

**FILED / PRODUIT**

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CT- CT-2020-003

Annie Ruhlmann for / pour  
REGISTRAR / REGISTRAIRE

CT-2020-003

OTTAWA, ONT.

Doc. # 54

**THE COMPETITION TRIBUNAL**

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

**AND IN THE MATTER** of a Consent Agreement pursuant to section 74.12 of the *Competition Act* with respect to certain deceptive marketing practices of the Respondents under paragraphs 74.01(1)(a), 74.01(1)(b) and subsection 74.011(2) of the *Competition Act*.

**BETWEEN:**

**THE COMMISSIONER OF COMPETITION**

**Applicant**

**- and -**

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

**Respondents**

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**CONSENT AGREEMENT**

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**WHEREAS** the Commissioner of Competition (the “**Commissioner**”) is responsible for the administration and enforcement of the *Competition Act* (the “**Act**”);

**AND WHEREAS** the Respondent Nuvocare Health Sciences Inc. (“**Nuvocare**”) is a private corporation federally incorporated under the *Canada Business Corporations Act*;

**AND WHEREAS** the Respondent Ryan Foley (“**Mr. Foley**”) is the founder, creator and formulator of Nuvocare products, is the President and CEO of Nuvocare, and made representations to the public relating to Nuvocare products;

**AND WHEREAS** Nuvocare and Mr. Foley (the “**Respondents**”) market and sell certain natural health products, 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 representations to the public promoting the Products in a variety of ways, including through the use of illustrations and text on labels and packaging, on Nuvocare’s Websites, on Social Media Sites, in promotional emails, at consumer expos and in online or print magazines;

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**AND WHEREAS** the Respondents, for the purpose of promoting the Products and for the purpose of promoting their business interests more generally, have made representations, including pictorial representations, which convey the General Impression that the Products have been clinically proven to work (“**Clinically Proven Representations**”);

**AND WHEREAS** the Commissioner has concluded that the Products have not been clinically proven to work;

**AND WHEREAS** the Commissioner has concluded that the Clinically Proven Representations were false or misleading in a material respect, and that the Respondents engaged in reviewable conduct contrary to paragraph 74.01(1)(a) of the Act;

**AND WHEREAS** the Respondents, for the purpose of promoting the sale of the Products, and for the purpose of promoting their business interests more generally, also sent Clinically Proven Representations in emails (“**Electronic Message Representations**”);

**AND WHEREAS** the Commissioner has concluded that the Electronic Message Representations are false or misleading in a material respect, and that the Respondents have engaged in reviewable conduct contrary to subsection 74.011(2) of the Act;

**AND WHEREAS** the Respondents, for the purpose of promoting the sale of the Products, and for the purpose of promoting their business interests more generally, have made representations, including pictorial representations, which conveyed the General Impression that use of a product offered or promoted by the Respondents will cause weight loss; burn fat; release fat or increase fat release; block fat storage; block carbohydrates; cut, reduce or control appetite; decrease emotional eating; target fat in areas of the body such as the belly; increase metabolism; reduce food intake; improve weight management; and control weight, along with other related claims (“**Weight Loss Representations**”);

**AND WHEREAS** the Commissioner has concluded that the Weight Loss Representations are performance and/or efficacy claims within the meaning of paragraph 74.01(1)(b) of the Act and therefore must be supported by adequate and proper testing;

**AND WHEREAS** the Commissioner has concluded that the testing produced by the Respondents is not adequate and proper to support the Weight Loss Representations made with respect to the performance or efficacy of the Products;

**AND WHEREAS** a relevant consideration for the Commissioner’s conclusion was that no well-conducted, randomized, placebo-controlled double-blind study was conducted on the particular formulation of ingredients present in the Products;

**AND WHEREAS** the Products were licensed by Health Canada’s Natural and Non-Prescription Health Products Directorate to make certain health claims, but not to make the Weight Loss Representations or the Clinically Proven Representations;

**AND WHEREAS** the Commissioner has concluded that the Weight Loss Representations are not based on adequate and proper testing, and that the Respondents have engaged in reviewable conduct contrary to paragraph 74.01(1)(b) of the Act;

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**AND WHEREAS** the Respondents agreed to enter into a Temporary Consent Agreement, which was registered with the Competition Tribunal on May 13, 2020, and which prohibited the Respondents from engaging in certain reviewable conduct or substantially similar reviewable conduct, in order to protect the public while the Commissioner conducted his inquiry;

**AND WHEREAS** following the registration of the Temporary Consent Agreement, the Commissioner continued his inquiry into the conduct, which included obtaining an Order requiring Nuvocare to produce records or things pursuant to paragraph 11(1)(b) of the Act and to make and deliver written returns of information pursuant to paragraph 11(1)(c) of the Act;

**AND WHEREAS** the Commissioner acknowledges that Nuvocare is a small, closely held corporation that has been impacted by the Respondent Mr. Foley's unique personal circumstances at the time of execution of this Agreement which have necessitated the involvement of the Ontario Public Guardian and Trustee;

**AND WHEREAS** the COVID-19 pandemic has severely affected sales and business profits of the Respondents, such that the Respondents are in a precarious financial situation and have a limited ability to pay administrative monetary penalties;

**AND WHEREAS** the Commissioner has agreed to more favourable terms in this Agreement than would otherwise be the case in recognition of the financial difficulties of the Respondents;

**AND WHEREAS** that for the purpose of this Agreement only, including execution, registration, enforcement, variation or rescission of this Agreement, the Respondents do not contest the Commissioner's conclusions, but do not agree with the conclusions and nothing in this Agreement shall be taken as an admission or acceptance by the Respondents of any facts, allegations or conclusions for any other purpose, nor shall it derogate from any rights or defences of the Respondents against third parties;

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

**NOW THEREFORE** in order to resolve the Commissioner's concerns, the Parties hereby agree as follows:

## **I. INTERPRETATION**

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

- a. "**Act**" means the Competition Act, R.S.C. 1985, c. C-34;
- b. "**Affiliate**" means an affiliated corporation, partnership or sole proprietorship within the meaning of subsection 2(2) of the Act;
- c. "**Agreement**" means this Consent Agreement entered into by the Parties pursuant to section 74.12 of the Act;
- d. "**Commissioner**" means the Commissioner of Competition appointed pursuant to section 7

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of the Act, and his or her authorized representatives;

- e. “**Compliance Program**” has the meaning set out in Part IV of this Agreement;
- f. “**Electronic Message**” means an electronic message within the meaning of subsection 74.011(5) of the Act;
- g. “**General Impression**” has the meaning set out in subsection 74.03(5) of the Act;
- h. “**Interpretation Act**”, means the *Interpretation Act*, R.S.C. 1985, c. I-21;
- i. “**Parties**” means the Commissioner and the Respondents collectively, and “**Party**” means any one of them;
- j. “**Person**” means any individual, corporation, partnership, firm, association, trust, unincorporated organization, or other entity;
- k. “**Registration Date**” means the date on which the Agreement is registered by the Tribunal pursuant to section 74.12 of the Act;
- l. “**Record**” has the meaning in subsection 2(1) of the Act;
- m. “**Representation**” means a Clinically Proven Representation or Weight Loss Representation;
- n. “**Respondents**” means Nuvocare Health Sciences Inc. and Ryan Foley either collectively or individually;
- o. “**Similar Product**” means any other product whereby any representation to the public is made that creates a General Impression consistent with that which is created by the Weight Loss Representations;
- p. “**Tribunal**” means the Competition Tribunal established by subsection 3(1) of *Competition Tribunal Act*, R.S.C., 1985, c. 19 (2nd Supp.), as amended;
- q. “**Website**” means any web page or collection of web pages owned or operated by the Respondents, including Nuvocare.ca, Nuvocare.com, Nutracentials.com, and Slimcentials.com; and
- r. “**Social Media Sites**” means sites on which the Respondents maintain an online presence, including YouTube.com, Facebook.com and Instagram.com.

## **II. COMPLIANCE WITH THE ACT**

2. Subject to paragraph 3 below, within 30 days of the Registration Date, the Respondents shall ensure that the Representations they make to the public in respect of the Products and Similar Products, including Representations sent by Electronic Message, comply with paragraph 74.01(1)(a) and paragraph 74.01(1)(b), and subsection 74.011(2) of the Act. Without limiting the generality of the foregoing, the Respondents shall not:

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- a. make, cause to be made, or permit to be made any representation to the public that creates the materially false or misleading General Impression that a Product or any Similar Product has been clinically proven to work;
  - b. make, cause to be made, or permit to be made any representation about the performance or efficacy of a Product or Similar Product that is not based on adequate and proper testing, the proof of which lies on the Respondents, unless the representation has been specifically approved by Health Canada; or
  - c. send or cause to be sent in an Electronic Message a representation that creates the materially false or misleading General Impression that a Product or any Similar Product has been clinically proven to work.
3. With respect to Representations made on packaging for the Products and Similar Products, within 45 days of the Registration Date, the Respondent shall create new templates to cause the packaging for the Products and Similar Products to comply with paragraph 74.01(1)(a) and paragraph 74.01(1)(b) of the Act in the time periods set out in paragraphs 4 and 5.
  4. Within 90 days of the Registration Date, the Respondents shall ensure the Representations appearing on packaging for the Products are in compliance with paragraph 2.
  5. Within 180 days of the Registration Date, the Respondents shall ensure the Representations appearing on packaging for Similar Products are in compliance with paragraph 2. The Respondents shall discharge this obligation with respect to each Similar Product in the following order:
    - a. SlimCentials Raspberry Ketones, NPN: 80037082;
    - b. KetoPlex MCT 8X, NPN: 80090202;
    - c. SlimCentials Garcinia Cambogia +, NPN: 80042315;
    - d. KetoPlex MCT Collagen, NPN: 80092566;
    - e. NutraCentials Garcinia Cambogia Nx, NPN: 80042315;
    - f. NutraCentials Raspberry Ketones Nx, NPN: 80037082;
    - g. KetoPlex KetoCuts, NPN: 80090887;
    - h. NutraCentials Green Coffee Bean Nx, NPN: 80036982;
    - i. VitaCentials Slim Energy, NPN: 80089921;
    - j. SlimCentials Green Coffee Bean+, NPN: 80036982;
    - k. KetoPlex MCT C8, NPN: N/A;
    - l. NutraCentials African Mango Nx, NPN: 80036983;

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- m. NutraCentials Cissus Quadrangularis, NPN: 80046370;
- n. NutraCentials Zen Cleanse, NPN: 80085328;
- o. NutraCentials Blueberry Pterostilbene, NPN: 80052455;
- p. SlimCentials Cissus Quadrangularis+, NPN: 80046370;
- q. SlimCentials African Mango+, NPN: 80036983;
- r. NutraCentials White Mulberry Nx, NPN: 80052527.

### **III. PAYMENTS**

#### **ADMINISTRATIVE MONETARY PENALTY**

- 6. The Respondent Nuvocare shall pay an administrative monetary penalty in the amount of \$50,000.
- 7. The Respondent Mr. Foley shall pay an administrative monetary penalty in the amount of \$50,000.
- 8. The payments referred to in paragraphs 5 and 6 shall be made in the manner set out in Appendix “A” attached hereto and shall be made by certified cheque or wire transfer payable to the Receiver General for Canada.

### **IV. CORPORATE COMPLIANCE PROGRAM**

- 9. Within 90 days after the Registration Date, Nuvocare shall establish, and thereafter maintain, a corporate compliance program, the goal of which will be to promote compliance with the Act generally, and Part VII.1 of the Act specifically. The compliance program shall be framed and implemented in a manner consistent with the Commissioner’s bulletin titled “Corporate Compliance Programs”, as published (as of the Registration Date of this Agreement) on the Competition Bureau’s website at [www.competitionbureau.gc.ca](http://www.competitionbureau.gc.ca).
- 10. During the term of this Agreement, (i) the Respondent Nuvocare shall provide a copy of this Agreement to all Marketing Personnel within 14 days after the Registration Date of this Agreement, and (ii) all future Marketing Personnel will be provided with a copy of this Agreement within 14 days after their commencement of employment. Within 14 days after being provided with a copy of this Agreement, the Respondent Nuvocare shall secure from each such Person a signed and dated statement acknowledging that they read and understood this Agreement and Part VII.1 of the Act and provide same to the Commissioner or his authorized representative.

### **V. COMPLIANCE REPORTING**

- 11. The Respondents shall, within 30 additional days following the end of the above referenced 180 period, provide a report to the Commissioner’s authorized representative setting out the action(s) taken to comply with paragraphs 2, 3, 4 and 5 to this Agreement.

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12. The Respondent Nuvocare shall provide to the Commissioner or his authorized representative, within 30 days following receipt of a written request from the Commissioner, such Records and information in such form as the Commissioner reasonably requests, for the purposes of monitoring compliance with this Agreement.

## **VI. GENERAL**

13. 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 Respondents and to the Commissioner at the following addresses:

**(a) The Commissioner:**

Commissioner of Competition  
Competition Bureau Canada  
Place du Portage, Phase 1  
50 Victoria Street, 21st Floor  
Gatineau, Quebec K1A 0C9

Attention: Acting Deputy Commissioner of Competition, Deceptive Marketing Practices  
Directorate

Email: julie.tremblay2@cb-bc.gc.ca

**With a copy to:**

Executive Director and Senior General Counsel  
Competition Bureau Legal Services  
Department of Justice  
Place du Portage, Phase 1  
50 Victoria Street, 22nd Floor  
Gatineau, Quebec K1A 0C9

**(b) The Respondents:**

Nuvocare Health Sciences Inc.  
10 Four Seasons Place, Suite 1000  
Toronto, ON,  
M9B 6H7

Ryan Foley  
c/o Mr. James Gardiner

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Ontario Public Guardian and Trustee  
595 Bay Street, Suite 800  
Toronto, Ontario M5G 2M6  
[James.Gardiner@ontario.ca](mailto:James.Gardiner@ontario.ca)

**With a copy to:**

John Syme  
John Syme Law  
204 – 78 George St.  
Ottawa, ON  
K1N 5W1  
email: [jsyme@jls-law.ca](mailto:jsyme@jls-law.ca)

14. This Agreement shall be binding for a period of 10 years following its registration.
15. The Parties consent to the immediate registration of this Agreement with the Tribunal.
16. The Commissioner may, in his sole discretion and after informing the Respondents in writing, extend any of the time periods in Parts II, III, IV and V of this Agreement.
17. Nothing in this Agreement precludes the Respondents or the Commissioner from bringing an application under section 74.13 of the Act.
18. The Respondents shall not make any public statement that contradicts the terms of this Agreement.
19. 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 for 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.
20. This Agreement may be executed in 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.
21. 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 a Party.
22. For greater certainty, the Ontario Public Guardian and Trustee has executed this Agreement as guardian for Mr. Foley and, other than as set out in paragraph 7 above, this Agreement does not create any rights or obligations for the Ontario Public Guardian and Trustee. While Mr. Foley remains the subject of decisions made pursuant to section 16 of the *Substitute Decisions Act, 1992*, the Ontario Public Guardian and Trustee shall be obligated to pay, from Mr. Foley’s assets, the



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administrative monetary penalty provided for in paragraph 7 of this Agreement, according to the terms set out in Schedule "A".

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

**DATED** at Halifax in the Province of Ontario this 25 day of April, 2022.

**For: Nuvocare Health Sciences Inc.**

"Original signed by Richard Foley"

**Richard Foley**

I have the authority to bind the corporation.

**DATED** at Toronto, in the Province of Ontario, this 26th day of April, 2022.

**For: Ryan Foley, by the Ontario Public Guardian and Trustee**

I have the authority to bind the Office of the Public Guardian and Trustee.

"Original signed by James Gardiner"

Mr. James Gardiner, Ontario Public Guardian and Trustee

For the Office of the Public Guardian and Trustee

**DATED** at Ottawa, in the Province of Ontario, this 26th day of April, 2022.

"Original signed by Matthew Boswell"

Matthew Boswell

Commissioner of Competition

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**APPENDIX "A"**

1. Nuvocare to pay an AMP in the amount of \$50,000 in accordance with the following schedule:
  - a. \$5,000 within 60 days of the registration of the Consent Agreement;
  - b. \$5,000 on the first anniversary of the registration of the Consent Agreement;
  - c. \$5,000 on the second anniversary of the registration of the Consent Agreement;
  - d. \$5,000 on the third anniversary of the registration of the Consent Agreement;
  - e. \$6,000 on the fourth anniversary of the registration of the Consent Agreement;
  - f. \$7,000 on the fifth anniversary of the registration of the Consent Agreement;
  - g. \$8,000 on the sixth anniversary of the registration of the Consent Agreement; and
  - h. \$9,000 on the seventh anniversary of the registration of the Consent Agreement.
  
2. Ryan Foley to pay an AMP in the amount of \$50,000 in accordance with the following schedule:
  - a. \$25,000 within 90 days of the registration of the Consent Agreement;
  - b. \$3,000 on the first anniversary of the registration of the Consent Agreement;
  - c. \$3,000 on the second anniversary of the registration of the Consent Agreement;
  - d. \$3,000 on the third anniversary of the registration of the Consent Agreement;
  - e. \$3,000 on the fourth anniversary of the registration of the Consent Agreement;
  - f. \$4,000 on the fifth anniversary of the registration of the Consent Agreement;
  - g. \$4,000 on the sixth anniversary of the registration of the Consent Agreement;
  - h. \$5,000 on the seventh anniversary of the registration of the Consent Agreement.