

Complaint

IN THE MATTER OF
GOEN TECHNOLOGIES CORPORATION, ET
AL.

CONSENT ORDER, ETC. , IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-4185; File No. 042 3127
Complaint, February 8, 2007 — Decision, February 8, 2007

This consent order requires respondents Goen Technologies Corporation, et al., to have competent and reliable scientific evidence substantiating any claims that TrimSpa® Completely Ephedra Free Formula X32 or any other covered product or service causes rapid and substantial weight loss or that the Hoodia gordonii, or any other appetite suppressant, in a covered product enables users to lose substantial amounts of weight by suppressing their appetite. The order provides for the payment of \$1,500,000 to the Commission and requires respondents to provide the Commission with a list of all consumers who respondents know purchased TrimSpa X32 from March 1, 2003, through the date of entry of this order. The funds paid by respondents shall be used by the Commission to provide direct redress to purchasers of Trimspa X32 and to pay any attendant costs of administration. Any funds not so used shall be paid to the United States Treasury. In addition, the order requires the respondents, for five years after the last date of dissemination of any representation covered by this order, to make available to the Commission all advertisements and promotional materials containing the representation, all materials that were relied upon in disseminating the representation, and all tests or other evidence that call into question the representation or the basis relied upon for the representation.

Participants

For the *Commission: Matthew Daynard, Michael Ostheimer,*
and *Brad Winter.*

For the *Respondents: M. Howard Morse, Drinker Biddle &*
Reath, Washington, DC; Donald A. Bashada and James M.
Fischer, Drinker Biddle, Florham Park, NJ; and Edward W.
Correia, Latham & Watkins LLP.

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The Federal Trade Commission, having reason to believe that Goen Technologies Corporation, Nutramera Corporation, and Trimspa, Inc., corporations, and Alexander Szynalski a/k/a Alexander Goen, individually and as an officer of the corporations (“respondents”), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

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.
2. Respondent Nutramera Corporation (“Nutramera”) is a Delaware corporation with its principal office or place of business at 35 Melanie Way, Whippany, New Jersey 07981.
3. 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.
4. Respondent Alexander Szynalski a/k/a Alexander Goen (“Szynalski”) is an officer of GTC, Nutramera, and Trimspa. Individually, or in concert with others, he formulates, directs, controls, or participates in the policies, acts, or practices of GTC, Nutramera, and Trimspa, including the acts and practices alleged in this complaint. His principal office or place of business is the same as that of the corporations.
5. Respondents have labeled, advertised, offered for sale, sold, and distributed purported weight-loss products to the public, including Trimspa® Completely Ephedra Free Formula X32 (“TrimSpa X32”). TrimSpa X32 is a tablet that, according to its label, contains, among other ingredients, Hoodia gordonii, chromium, vanadium, glucomannan, citrus naringine,

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glucosamine HCl, cocoa extract, and green tea extract. TrimSpa X32 tablets are “foods” or “drugs,” within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.

6. The acts and practices of respondents alleged in this complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act.

7. Respondents have disseminated or have caused to be disseminated advertisements for TrimSpa X32, including but not necessarily limited to the attached Exhibits A through I. These advertisements contain the following statements and depictions:

Television Advertisements

- a. Video: *Cars racing on a track .*
- Video: “HIGH-SPEED” *[vibrating]*
- Video: *Cars racing on a track and close-up of a woman in a racing outfit.*
- Video: “DREAM *[vibrating]* BODY”
- Video: *Cars racing on a track and close-up of a woman in a racing outfit.*
- Video: “DIET PILL” *[vibrating]*
- Video: *Cars racing on a track.*
Super: “TRIMSPA EPHEDRA FREE FORMULA
Use as part of a diet and exercise program.
Results not typical.
Testimonials have lost weight on various
TrimSpa formulas.”
- Woman #1: “You think that’s fast? Try TrimSpa.”

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Woman #2 with: "I've lost 57 pounds."
inset fatter photo
of herself

Woman #3 with: "TrimSpa has driven me to lose 25
inset fatter photo pounds."
of herself

Man #1: "I've lost 8 pounds in 4 weeks."

Man #2 with: "I lost 18 pounds in 6 weeks on
inset fatter photo ephedra free TrimSpa."
of himself

Man #3: "TrimSpa works for my team."

Woman #2: "The results are unbelievable."

Woman #1: "Get the attention you deserve."

Video: Super: "1-800-TRIMSPA
TRIMSPA.COM"

Woman #3: "TrimSpa putting you on the fast track to
become all you've ever envied."

Exhibit A (30-second television advertisement)

b.

Video

Audio

John Daly swinging a golf club.

*Red band through center of
screen with white Aticker tape"
text scrolling across for
approximately 21 seconds of the
commercial:*

"BREAKING NEWS
*** BREAKING NEWS ***
BREAKING NEWS"

Woman: "Hey check out John

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<i>John Daly riding a motorcycle.</i>	Daly's new golf cart."
<i>John Daly on a golf course.</i>	
Super: "John Daly PGA Tour's Longest Driver Ticker tape text: **BREAKING NEWS *** ANNA NICOLE SMITH HAS LOST 30 LBS WITH TRIMSPA COMPLETELY EPHEDRA FREE!..."	John Daly: "TrimSpa has driven me to lose 32 pounds."
Super in white on a black background: "TRIMSPA® EPHEDRA FREE FORMULA Super: Use as part of a diet and exercise program. Results not typical."	
<i>Woman on a golf course holding a flag pole with inset fatter photo of herself.</i>	John Daly: "These are my new friends."
<i>Woman on a golf course putting with inset fatter photo of herself.</i>	John Daly: "Jerrica down 25 pounds"
<i>Man on a golf course driving with inset fatter photo of himself.</i>	John Daly: "Karla Odell lost 57 pounds"
<i>John Daly taking swings on a golf course.</i>	John Daly: "And Jon Daniels over 100 pounds"
	John Daly: "All with TrimSpa. Patented TrimSpa"
Super: 1-800-TRIMSPA TRIMSPA.COM	John Daly: "Your high speed

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dream body diet pill.”

John Daly: “Completely
ephedra free. Call 1-800-
TrimSpa or visit
trimspa.com”

John Daly: “When it comes to
getting your dream body, it’s
a gimmee.”

Exhibit — (30-second television advertisement)

c. Video: *Woman with motorcycle posing and
moving seductively.*

Super: “Diet and exercise improve results. Results
not typical and may vary.”

Audio: “TRIMSPA”

Video: “Before” and “After” photos of woman
Super: “TRIMSPA X32
25 lbs in 2 2 months!

Audio: “X32”

Video: *Woman continuing to move and pose.*

Audio: “The ultimate comeback — Get the attention you
deserve — Go to trimspa.com and order TrimSpa X32
today”

Video: *Super:* “TRIMSPA X32
Be envied.
1-800-TRIMSPA
trimspa.com”

Audio: “also available at fine retailers everywhere.”

Exhibit C (30-second television advertisement)

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Radio Advertisements

- d. . . . If Anna Nicole Smith with her outrageous appetite lost 40 pounds to recapture her super-model days with TrimSpa Completely Ephedra Free . . . guess what TrimSpa's High Speed Dream Body Diet Pill can do for you!

You and your TrimSpa hot Dream Body will look mighty good next to a cool million dollars at the 2003 Radio Music Awards on Monday, October 27th on NBC.

Exhibit D (60-second radio advertisement)

- e. Howard Stern: Trimspa love it. Big fan. Super model Anna Nicole Smith. You know you forget she used to be a supermodel and then she got fat.

Robin Quivers: Yeah she used to model jeans as a matter of fact.

Howard Stern: Star Magazine did a thing on. — They had a shock-o-meter and the shock was that Anna Nicole Smith had lost 85 pounds.

Robin Quivers: That is shocking . . . that she had 85 to lose.

Howard Stern: TrimSpa formula X32 — boy is that good stuff. 2004 — you want your dream body — well here's your dream body diet pill. They're going to help you lose all that weight, just by taking a little pill. TrimSpa formula X32. It's got a secret ingredient used for centuries by African bushmen to suppress hunger during long hunting trips when food was scarce. That's the truth. That's how TrimSpa came about. It is an amazing formula. You don't see any fat African bushmen, I'll tell you that. Order your dream body now at TrimSpa.com. Call 1-800-TrimSpa.

Man talking in gibberish.

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Howard Stern: Thank you sir. Here's the inventor of it.
Gibberish continues.

Howard Stern: TrimSpa. Available at Walgreens, RiteAid, and GNC. TrimSpa be all you ever envied. Lose all the weight — shock some people yourself this year — just like Anna Nicole Smith did.

Exhibit E (Radio advertisement)

- f. Announcer: We know you've seen how amazing supermodel and actress Anna Nicole Smith looks since the number one selling diet pill in the country, TrimSpa X32, helped her lose 69 pounds!

What you might not know is that people just like you are also making their "ultimate comebacks" with the help of the Dream Body Diet Pill . . . people like Kipp Cowen, who, at age 37, was at least 100 pounds overweight. Fortunately, when his girlfriend recommended TrimSpa X32, Kipp listened.

Kipp: Hi, my name is Kip[p] Cowen, I'm from Dallas, Texas and in less than four months I have lost 59 pounds taking TrimSpa X32.

Announcer: And then there's the experience of Dichele Lutz, a lucky lady who couldn't be happier about "losing big" in Vegas!

Dichelle: Hello, my name is Dichelle Lutz. I'm from Las Vegas, Nevada and I have lost 78 pounds in seven months using TrimSpa X32.

Announcer: Come on, see what X32 can do for you. Order TrimSpa X32 today! Call 1-800-TrimSpa or go to TrimSpa.com or find it at GNC, Walgreens and Rite Aid! TrimSpa. Be Envied.

Exhibit F (60-second radio advertisement)

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Print Advertisements

- g. Trim
Spa

...

COMPLETELY EPHEDRA FREE

ALet's face it, I'm a big guy," says John Daly. . . . Then I started hearing about TrimSpa® products, went to trimspa.com and was knocked out by the 'Before' and 'After' pictures of folks whose lives were transformed by its amazing High-Speed **DREAM BODY™** Diet Pill.

. . . one of the owners of Greg Ray Racing — who was so thrilled with his 100 pound weight loss . . . — and even Anna Nicole Smith, who lost over 30 pounds with **TrimSpa™ COMPLETELY EPHEDRA FREE Formula X32!**

[“]Frankly, when I started using TrimSpa products I did think it sounded too good to be true,” admitted Daly. “But not only have I already burned off 32 pounds — the weight loss *continues*

...

**The Secret Ingredients
Behind TrimSpa™ COMPLETELY
EPHEDRA FREE Formula X32**

Hoodia Gordonii Cactus

The perfect solution for unwanted cravings and big appetites, this natural appetite suppressant stops hunger and leaves you feeling satisfied with less food, longer.

...

2003 TrimSpa Results not typical. Not for use by or sale to persons under 18 years of age. Healthy diet accompanied by exercising can only improve results. These statements have not been evaluated by the Food and Drug Administration. Not intended to treat, prevent, mitigate, or cure disease. Call 1-800-TRIMSPA or visit www.trimspa.com for use, guarantee details and requirements. Consult physician before using. Read the label and follow directions. Do not use any of these products if pregnant or nursing. . . .

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Exhibit G (Product info sheet for events)

h. **“I’M BACK!**

THANKS TRIMSPA®!”

— *Anna Nicole Smith*

ANNA, HOTTER THAN EVER. . .

. . . and she looks *amazing*! When the rumors began to fly that Anna Nicole lost an incredible amount of weight on a patented diet pill, the public was skeptical. We all watched her battle her weight in the past — without long-term success. But when her amazing “Before” and “After” pictures were released, we found ourselves embracing a new THIN Anna Nicole. Looking more beautiful than she ever has. Guess what? She even got back to her modeling days within only 12 weeks — this blond bombshell vows this is the real Anna Nicole. She found something that finally worked when nothing else did.

So what is it?

[*Depictions: Photographs of Anna Nicole Smith labeled “Before” and “After: 8/27/03” with the caption “Anna Nicole Smith’s After Pictures Taken On August 27, 2003, Just 12 Weeks After Taking Trimspa® X32”*]

**TRIMSPA® Worked for
Anna Nicole *because* . . .**

Patented TrimSpa® *COMPLETELY* EPHEDRA FREE Formula X32 contains the super appetite suppressant secret used by African tribesman for thousands of years to destroy hunger during long hunting trips — TrimSpa® *COMPLETELY* EPHEDRA FREE Formula X32 makes the impossible, possible. Its makes losing 30, 50, even 70 pounds (or however many pounds you need to lose) painless - Anna Nicole is proof that you can get your DREAM BODY™ and lose the weight. If it worked for Anna, TrimSpa® *COMPLETELY* EPHEDRA FREE Formula X32 can work for you, too!

Anna’s making the ultimate comeback! When are you going to make yours?

. . .

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TrimSpa
Be Envied.™

82003 Trimspa® Results not typical. Not for use by or sale to persons under 18 years of age. Healthy diet accompanied by exercising can only improve results. These statements have not been evaluated by the Food and Drug Administration. Not intended to treat, prevent, mitigate, or cure disease. Call 1-800-TRIMSPA or visit www.trimspa.com for use, guarantee details and requirements. Consult physician before using. Read the label and follow directions. Do not use if pregnant or nursing. If you are allergic to shellfish consult your doctor before deciding to take Glucosamine. Models have been compensated for photos. All models have become hotter and sexier (lost weight) using Trimspa® products. . . .

Exhibit H (Magazine advertisement)

Internet Advertising

i. **The Word Is Out . . .**

Anna Nicole Smith

*[Depictions: Photographs of Anna Nicole Smith labeled “Before **TRIMSPA**” and Aand After **losing 69 lbs!**”]*

Anna Nicole Smith Bares All . . .
. . . About Her Weight Loss!

Have you heard the naked facts? **Anna Nicole Smith** has **FINALLY** bared all on national TV and told the world **exactly** how much weight she lost using **TRIMSPA X32**, the **DREAM BODY Diet Pill!**

And exactly how much **DID** Anna lose in only eight months?

Sixty-nine pounds! Yes, believe it or not, Anna Nicole shed **sixty-nine** pounds with **TRIMSPA X32** to reveal one of the sexiest supermodel **DREAM BODIES** ever to slink down a runway during **Fashion Week** in New York! Now she’s seducing thousands of fans with her incredible new look on talk

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shows, TV specials, magazine photo spreads and soon, even in a major motion picture!

...

Well, now you not only know her fabulous secret, you're at the perfect place to discover how it can help **you** to lose **all** the weight and get the attention you deserve . . . just like Anna! So don't waste another moment! Click **HERE** to find out more about **TRIMSPA X32** and start making **your** ultimate comeback **right now!**

Buttons "Buy 1 Bottle" or to "Buy 3-Pack"

hyperlinks to "newsletter," "privacy & policies," "store locator," and "order status"

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The statements contained on this site have not been evaluated by the Food and Drug Administration. Not intended to diagnose, treat, prevent, mitigate or cure any disease. Testimonial results not typical. Your actual results may vary. Please read product labels before purchasing product. Please check with your physician before starting any weight loss program. Read the label and follow directions.

Exhibit I (www.trimspa.com — Anna Nicole Smith page
— June 2004)

j. **TRIMSPA®**
Frequently Asked Questions

* * *

< How fast will I see results? How many pounds will I lose per week?

TRIMSPA® products work differently in all people because each person has a different body chemistry. If you don't notice immediate results, please be patient. TRIMSPA's formulas are so unique that we're confident you can achieve significant fat reduction. Generally, weight loss of 2 to 4 pounds per week is considered safe, and such levels of weight loss have

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been demonstrated with the ingredients in TRIMSPA® products.

CAUTION: Although TRIMSPA® products contain no drugs whatsoever, do not let yourself lose weight too quickly. If you lose more than 10 pounds in the first 5 days, do not take any more pills for 2 or 3 days at the end of the first week.

. . .

hyperlinks to “newsletter,” “privacy & policies,” “store locator,” and “order status”

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The statements contained on this site have not been evaluated by the Food and Drug Administration. Not intended to diagnose, treat, prevent, mitigate or cure any disease. Testimonial results not typical. Your actual results may vary. Please read product labels before purchasing product. Please check with your physician before starting any weight loss program. Read the label and follow directions.

Exhibit I (www.trimspa.com — Frequently Asked Questions page
— June 2004)

k. **TRIMSPA® X32 Testimonials**

Last year I gained 21 pounds! I was miserable and hated the way I looked. I decided to take control of my life and started using TRIMSPA® X32. I am happy to say that in 11 weeks, I was back to my normal weight. I had lost 21 pounds with the help of TRIMSPA® X32. . . . I am sold on TRIMSPA® X32 and now all of my friends are using it to lose weight and feel great! Thank you TRIMSPA®!

Chelsea Zedar
21 lbs more driven

*[Depictions: “before” and
“after” photos of Chelsea]*

TRIMSPA® X32 has changed my life. . . in such a short time I have lost 15 pounds. No other product has ever given me the results that this product has given me. . . .

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[Depictions: “before” and
“after” photos of Dawn]

Dawn Marsico
15 lbs more in control

I found myself very unhappy with the way I looked and felt. I had heard of various weight loss supplements but was skeptical about the outcome. I came across TRIMSPA® X32 and lost 23 pounds in nine weeks. . . .

Sophia Poshni

[Depictions: “before”

and

23 lbs more confident “after” photos of Sophia]

I lost 25 pounds in three months on TRIMSPA® X32 and it also gave me more energy.

[Depictions: “before” and
“after” photos of Sunni]

Sunni Hemme
25 lbs more fierce

. . .

hyperlinks to “newsletter,” “privacy & policies,” “store locator,” and “order status@

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The statements contained on this site have not been evaluated by the Food and Drug Administration. Not intended to diagnose, treat, prevent, mitigate or cure any disease. Testimonial results not typical. Your actual results may vary. Please read product labels before purchasing product. Please check with your physician before starting any weight loss program. Read the label and follow directions.

Exhibit I (www.trimspa.com — TrimSpa X32
Testimonials page — June 2004)

1. **TRIMSPA® X32**

This formula was created to help achieve a sexier you ...

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Ingredients

Hoodia Gordonii (Hoo-dee-uh Gore-doh-nee) is a natural appetite suppressant, used for generations by South African tribesmen to stave off hunger during long hunting expeditions. . . .

Exhibit I (www.trimspa.com—TrimSpa X32 Ingredients page)

8. Through the means described in Paragraph 7, respondents have represented, expressly or by implication, that:

- A. TrimSpa X32 causes rapid and substantial weight loss; and
- B. Hoodia gordonii — an African appetite suppressant — in TrimSpa X32 enables users to lose substantial amounts of weight by suppressing their appetite.

9. Through the means described in Paragraph 7, respondents have represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representations set forth in Paragraph 8, at the time the representations were made.

10. In truth and in fact, respondents did not possess and rely upon a reasonable basis that substantiated the representations set forth in Paragraph 8, at the time the representations were made. Therefore, the representation set forth in Paragraph 9 was, and is, false or misleading.

11. The acts and practices of respondents as alleged in this complaint constitute unfair or deceptive acts or practices, and the making of false advertisements, in or affecting commerce in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

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THEREFORE, the Federal Trade Commission this eighth day of February, 2007, has issued this complaint against respondents.

By the Commission, Commissioner Rosch recused.

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Exhibit A

Exhibit A is a computer file containing, *inter alia*, the material depicted in Part 7.a. of the Complaint. A copy of Exhibit A has been placed on the attached CD and, in its entirety, is hereby incorporated by reference into the Complaint.

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Exhibit B

Exhibit — is a computer file containing, *inter alia*, the material depicted in Part 7.b. of the Complaint. A copy of Exhibit — has been placed on the attached CD and, in its entirety, is hereby incorporated by reference into the Complaint.

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Exhibit C

Exhibit C is a computer file containing, *inter alia*, the material depicted in Part 7.c. of the Complaint. A copy of Exhibit C has been placed on the attached CD and, in its entirety, is hereby incorporated by reference into the Complaint.

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Exhibit D

TRIMSPA 2003 RADIO MUSIC AWARDS 60

Want to look and **Be Envied™** like a star—and *win a million bucks*? ~~Well~~, **TrimSpa®** is there to help you go for it at the 2003 Radio Music Awards on NBC live at 9pm Monday, October 27th! Get ready for the music event of the Century with knock out performances by Madonna, J-Lo, John Mayer, Shania Twain and more!

TrimSpa® will pick 5 winners a day, 125 in all, pack your pockets with five grand and fly you and a friend to a blockbuster back stage party at the Radio Music Awards—automatically qualifying you to win a *cool million dollars*!

For details go immediately to trimspa.com. What you also need to lose the weight!

If Anna Nicole Smith with her outrageous appetite lost 40 pounds to recapture her super-model days with **TrimSpa®** **COMPLETELY EPHEDRA FREE...** *guess what* **TrimSpa's®** High-Speed **DREAM BODY™** Diet Pill can do for you!

You and your **TrimSpa®** hot **DREAM BODY™** will look mighty good next to a *cool million dollars* at the 2003 Radio Music Awards on Monday, October 27th on NBC.

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Exhibit E

Exhibit E is a computer file containing, *inter alia*, the material depicted in Part 7.e. of the Complaint. A copy of Exhibit E has been placed on the attached CD and, in its entirety, is hereby incorporated by reference into the Complaint.

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Exhibit F

OYCEGTS

:60 Second Generic
Testimonial Spot

VO: We know you've seen how **amazing** supermodel and actress **Anna Nicole Smith** looks since the **Number One** selling diet pill in the country, **TRIMSPA X32**, helped her lose **69 pounds**!

What you might *not* know is that people just like you are also making *their* "ultimate comebacks" with the help of the **DREAM BODY Diet Pill**...people like **Kipp Cowen**, who, at age 37, was at least **100 pounds** overweight. Fortunately, when his girlfriend recommended **TRIMSPA X32**, Kipp *listened*....

KIPP: (SOUND BITE)
Hi, my name is Kip Cowen, I'm from Dallas, Texas and in less than four months I have lost 59 pounds taking TRIMSPA X32.

VO: And then there's the experience of **Dichele Lutz**, a lucky lady who couldn't be happier about "losing **big**" in Vegas!

DICHELE: (SOUND BITE)
Hello, my name is Dichele Lutz. I'm from Las Vegas, Nevada and I have lost 78 pounds in seven months using TRIMSPA Formula (Tim to take out of audio) X32.

VO: Come on, see what X32 can do for you. (Tim needs to have this VO taped) Order **TRIMSPA X32 TODAY!** Call **1-800 TRIMSPA** or go to **TRIMSPA.com**, or find it at **GNC**, **Walgreens** and **Rite Aid**! **TRIMSPA. Be Envied.**

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Exhibit G

Product Info Sheet for Events 10.9.03



"Let's face it, I'm a big guy," says John Daly. "I love food and could never pass up any kind of chocolate. So excess pounds became a way of life...besides, there was always the next size in pants and shirts. Then I started hearing about TrimSpa® products, went to trimspa.com and was knocked out by the 'Before' and 'After' pictures of folks whose lives were transformed by its amazing High-Speed DREAM BODY™ Diet Pill.

I was particularly impressed by fellow athletes who are still having tremendous success with TrimSpa® products. Guys like Bubba Paris, the three time Super Bowl® champ for the 49ers®; Tom McMillen, the NBA® star who was also the former Co-Chair for President Clinton's Council on Physical Fitness; Lee Mroszak, one of the owners of Greg Ray Racing—who was so thrilled with his 100 pound weight loss he uniformed the team and plastered the race car with TrimSpa® logos—and even Anna Nicole Smith, who lost over 30 pounds with TrimSpa® COMPLETELY EPHEDRA FREE Formula X32!

Frankly, when I started using TrimSpa® products I did think it sounded too good to be true," admitted Daly. "But not only have I already burned off 32 pounds—the weight loss continues—and, more importantly, I've been able to keep it off. I have more energy than I've ever had in my life and I look great! Heck, I'm getting so ripped I don't know if the oooohs and aaaahs from the gallery are for my long drive, or for my DREAM BODY!

Seriously, though, endorsing TrimSpa® products is a great way for me to show my appreciation of and my total belief in what TrimSpa® can do for just about anybody who tries it."

Tee it up, John...you're no longer a long shot to reach your ideal weight with TrimSpa® products!

TrimSpa® Retail Div: 1-800-TRIMSPA

The Secret Ingredients Behind TrimSpa® COMPLETELY EPHEDRA FREE Formula X32

Hoodia Gordonii Cactus

The perfect solution for unwanted cravings and big appetites, this natural appetite suppressant stops hunger and leaves you feeling satisfied with less food, longer.

Glucosamine

Your ultimate safeguard against gaining weight, this patented ingredient actually assists your metabolism in using the glucose (or blood sugar) in the foods you eat as a source of energy instead of storing it as ugly fat.

Green Tea Extract

Want to turn heads and stop traffic with sexy, defined muscles? This multi-purpose herb helps fight free radicals while it also helps burn fat and reveal the healthy, lean muscles underneath.

Cocoa Extract

Why look heavier than you really are? This natural diuretic helps rid the body of excess water so you look trimmer as you become trimmer.

Citrus Naringinine

Stop obesity before it begins by curbing your appetite and inhibiting the enzymes that can cause you to be overweight in the first place with this soluble source of fiber that keeps your system regular and your body lighter.

Chromium Chelavite™

Don't deprive yourself of the foods you love—while everyone else struggles to resist carbs, this important nutrient can help you achieve the same results low-carb diets offer but without having to sacrifice all breads, pastas and sugar!

Vanadium

The perfect answer to a day of indulgence with your favorite comfort foods, this natural appetite suppressant also assists your metabolism in converting carbohydrates—that might otherwise be stored as fat—into energy.

Glucomannan

Feel satisfied and full while you actually eat less! This natural dietary fiber increases satiety, resulting in the lower caloric intake that ultimately helps you lose weight.

Sodium Carboxymethylcellulose

Say you can't eat another bite, and mean it! This non-toxic, indigestible solution helps fool your body by creating a sense of fullness while it's in the stomach, reducing the desire to eat...and the numbers on your scale!

© 2003 TrimSpa. Results may vary. Not for use by or sale to persons under 18 years of age. Healthy diet accompanied by exercising can only improve results. These statements have not been evaluated by the Food and Drug Administration. Not intended to treat, prevent, diagnose or cure disease. Call 1-800-TRIMSPA or visit 2003.2008.0000 for use, purchase details, and requirements. Consult physician before using. Read the label and follow directions. Do not use any of these products if pregnant or nursing. Do not use if allergic to cellulose. Do not use if you have high blood pressure. TrimSpa and the TrimSpa logo are trademarks of TrimSpa. All other marks are trademarks of their respective owners.

CID - 014175

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Exhibit H

Anna Cosmo Ad with Coupon 11/11/03 5:19 PM Page 1

**"I'M BACK!
THANKS TRIMSPA®!"**
-Anna Nicole Smith

ANNA, HOTTER THAN EVER...

...and she looks amazing! When the rumors began to fly that Anna Nicole lost an incredible amount of weight on a patented diet pill, the public was skeptical. We all watched her battle her weight in the past—without long-term success. But when her amazing "Before" and "After" pictures were released, we found ourselves embracing a new THIN Anna Nicole. Looking more beautiful than she ever has. Guess what? She even got back to her modeling days within only 12 weeks—this blonde bombshell vows this is the real Anna Nicole. She found something that finally worked when nothing else did.

So what is it?
TrimSpa® Worked for Anna Nicole because...

Patented TrimSpa® COMPLETELY EPHEDRA FREE Formula X32 contains the super appetite suppressant secret used by African tribesman for thousands of years to destroy hunger during long hunting trips—TrimSpa® COMPLETELY EPHEDRA FREE Formula X32 makes the impossible, possible. It makes losing 30, 50, even 70 pounds (or however many pounds you need to lose) painless...Anna Nicole is proof that you can get your DREAM BODY™ and lose the weight. If it worked for Anna, TrimSpa® COMPLETELY EPHEDRA FREE Formula X32 can work for you, too!

Anna's making the ultimate comeback! When are you going to make yours?

Call 1-800-634-3617 ext. M620 or visit www.M620.trimspa.com to get your DREAM BODY today. Also available at **CNC**®, **Walgreens**®, **Rite Aid**® and **CVS**®.

Be Envid® with TrimSpa® COMPLETELY EPHEDRA FREE Formula X32.

\$5.00 OFF
TrimSpa® COMPLETELY EPHEDRA FREE Formula X32

Available at these and other fine retailers:

CNC Walgreens Rite Aid CVS

Expires: 3/1/2004
Offer number: 61121
COUPON CODE: 1 67463 21274 1 (8/02) 06

TrimSpa®
Be Envid.™

©2003 TrimSpa®. Results not typical. Not for use by or sale to persons under 18 years of age. Health diet accompanied by exercising can only improve results. These statements have not been evaluated by the Food and Drug Administration. Not intended to treat, prevent, mitigate or cure disease. Call 1-800-634-3617 or visit www.trimspa.com for use, guarantee details, and requirements. Consult physician before using. Read the label and follow directions. Do not use if pregnant or nursing. If you are taking any medicine, consult your doctor before deciding to take TrimSpa®. Results have been experienced for photos. All models have become hotter and more beautiful using TrimSpa® products. TrimSpa®, the "TrimSpa" logo, Be Envid®, and DREAM BODY™ are all trademarks of TrimSpa®. All other marks are trademarks of their respective owners.

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Exhibit I

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The Word Is Out...



Anna Nicole Smith Bares All...
...About Her Weight Loss!

Have you heard the naked facts? **Anna Nicole Smith** has **FINALLY** bared all on national TV and told the world **exactly** how much weight she lost using **TRIMSPA X32**, the **DREAM BODY Diet Pill**!

And exactly how much **DID** Anna lose in only eight months?

Sixty-nine pounds! Yes, believe it or not, Anna Nicole shed **sixty-nine** pounds with **TRIMSPA X32** to reveal one of the sexiest supermodel **DREAM BODIES** ever to slink down a runway during **Fashion Week** in New York! Now she's seducing thousands of fans with her incredible new look on talk shows, TV specials, magazine photo spreads and soon, even in a major motion picture!

For months, Anna's **ultimate comeback** was the talk of gossip columns,

<http://web.archive.org/web/20040624124528/www.trimspa.com/main/anna.shtml> 2/17/2006

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entertainment magazines and the popular press, all buzzing with the question, "How much did Anna lose, and how did she **do** it?"

Well, now you not only know her fabulous secret, you're at the perfect place to discover how it can help **you** to lose **all** the weight and get the attention you deserve...just like Anna! So don't waste another moment! Click **HERE** to find out more about **TRIMSPA X32**and start making **your** ultimate comeback **right now!**

Buy 1 Bottle

1 Bottle \$39.95

Buy 3-Pack

~~\$49.95~~ \$39.95 for 3 bottles
PLUS Free Gift
Save Over \$14 Off Retail

next page

TRIMSPA.COM | 1-800-447-2727

newsletter | privacy & policies | store locator | order status

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The statements contained on this site have not been evaluated by the Food and Drug Administration. Not intended to diagnose, treat, prevent, mitigate or cure any disease. Testimonial results not typical. Your actual results may vary. Please read product labels before purchasing product. Please check with your physician before starting any weight loss program. Read the label and follow directions.

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CONSULTATION ** INFORMATION ** QUESTIONS ** SHOP

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TRIMSPA® Frequently Asked Questions

We've prepared answers to some frequent questions about TRIMSPA® products to help you make an informed decision. We know that the more you learn about TRIMSPA® products, the more you'll see how effective they really are. If you're unsure which TRIMSPA® product is right for you, we invite you to try our free [online weight loss consultation](#). Or, if you're already familiar with our products and you're ready to purchase, [click here](#).

► **How fast will I see results? How many pounds will I lose per week?**

TRIMSPA® products work differently in all people because each person has a different body chemistry. For example, if you're a tall, big-boned person, you will probably lose more weight than someone who is short and small-boned. We've spoken to people who first noticed their results after a full 60 days of using TRIMSPA® products. If you don't notice immediate results, please be patient. TRIMSPA's formulas are so unique that we're confident you can achieve significant fat reduction. Generally, weight loss of 2 to 4 pounds per week is considered safe, and such levels of weight loss have been demonstrated with the ingredients in TRIMSPA® products.

CAUTION: Although TRIMSPA® products contain no drugs whatsoever, do not let yourself lose weight too quickly. If you lose more than 10 pounds in the first 5 days, do not take any more pills for 2 or 3 days at the end of the first week.

► **How are TRIMSPA® products different from the other weight loss products out there?**

TRIMSPA® X32 has an ingredient that prolongs the amount of time that food is available for energy, thus keeping it from being stored as fat. This ingredient is not new to us, but the research on its weight loss capabilities IS fairly new. This makes TRIMSPA® X32 the most technologically advanced body shaping formula ever!

► **Is it safe to order online?**

Absolutely. When you order TRIMSPA® online, your personal information is sent to us via secure servers. All your personal information is encrypted to ensure it doesn't fall into the wrong hands.

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<http://web.archive.org/web/20040706002552/www.trimspa.com/main/questions.shtml>

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CONSULTATION INFORMATION QUESTIONS TESTIMONIALS SHOW

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TRIMSPA® X32 Testimonials
(Next Testimonial Page)

Last year I gained 21 pounds! I was miserable and hated the way I looked. I decided to take control of my life and started using TRIMSPA® X32. I am happy to say that in 11 weeks, I was back to my normal weight. I had lost 21 pounds with the help of TRIMSPA® X32. I felt so great about my new look that I entered the Miss Florida USA pageant. I am sold on TRIMSPA® X32 and now all my friends are using it to lose weight and feel great! Thank you TRIMSPA®!

Chelsea Zedar
21 lbs more driven

before after

TRIMSPA® X32 has changed my life...in such a short time I have lost 15 pounds. No other product has ever given me the results that this product has given me. I feel like a whole new person and I owe it to TRIMSPA® X32. I feel healthy and happy again,

<http://web.archive.org/web/20040705025754/www.trimspa.com/main/testimonials.shtml>

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before



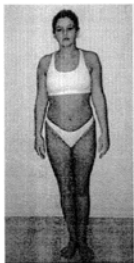
after

and I just want to thank everyone that made this product available to me. Thanks!

Dawn Marsico
15 lbs more *in control*

I found myself very unhappy with the way I looked and felt. I had heard of various weight loss supplements but was skeptical about the outcome. I came across TRIMSPA® X32 and lost 23 pounds in nine weeks. I have never been so happy and satisfied with the way I look. Thank you TRIMSPA®! You have changed my life.

Sophia Poshni
23 lbs more *confident*



before



after

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before



after

I lost 25 pounds in three months on TRIMSPA® X32 and it also gave me more energy.

Sunni Hemme
25 lbs more fierce

[Next Testimonial Page]

Note: If you have a success story or photos you'd like to share, please let us know. We'll be adding new testimonials constantly, so check back often.

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The statements contained on this site have not been evaluated by the Food and Drug Administration. Not intended to diagnose, treat, prevent, mitigate or cure any disease. Testimonial results not typical. Your actual results may vary. Please read product labels before purchasing product. Please check with your physician before starting any weight loss program. Read the label and follow directions.

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TRIMSPA

CONSULTATION INFORMATION NEWS / EVENTS TESTIMONIALS

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home: information: X32

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TRIMSPA® X32

This formula was created to help achieve a sexier you...

Ingredients

Hoodia Gordonii

(Hoo-dee-uh Gore-doh-nee) is a natural appetite suppressant, used for generations by South African tribesmen to stave off hunger during long hunting expeditions.

Glucosamine

(Gloo-ko-so-meen) is an ingredient, patented by TRIMSPA for weight loss, that actually prolongs the amount of time glucose (or blood sugar) stays within the bloodstream after eating. This delay means that any extra insulin can be used directly by the muscles for energy, instead of being transferred too quickly to the "warehouse," or fat cells.

Green Tea Extract

has long been known for its thermogenic-or heat generating-properties that promote burning of fat. The polyphenols in green tea also contain epigallocatechin gallate, which has been known to significantly reduce food intake and, subsequently, body weight in healthy adults. It is rich in potent bioflavonoids that, together with the polyphenols, provide the antioxidants so vital to fighting free radicals.

Cocoa Extract

contains 3,7 - dimethylxanthine, also known as Theobromine, and is found naturally in cocoa beans.

view ingredients

view testimonials

view directions



<http://www.trimspa.com/main/cef.shtml>

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Decision and Order

DECISION AND ORDER

The Federal Trade Commission (“Commission”), having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true and waivers and other provisions as required by the Commission’s Rules; and

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.

Decision and Order

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

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- 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.

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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

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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

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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

Decision and Order

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

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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

Decision and Order

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.

Analysis to Aid Public Comment

**ANALYSIS OF PROPOSED CONSENT ORDER TO AID
PUBLIC COMMENT**

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Goen Technologies Corp., Nutramera Corp., TrimSpa, Inc., and Alexander Szynalski a/k/a Alexander Goen (together, “respondents”).

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement’s proposed order.

This matter involves the advertising and promotion of Trimspa® Completely Ephedra Free Formula X32 (“TrimSpa X32”), a dietary supplement that, according to its label, contains, among other ingredients, Hoodia gordonii, chromium, vanadium, glucomannan, citrus naringine, glucosamine HCl, cocoa extract, and green tea extract. According to the FTC complaint, respondents represented that TrimSpa X32 causes rapid and substantial weight loss; and that Hoodia gordonii — an African appetite suppressant — in TrimSpa X32 enables users to lose substantial amounts of weight by suppressing their appetite. The complaint alleges that respondents failed to have substantiation for these claims. The proposed consent order contains provisions designed to prevent respondents from engaging in similar acts and practices in the future.

Part I of the proposed order requires respondents to have competent and reliable scientific evidence substantiating any claims that a covered product or service causes rapid and substantial weight loss or that the Hoodia gordonii, or any other appetite suppressant, in a covered product enables users to lose

Analysis to Aid Public Comment

substantial amounts of weight by suppressing their appetite. The provision further requires that any such claim be true. A “covered product or service” is defined as “any dietary supplement, food, drug, or device, or any health-related service or program.” Part I.C. further requires that future claims about the health benefits, performance, efficacy, safety, or side effects of any covered product or service be truthful and supported by competent and reliable scientific evidence.

Part II of the proposed order provides that the order does not prohibit respondents from making representations for any drug that are permitted in labeling for the drug under any tentative final or final Food and Drug Administration (“FDA”) standard or under any new drug application approved by the FDA; representations for any medical device that are permitted in labeling under any new medical device application approved by the FDA; and representations for any product that are specifically permitted in labeling for that product by regulations issued by the FDA under the Nutrition Labeling and Education Act of 1990.

Part III provides for the payment of \$1,500,000 to the Commission.

Part IV of the proposed order requires respondents to provide the Commission with a list of all consumers who respondents know purchased TrimSpa X32 from March 1, 2003 through the date of entry of this Order.

Parts V through IX require respondents to keep copies of relevant advertisements and materials substantiating claims made in the advertisements; to provide copies of the order to certain of their personnel; to notify the Commission of changes in corporate structure (for the corporate respondents) and changes in employment (for the individual respondent) that might affect compliance obligations under the order; and to file compliance reports with the Commission. Part X provides that the order will terminate after twenty (20) years under certain circumstances.

Analysis to Aid Public Comment

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Complaint

IN THE MATTER OF

ZANGO, INC., ET AL.CONSENT ORDER, ETC. , IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

*Docket C-4186; File No. 052 3130
Complaint, March 7, 2007 — Decision, March 7, 2007*

This consent order addresses the developing, marketing, and distributing via Internet downloads of advertising software programs (“adware”) that monitor consumers’ Internet use in order to display targeted pop-up ads. Respondents Zango, Inc., and Keith Smith and Daniel Todd, individually and as officers of Zango, through third-party affiliates, installed their adware on consumers’ computers without adequate notice or consent; and made their adware difficult for consumers to identify, locate, and remove. The order prohibits respondents from contacting any consumer’s computer, to display ads or otherwise, if their adware was installed on that computer before January 1, 2006. The order also prohibits respondents from, or assisting others in, installing software onto any computer by exploiting security vulnerabilities or failing to give adequate notice to consumers, or installing any software program or application without express consent. Respondents must require affiliates to obtain express consent before installing software, and must establish and maintain mechanisms through which consumers can report and respondents can address complaints, and consumers can locate and uninstall respondents’ adware. In addition, the order requires respondents to pay \$3 million to the Commission; these funds may be used to provide such relief as the Commission determines to be reasonably related to respondents’ practices, including the rescission of contracts, payment of damages, and/or public notification respecting such unfair or deceptive practices. Any funds not used shall be paid to the U.S. Treasury.

Participants

For the *Commission*: David K. Koehler and Carl H. Settlemyer.

For the *Respondents*: Christine A. Varney and Mary Ellen Callahan, Hogan & Hartson LLP.