

The Commission having thereafter considered the matter and having determined that it had reason to believe that respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Goen Technologies Corporation (“GTC”) is a New Jersey corporation with its principal office or place of business at 35 Melanie Way, Whippany, New Jersey 07981.

Respondent Nutramerica Corporation (“Nutramerica”) is a Delaware corporation with its principal office or place of business at 35 Melanie Way, Whippany, New Jersey 07981.

Respondent Trimspa, Inc. (“Trimspa”) is a New Jersey corporation with its principal office or place of business at 35 Melanie Way, Whippany, New Jersey 07981.

Respondent Alexander Szynalski a/k/a Alexander Goen (“Szynalski”) is an officer of the corporate respondents. Individually, or in concert with others, he formulates, directs, controls, or participates in the policies, acts, or practices of the corporations. His principal office or place of business is the same as that of the corporations.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

DEFINITIONS

For purposes of this Order, the following definitions shall apply:

1. Unless otherwise specified, “Respondents” shall mean:
 - a. Goen Technologies Corporation (“GTC”), a corporation, its successors and assigns and its officers;
 - b. Nutramerica Corporation (“Nutramerica”), a corporation, its successors and assigns and its officers;
 - c. Trimspa, Inc (“Trimspa”), a corporation, its successors and assigns and its officers; and
 - d. Alexander Szynalski a/k/a/ Alexander Goen (“Szynalski”), individually and as an officer of the corporations;

and each of the above's employees with managerial authority.

2. "Trimspa X32" shall mean the TrimSpa® Completely Ephedra Free Formula X32 dietary supplement.
3. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.
4. "Competent and reliable scientific evidence" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.
5. "Covered product or service" shall mean any dietary supplement, food, drug, device, or any health-related service or program.
6. "Endorsement" shall mean as defined in 16 C.F.R. § 255.0(b).
7. "Food," "drug," and "device," shall mean "food," "drug," and "device" as defined in Section 15 of the FTC Act, 15 U.S.C. § 55.
8. The term "including" in this Order shall mean "without limitation."
9. The terms "and" and "or" in this Order shall be construed conjunctively or disjunctively as necessary, to make the applicable phrase or sentence inclusive rather than exclusive.

I.

IT IS ORDERED that Respondents, directly or through any corporation, subsidiary, division, trade name, or other device, in connection with the advertising, promotion, offering for sale, or sale of Trimspa X32 or any other covered product or service, in or affecting commerce, shall not represent, in any manner, expressly or by implication, including through the use of a product name or endorsement:

- A. That such product or service causes rapid and substantial weight loss;
- B. That the Hoodia gordonii, or any ingredient, in such product, enables users to lose substantial amounts of weight by suppressing their appetite; or
- C. About the health benefits, performance, efficacy, safety or side effects of such product or service,

unless the representation is true, not misleading, and, at the time it is made, Respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

II.

IT IS FURTHER ORDERED that:

A. Nothing in this order shall prohibit Respondents from making any representation for any drug that is permitted in labeling for such drug under any tentative final or final standard promulgated by the Food and Drug Administration, or under any new drug application approved by the Food and Drug Administration; and

B. Nothing in this order shall prohibit Respondents from making any representation for any product that is specifically permitted in labeling for such product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990; and

C. Nothing in this order shall prohibit Respondents from making any representation for any device that is permitted in labeling for such device under any new medical device application approved by the Food and Drug Administration.

III.

IT IS FURTHER ORDERED that Respondents shall pay to the Federal Trade Commission the sum of **one million five hundred thousand dollars** (\$1,500,000). This payment shall be made in the following manner:

A. The payment shall be made by wire transfer or certified or cashier's check made payable to the Federal Trade Commission, the payment to be made no later than fifteen (15) days after the date that this order becomes final.

B. In the event of any default in payment, which default continues for ten (10) days beyond the due date of payment, the amount due, together with interest, as computed pursuant to 28 U.S.C. § 1961 from the date of default to the date of payment, shall immediately become due and payable to the Commission.

C. The funds paid by Respondents, together with any accrued interest, shall, in the discretion of the Commission, be used by the Commission to provide direct redress to purchasers of Trimspa X32 in connection with the acts and practices alleged in the complaint, and to pay any attendant costs of administration. If the Commission determines, in its sole discretion, that redress to purchasers of this product is wholly or partially impracticable or is otherwise unwarranted, any funds not so used shall be paid to the United States Treasury. Respondents shall

be notified as to how the funds are distributed, but shall have no right to contest the manner of distribution chosen by the Commission. No portion of the payment as herein provided shall be deemed a payment of any fine, penalty or punitive assessment.

- D. Respondents relinquish all dominion, control, and title to the funds paid, and all legal and equitable title to the funds vests in the Treasurer of the United States and in the designated consumers. Respondents shall make no claim to or demand for return of funds, directly or indirectly, through counsel or otherwise; and in the event of bankruptcy of any respondent, Respondents acknowledge that the funds are not part of the debtor's estate, nor does the estate have any claim or interest therein.

IV.

IT IS FURTHER ORDERED that Respondents shall, no later than twenty (20) days after the date that this Order becomes final, deliver to the Commission a list, in the form of a sworn affidavit, of all consumers who purchased TrimSpa X32 on or after March 1, 2003 through the date of entry of this Order, to the extent that such purchasers are known to Respondents through a diligent search of their records, including but not limited to computer files, sales records, and inventory lists. Such list shall include each consumer's name and address, the product(s) purchased, the quantity and the amount paid, including shipping and handling charges, and if available, the consumer's telephone number and email address.

V.

IT IS FURTHER ORDERED that Respondents GTC, Nutramerica, and Trimspa, and their successors and assigns, and Respondent Szynalski shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon reasonable notice make available to the Federal Trade Commission for inspection and copying:

- A. All advertisements and promotional materials containing the representation;
- B. All materials that were relied upon in disseminating the representation; and
- C. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

VI.

IT IS FURTHER ORDERED that Respondents GTC, Nutramerica, and Trimspa, and their successors and assigns, and Respondent Szynalski shall deliver a copy of this order to all current and future principals, officers, directors, and other employees with managerial authority having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondents shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

VII.

IT IS FURTHER ORDERED that Respondents GTC, Nutramerica, and Trimspa, and their successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the corporations that may affect compliance obligations arising under this order, including, but not limited to, dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporations about which Respondents learn less than thirty (30) days prior to the date such action is to take place, Respondents shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

VIII.

IT IS FURTHER ORDERED that Respondent Szynalski, for a period of seven (7) years after the date of issuance of this order, shall notify the Commission of the discontinuance of his individual current business or employment, or of his individual affiliation with any new business or employment. The notice shall include respondent's new business address and telephone number and a description of the nature of the business or employment and his duties and responsibilities. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

IX.

IT IS FURTHER ORDERED that Respondents GTC, Nutramerica, and Trimspa, and their successors and assigns, and Respondent Szynalski shall, within sixty (60) days after service of this order, and, upon reasonable notice, at such other times as the Federal Trade Commission

may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

X.

IT IS FURTHER ORDERED that this order will terminate on February 8, 2027, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order's application to any Respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the Respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission, Commissioner Rosch recused.

Donald S. Clark
Secretary

ISSUED: February 8, 2007

SEAL: