

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

**COMMISSIONERS: Deborah Platt Majoras, Chairman
Thomas B. Leary
Pamela Jones Harbour
Jon Leibowitz**

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| _____ |) | |
| In the Matter of |) | |
| |) | |
| CYTODYNE, LLC, |) | |
| a limited liability company, |) | |
| |) | |
| EVERGOOD PRODUCTS CORP., |) | |
| a corporation, and |) | DOCKET NO. C-4146 |
| |) | |
| MELVIN L. RICH, |) | |
| individually and as a manager of |) | |
| Cytodyne, LLC and an officer of |) | |
| Evergood Products Corp. |) | |
| _____ |) | |

COMPLAINT

The Federal Trade Commission, having reason to believe that Cytodyne, LLC, a limited liability company, Evergood Products Corp., a corporation, and Melvin Rich, individually and as a manager of Cytodyne, LLC and an officer of Evergood Products Corp. (“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 Cytodyne, LLC is a New York limited liability company with its principal office or place of business at 200 Adams Boulevard, Farmingdale, NY 11735. Its previous corporate name was Everrich, LLC.
2. Respondent Evergood Products Corp. (“Evergood”) is a Delaware corporation with its principal office or place of business at 200 Adams Boulevard, Farmingdale, NY 11735. Evergood is a holding company and has an eighty-seven and one-half percent ownership interest in Cytodyne, LLC. Evergood has controlled the acts and practices of Cytodyne, LLC with respect to the advertising, marketing, distribution, offering for sale, and sale of Xenadrine EFX.

3. Respondent Melvin L. Rich is a manager of Cytodyne, LLC. He is also President of Evergood and has a forty-five percent ownership interest in the company. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of Cytodyne, LLC and Evergood, including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of Cytodyne, LLC and Evergood.

4. Since May 2003, respondents have advertised, labeled, offered for sale, sold, and distributed the dietary supplement Xenadrine EFX. Xenadrine EFX is a tablet containing, among other ingredients, green tea extract, yerba mate, and bitter orange. A 120-tablet bottle of Xenadrine EFX – a one-month supply – retails for approximately \$40. From June 2003 through mid-August 2004, sales of Xenadrine EFX exceeded \$61 million.

5. Xenadrine EFX is a “food” or “drug” 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 Xenadrine EFX, including but not limited to the attached Exhibits A through F. These advertisements contain the following statements and depictions:

- a. *Misty Lee Lost 25 Pounds Faster And Easier Than She Ever Dreamed Possible With Xenadrine-EFX!*

John Murphy lost 37 Pounds in just weeks!

Kelly Kinney lost 101 Pounds!

Holli Whitacre lost over 100 Pounds!

All of these people just discovered the most incredible weight loss product in the world...and it shows!

There’s safety in numbers. That’s why it’s nice to know that there are millions of people around the world happily counting the pounds they’ve lost with revolutionary new Xenadrine-EFX.

What makes us different than all the rest? Xenadrine-EFX really works! It’s been clinically proven to help you burn fat safely and effectively, without ephedrine. Our incredibly advanced thermogenic formula literally “revs up” your body’s metabolism for rapid reductions in body-fat and an incredible boost to your energy levels.

Amazingly, Xenadrine-EFX’s unique formula of advanced thermogenic compounds actually triggers unprecedented results without the use of ephedrine.

In fact, it's the only product of its kind proven *more effective* than ephedrine-based fat burners in head-to-head clinical testing. Best of all, you'll start to see and feel the difference almost overnight and even without strict dieting or exercise! It's about time you discovered the most incredible weight loss product in the world. Clinically proven Xenadrine-EFX. The Guaranteed Easiest and Fastest Way to Take Off the Weight!

Exhibit A (two-page magazine advertisement)

- b. **Video:** Claudette Garza with a photograph labeled "*Before* Claudette Garza lost **22 Pounds!**"
- Announcer 1:** "Xenadrine EFX, the world's number one diet supplement presents swimsuit season."
- Video:** Joey Anderson with a photograph labeled "*Before* Joey Anderson lost **55 Pounds!**"
- Announcer 2:** "Slip into something sleek and sexy, and start strutting your stuff."
- Video:** Hazel Nelson with a photograph labeled "*Before* Hazel Nelson lost **25 Pounds!**"
- Announcer 1:** "Xenadrine EFX can help make it happen, fast and easy."
- Video:** Dan Tedtman with a photograph labeled "*Before* Dan Tedtman lost **35 pounds!**"
- Announcer 2:** "These real people are living proof of Xenadrine EFX's unsurpassed thermogenic power."
- Video:** Alexis Graham with a photograph labeled "*Before* Alexis Graham lost **113 pounds!**"
- Announcer 2:** "Increase your metabolism and get dramatic results without ephedra."
- Video:** Bottle of Xenadrine EFX with "CLINICALLY TESTED" on its label and superscript "**FAST! EASY! EPHEDRA-FREE!**"
- Announcer 1:** "So come on, start turning some heads with Xenadrine EFX. Number one in the world because it really works."
- Video:** Robert Hale with a photograph labeled "*Before* Robert Hale lost **85 pounds!**"

Exhibit B (thirty-second television advertisement)

c. **The Shape Of Things To Come
...With Xenadrine-EFX.**

**Melissa lost
45 Pounds!**

**Patrick lost
64 Pounds!**

**Kelly Lost
110 Pounds!**

**Jennifer Lost
52 Pounds!**

Melissa, Patrick, Kelly and Jennifer are happier than ever before – because they all lost incredible amounts of weight, and kept it off, with Xenadrine-EFX.

“If it wasn’t for Xenadrine-EFX, I wouldn’t have lost my weight as quickly and as easily as I did.” says Melissa. And Patrick agrees. “I’ve used plenty of products in the past to help with weight loss and improve my energy levels, and Xenadrine-EFX has far surpassed anything I’ve ever used. I’m a new person thanks to Xenadrine-EFX.”

These are just a few of the thousands of people who have achieved real weight loss success with Xenadrine-EFX. Its thermogenic, ephedra-free formula increases metabolism and reduces calories which helped them achieve significant decreases in body fat levels. In fact, the Xenadrine-EFX formula was clinically tested against two leading ephedra-based thermogenic supplements and outperformed them both for the boosting of metabolism and resulting caloric expenditure.

...
Xenadrine-EFX
Real People. Real Science. Real Success.

Exhibit C (magazine advertisement)

d. **Losing Weight
Was The Best Thing
I Ever Did For Myself!**

**Jennifer Lost An Incredible 52 Pounds
And Kept It Off With Xenadrine-EFX!**

“One day, standing in front of my open closet, I started to cry. None of my clothes fit anymore.” That’s when Jennifer made up her mind to do something about it. She started using Xenadrine-EFX, lost 52 pounds, and has kept off the weight.

“Sure, I’d tried other diets, but with Xenadrine-EFX, it was like the pounds just started disappearing,” she says. “And it didn’t make me feel jittery like the stuff I’d used in the past.”

What makes Xenadrine-EFX so different from other diet supplements is the thermogenic, ephedra-free formula that increases your metabolism and helps

control your appetite, which helped Jennifer achieve significant decreases in body fat levels. In fact, the Xenadrine-EFX formula was clinically tested against two leading ephedra-based thermogenic supplements and outperformed them both in boosting metabolism and resulting caloric expenditures.

...

Xenadrine-EFX

Real People.

Real Science.

Real Success.

Exhibit D (magazine advertisement)

- e. **“I lost 100 pounds and I owe it all to Xenadrine-EFX.
If I can do it, you can too!”**
– Holli Whitacre

“I look in the mirror and I still can’t believe that it’s me!” Holli says today. “I’m 100 pounds lighter and I feel 100% healthier! I love what Xenadrine-EFX has done for me.”

Xenadrine-EFX worked for Holli and it will work for you. This amazing weight loss technology attacks body fat by increasing your metabolism better than any other product on the market today. Its unique formula combines a new generation of advanced thermogenic components that work together to stimulate significant increases to your metabolism and subsequently burn calories. Simply stated, Xenadrine-EFX helps you to burn fat more quickly.

And here's more good news. Xenadrine-EFX doesn't contain ephedra. In fact, it is the only thermogenic diet product that has been proven in head to head clinical studies to be more effective than ephedra-based fat burners. Scientifically designed to burn fat and maintain muscle, this revolutionary formula has quickly become the #1 diet supplement in America.

Xenadrine-EFX is the fastest and easiest way to dramatic and long term weight loss. Put Xenadrine-EFX to work for you and discover the unprecedented fat burning power of the next generation in weight-loss technology!

Xenadrine . . . The #1 Diet Supplement Worldwide . . . because it works!

Exhibit E (magazine advertisement translated from the original Spanish to English)

- f. “It was marvelous **to lose 20 lbs.** It’s even better **not to gain them back** with Xenadrine-EFX.”

Over a year ago, Claudette lost more than 20 pounds thanks to Xenadrine-EFX, and she feels happier than ever. As she, herself, says: “In a few weeks, I went down four clothing sizes. It’s a fact: Xenadrine-EFX changed my life forever!”

But what really makes Claudette story so incredible is that she has managed to keep the weight off for more than a year... with the help of Xeandrine-EFX, a sensible diet, and regular exercise.

What makes Xenadrine-EFX so effective is its exclusive ephedra-free thermogenic formula, which helps to speed up your metabolism and control your appetite. In fact, the Xenadrine-EFX formula has been clinically proven in comparison with two thermogenic ephedra-based supplements, and in both cases, it had better results in stimulating the metabolism and burning calories.

Xenadrine-EFX: The most popular diet supplement worldwide, because it works!

Xenadrine-EFX

Real People. Real Science. Real Success.

Exhibit F (magazine advertisement translated from the original Spanish to English)

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

- a. Xenadrine EFX causes rapid and substantial weight loss;
- b. Xenadrine EFX causes rapid and substantial fat loss;
- c. Xenadrine EFX causes rapid and substantial weight loss without the need to reduce caloric intake or increase physical activity; and
- d. Xenadrine EFX causes permanent or long-term weight loss.

9. In truth and in fact,

- a. Xenadrine EFX does not cause rapid and substantial weight loss;
- b. Xenadrine EFX does not cause rapid and substantial fat loss;

- c. Xenadrine EFX does not cause rapid and substantial weight loss without the need to reduce caloric intake or increase physical activity; and
- d. Xenadrine EFX does not cause permanent or long-term weight loss.

Therefore, the representations set forth in Paragraph 8 were, and are, false or misleading.

10. 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.

11. 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 10 was, and is, false or misleading.

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

- a. Xenadrine EFX is clinically proven to cause rapid and substantial weight loss; and
- b. Xenadrine EFX is clinically proven to be more effective than leading ephedrine-based diet products.

13. In truth and in fact,

- a. Xenadrine EFX is not clinically proven to cause rapid and substantial weight loss; and
- b. Xenadrine EFX is not clinically proven to be more effective than leading ephedrine-based diet products.

Therefore, the representations set forth in Paragraph 12 were, and are, false or misleading.

14. Through the means described in Paragraph 7, respondents have represented, expressly or by implication, that persons who appeared in Xenadrine EFX advertisements achieved the weight loss reported in those ads solely through the use of Xenadrine EFX.

15. In truth and in fact, persons who appeared in Xenadrine EFX advertisements did not achieve the weight loss reported in those ads solely through the use of Xenadrine EFX. Persons who appeared in the Xenadrine EFX advertisements engaged in rigorous diet and/or exercise programs in order to lose weight, and some were provided with a personal trainer. Therefore, the representation set forth in Paragraph 14 was, and is, false or misleading.

16. Through the means described in Paragraph 7, respondents have presented testimonials for Xenadrine EFX by consumer endorsers who purportedly lost weight in the ordinary course of using the product. Respondents have failed to disclose that the endorsers were paid from \$1,000 to \$20,000 in connection with their endorsing Xenadrine EFX. This fact would be material to consumers in their purchase or use decisions regarding Xenadrine EFX. The failure to disclose this fact, in light of the representation made, was, and is, a deceptive practice.

17. 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.

IN WITNESS WHEREOF, the Federal Trade Commission has caused its complaint to be signed by its Secretary and its official seal to be hereto affixed at Washington, D.C. this twenty-third day of August, 2005.

By the Commission.

Donald S. Clark
Secretary

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