

<p>DISTRICT COURT, JEFFERSON COUNTY, COLORADO 100 Jefferson County Parkway Golden, Colorado 80401-6002</p> <hr/> <p>STATE OF COLORADO, ex rel. JOHN W. SUTHERS, ATTORNEY GENERAL,</p> <p>Plaintiff,</p> <p>v.</p> <p>NUTRA PILLS, INC. D/B/A GLOBAL NUTRITION SCIENCES, GNS, VITRASUN, NUTRA LANE, F/D/B/A GOLF NUTRITION SCIENCES; AND JOSHUA D. BEZONI, individually,</p> <p>Defendants.</p>	<p>EFILED Document CO Jefferson County District Court 1st JD Filing Date: Mar 18 2010 8:28AM MDT Filing ID: 30119955 Review Clerk: Matt J Forbes</p> <p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Attorneys for Plaintiff: JOHN W. SUTHERS Attorney General OLIVIA C. DEBLASIO, 35867* Assistant Attorney General JAY B. SIMONSON, 24077* First Assistant Attorney General 1525 Sherman Street, 7th Floor Denver, CO 80203</p> <p>(303) 866-5079 (303) 866-4916 Fax *Counsel of Record</p>	<p>Case No.:</p>
<p>COMPLAINT</p>	

Plaintiff, the State of Colorado, upon relation of John W. Suthers, Attorney General for the State of Colorado, by and through undersigned counsel, states and alleges as follows:

INTRODUCTION

1. This is an action brought by the State of Colorado pursuant to the Colorado Consumer Protection Act, §§ 6-1-101 through -1101, C.R.S. (2009) (“CCPA”), to enjoin and restrain Defendants from engaging in certain unlawful deceptive trade practices, for statutorily-mandated civil penalties, for disgorgement, consumer restitution, and for other relief as provided in the CCPA.

PARTIES

2. John W. Suthers is the duly elected Attorney General for the State of Colorado [hereinafter “State” or “Plaintiff”] has express jurisdiction to investigate and to prosecute violations of the Colorado Consumer Protection Act (“CCPA”), § 6-1-101, *et seq.*, C.R.S. (2009).

3. Nutra Pills, Inc. d/b/a Global Nutrition Sciences, GNS, VitraSun, and Nutra Lane f/d/b/a Golf Nutrition Sciences [hereinafter “Nutra Pills” or “Defendant”] is a nutritional and dietary supplement retailer located at 6452 Fig Street in Arvada, Colorado. Nutra Pills sells products primarily over the Internet. Nutra Pills owns or has operated several web sites on which it sells its products, including www.gns-online.com, www.acaiberryedge.com, www.acaiberryelite.com, www.slimseduction.com, www.resverr.com, www.resverxp.com, www.maquilean.com. Nutra Pills ceased soliciting and accepting orders on October 2, 2009 and ceased fulfilling orders for its products on December 28, 2009.

4. Joshua D. Bezoni [hereinafter “Bezoni” or “Defendant”] originally formed Nutra Pills under the name Golf Nutrition Sciences in 2000. In February 2009 Golf Nutrition Sciences was renamed Nutra Pills, Inc. Also in February 2009, Bezoni stepped down as president of the company, but remains the sole shareholder. At relevant times, Bezoni has also served as the company’s secretary and treasurer. At relevant times, Defendant Bezoni led the marketing department, which often consisted of only Bezoni, to sell Nutra Pills’ products. Defendant Bezoni directed the company to employ “Free-to-Pay conversions,” a type of negative option marketing plan described herein.

JURISDICTION AND VENUE

5. Pursuant to § 6-1-103 and § 6-1-110(1), C.R.S. (2009), this Court has jurisdiction to enter appropriate orders prior to and following an ultimate determination of liability.

6. The violations alleged herein were committed, in part, in Jefferson County, Colorado. Therefore, venue is proper in Jefferson County, Colorado, pursuant to § 6-1-103, C.R.S., and Colo. R. Civ. P. 98 (2009).

RELEVANT TIMES

7. The conduct that gives rise to the claims for relief contained in this Complaint began in the year 2005 and continued through December 2009.

8. This action is timely brought pursuant to § 6-1-115, C.R.S. (2009), in that it is brought within three years of the date on which false, misleading, and deceptive acts or practices occurred and/or were discovered. Furthermore, the alleged deceptive acts were continuing.

PUBLIC INTEREST

9. The State alleges that through the unlawful practices of their business, or occupation, Defendants have deceived, misled, and financially injured a number of consumers in Colorado and nationwide. Therefore, the Colorado Attorney General believes these legal proceedings are in the public interest and are necessary to safeguard citizens from Defendants' unlawful business activities.

GENERAL ALLEGATIONS

10. Bezoni and Nutra Pills, Inc. [hereinafter collectively "Defendants"] advertised and sold nutritional and dietary products, including, but not limited to, Acai Berry Edge, Acai Berry Elite, Slim Seduction, and ResVerr.

11. Defendants sold their products primarily online and contract with thousands of "affiliates" to direct traffic to Defendants' websites described in Paragraph 3 herein. "Affiliates" are individuals and companies that buy advertising space in the form of online pop-up's and banner ads. Nutra Pills required its affiliates to use only Nutra Pills' authorized internet advertising materials. Defendants paid a commission to the affiliates when sales were made. Defendants exercised control over all of the direct and affiliate advertising of Nutra Pills' products.

12. Defendants employed "Free-to-Pay" conversions in their advertising. "Free-to-Pay Conversions" is a type of Negative Option Marketing that means a "Free Trial" or "Risk Free Trial" offer converts after a period of time to a "pay" offer, and the consumer's initial consent to receive the Free Trial and pay nominal shipping and handling charges is consent to a later charge for the full cost of the product.

13. "Negative Option Marketing" as defined by the Federal Trade Commission ("FTC") rule on Use of Prenotification Negative Option Plans, 16 C.F.R. Part 425 ("PNOR") refers to those commercial transactions in which sellers interpret a consumer's failure to take affirmative action—either to reject an offer or to cancel an agreement—as affirmative assent to be charged.

14. Defendants routinely employed Free-to-Pay conversion offers and advertised a "Free Trial" offer or "Risk Free Trial" offer of one of their products to induce consumers to

consent online to a nominal shipping fee of \$3.97 charged to their credit or bank card in order to receive a “Free Trial” offer of Defendants’ products. Defendants advertised a 20-day “Free Trial” period.

15. In addition to sending a “free” twenty day sample of their products, Defendants sent an additional two-month supply. Under the terms of the Free-to-Pay conversion, when consumers consented to the nominal shipping fee, they also automatically consented to a charge for the full price of the two-month supply of the product unless they took action to cancel within the 20 days.

16. On day 21 of the offer, Defendants charged the consumer’s credit or bank card for the two-month supply of the product, \$79.90, if the consumer had not returned the product. In order to return the product, Defendants required that consumers obtain a “Return Authorization Number” and then they must pay to ship the unused portion of the two-month supply back to Defendants. In short, the “free” offer converted after a period of time to a “pay” offer.

17. Defendants would only refund the consumer the \$79.90 charge if the product was returned within 30 days. The thirty day period began to run from the date of order and not the date of shipping or the date the consumer received the product. Further, if consumers failed to take action within 21 days, the Defendants not only charged consumers the full cost of the product but also enrolled them into an auto ship plan so consumers continued to receive bi-monthly shipments of the products and were charged accordingly.

18. Defendants sent an invoice with the Free Trial offer that stated, in part:
subtotal: \$0.00
shipping: \$3.97
tax: \$.00

total: \$3.97

This amount has been charged to your credit card or checking account. \$79.90 will be billed to your card to complete payment on [date 21 days after shipping date].

The invoice also included a “Description of Items” that stated the customer had agreed to the “Club Membership” and that the quantity was “2” and the cost was \$0.00, which is listed under headings entitled “Unit Price” and “Total Price.” The Club Membership disclosed that “2 units at \$34.95 per unit will be shipped [the following month]. An additional 2 units will ship every 45 days following the first auto-ship.” The invoice did not include any information about returning the product. The Defendants’ “Return Policy” was enclosed separately.

19. After the Defendants charged the consumer’s credit or bank card for the full price of the two-month supply, Defendants sent an email to the consumer that stated that the trial

period had elapsed and the consumer's credit card was charged earlier that day. It did not provide the amount that was charged to the consumer's credit or bank card. It provided a customer support email address and phone number but did not include any information about Defendants' policy and process for cancelation and refund.

20. More than one thousand consumers complained over the last three years to the Better Business Bureaus ("BBB") and the various state Attorneys General Offices, including the Colorado Attorney General about Nutra Pills. The vast majority of the consumers complained that Defendants' Free-to-Pay conversion offers were deceptive and misleading. Specifically, consumers complained that they had no idea they were consenting to additional, substantially higher charges to their credit and bank cards at the time they agreed to the nominal shipping and handling charge for the "Free Trial" offer. Consumers believed that a "Free Trial" offer was Free.

21. Consumers also complained to the BBB and State Attorneys General that Defendants wrongly charged their credit and bank cards for continuous shipments of products the consumers never wanted, and when they tried to cancel and return the products, it was extremely difficult to do so, which caused the consumers to incur more charges. Consumers reported, for example, that they had lost \$80.00 or more because of the deceptive nature of Defendants' "Free Trial" offers and the continuing auto ship charges.

22. Defendants were aware of consumers' complaints as early as 2005 when they began employing Free-to-Pay conversions in their marketing of Slim Seduction.

23. In response to the complaints, Defendants claim they modified their web sites by making the "terms and conditions" of the Free-to-Pay conversion offer on the "Frequently Asked Questions" page and the "Order" page more conspicuous and continuing to require a check box for consumers to indicate that they had read the terms and conditions. However, Defendants did not discontinue their use of Free-to-Pay conversions to sell their products after receiving consumer complaints.

24. In December 2008, Defendants employed Free-to-Pay conversions to sell two new products, Acai Berry Edge and Acai Berry Elite. Defendants shipped 250,000 orders in the first six months of marketing the Acai Berry products with Free-to-Pay conversions. In 2009, Defendants also began selling online their ResVerr product using Free-to-Pay conversions.

25. Those consumers who filed written complaints represent a larger population of consumers who were misled by Defendants' "Free Trial" offers; did not want a two-month supply of the product; and certainly did not want to be enrolled into the auto ship program and charged continuously. Plaintiff requested and received from Defendants recorded customer service calls that were placed in June and July 2009. Plaintiff listened to 36

randomly selected customer service calls and found that nearly half of the callers either requested refunds and explanations related to charges they did not recognize or remember authorizing, or requested cancelation of the auto ship program that they did not even realize they were enrolled in.

26. Defendants report that 80 percent of Nutra Pills' gross revenue derives from the sale of products marketed under Free-to-Pay conversions. Nutra Pills grossed approximately \$40 million in sales in 2009.

27. Defendant Bezoni developed and approved of Nutra Pills' use of free-to pay conversions to sell Defendants' products. Defendant Bezoni approved the company's web sites described in Paragraph 3 herein and at relevant times wrote the copy that appeared on those web sites. Defendant Bezoni made the decision to use Free-to-Pay conversions to sell the Acai Berry products. Defendant Bezoni was aware of the BBB complaints from consumers about Defendants' use of Free-to-Pay conversions to sell Slim Seduction. Defendant Bezoni directed, conceived of, participated in, and condoned the practices and policies of Nutra Pills to such a degree as to make him personally liable for the deceptive trade practices described and alleged herein.

FIRST CLAIM FOR RELIEF

(Knowingly makes false representations regarding the characteristics or quantity of goods or services)

28. Plaintiff incorporates herein by reference all of the allegations contained in Paragraphs 1 through 27 of this Complaint.

29. Through the above-described conduct in the course of their business, occupation or vocation, Defendants knowingly made false representations as to the characteristics or quantity of goods or services that a consumer would receive, in violation of § 6-1-105(1)(e), C.R.S. (2009).

30. By means of the above-described unlawful deceptive trade practices, Defendants have deceived, misled, and unlawfully acquired money from consumers from Colorado.

SECOND CLAIM FOR RELIEF

(False or misleading statements of fact concerning the price of goods)

31. Plaintiff incorporates herein by reference all of the allegations contained in Paragraphs 1 through 27 of this Complaint.

32. Through the above-described conduct in the course of their business, occupation or vocation, Defendants have made false and misleading representations regarding the price of goods and services they advertised and sold, in violation of § 6-1-105(1)(l), C.R.S. (2009).

33. By means of the above-described unlawful deceptive trade practices, Defendants have deceived, misled, and unlawfully acquired money from consumers from Colorado.

THIRD CLAIM FOR RELIEF
(Failing to disclose material information)

34. Plaintiff incorporates herein by reference all of the allegations contained in Paragraphs 1 through 27 of this Complaint.

35. Through the above-described conduct in the course of their business, occupation or vocation, Defendants failed to meaningfully disclose to consumers the terms and conditions associated with their sales of products, in violation of § 6-1-105(1)(u), C.R.S. (2008).

36. By means of the above-described unlawful deceptive trade practices, Defendants have deceived, misled, and unlawfully acquired money from consumers from Colorado.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for judgment against Defendants and the following relief:

A. An order declaring Defendants' above-described conduct to be in violation of the Colorado Consumer Protection Act, § 6-1-105 (e), (l), (u), C.R.S. (2009).

B. An order permanently enjoining Defendants, their officers, directors, successors, assigns, agents, employees, and anyone in active concert or participation with Defendants with notice of such injunctive orders, from engaging in any deceptive trade practices as defined in and proscribed by the CCPA and as set forth in this Complaint.

C. Appropriate orders necessary to prevent Defendants' continued or future deceptive trade practices.

D. A judgment in an amount to be determined at trial for restitution, disgorgement, or other equitable relief pursuant to § 6-1-110(1), C.R.S. (2009).

E. An order requiring Defendants to forfeit and pay to the General Fund of the State of Colorado, civil penalties in an amount not to exceed \$2000 per violation pursuant to § 6-1-112(1), C.R.S. (2009), or \$10,000 per violation pursuant to § 6-1-112(3), C.R.S. (2009).

F. An order requiring Defendants to pay the costs and expenses of this action incurred by the Attorney General, including, but not limited to, Plaintiff's attorney fees, pursuant to § 6-1-113(4), C.R.S. (2009).

G. Any such further orders as the Court may deem just and proper to effectuate the purposes of the CCPA.

Dated this 18th day of March, 2010.

JOHN W. SUTHERS
Attorney General

/s/ Olivia DeBlasio

OLIVIA C. DEBLASIO, 35867*
Assistant Attorney General
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First Assistant Attorney General

Consumer Protection Section
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Pursuant to C.R.C.P. 121, § 1-26(9), the original of this document with original signatures is maintained in the offices of the Colorado Attorney General, 1525 Sherman Street, Denver, CO 80203, and will be made available for inspection by other parties or the Court upon request.