NAD), the self-regulatory body of the advertising industry, found that Euro-Pro’s claims reasonably conveyed the message that Shark is the most recommended vacuum brand among U.S. consumers of vacuum cleaners and that the data Euro-Pro relied on in support of its claims was not sufficiently reliable and did not represent U.S. vacuum cleaner consumers. The NAD recommended that the claims be discontinued, and Euro-Pro appealed the recommendation to the NARB.

The NARB panel agreed with the NAD decision, noting that while traditional consumer surveys are not necessarily the only way to support “most recommended” claims, advertisers must have reliable and representative data to substantiate those claims. Euro-Pro based its “most recommended” claim on aggregated reviews by customers purchasing vacuums online - even though the majority of Americans (84 percent) still purchase vacuum cleaners in brick-and-mortar stores, and few of those purchasers post online reviews. In addition, Euro-Pro’s data were based only on sites that asked buyers whether they would recommend a purchase (rather than rating a purchase, for example, with stars), which excluded data from some of the largest online sellers (including Amazon), and that differences and deficiencies in the way the online sites surveyed consumers undercut the reliability of the data and Euro-Pro’s aggregation. Overall, the panel concluded that Euro-Pro had not met its burden of establishing that the data it used were representative of U.S. vacuum cleaner consumers and sufficiently reliable to support its “most recommended” claims.

The NARB panel also agreed with the NAD’s determination that consumers would not reasonably understand that the disclaimer (“based on percentage of consumer recommendations . . .”) limited the claim,

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insofar as it simply indicated the methodology used to substantiate the claim. Even if consumers viewed the disclaimer as limiting the main claim, the panel noted that the disclaimer would then contradict that claim and therefore be unacceptable.

The NARB recommended that Euro-Pro promptly cease making its “America’s Most Recommended” claim.

The NARB panel did, however, note the “usefulness of online consumer reviews” and stated that it did not intend for its decision to preclude the possibility that web-based consumer review data can be aggregated across websites in support of advertising claims. It also noted that Euro-Pro’s analysis might support narrower claims.

Advertisers looking to online customer reviews, ratings or similar data to support claims should carefully examine the connection between the claim and the evidence to ensure that the universe relied on is appropriate and that the methodology for aggregating reviews results in a representative sample of consumers.

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