

*MAY 19/20*

OTTAWA, ONT.

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**COMPETITION TRIBUNAL**

**IN THE MATTER** of the *Competition Act*, R.S.C. 1985, c. C-34;

**AND IN THE MATTER** of a Temporary Consent Agreement pursuant to section 74.12 of the *Competition Act* regarding conduct reviewable pursuant to paragraph 74.01(1)(b) of the *Competition Act*;

**BETWEEN:**

**THE COMMISSIONER OF COMPETITION**

**Applicant**

and

**NUVOCARE HEALTH SCIENCES INC. and RYAN FOLEY**

**Respondents**

**TEMPORARY CONSENT AGREEMENT**

**WHEREAS** the Commissioner is responsible for the administration and enforcement of the *Competition Act*, RSC 1985, c. C-34 (the "**Act**");

**AND WHEREAS** the Commissioner of Competition (the "**Commissioner**") has filed an application pursuant to section 74.11 of the Act for an order directing Nuvocare Health Sciences Inc. and Ryan Foley (the "**Respondents**") not to engage in certain reviewable conduct or substantially similar reviewable conduct;

**AND WHEREAS** the Respondents market and sell certain natural health products to the public, specifically WeightOFF Max! marketed under Nuvocare's SlimCentials and NutraCentials brands, Forskolin+ marketed under Nuvocare's SlimCentials brand, and Forskolin Nx marketed under Nuvocare's NutraCentials brand (collectively, the "**Products**");

**AND WHEREAS** the Respondents have made and are making representations to the public which convey the general impression that the Products, alone or when used together, will result in weight loss or will burn fat, along with other related claims;

**AND WHEREAS** the Commissioner has concluded that the Respondents have made and continue to make these claims systematically, across a wide range of platforms;

**AND WHEREAS** the Commissioner has concluded that the claims are not based on adequate and proper testing;

**AND WHEREAS** the Commissioner has concluded that the Respondents have engaged and are engaging in conduct reviewable pursuant to paragraph 74.01 (1)(b) of the Act;

**AND WHEREAS** the Commissioner's inquiry into the Respondents' conduct is ongoing;

**AND WHEREAS** it appears to the Commissioner that the Respondents' reviewable conduct is causing serious harm, and that such harm is likely to ensue unless a temporary order under subsection 74.11(1) of the Act is issued or this Agreement is registered, and that the harm occasioned to consumers and competition outweighs any harm to the Respondents and therefore that the balance of convenience favours the seeking and issuance of a temporary order under subsection 74.11(1) of the Act or the registration of this Agreement to ensure that the conduct ceases while he completes his inquiry;

**AND WHEREAS** the Parties are satisfied that this matter can be resolved collaboratively on a temporary basis with the registration of this Agreement which, upon registration, shall have the same force and effect as an order of the Tribunal;

**AND WHEREAS IT IS AGREED AND UNDERSTOOD** that for the purposes of this Agreement only, including execution, registration, enforcement, variation or rescission of this Agreement, and subject to paragraph 8 of this Agreement, the Respondents acknowledge the Commissioner's conclusions and agree that they provide a basis for this Temporary Consent Agreement being put in place until this matter is finally resolved by way of agreement or order of the Competition Tribunal, but nothing in this Agreement shall be taken as an admission or acceptance by the Respondents of any facts, wrongdoing, submissions, legal argument or conclusions nor shall it derogate from any rights or defences of the Respondents including any defences available under the Act;

**AND WHEREAS IT IS AGREED AND UNDERSTOOD** that the registration of this Agreement does not preclude the Commissioner from filing an application for any other order under Part VII.1 of the Act at any time, including but not limited to, an application pursuant to section 74.1 of the Act;

**NOW THEREFORE**, in order to resolve the Commissioner's concerns on a temporary basis until this matter is finally determined, the Parties hereby agree as follows:

**I. INTERPRETATION**

1. For the purpose of the Agreement, the following definitions shall apply:

  
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- a. “**Act**” means the *Competition Act*, R.S.C. 1985, c. C-34;
- b. “**Agreement**” means this Temporary Consent Agreement entered into by the Parties pursuant to section 74.12 of the Act;
- c. “**Commissioner**” means the Commissioner of Competition appointed pursuant to section 7 of the Act, and his or her authorized representatives;
- d. “**Interpretation Act**”, means the *Interpretation Act*, R.S.C. 1985, c. I-21;
- e. “**Parties**” means the Commissioner and the Respondents collectively, and “**Party**” means any one of them;
- f. “**Registration Date**” means the date on which the Agreement is registered by the Tribunal pursuant to section 74.12 of the Act;
- g. “**Respondents**” means Nuvocare Health Sciences Inc. and Ryan Foley; and
- h. “**Tribunal**” means the Competition Tribunal established by subsection 3(1) of *Competition Tribunal Act*, R.S.C., 1985, c. 19 (2nd Supp.), as amended.

II. **COMPLIANCE WITH THE DECEPTIVE MARKETING PRACTICES PROVISIONS OF THE ACT**

- 2. Within 20 days of the Registration Date, the Respondents shall be prohibited from:
  - a) making, by any means whatsoever, any representation to the public in the form of a statement, warranty or guarantee of performance or efficacy of any product that is not based on adequate and proper testing;
  - b) making, by any means whatsoever, any representation to the public in the form of a statement, warranty or guarantee of performance or efficacy that is not based on adequate and proper testing about the products WeightOFF Max! under the NutraCentials and SlimCentials brands, the product Forskolim+ under the SlimCentials brand, and the product Forskolim Nx under the NutraCentials brand, as well as any other variation of these products; and
  - c) Without limiting the generality of the foregoing, making, by any means whatsoever, any representation to the public in the form of a statement, warranty or guarantee of performance or efficacy that is not based on adequate and proper testing about the Products’ capacity to:

  
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- i. cause weight loss;
  - ii. burn fat;
  - iii. increase fat release;
  - iv. block fat storage;
  - v. block carbohydrates;
  - vi. cut appetite;
  - vii. decrease emotional eating;
  - viii. target belly fat; or
  - ix. increase metabolism.
3. The Respondents shall, within 30 days of the Registration Date, provide a report to the Commissioner's authorized representative setting out all actions it has taken to comply with this Agreement.
4. The Commissioner's costs in the application pursuant to section 74.11 of the Act, as against the Respondents, fixed and payable forthwith in the amount \$2,500.

### III. **GENERAL**

5. Notices, reports and other communications required or permitted pursuant to any of the terms of this Agreement shall be in writing and shall be considered to be given if dispatched by personal delivery, registered mail or facsimile transmission to the Parties at the following addresses:

#### **Deputy Commissioner of Competition**

Josephine Palumbo  
Competition Bureau  
Place du Portage, 21st Floor  
50 Victoria Street, Phase I  
Gatineau, Quebec K1A 0C9

Facsimile: (819) 956-2836

#### **With a copy to:**

Talitha Nabbali  
Competition Bureau Legal Services  
Department of Justice  
Place du Portage, 22<sup>nd</sup> Floor  
50 Victoria Street, Phase I  
Gatineau, Quebec K1A 0C9  
[talitha.nabbali@canada.ca](mailto:talitha.nabbali@canada.ca)

  
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**The Respondents:**

**Ryan Foley**  
President & CEO  
Nuvocare Health Sciences Inc.  
10 Four Seasons Place, Suite 1000  
Toronto, ON M9B 6H7

**With a copy to:**  
John Syme  
[jsyme@jls-law.ca](mailto:jsyme@jls-law.ca)

6. This Agreement shall be binding upon the Respondents until the Commissioner's inquiry is resolved by a final consent agreement or decision of the Tribunal, or such further time period as agreed to by the Parties.
7. The Parties consent to the immediate registration of this Agreement with the Tribunal pursuant to section 74.12 of the Act.
8. Nothing in this Agreement precludes the Respondents or the Commissioner from bringing an application under section 74.13 of the Act where circumstances that led to the making of this Agreement have changed. Subject to this paragraph, the Respondents will not, for the purposes of this Agreement only, including execution, registration, enforcement, variation or rescission, contest the basis for this Temporary Consent Agreement or that circumstances appear to the Commissioner as stated herein.
9. The Respondents shall not make any public statements that contradict the terms of this Agreement.
10. The Respondents attorn to the jurisdiction of the Tribunal for the purposes of this Agreement and any proceeding relating to this Agreement for variation or rescission.
11. In the event of a dispute regarding the interpretation, implementation or application of this Agreement, any of the Parties shall be at liberty to apply to the Tribunal for an order or directions. In no event shall any dispute suspend any time period under the Agreement. The Parties agree that the Tribunal has jurisdiction to make such order as is required to give effect to this Agreement.
12. This Agreement may be executed in two or more counterparts, each of which shall be an original instrument, and all of which taken together shall constitute one and the same instrument. In the event of any discrepancy between the English and French versions of this Agreement, the English version shall prevail.

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13. The Agreement constitutes the entire and only agreement between the Parties and supersedes all previous negotiations, communications and other agreements, whether written or oral, unless they are incorporated by reference herein. There are no terms, covenants, representations, statements or conditions binding on the Parties other than those contained herein.
14. The computation of time periods contemplated by this Agreement shall be in accordance with the *Interpretation Act*. For the purpose of this Agreement, the definition of "holiday" in the *Interpretation Act* shall include Saturday. For the purposes of determining time periods, the date of this Agreement is the last date on which it is executed by the Parties.

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The undersigned hereby agree to the filing of the Agreement with the Tribunal for registration.

DATED at Mississauga, Ontario this 9<sup>th</sup> day of May, 2020.

for: the Respondents, **Nuvocare Health Sciences Inc. and Ryan Foley**

"Original Signed by Ryan Foley"

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Ryan Foley  
President and CEO  
Nuvocare Health Sciences Inc.

I have authority to bind the corporation.

DATED at Gatineau in the Province of Quebec this 10<sup>th</sup> day of May, 2020

"Original signed by Matthew Boswell"

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Matthew Boswell  
Commissioner of Competition