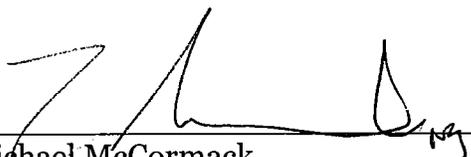
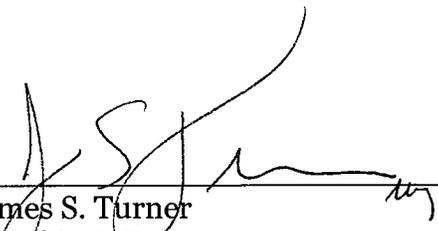


1 3.24(a). In an effort to comply with the requirements of the Rules of Practice, Counsel
2 respectfully requests leave to amend the prior pleading to include the attached
3 Statement of Undisputed Facts.
4

5 Dated March 2, 2009.

6 Respectfully submitted,
7

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4 **IN THE UNITED STATES OF AMERICA**
5 **BEFORE THE FEDERAL TRADE COMMISSION**
6 **OFFICE OF ADMINISTRATIVE LAW JUDGES**

7 **In the Matter of**) **Docket No.: 9329**
8 **DANIEL CHAPTER ONE,**)
9 **a corporation, and**)
10 **JAMES FEIJO,**) **PUBLIC DOCUMENT**
11 **individually, and as an officer of**)
12 **Daniel Chapter One**)
13 _____)

14 **RESPONDENTS' STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF**
15 **RESPONDENTS' MOTION FOR SUMMARY DECISION**

16
17 Each of these statements is identified and supported in DCO's Motion for Summary
18 Decision:
19

- 20 1. DCO is formed as a Corporation Sole in Washington State under the Revised
21 Code of Washington § 24.12, et. seq.
22 2. DCO states on its website the following:

23 *Welcome to Daniel Chapter One Online!*

24
25 *Daniel Chapter One got its name from the Old Testament, book of Daniel,*
26 *first chapter. In that account, Daniel and his men were being held in*
27 *Babylonian captivity, and were expected to eat the king's food -so as to be*
28 *fit and strong servants.*

But Daniel asked permission to eat a vegetable diet and to drink only
water, rather than partake of the rich meats and wine of the king. The
king's men said no; surely Daniel would get sick, maybe die! So Daniel

1 asked for a trial of 10 days. At the end of Chapter One, it is recorded that
2 Daniel and men, after that trial, were strong in flesh, with bright eyes,
3 and continued to grow in knowledge and wisdom.

4 So it was that the founders of Daniel Chapter One®, since trying their
5 own "Daniel Chapter One" diet for 10 days and discovering that indeed
6 they felt fantastic, decided to name the health food store they began, after
7 that portion of the bible. The company, then and now, does not push a
8 vegetarian diet for wellness, but simply a healthy diet of wholesome,
9 natural foods - rather than the unwholesome, artificial food of the
10 modern world. It's about eating with purpose, and partaking of the good
11 food God has given us for health and healing. Good food for physical,
12 mental, and emotional health includes herbs and nutrients.

13 The tiny health food supplement store Daniel Chapter One® grew and
14 grew, from one to several locations. As the store grew, so the founders
15 grew - in knowledge and wisdom, as in fact Daniel had experienced! The
16 store quickly became more of a natural healing center. From their hands-
17 on expertise, the couple began next to design the nutritional supplement
18 product line now known world over as Daniel Chapter One.

19
20
21 3. DCO states on every page of its website the following:

22 *The information on this website is intended to provide information,
23 record, and testimony about God and His Creation. It is not intended to
24 diagnose a disease. The information provided on this site is designed to
25 support, not replace, the relationship that exists between a patient/site
26 visitor and his/her health care provider. Caution: some herbs or
27 supplements should not be mixed with certain medications.*

28
29
30 4. DCO states on its website the following in regard to each of the Challenged
31 Products:

32 **These statements have not been evaluated by the FDA. This product is
33 not intended to diagnose, treat, cure or prevent disease.*

34
35 5. DCO stated the following about the Challenged Product Bioshark:

36 *"Bioshark is pure skeletal tissue of sharks which provides a protein that
37 inhibits angiogenesis -- the formation of new blood vessels. This can stop
38 tumor growth and halt the progression of eye diseases . . ."*

1 6. DCO stated the following about the Challenged Product 7 Herb Formula:

2 *"[7 Herb Formula] purifies the blood, promotes cell repair, fights tumor*
3 *formation, and fights pathogenic bacteria . . ."*

4
5 7. DCO stated the following about the Challenged Product GDU:

6 *"contains natural proteolytic enzymes (from pineapple source bromelain*
7 *to help digest protein --even that of unwanted tumors and cysts. This*
8 *formula also helps to relieve pain and heal inflammation. . .GDU is also*
9 *used for. . .and as an adjunct to cancer therapy. GDU possesses a wide*
10 *range of actions including anti-inflammatory and antispasmodic*
11 *activity. . ."*

12
13 8. DCO stated the following about the Challenged Product BioMixx:

14 *"boosts the immune system, cleanses the blood and feeds the endocrine*
15 *system to allow for natural healing. It is used to assist the body in*
16 *fighting cancer and in healing the destructive effects of radiation and*
17 *chemotherapy treatments."*

18
19 9. DCO did not expressly state any of the following about the Challenged Product
20 Bioshark:

21 *"Bioshark inhibits tumor growth"*

22 *"Bioshark is effective in the treatment of cancer"*

23
24 10. DCO did not expressly state any of the following about the Challenged Product 7
25 Herb Formula:

26 *"7 Herb Formula is effective in treating and curing cancer"*

27 *"7 Herb Formula inhibits tumor formation"*

28
29 11. DCO did not expressly state any of the following about the Challenged Product
30 GDU:

31 *"GDU eliminates tumors"*

1 12. DCO did not expressly state any of the following about the Challenged Product
2 BioMixx:

3 *"BioMixx is effective in the treatment of cancer"*

4 *"BioMixx heals the destructive effects of radiation and chemotherapy"*

5
6 13. The Commission has no factual extrinsic evidence that DCO alleged practices
7 caused substantial injury to consumers.

8 14. The Commission has no factual extrinsic evidence that DCO alleged practices are
9 likely to cause substantial injury to consumers.

10
11 15. The Commission has no factual extrinsic evidence that DCO alleged practices
12 cannot be reasonably avoided by consumers.

13 16. The Commission has no factual extrinsic evidence that DCO alleged practices are
14 not outweighed by countervailing benefits to consumers.

15
16 17. The Commission has no factual extrinsic evidence that DCO alleged practices are
17 not outweighed by countervailing benefits to competition.

18 18. The Commission has no factual evidence of consumer perceptions about DCO, its
19 products or its claims, either express or implied.

20
21 19. The Commission has no factual evidence of consumer expectations about DCO,
22 its products or its claims, either express or implied.

23 20. The Commission has no factual evidence about the cost of developing
24 substantiation for DCO's express claims.

25 21. The Commission has no factual evidence about the amount of substantiation
26 experts in the field of dietary supplements believe is reasonable for structure/function
27 claims about those supplements.
28

1 22. The Commission has no factual evidence concerning whether the express
2 statements made by DCO as described in ¶¶ 5-8 above are false, misleading, unfair, or
3 deceptive.

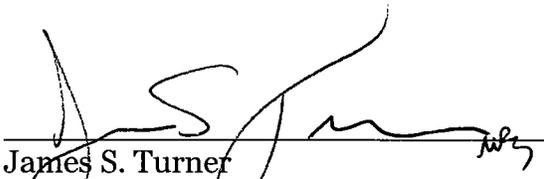
4 23. DCO has substantiation for the express claims it made about the Challenged
5 Products, as described in ¶¶ 5-8 above.

6 24. The Commission's expert did not testify about the DCO express statements
7 described in ¶¶ 5-8 above.

8 25. DCO's experts have given competent testimony that the DCO express statements
9 described in ¶¶ 5-8 above are accurate.

10
11 Respectfully submitted,

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27 Attorneys for Respondents

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8 **JAMES FEIJO,**)
9 **individually, and as an officer of**)
10 **Daniel Chapter One**)

11
12 **CERTIFICATE OF SERVICE**

13
14 I certify that on March 2, 2009, I served or caused to be served the following documents
15 on the individuals listed below by electronic mail, followed by Federal Express delivery:

16 Withdrawal of Second Errata for Respondents' Motion for Summary Decision, Request for
17 Leave to Amend Respondents' Motion for Summary Decision and Argument in Support
18 thereof

19 Respondents' Statement of Undisputed Facts in Support of Respondents' Motion for Summary
20 Decision

21 Service to:

22 Donald S. Clark
23 Office of the Secretary
24 Federal Trade Commission
25 600 Pennsylvania Avenue, NW, Room H-135
26 Washington, DC 20580
27 Email: secretary@ftc.gov

28 Leonard L. Gordon, Esq. (lgordon@ftc.gov)
Theodore Zang, Jr., Esq. (tzang@ftc.gov)
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David W. Dulabon, Esq. (ddulabon@ftc.gov)
Federal Trade Commission – Northeast Region
One Bowling Green, Suite 318

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New York, NY 10004
Courtesy Copies (2):

Hon. D. Michael Chappell
Administrative Law Judge
600 Pennsylvania Avenue, NW, Room H-106
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Email: oalj@ftc.gov



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