

NAD Considers Whether “Number 1” Claims Can be Qualified

Gonzalo E. Mon

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DREO advertises that it is the “No. 1 Fan and Heater Brand” in the United States. Lasko, a competitor, thinks that it is, in fact, the “number 1” brand in both of those categories. Because there can’t be two “number 1” brands, Lasko filed a challenge before the NAD to dispute its competitor’s claims.

In support of its position, Lasko submitted three years of unit sales data from a market research company, which included both major online retailers and brick-and-mortar stores, to demonstrate that Lasko had a significantly higher market share than DREO.

Although DREO apparently didn’t dispute that data, it argued that its claims are more narrow because a disclosure explains that the claims are based on third-party data for Amazon US Retail Sales, covering specific periods of time. Lasko didn’t seem to dispute that data, either.

If neither party disputed the other party’s data, who wins?

NAD determined that “each of the challenged claims reasonably conveys a broad message that DREO fans and heaters are the #1 brand in total sales volume, *regardless of the channel in which the products are sold.*” In that case, the analysis turns on the disclosure.

Although the parties disputed whether DREO’s disclosures were sufficiently clear, NAD noted that “a disclosure cannot be used to contradict the main message communicated. In this instance, because the main message as communicated in the challenged advertising is that DREO is the overall sales leader is unsupported, it cannot be qualified by a disclosure.”

It’s possible that this case would have turned out differently if the qualifying language were incorporated into the claim itself, rather than just appearing in the footnote. In any event, this decision is another reminder that there is a limit to what companies can do in the fine print.

Click [here](#) for our post earlier this week that discusses a different aspect of #1 claims.