

ESTTA Tracking number: **ESTTA330422**

Filing date: **02/03/2010**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

### Petitioner Information

Name	Biotab Nutraceuticals, Inc.		
Entity	Corporation	Citizenship	California
Address	401 East Huntington Drive Monrovia, CA 91016 UNITED STATES		

Attorney information	Jay Stein, Esq. FINESTONE & RICHTER 1875 Century Park East, Suite 1500 Los Angeles, CA 90067 UNITED STATES jstein@frlawcorp.com Phone:(310)575-0800		
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### Registration Subject to Cancellation

Registration No	3435044	Registration date	05/27/2008
Registrant	DUOIBES, ALBERT 2201 HEATHER ST EAST GRAND RAPIDS, MI 49505 UNITED STATES		

### Goods/Services Subject to Cancellation

Class 005. First Use: 2007/05/01 First Use In Commerce: 2007/05/01  
All goods and services in the class are cancelled, namely: Dietary supplements

### Grounds for Cancellation

Deceptiveness	Trademark Act section 2(a)
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

### Mark Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	3401265	Application Date	07/18/2007
Registration Date	03/25/2008	Foreign Priority Date	NONE
Word Mark	EXTENZE		

Design Mark	<h1>ExtenZe</h1>
Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 1999/11/01 First Use In Commerce: 1999/11/01 Vitamin supplements

Attachments	77232418#TMSN.jpeg ( 1 page )( bytes ) Statement in Support of Cancellation w Exhibit.pdf ( 15 pages )(608119 bytes )
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### Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Jay Stein/
Name	Jay Stein, Esq.
Date	02/03/2010

UNITED STATES PATENT AND TRADEMARK OFFICE

TRADEMARK TRIAL AND APPEALS BOARD

Re: “EXTENZOL”

Defendant (Subsequent Registrant): Tong Bruce Vang; Ionx Holdings, Inc.

Serial Number: 77282096

Subsequent Registration Number: 3435044

Plaintiff/Prior Registrant: Biotab Nutraceuticals, Inc.

Prior Registration Number: 3401265

STATEMENT IN SUPPORT OF CANCELLATION OF REGISTRATION OF  
“EXTENZOL”

I.  
THE PRIOR REGISTRATION

Plaintiff/Prior Registrant Biotab Nutraceuticals, Inc., a California corporation, (“Biotab”) is a manufacturer and marketer of nutraceutical products, including being the originator of dietary supplements designed to enhance both male and female sexual satisfaction. Biotab is the Registrant of the trademark, “**ExtenZe**,”<sup>®</sup> registered in the Principle Register under Registration Number 3,401,265 in connection with Class 005 goods identified as vitamin supplements. In particular, Registrant’s application depicts in its attached specimen the packaging for “**ExtenZe**<sup>™</sup> Maximum Strength Male Enhancement.”

As was attested to in Biotab’s application, Biotab’s “**ExtenZe**”<sup>®</sup> products have been used in commerce since November 1, 1999. Moreover, for years, Biotab has advertised heavily in both television and print media, such that there is now widespread name recognition of “**ExtenZe**”<sup>®</sup> amongst the general consuming public. Biotab’s “**ExtenZe**”<sup>®</sup> male enhancement product is understood to be the top selling male enhancement product on the market.

Notwithstanding Biotab’s prior registration of the “**ExtenZe**”<sup>®</sup> trademark for supplements, its use of the “**ExtenZe**”<sup>®</sup> name in commerce for a decade, and the strength of Biotab’s “**ExtenZe**”<sup>®</sup> mark by virtue of its massive marketing campaigns, Defendant/Subsequent Registrant Tong Bruce Vang applied for registration of a mark denoted as “**Extenzol**.” Although Defendant/Subsequent Registrant was granted registration in the Principal Register on May 27, 2008 as Registration Number 3435044, Biotab seeks to cancel said registration.

**II.**  
**DEFENDANT'S MARK IS LIKELY TO CAUSE CONFUSION WITH PRIOR REGISTERED MARKS AS TO THE SOURCE OF THE GOODS.**

Section 2(d) of the Trademark Act (15 USC §1052(d)) precludes the registration of any mark “which so resembles a mark registered in the Patent and Trademark Office, or a mark or trade name previously used in the United States by another and not abandoned, as to be likely, when used on or in conjunction with the goods of the applicant, to cause confusion, or to cause mistake, or to deceive.”

In re E.I. du Pont de Nemours & Co., 476 F2d 1357, 1361 (1973) established that the criteria for testing the likelihood of confusion under Section 2(d) of the Act as including the following most relevant factors here:

- (1) The similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression. [See also, Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondee en1772, 396 F3d 1369, 1371.]
- (2) The similarity or dissimilarity and nature of the goods or services as described in an application or registration or in connection with which a prior mark is in use.
- (3) The similarity or dissimilarity of established, likely-to-continue trade channels.

**A. Applicant's Word Mark is Nearly Identical to Registrant's Marks.**

Defendant's “Extenzol” mark is hardly distinguishable from Plaintiff's prior registered mark, “**ExtenZe.**”® The replacement of the ending silent “e” in Plaintiff's prior registered mark with two other letters does not sufficiently distinguish Defendant's mark from Plaintiff's prior registered mark. The words look and sound substantially similar and they share the same connotation – the “extension” of something.

Plaintiff contends that the commercial impression of consumers is likely to be one of inability to distinguish the source of goods as being Plaintiff or Defendant, given that Defendant merely adds two letters to the end of the root of Plaintiff's prior registered trademark.

In Weiss Associates, Inc. v. HRL Associates, Inc., 902 F 2d 1546, 1547 (Fed. Cir. 1990), the Court held that changing the final letter of even a three-letter registered mark covering similar goods “so resemble each other that confusion was likely.” See also, In re Pix of America, Inc. 225 USPQ 691 (TTAB 1985), “Newports” likely to be confused with “Newport;” In re Curtice-Burns, Inc., 231 USPQ 990 (TTAB 1986), “McKenzie's” likely to be confused with “McKenzie;” In re Pellerin Milnor Corp., 221 USPQ 558 (TTAB 1983), “Miltron” likely to be confused with “Miltronics;” In re BASF A.G., 189 USPQ 424 (TTAB 1975), “Lutexal” likely to be confused with “Lutex.”

As is the standard regarding similarity of marks established by du Pont, *supra*, the two marks need not be compared side-by-side, but rather, the test is whether the two marks are

similar enough that there is a likelihood of confusion by consumers as to the source of the goods. In so doing, the impression of the average consumer is to be gauged, although acknowledging that the consumer typically retains only a general impression of the mark. Sealed Air Corp. v. Scott Paper Co., 190 USPQ 106, 108 (TTAB 1975). Moreover, when the goods are identical, as is the case here, discussed below, “the degree of similarity necessary to support a conclusion of likely confusion declines.” Century 21 Real Estate Corp. v. Century Life of America, 970 F 2d 874, 877 (Fed. Cir. 1992).

If the dominant portion of each mark is the same, then confusion is more likely, despite other differences in the mark. Palm Bay Imports, supra. Plaintiff submits that this concept is even more acute when comparing single-word marks.

**B. Defendant’s Goods Are Seemingly Identical to Plaintiff’s Prior-Registered Goods**

For there to be a likelihood of confusion of the source of the goods, the Defendant’s goods or services need only be “related” in nature, not identical. Safety-Kleen Corp. v. Dresser Industries, Inc., 518 F2d 1399, 1404 (USCCPA 1975), involving parts washers versus hand tools. The respective goods need only be sufficiently related that consumers are likely to encounter them in the same channels of trade and, thereby, be confused as to the origin of the goods. On-line Careline, Inc. v. America Online, Inc., 229 F3d 1080 (Fed. Cir. 2000).

As detailed in Plaintiff’s prior registration, Plaintiff enjoys the registration on the Principal Register of the mark, “ExtenZe”® for use with Class 005 goods, some of which goods being identified in Plaintiff’s trademark application as supplements for “male enhancement.”

Defendant sought registration of a nearly identical word mark for what are identical goods (i.e., male enhancement supplements) -- which Defendant labels as “Ultimate Growth Enhancement” -- offered to the general public in the same channel of trade.

Given the overlapping description of the goods and the description in the “use in commerce” exemplar submitted with Defendant’s application as those included in Plaintiff’s application for its prior registered mark, there need be no further inquiry into the similarity of the goods. The conclusion of the identical nature of Defendant’s goods bearing the mark to Plaintiff’s prior registered mark is made even more clear by observing Defendant’s advertisement of its goods as relating to “Men’s Sexual Health” and that, with Defendant’s “Extenzol,” “you can achieve: Your maximum penis size” and “Natural male enhancement.” (See Exhibit “A” hereto).

The goods are identical.

**C. Defendant's Goods Are Sold in the Same Channels of Trade as Are Plaintiff's Goods.**

Plaintiff's goods are consumer goods sold to the general public. So are Defendant's goods. Consumers can shop via the internet or even by telephone in response to an advertisement and encounter both Plaintiff's goods and Defendant's goods in the same venue.

**D. The Likelihood of Confusion is Great.**

In the instant matter, Defendant's mark looks, sounds, and has the same commercial connotation as Plaintiff's prior registered mark. Defendant's described goods are not just related, but are substantially identical to the goods relating to Plaintiff's prior registered mark. And, Defendant's described goods are sold in the same channels of trade to the same consumers.

Moreover, Plaintiff enjoys the rights conferred by its trademark's priority in registration (and its mark's much earlier use in commerce). Therefore, if there is any doubt as to the likelihood of confusion, such doubt must be resolved in favor of the prior registrant. In re Shell oil Co., 992 F2d 1204 (Fed. Cir. 1993). In re Hyper Shoppes (Ohio), Inc., 837 F2d 463, 464-5 (Fed. Cir. 1988).

**III.**

**DEFENDANT PERPETRATED A FRAUD IN APPLYING FOR AND SECURING ITS REGISTRATION OF THE "EXTENZOL" MARK.**

Plaintiff had been using its brand name, "ExtenZe," in commerce since 1999, in connection with a male enhancement product. Essentially concurrent with Defendant's application for the "Extenzol" trademark in September 2007, Defendant's applied for registration of a mark for "Extenze" (Serial No. 77291362), even though Plaintiff was already the registrant of that mark. After a United States Patent and Trademark Office ("USPTO") Office Action identified that there was already a registered mark for similar goods using the very same mark, Defendant ultimately abandoned the effort to register "Extenze."

Notwithstanding Plaintiff's dominant marketplace presence since 1999 of its "ExtenZe®," male enhancement supplement, and notwithstanding being advised expressly by the USPTO of the existence and prior rights of Plaintiff's mark for the same or similar goods, Defendant continued to pursue registration of the mark, "Extenzol." In order to avoid detection as being for a similar product as Plaintiff's "ExtenZe®" male enhancement supplement, though, Defendant ambiguously described the goods with which its "Extenzol" mark would be associated as being merely "dietary supplements." And, Defendant "pulled the wool over the eyes" of the USPTO's examining attorney and the public by submitting in support of that application a "use in commerce" photo of product labeling that described Defendant's product as "Ultimate Growth Enhancement" capsules, but actually marketing its product and labeling it as "Ultimate Male Enhancement" capsules (as is depicted on the first page of Exhibit "A" hereto). That "bait and switch" evidences part of the fraud that Defendant perpetrated in securing its registration of "Extenzol."

**IV.**

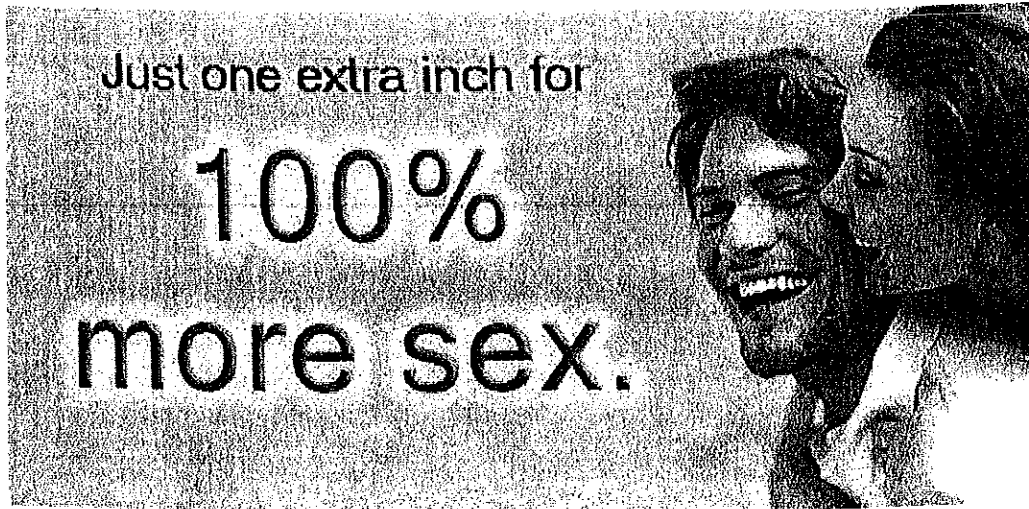
**AS PLAINTIFF IS HARMED BY THE REGISTRATION OF DEFENDANT'S MARK,  
DEFENDANT'S REGISTRATION MUST BE CANCELLED.**

Plaintiff Biotab Nutraceuticals, Inc. is the registered owner of a prior mark, "ExtenZe®." Plaintiff sells to retailers and to the general public, including through the internet, the goods described in such registration, largely being male enhancement supplements. Therefore, if Defendant is allowed to market the same or similar goods to the same consumers in the same channels of trade with a nearly identical name, it would dilute Plaintiff's prior registered trademark and, undoubtedly, would result in confusion as to the source of the goods, thereby interfering with Plaintiff's commercial advantage and goodwill.

Given the harm to be suffered by Plaintiff if Defendant is allowed to maintain its registration, it is respectfully requested that Defendant's registration be cancelled.

# **EXHIBIT "A"**





## You Can Reach Your Maximum Size Potential - Naturally!

Extenzol™ Can Help Give You:

- Men's Sexual Health Support
- Great Sexual **Desire** and **Performance**
- Maximum Ability to Achieve **Long** and **Hard Erections**
- Improved **Energy** Levels for Sexual Activity
- All Natural Ingredients and **No Side Effects\***

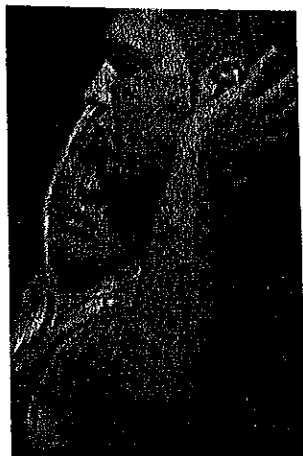
**100% Satisfaction Guaranteed or Your Money Back!**

**H**i, my name is Pauline, and I'm the customer service manager at MicroNutra Health™. I would like to congratulate you for taking the first step to reaching for a real solution for your health.

Nothing is more important than making the right decision when it comes down to YOUR health and quality of life. Let's clarify why Extenzol™ is the correct choice for you.

## The Answer is Extenzol™

Extenzol™ is a nutritional matrix formulated to supplement what you don't find in your everyday diet. As part of a healthy lifestyle, the natural nutrition in Extenzol™ helps promote better sexual performance and maximize your natural potential . . . without negative side effects.\* Extenzol™ contains a proprietary herbal blend designed for maximum results.



With Extenzol™, you can leave a big impression.

With Extenzol™ you can achieve:

- Your maximum penis size potential
- Better sexual performance
- Increased sexual desire
- Healthy blood flow
- Heightened sexual pleasure
- Natural male enhancement
- Better prostate health

Call **1.800.875.0850** now to try Extenzol™ risk-free!

## My Secret to Success

One of the most fulfilling aspects of working for MicroNutra Health™ comes from the truly **life-changing results** real customers are experiencing every day. I love knowing that people like you and me are able to live the life they want once again simply by taking our natural and safe formulas. Your individual results may vary, and you are always protected by our Extenzol™ guarantee\*. Today Steve and Geoff share with us what Extenzol™ has done for their healthy lifestyles.

### "I was at the verge of losing my girl . . . "

I was at the verge of losing my girl due to my small penis size, then a friend introduced Extenzol. I have just finished one bottle, the difference is clear now. She returned from school and it hit her hard, she was like "what did you do?" Thanks.

– Steve, (IL) 09/17/2008

### "The increase in size . . . "

I have found your product to live up to all the statements in your brochures and online info. After only several days I noticed improvement in several areas including prolonged periods of love making and greater satisfaction from my partner. The increase in size is definitely the reason, due solely to the use of Extenzol.

I can only recommend that men should try this product before several others on the market today. Also I must say the postal service is discreet yet very efficient.

- Geoff, (Australia) 10/01/2008

### In One Potent Formula, Extenzol™ . . .

- **Promotes Balance:** Extenzol™ provides the raw nutrients to increase sexual desire, endurance, and performance. Extenzol™ vastly increases your ability to satisfy her desire.
- **Supercharges Sexual Brain Signals:** Extenzol™ helps to trigger sexual brain activity and synapse firing to flow to the lower motor neurons and then into the spongy reservoirs of your penis, expanding the penile tissues.
- **Increases Blood Flow:** Extenzol™ stimulates a balanced system to increase sexual capacity, stamina, and performance. This stimulation provides necessary blood flow to your penis.
- **Maximizes Nitric Oxide:** The potent nutrients in Extenzol™ provide your body with the raw food needed for strong erections.



Forget everything else, and make her world spin.

### All-Natural Formula for Guaranteed\* Success

The proprietary blend of herbal ingredients in Extenzol™ is the key to your success. The herbals in Extenzol™ have been used for male sexual enhancement all over the world for hundreds of years.

We have carefully chosen the ingredients in Extenzol™ for maximum natural effectiveness and combined them into a potent formula to bring you one of the best male sexual health supplements available.

Manufactured under cGMP guidelines



**Niacin**

healthy serum cholesterol balance.

**Niacin**  
supports

**Zinc**

**Zinc** supports  
serum

Ingredients are supported by substantiated research



testosterone concentration.

**Tribulus terrestris extract**

**Tribulus terrestris**, also



known as **Puncture Vine Extract**, has been shown in pre-clinical studies to improve sexual desire, libido and erections, and support serum testosterone.

**Eurycoma longifolia extract 20:1**

**Chrysin**

**Chrysin** has been shown

in pre-clinical studies to stimulate nitric oxide release from endothelial cells causing vasorelaxation (required for erection).

**Arginine HCL**

**Arginine HCL** promotes

healthy sexual function and erectile function.

**Maca**

**Maca Extract** has been

shown in pre-clinical studies to enhance sexual function. In clinical studies, Maca was shown to improve sexual desire.

**Cnidium monnier**

**Cnidium Monnier**

**Extract** caused relaxation of corpus cavernosal tissue (required for an erection) in pre-clinical studies.

**Epimedium extract 20: 1**

**Avena sativa**

**Muira puama**

**Pygeum africanum**

**Pygeum africanum**

supports healthy prostate function.

**Yohimbe extract 20: 1**

**Yohimbe  
Extract**

improves the sexual experience.

**Supplement Facts**

Serving Size: 1 tablet

Amount Per Serving		% DV
<u>Niacin</u> (as niacinamide)	25 mg	125%
<u>Zinc</u>	20 mg	133%
Proprietary Herbal Blend	2,685 mg	*
<u>Tribulus terrestris extract</u> , <u>Eurycoma longifolia extract 20:1</u> , <u>Chrysin</u> , <u>Arginine HCL</u> , <u>Maca</u> , <u>Cnidium monnier</u> , <u>Epimedium extract 20: 1</u> , <u>Avena sativa</u> , <u>Muirira puama</u> , <u>Pygeum africanum</u> , <u>Yohimbe extract 20: 1</u> ,		

\*Daily Value not established. †Percent Daily Values are based on a 2,000 calorie diet.

**Maximize Your Potential - Naturally!**

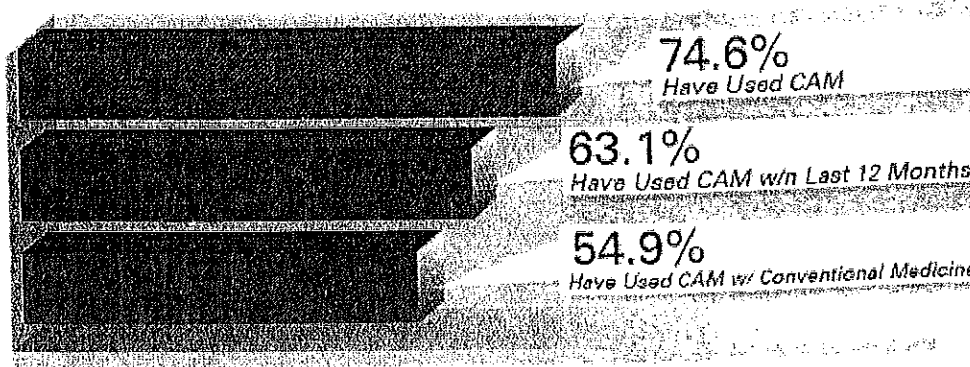
Extenzol™ can help maximize your potential by promoting natural, healthy blood flow. In addition to the sexual health benefits of Extenzol™, you can enjoy:

- Reaching your maximum natural potential
- More energy
- Enhanced physical performance
- More confidence

**Did You Know?**

According to the National Institutes of Health (NIH), 74.6% of Americans are turning to Complementary and Alternative Medicine to achieve vibrant health. If you are one of these people . . . you have come to the right place!

Statistics on the Use of Complementary and Alternative Medicine (CAM) by Adults in the U.S.



### When it Comes to Your Health

Health care is quickly becoming a pressing issue in the United States, but most of the debates avoid the foundation of health care: **prevention**. Most health care dollars spent today deal with the devastating health effects of *preventable lifestyle factors*, like:

- Eating the Standard American Diet of processed, boxed, chemical-laden, refined, fast, and junk foods
- Severe nutrient deficiencies as a result of this diet
- Little physical activity
- Toxins surrounding us in our carpet, cosmetic products, cleaning products, food and drink products, water, air, and more
- Frequently high stress levels

Does this sound like your life? Then you need to know that you can actually **save yourself thousands of dollars** and **enjoy vibrant health and energy** for years to come . . . starting *now*.

We at MicroNutra Health™ believe health care should encompass the whole person, addressing the root cause instead of just the symptoms. MicroNutra Health™ products are the perfect addition to a healthy lifestyle, providing your body with the tools it needs to help you enjoy youthful energy and finally experience the true meaning of health care.

### It's Time to Invest in Your Healthy Future

A serving of Extenzol™ costs **less than a cup of coffee** at the single bottle price. Most of our customers opt to save even more money by taking advantage of our multi-bottle price break, which allows a significant savings of up to 50%.

*What else can you do that will so greatly affect the quality of your life?*

**\*We guarantee you'll be absolutely thrilled  
or your money back . . .**



## A 90-Day Promise.

Right up to the last minute of the 90th day, period!



## Our Promise to You

I can promise you that Extenzol™ . . .

- Can help you reach your maximum penis size potential
- Helps provide better sexual performance, intercourse, and orgasm pleasure
- Delivers aphrodisiacs for increased sexual desire
- Promotes healthy blood flow for your erections
- Heightens sexual pleasure and sensitivity
- Contains all-natural ingredients
- Has zero negative side effects\*

I know that Extenzol™ works. I see it every day in customer reorders and testimonials. I am so confident that Extenzol™ will work for you too that we offer one of the best guarantees in the industry.

## Frequently Asked Questions

We encourage you to call us at 1.800.875.0850 if you have any questions about Extenzol™ that we haven't addressed below.

### **Q: How safe is Extenzol™?**

A: Because Extenzol™ is made with all-natural ingredients and no harmful fillers, steroids, or chemicals, it is safe to take on a regular basis. As always, consult your health professional if you have a concern.

### **Q: Why should I try Extenzol™?**

A: You should try Extenzol™ if you would like to experience your maximum penis size potential, increased sex drive, and heightened sexual pleasure and performance. Extenzol™ is a natural male enhancement designed with your sexual satisfaction in mind.

**Q: How often do I take Extenzol™?**

A: Take as directed on the label. Many individuals may opt to increase their intake depending on their weight. Consult your health professional if you have any concerns.

[Click Here for more answers to Frequently Asked Questions](#)

**3 Easy Ways to Order**

**Call Now**

1.800.875.0850 (USA)

1.616.551.4246 (International)

M-F 8am-9pm EST | Sat 10am-6pm EST

**Order Online**

Guaranteed Online Security



**Mail or Fax**

[Download Fax Form](#)

Fax to 1.616.825.6167

**The Extenzol™ Advantage**



Naturally maximize the male **erect size**  
**Increase sexual desire**, drive and energy  
Enjoy pleasure benefits with no side effects\*



Contains 30 Tablets.

**Retail Value: \$67.00**

**Single Bottle Option**





### Extenzo™ Best Value Option



#### Buy 3, Get 3 FREE

Get six bottles of Extenzo™

for only \$201.00

\$33.50

each



Free Shipping Free shipping to U.S. and Canada. Shipping less \$9.95 for international orders.

### Extenzo™ Most Popular Option



#### Buy 2, Get 1 FREE

Get three bottles of Extenzo™

for only \$134.00

\$44.67

each



[Click Here to Save 40% on a single bottle of Extenzo™ with the Hello Life Advantage!](#)



#### Get Extenzo™ as low as \$40.20 a month!

Automatically shipped to your door

Easy, low monthly payments

No hidden-fees - stop anytime!

Call 1.800.875.0850 to start today!

**Shipping Worldwide** | \$9.95 US & Canada | \$26.95

International | Call for Overnight Shipping | Discreet

Plain Box Packaging

