

ORIGINAL



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

In the Matter of
DANIEL CHAPTER ONE,
a corporation, and

JAMES FEIJO,
Individually, and as an officer of
Daniel Chapter One.

DOCKET NO. 9329

PUBLIC DOCUMENT

Hearing: April 21, 2009
10:00 a.m.

ERRATA TO RESPONDENTS' PRE-HEARING MEMORANDUM ON
JURISDICTION

On April 10, 2009, Respondents filed a document entitled Respondents' Pre-Hearing Memorandum on Jurisdiction, List of Witnesses, List of Exhibits and Proposed Order. Attachment 3 to that document, Respondents' Pre-Hearing Memorandum on Jurisdiction: Daniel Chapter One is Not a Corporation Within the Meaning of 15 U.S.C. Sec. 44, contained several typographical and formatting errors. A corrected copy of the document is attached, along with a list of the individual changes made.

Dated: April 13, 2009

Respectfully Submitted,

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RESPONDENTS' PRE-HEARING MEMORANDUM ON JURISDICTION

ERRATA SHEET

Page	Section	Correction
1-8	Section Headings	Reformatted, bolded and changed case to upper case or title case as appropriate
1	Heading	Changed "MEMORANDUMON" to "MEMORANDUM ON"
1	Intro., para. 1	Added "of" between "State" and "Washington"
	Intro., para. 1	Changed "Washington State Statute" to "Washington State statute"
1	Intro., para. 1	Changed "The (Resp. Ex 1, CC ex)" to "(Resp. Ex. 1)"
1	Intro., para. 2	Replaced "communist" with "then-Communist"
2	Intro., para. 3	Replaced "As part of it missionary work" with "As part of its missionary work"
2	Intro., para. 3	Replaced "dietary guideless drawn form the bible" with "dietary guidelines drawn from the Bible"
3	Sec. II, para. 1	Replaced "originations" with "organizations"
3	Sec. II, para. 1	Reformatted for font size
3	Sec. II, para. 2	Reformatted for line breaks
3	Sec. II, para. 2	Changed "Daniel CAhpter One" to "Daniel Chapter One"
4	Sec. II, para. 3	Changed "enhancing its members' 'profit,'6" to "enhancing its members' 'profit,'6"
4	Sec. II, para. 3	Replaced "act ivies" with "activities"
4	Sec. II, para. 4	Replaced "foot not six" with "footnote 6"
4	Sec. II, para. 4	Replaced "The American Medical Association v the FTC" with " <i>American Medical Association v. FTC</i> "
4	Sec. II, para. 4	Deleted space between " and "An advantageous gain" and inserted closed quotation marks following "have been met."
4	Sec. III, para. 1	Changed "Daniel Capter one" to "Daniel Chapter One"
5	Sec. III, para. 3	Added "say" following "O'Hara goes on to" and deleted repetitive "that" following "say"
6	Sec. III, Part A, para. 1	Changed "Daniel Chaptr One" to "Daniel Chapter One" and changed "th current overseer" to "the current overseer"
6	Sec. III, Part B, para. 1	Changed "Washtion State Statute" to "Washington State statute"
6	Sec. III, Part B, para. 1	Changed "Dnail Chapter One" to "Daniel Chapter One"
6	Sec. III, Part B, para. 1	Changed "couorts" to "courts"

7	Sec. III, Part D, para. 1	Changed “establishes” to “established”
7	Sec. IV, Heading	Changed “VI” to “IV”
8	Sec. IV, para. 2	Changed “if FTC provided Proof” to “if FTC provided proof”, deleted “does not,” following “has not,” and changed “of pver DCO” to “over DCO”
8	Sec. V, Heading	Changed “CONCLSUIION” to “CONCLUSION”
8	Sec. V, para. 1	Changed “lack jurisdiction” to “lacks jurisdiction”

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Hearing: April 21, 2009
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**RESPONDENTS' PRE-HEARING MEMORANDUM ON JURISDICTION:
DANIEL CHAPTER ONE IS NOT A CORPORATION WITHIN
THE MEANING OF 15 USC SEC 44 (CORRECTED)**

I. INTRODUCTION

Respondent Daniel Chapter One is organized as a Corporation Sole recognized under the laws of the State of Washington as of October 30, 2002. Respondent James Feijo is the Overseer of Daniel Chapter One as called for in the Washington State statute authorizing the creation of a Corporation Sole. Chapter 24.12 RCW (Resp. Ex. 1)

Under this statute Daniel Chapter One is a non profit religious organization. Beginning in 1983, operating as unincorporated religious association,¹ DCO has traveled on missions to home churches (church services held in the homes of believers) bringing Bibles to Christian worshipers in then-Communist countries such as Poland, East

¹ Between 1983 and 2002, except for 1990 to 1998, DCO operated officially as an unincorporated religious organization. Between 1990 and 1998 it continued to operate in the same manner though it had filed corporation papers in Rhode Island. During that time, 1990 to 1998, it filed only one annual report (in 1997) and it appears from the record that for all the other years its official charter was revoked.

Germany, and China. It has established missionary relationships with Christian individuals organized into worshipping communities in Holland and Israel. It has worked with individuals in nursing homes and with handicapped (and high performance) athletes since 1983.

As part of its missionary work DCO addressed the health concerns of its followers including people it worked with in nursing homes and with both handicapped and high performance athletes that it worked with. As they worked with these individuals guided by their Biblical studies they began creating dietary guidelines drawn from the Bible. This work ultimately led to their developing the DCO products that are the focus of this hearing.

In its work, as a Corporation Sole, DCO is not organized or run to make and does not make a profit. Its newsletters and handbooks are provided for free or small donations. It maintains a non profit charitable program that allows any user of DCO products to obtain its products for free or for smaller than recommended donations, and it receives and makes donations. It makes products available to people who follow it and shares its teachings primarily on its two hours a day radio show and its web site. The recommended contribution for DCO products is the same or less than similar dietary supplements in the for profit dietary supplement market. All the property belonging to Chapter Daniel One is held in trust by overseer James Feijo.

In its organization and operation Daniel Chapter One is a not for profit religious organization and as such is not subject to jurisdiction of the Federal Trade Commission.

II. THE FTC HAS JURISDICTION OVER ANTICOMPETITIVE PRACTICES BY NONPROFIT ASSOCIATIONS WHOSE ACTIVITIES PROVIDE SUBSTANTIAL ECONOMIC BENEFITS TO THEIR FOR-PROFIT MEMBERS' BUSINESSES

In *California Dental Association v. Federal Trade Commission*, in which the US Supreme Court addressed FTC's jurisdiction over non-profit organizations the Court held, quoting the FTC statute, that "The FTC Act gives the Commission authority over 'persons, partnerships, or corporations,' 15 U. S. C. § 45(a)(2), and defines 'corporation' to include 'any company . . . or association, incorporated or unincorporated, without shares of capital or capital stock or certificates of interest, except partnerships, which is organized to carry on business for its own profit or that of its members,' §44. . . ." It then adopts the standard proposed by the FTC in its brief saying that "the Commission has jurisdiction 'over anticompetitive practices by nonprofit associations whose activities provid[e] substantial economic benefits to their for-profit members' businesses.' Brief for Respondent 20." *California Dental Association v. Federal Trade Commission*, 526 U.S. 756 (1999)

The court goes on to say "To be sure, proximate relation to *lucre* must appear; the FTC Act does not cover all membership organizations of profit-making corporations without more and an organization devoted solely to professional education may lie outside the FTC Act's jurisdictional reach, even though the quality of professional services ultimately affects the profits of those who deliver them." (Emphasis added) Daniel Chapter One has no for profit members and only one not for profit member. Lucre is the court's touch stone and it identifies the kind of lucre it has in mind.

"The CDA's contributions to the profits of its individual members are

proximate and apparent,” the court says. It then itemizes the way in which the CDA made money for its members. “Through for-profit subsidiaries, the CDA provides advantageous insurance and preferential financing arrangements for its members, and it engages in lobbying, litigation, marketing, and public relations for the benefit of its members' interests. This congeries of activities confers far more than *de minimis* or merely presumed economic benefits on CDA members; the economic benefits conferred upon the CDA’s profit-seeking professionals plainly fall within the object of enhancing its members’ ‘profit,’⁶” which the FTC Act makes the jurisdictional touchstone.” DCO engages in none of these activities and has no for profit subsidiaries. Lucre and “profit” are equated by the court.

In footnote 6 the court spells out in more detail what it means by “profit.” Quoting the Court of Appeals in the case of *American Medical Association v. FTC* it says "according to a generally accepted definition profit 'means gain from business or investment over and above expenditures, or gain made on business or investment where both receipts or payments are taken into account..." *American Medical Assn. v. Federal Trade Commission*, 455 U.S. 676 (1982) at 1017, This definition of profit comports with the standard dictionary definition of profit which is “An advantageous gain or return; benefit...The return received on a business undertaking after all operating expenses have been met.” <http://www.thefreedictionary.com/profit>

III. AS A CORPORATE SOLE, DANIEL CHAPTER ONE IS A LEGITIMATE LEGAL ENTITY OUTSIDE THE JURISDICTION OF THE FTC

Daniel Chapter One operates as a church and “Churches ... may be legally organized in a variety of ways under state law, such as unincorporated associations,

nonprofit corporations, **corporations sole, and charitable trusts.**” IRS Tax Guide for Churches and Religious Organizations, p. 2 (italics original; bold added).

There are “functioning corporations sole in at least one-half the states, with explicit statutory provisions for corporations sole in about a third. In many jurisdictions, this is the manner of incorporating Roman Catholic dioceses, or more accurately, the *bishops* of those dioceses. From this perspective, the corporation sole is a useful, even commonplace, legal reality.” J. O’Hara, “The Modern Corporate Sole,” 93 *Dickinson L. Rev.* 23, 24 (1988) (italics original).

O’Hara goes on to say that “from its quaint beginnings in English law, the corporation sole has established a modest, yet solid, foothold in the United States. To churches with a hierarchical structure, and particularly to the Roman Catholic Church, it has been a secure method for both ownership of property and daily operation. In a society characterized by religious and ethnic pluralism, the corporation sole has provided a useful legal option, well adapted to the needs of certain groups.” O’Hara, p. 39.

A. By Definition a Corporate Sole is Composed of One Individual.

The modern corporate sole is rooted in the common law corporation sole which “lacks the usual trappings of a corporation. It does not have a board of directors, officers, stock, bylaws, officials minutes, seal, or corporate name.” *Id.*, p. 26. “Seventeen states (including Washington state) explicitly recognize the corporation sole under statutory law, often in a special section for nonprofit corporations or in a section on religious societies.” *Id.*, p. 32. “Unlike other not-for-profit corporations, a corporate sole does not have members or officers or a board of directors. A corporation sole is composed of a series of natural persons who, one after another, hold the office of

religious leader of the particular religious organization.” *In re the Catholic Bishop of Spokane*, 329 Bankruptcy Rep. 304, 326 (U.S. Bank. Ct., E.D. Wash. 2005). Daniel Chapter One is working to designate the successor to the current overseer.

B. The Bishop or Overseer of a Corporate Sole Holds all Property in Trust.

Organized in accordance with the Washington State statute authorizing the creation of a Corporate Sole Daniel Chapter One holds all the property of the church in trust. This is as held by courts reviewing Corporate Sole entities. For example “The corporate sole statute specifically authorizes the Bishop, who is deemed to be the body corporate, to hold the property in trust.... The trustee holds only ‘bare legal title’...” *In re Catholic Bishop*, p. 325. While the Washington statutes do not establish a trust, they do require that the Articles of Incorporation of a corporate sole provide that all property of the corporation must be held in trust “for the use, purpose, benefit and behoof of [the overseer’s] religious denomination, society or church.” *Id.*, p. 326 and WSC Chapter 24.

C. A Corporate Sole May Engage in Commerce to Further its Charitable Purpose

The modern corporate sole statutes “are meant to provide a framework for the operation of a continuing concern. They are also both meant to provide a structure for the planning, financing, direction and management necessary for an organization existing and working in a sophisticated business environment.” *O’Hara*, p. 35. According to Washington State law, “a corporate sole ... is a legal entity with powers to sue and be sued, hold and manage property, enter into binding contracts and generally take other actions and engage in other activities common to legal entities” *In re Catholic Bishop*, p. 325.

D. The Articles of Incorporation of DCO Established a Religious Trust.

As with the Roman Catholic Church in *In re Catholic Bishop*, Articles 3 and 4 of the Articles of Incorporation of Daniel Chapter One established a religious trust, having designated Daniel Chapter One as the beneficiary of the trust required by law of all corporate soles. *See* DCO Articles of Incorporation filed with Washington Secretary of State, Articles 3 and 4. As a corporate sole engaged in the work on an apostle (health care ministry proselytizer) and evangelist (health care ministry preacher), the property of which is held in trust for that apostolic and evangelistic ministry, such property cannot legally, and does not, in fact, inure to the private benefit of the Feijo's who receive no salary and are under a de facto vow of poverty.

IV. THE FTC HAS FAILED TO CARRY ITS BURDEN OF PROOF THAT DCO IS ORGANIZED TO CARRY ON BUSINESS FOR ITS OWN PROFIT OR FOR THE PROFIT OF ITS MEMBERS

In order for the FTC to prove that it has jurisdiction over DCO, it must produce evidence that DCO is a "corporation ... which is organized to carry on business for its own profit or that of its members." 15 U.S.C. sections 44 and 45(a)(2). In *Community Blood Bank of the Kansas City Area, Inc. v. FTC*, 405 F.2d 1011 (8th Cir. 1969), the court rejected the FTC claim that it has jurisdiction over "any corporation engaged in business only for charitable purposes and which is forbidden by law to carry on business for profit, that receives income in excess of expenses..." *Id.*, at 1016.

Congress "did not intend to bring within the reach of the Commission any and all nonprofit corporations regardless of their purposes and activities." *Id.* at p. 1018. Thus, "even though a corporation's income, exceeds its disbursements its nonprofit character is not necessarily destroyed." *Id.* at 1017. DCO operates at a breakeven point or less.

Even if FTC provided proof that DCO's income from the sale of its products exceeds the cost of goods sold and overhead expenses, which it has not, such proof still would not support the existence of FTC jurisdiction over DCO.

Rather, the FTC must show more than that, namely, that DCO's "making profits [from the sales of its products] is more than a subordinate ...characteristic of [DCO's] existence for it to be considered one operated for profit." *Id.* In order for the FTC to satisfy its burden of proof, it must show that DCO and the Feijo's are engaged in business for profit of themselves, not for the purposes stated in their Articles of Incorporation of DCO as Corporate Sole and in their actual operation.

The FTC counsel has failed to provide any evidence that meets this burden.

V. CONCLUSION

For the above stated reasons Respondents ask this court to find that the FTC lacks jurisdiction over Respondents.

Dated: April 10, 2009

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CERTIFICATE OF SERVICE

I certify that on April 13, 2009, I filed, served or caused to be served or filed, the following documents on the individuals listed below by electronic mail, followed by Federal Express delivery as indicated:

Errata to Respondents' Pre-Hearing Memorandum on Jurisdiction
Errata Sheet

Respondents' Pre-Hearing Memorandum on Jurisdiction: Daniel Chapter One is not a Corporation
Within the Meaning of 15 USC Sec 44 (Corrected)

The original and one paper copy via Federal Express and one electronic copy via email to:

Donald S. Clark
Office of the Secretary
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One electronic copy to:

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Two paper copies via Federal Express and one electronic copy to:

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