

**ORIGINAL**

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES**



\_\_\_\_\_)  
In the Matter of )  
)  
)  
DANIEL CHAPTER ONE, )  
a corporation, and )  
)  
JAMES FELJO, )  
individually, and as an officer of )  
Daniel Chapter One )  
)  
\_\_\_\_\_)

**Docket No. 9329**

**Public Document**

**COMPLAINT COUNSEL’S MEMORANDUM IN OPPOSITION  
TO RESPONDENTS’ MOTION FOR STAY OF DISCOVERY**

Complaint Counsel opposes Respondents’ Motion For Stay of Discovery (the “Motion”).

For the reasons set forth below, Complaint Counsel respectfully requests that the Respondents’ Motion be denied.

**I. BACKGROUND**

On September 18, 2008, Complaint Counsel served its Complaint on Respondents in this Part III Administrative proceeding. On October 14, 2008, Respondents filed their Answer to the Complaint. In their Answer, Respondents do not assert that they are a non-profit entity, nor do they assert an affirmative defense that the Federal Trade Commission (“FTC” or the “Commission”) lacks subject matter jurisdiction over them. Rather, Respondents admit in their Answer that they “distribute the named products in commerce,” that “they operate a website,” and “that they publish information about the product[s].” Respondents also admit making the following representations about the products at issue:

- a. Bio\*Shark inhibits tumor growth;
- b. Bio\*Shark is effective in the treatment of cancer;

- c. 7 Herb Formula is effective in the treatment or cure of cancer;
- d. 7 Herb Formula inhibits tumor formation;
- e. GDU eliminates tumors;
- f. GDU is effective in the treatment of cancer;
- g. BioMixx is effective in the treatment of cancer; and
- h. BioMixx heals the destructive effects of radiation and chemotherapy.

*Respondents' Answer* at ¶¶ 4-5, 7, 9, 11, 13-14.

On October 28, 2008, the Court held a *Prehearing Scheduling Conference* (the "Scheduling Conference"). At the Scheduling Conference, when the Court asked the parties about the proposed Scheduling Order, Respondents' counsel stated, "we have no objections or comments on the scheduling order, so the way that it's formulated, it's fine." *Scheduling Conference Tr.* at 6. At the Scheduling Conference, Respondents' counsel never claimed that discovery should be stayed due to any jurisdictional issues. In fact, counsel did not raise any jurisdictional issues at the Scheduling Conference, and counsel did not indicate that Respondents intended to file a Motion to Dismiss.<sup>1</sup>

As a result, discovery went forward, with Complaint Counsel working diligently to comply with the Court's October 28, 2008 Scheduling Order. Complaint Counsel provided responses to Respondents' discovery requests and produced almost 2,100 pages of documents. Respondents, however, provided evasive and incomplete answers to Complaint Counsel's First Set of Interrogatories. Furthermore, Respondents refused to produce relevant financial documents in response to Complaint Counsel's First Set of Document Requests. On January 9, 2009, this Court granted Complaint Counsel's Motion to Compel such documents and noted that

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<sup>1</sup> As will be more fully explained in Complaint Counsel's Opposition to Respondents' Motion to Dismiss (and incorporated herein by reference), the FTC has jurisdiction over the Respondents in this matter, and the FTC is not violating the Respondents' First Amendment rights of speech or free exercise of religion. Respondents clearly are engaged in commerce; they operate a Web site and sell their products to consumers over the Internet.

“the financial records requested in document requests 22 and 23 are properly discoverable.” Jan. 9, 2009 Order at 2.

Complaint Counsel also served Respondents a Second Set of Discovery Requests and Request for Admissions. Many of the interrogatories and document requests set forth in Complaint Counsel’s Second Set of Discovery Requests sought to clarify the evasive answers Respondents provided in response to Complaint Counsel’s First Set of Discovery Requests. Respondents, however, objected to each and every interrogatory and request for admission on First Amendment grounds and did not provide any answers or responses. In response to the document requests, Respondents objected to all but one document request on First Amendment grounds and produced only three pages of documents which Complaint Counsel has determined was not an adequate response.<sup>2</sup>

In direct response to this Court’s January 9, 2009 Order compelling them to produce the financial records requested, Respondents filed their Motion For Stay of Discovery and a Motion to Dismiss on Sunday, January 11, 2009. Complaint Counsel did not receive Respondents’ Motion and Motion to Dismiss until Monday, January 12, 2009 – the day before Complaint Counsel began the depositions of the Individual Respondent (James Feijo) and three other witnesses with knowledge of the facts of this matter. In the instant Motion and their Motion to Dismiss, Respondents assert that the FTC lacks subject matter jurisdiction over the Respondents. Respondents’ eleventh hour Motion and Motion to Dismiss are designed to delay the

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<sup>2</sup> If Respondents maintain their improper First Amendment objections and maintain their refusal to answer all relevant Interrogatories, produce documents, and respond to the Request for Admissions, Complaint Counsel will have no choice but to file a second Motion to Compel.

proceedings in this matter. Respondents' Motion and Motion to Dismiss both should be denied in their entirety.

**II. ARGUMENT: DISCOVERY SHOULD NOT BE STAYED.**

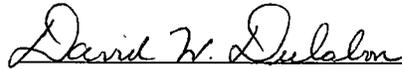
No stay of discovery should be granted. The Commission's Rules of Practice encourage an expeditious resolution of administrative proceedings. 16 C.F.R. § 3.1; *see also* Rules of Practice Amendments, Fed. Reg. 50640 (1996) ("the Administrative Law Judge and the litigants shall make every effort to avoid delay at each stage of a proceeding."). The Respondents, the Commission, and the public interest will benefit from a quick resolution of this litigation. *See also, e.g., In re Plastics Additives Antitrust Litig.*, No. 03-2038, 2004 U.S. Dist. LEXIS 23989, at \*27 (E.D. Pa. Nov. 30, 2004) (denying defendants' motion to stay discovery and noting that "the public . . . has a significant interest in ensuring the flow of this Court's judicial docket so that justice may be administered to the instant litigants, as well as all other litigants before this Court, in a timely fashion.").

Here, Respondents are attempting to delay unnecessarily these proceedings to avoid complying fully with the Court's January 9, 2009 Order. Discovery began over two and one-half months ago. The deadlines for issuing discovery requests *expired* almost one month ago. Most of the costs associated with discovery already have been borne by Complaint Counsel. Respondents have had months to raise these issues, yet they filed their Motion For Stay of Discovery and their Motion to Dismiss on the eve of the fact witness depositions that Complaint Counsel spent significant time and effort in arranging. Respondents can present their arguments through motions for summary disposition, which are to be filed on February 24, 2009. *Scheduling Order* at 2.

**III. CONCLUSION**

For the reasons set forth above, Complaint Counsel respectfully request that the Administrative Law Judge deny Respondents' Motion For Stay of Discovery.

Respectfully submitted,



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Federal Trade Commission  
Alexander Hamilton U.S. Custom House  
One Bowling Green, Suite 318  
New York, NY 10004

Dated: January 15, 2009

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on January 15, 2009, I have filed and served the attached **COMPLAINT COUNSEL'S MEMORANDUM IN OPPOSITION TO RESPONDENTS' MOTION FOR STAY OF DISCOVERY** and **[Proposed] ORDER DENYING RESPONDENTS' MOTION FOR STAY OF DISCOVERY** upon the following as set forth below:

The original and one paper copy via overnight delivery and one electronic copy via email to:

Donald S. Clark, Secretary  
Federal Trade Commission  
600 Pennsylvania Ave., N.W., Room H-159  
Washington, DC 20580  
E-mail: [secretary@ftc.gov](mailto:secretary@ftc.gov)

Two paper copies via overnight delivery and one electronic copy via email to:

The Honorable D. Michael Chappell  
Administrative Law Judge  
600 Pennsylvania Ave., N.W., Room H-528  
Washington, DC 20580  
E-mail: [oalj@ftc.gov](mailto:oalj@ftc.gov)

One electronic copy via email and one paper copy via overnight delivery to:

James S. Turner, Esq.  
Betsy Lehrfeld, Esq.  
Martin Yerick, Esq.  
Swankin & Turner  
1400 16<sup>th</sup> St., N.W., Suite 101  
Washington, D.C. 20036  
[jim@swankin-turner.com](mailto:jim@swankin-turner.com)

One electronic copy via email to:

Michael McCormack, Esq.  
[M.mccormack@mac.com](mailto:M.mccormack@mac.com)

  
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David W. Dulabon  
Complaint Counsel

**UNITED STATES OF AMERICA  
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<b>a corporation, and</b>	)	<b>Docket No. 9329</b>
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<b>JAMES FELJO,</b>	)	<b>Public Document</b>
<b>individually, and as an officer of</b>	)	
<b>Daniel Chapter One</b>	)	
	)	
_____	)	

**[Proposed] ORDER DENYING RESPONDENTS' MOTION FOR STAY OF DISCOVERY**

This Court's October 28, 2008 *Scheduling Order* establishes January 21, 2009 as the close of discovery, other than discovery permitted under Rule 3.24(a)(4), depositions of experts, and discovery for purposes of authenticity and admissibility of exhibits.

On January 11, 2009, Respondents filed a Motion For Stay of Discovery. Complaint Counsel filed their Opposition to Respondents' Motion for Stay of Discovery on January 15, 2009.

IT IS HEREBY ORDERED that Respondents' Motion For Stay of Discovery is DENIED.

ORDERED:

\_\_\_\_\_  
D. Michael Chappell  
Administrative Law Judge

Dated: