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

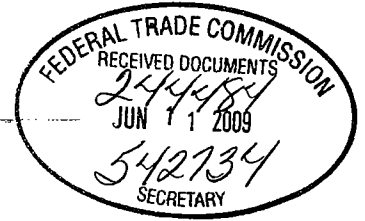
In the Matter of )  
)  
)

DANIEL CHAPTER ONE, )  
a corporation, and )  
)

JAMES FEIJO, )  
individually, and as an officer of )  
Daniel Chapter One )  
)  
)  
)

Docket No. 9329

Public Document



**COMPLAINT COUNSEL'S POST-TRIAL REPLY BRIEF**

Pursuant to the Court's April 29, 2009 Order on Post Trial Briefs, Complaint Counsel submit their *Reply to Respondents' Proposed Findings of Fact and Post-Trial Reply Brief*.

Respectfully submitted,

A handwritten signature in black ink that reads "Elizabeth K. Nach".

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Dated: June 11, 2009

# **TAB 1**

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION  
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**In the Matter of**  
**DANIEL CHAPTER ONE,**  
**a corporation, and**  
**JAMES FEIJO,**  
**individually, and as an officer of**  
**Daniel Chapter One**

**Docket No. 9329**  
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**COMPLAINT COUNSEL’S REPLY TO  
RESPONDENTS’ PROPOSED FINDINGS OF FACT**

1. Respondent Daniel Chapter One (hereinafter “DCO”) is a non-profit corporation sole organized under Washington State law. (CX 31; CX 35; R 1; R 2).

**Response to Finding No. 1:**

Although DCO is organized as a corporation sole, Respondent DCO operates as a for-profit corporation organized to carry on business for its own profit or that of its members.

(Complaint Counsel’s Findings of Fact (hereinafter referred to as CCPF \_\_) ¶¶ 16-94, 109-133).

2. Respondent DCO is a religious ministry. (HOJ, ALJ, Tr. 7; R 1; Harrison, Tr. 280, 290-299; Feijo, P., Tr. 344-345, 382-384; Feijo, J., Tr. 416-417, 464).

**Response to Finding No. 2:**

Complaint Counsel has no specific response.

3. Corporate Respondent DCO has no for-profit members. (R 1; HOJ, Feijo, J., Tr. 181-189).

**Response to Finding No. 3:**

Respondents DCO and James Feijo, as well as James Feijo’s wife, Patricia Feijo, profit from the sale of the DCO Products. (CCPF ¶¶ 109-133).

4. Respondent James Feijo is the overseer of DCO, and as such he holds all DCO property in trust for the ministry. (Feijo, J., Tr. 416).

**Response to Finding No. 4:**

Complaint Counsel does not dispute that Respondent James Feijo is the overseer of DCO or that he is legally obligated to hold DCO property in trust; however, rather than holding all DCO property in trust for the ministry, Respondent James Feijo personally profits from the sale of the DCO Products. (CCPF ¶¶ 109-133).

5. Respondent James Feijo has taken a vow of poverty as overseer of DCO's ministry. (HOJ, Feijo, J., Tr. 151).

**Response to Finding No. 5:**

Complaint Counsel does not dispute that Respondent James Feijo has taken a vow of poverty; however, the evidence indicates that he has not followed that vow. (CCPF ¶¶ 109-133).

6. Respondent DCO's name "Daniel Chapter One" refers to the chapter and verse of the Bible dealing with nutrition and natural healing. (Feijo, P., Tr. 327-328).

**Response to Finding No. 6:**

Complaint Counsel has no specific response.

7. Respondents' speech is intended to educate and inform recipients about health and healing practices that are consistent with the Book of Daniel, Chapter One, and other parts of the Bible. (Harrison, Tr. 279-284, 286-291, 298-299, 312; Feijo, P., Tr. 327-328, 337-339, 343-345, 357-358, 368-372, 382-383; Feijo, J., Tr. 416-417, 422-431, 433-436, 456-457).

**Response to Finding No. 7:**

Respondents' product advertisements generally do not contain any educational content.

*See, e.g.,* the BioMolecular Nutrition Product Catalog. (R15 (J.Feijo, Dep. at 161)).

8. Respondents' speech is intended to reach those who are devoted to or interested in nutrition and natural healing as expressed by the DCO ministry and the Book of Daniel, Chapter One, and other parts of the Bible. (Harrison, Tr. 279-284, 286-291, 298-299, 312; Feijo, P., Tr. 327-328, 337-339, 343-345, 357-358, 368-372, 382-383; Feijo, J., Tr. 416-417, 422-431, 433-436, 456-457).

**Response to Finding No. 8:**

Respondents' product advertisements are broadly disseminated. The radio program "Daniel Chapter One Health Watch" is carried by an eclectic group of AM radio stations. (Harrison, Tr. 309-10). Respondents' publication, The Most Simple Guide to the Most Difficult Diseases, is available on the DCO Web site and anyone can download it. (CX 29 at FTC-DCO 0430; P. Feijo, Tr. 395; J. Feijo, Tr. 453-55). The BioGuide and the Cancer Newsletter are also available on-line through DCO's Web site. (CX 13 at FTC-DCO 0013; CX 13A at FTC-DCO 2828A; CX 29 at FTC-DCO 0430; P. Feijo, Tr. 395; J. Feijo, Tr. 453-55; Tr. 264). Consumers can locate Respondents' Web site by entering the term "cancer" in a Google search. (R15 (J. Feijo, Dep. at 136)). FTC Investigator Michael Marino found and accessed DCO's Web site www.danielchapterone.com through Microsoft Internet Explorer. (CX 1).

9. Respondents communicate the message of their ministry by traveling the world for community meetings and prayer groups, and by using the internet, live radio broadcasts and written publications, and by including a Bible verse on labels of each of the Challenged Products. (CX 18 at FTC-DCO 0122, 0124, 0125, 0127; Harrison, Tr. 279-284, 286-291, 298-299, 312; Feijo, P., Tr. 327-328, 337-339, 343-345, 357-358, 368-372, 382-383; Feijo, J., Tr. 416-417, 422-431, 433-436, 456-457).

**Response to Finding No. 9:**

Complaint Counsel has no specific response.

10. As part of their ministry, Respondents express opinions via their radio broadcasts and their written publications about nutrition and natural healing. (Harrison, Tr. 279-284, 286-291, 298-299, 312; Feijo, P., Tr. 327-328, 337-339, 343-345, 357-358, 368-372, 382-383; Feijo, J., Tr. 416-417, 422-431, 433-436, 456-457).

**Response to Finding No. 10:**

Complaint Counsel has no specific response.

11. Respondents offer dietary supplement products (DCO products), including the Challenged Products, as part of their overall ministry. (Feijo, P., Tr. 337-338; 342-343).

**Response to Finding No. 11:**

Respondents admit that anyone can buy and use DCO's products, including people who do not believe in God. (P. Feijo, Tr. 410-11; *see also* Marino, HOJ Tr. 55). An entity does not have to be a religious ministry to become an affiliate of Respondent DCO. (J. Feijo, HOJ Tr. 114).

Furthermore, for the purposes of Section 12, the DCO Products are "food" or "drugs." (15 U.S.C. Section 55(a), (b), (c) (defining "food" as, among other things, "articles used for food or drink for man," and defining "drug" as, among other things, "articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man"))).

12. The Challenged Products are four of close to 200 products offered by Respondents. (Feijo, P., Tr. 392).

**Response to Finding No. 12:**

Complaint Counsel has no specific response.

13. Respondents use radio broadcasting and personal appearances as the primary means of informing interested persons about DCO products. (Feijo, J., Tr. 279-280; 282-284).

**Response to Finding No. 13:**

The evidence cited does not support the proposition that radio broadcasting and personal appearances are the "primary means" that Respondents inform "interested persons" about DCO products.

14. Interested persons who wish to obtain DCO products do so through the website. (Feijo, J., Tr. 459-450, 464).

**Response to Finding No. 14:**

Complaint Counsel has no specific response.

15. Where the Challenged Products appear and are ordered on Respondents' website(s), the following language appears:

"The information on this website is intended to provide information, record, and testimony about God and His Creation. It is not intended to diagnose a disease. The information provided on this site is designed to support, not replace, the relationship that exists between a patient/site visitor and his/her health care provider. Caution: some herbs or [nutritional] supplements should not be mixed with certain medications." (CX 11; CX 17 at FTC-DCO 0071, 0074, 0077, 0081, 0085-0086, 0090, 0093, 0096, 0099).

**Response to Finding No. 15:**

The language quoted above is not included on every web page where the Challenged Products appear. (See, e.g., CX 13 at FTC-DCO 0014). Moreover, the language quoted above appears in small print at the bottom of the web page where the Challenged Products are ordered. (CX 11 at FTC-DCO 0712).

16. With respect to the Challenged Products, Respondents' website(s) contain the following disclaimer:

"These statements have not been evaluated by the FDA. This product is not intended to diagnose, treat, cure or prevent disease." (CX 17 at FTC-DCO 0073, 0076, 0080, 0084, 0089, 0095, 0098; Feijo, P., Tr. 382).

**Response to Finding No. 16:**

Complaint Counsel has no specific response.

17. The Challenged Products are intended to supplement the diet, through the use of a vitamin, mineral, herb, or other botanical, for use by man to increase the total daily intake of such ingredients. (Feijo, P., Tr. 394; Feijo, J., Tr. 442-444, 457, 459).

**Response to Finding No. 17:**

In their advertisements, Respondents represent that the Challenged Products cure, mitigate, treat, or prevent cancer or tumors. (CCPF ¶¶ 134-173).

18. Respondents do not claim that the Challenged Products treat disease. (Feijo, P., Tr. 442-444).

**Response to Finding No. 18:**

Respondents do claim that the Challenged Products cure, mitigate, treat, or prevent cancer or tumors. (CCPF ¶¶ 134-173).

19. The Challenged Products are intended for ingestion in capsule, powder, or liquid form. (Feijo, J., Tr. 446).

**Response to Finding No. 19:**

Complaint Counsel has no specific response.

20. The Challenged Products are not represented for use as a conventional food or as the sole item of a meal or diet. (Feijo, J., Tr. 446).

**Response to Finding No. 20:**

Complaint Counsel has no specific response.

21. The Challenged Products are labeled as dietary supplements. (CX 12; CX 13; CX 14; CX 15; CX 16; CX 18 at FTC-DCO 0122, 0124, 0125, 0127).

**Response to Finding No. 21:**

CX 12, CX 13, CX 14, and CX 15 do not contain any Challenged Product labels.

22. On their website, Respondents make the following claim about the Challenged Product Bioshark:

“Pure skeletal tissue of sharks which provides a protein that inhibits angiogenesis -- the formation of new blood vessels. This can stop tumor growth and halt the progression of eye diseases . . .” (CX 12; Feijo, P., Tr. 341-342).

**Response to Finding No. 22:**

Complaint Counsel has no specific response.

23. On their website, Respondents make the following claim about the Challenged Product 7 Herb Formula:

“purifies the blood, promotes cell repair, fights tumor formation, and fights pathogenic bacteria” (CX 13; Feijo, P., Tr. 345-346).

**Response to Finding No. 23:**

Complaint Counsel has no specific response.

24. On their website, Respondents make the following claim about the Challenged Product GDU:

“contains natural proteolytic enzymes (from pineapple source bromelain to help digest protein --even that of unwanted tumors and cysts. This formula also helps to relieve pain and heal inflammation. . .GDU is also used for. . .and as an adjunct to cancer therapy. GDU possesses a wide range of actions including anti-inflammatory and antispasmodic activity. . .” (CX 14; Feijo, P., Tr. 351-352).

**Response to Finding No. 24:**

Complaint Counsel has no specific response.

25. On their website, Respondents make the following claim about the Challenged Product BioMixx:

“boosts the immune system, cleanses the blood and feeds the endocrine system to allow for natural healing. It is used to assist the body in fighting cancer and in healing the destructive effects of radiation and chemotherapy treatments.” (CX 15; Feijo, P., Tr. 354-355).

**Response to Finding No. 25:**

Complaint Counsel has no specific response.

26. Respondents do not use the words *diagnose*, *mitigate*, *cure* or *prevent* in any representation they make about the Challenged Products. (Feijo, P., Tr. 338-341; 345-346; 351-352; 354-355; 412-413).

**Response to Finding No. 26:**

Respondents do represent that the Challenged Products cure, mitigate, treat, or prevent cancer or tumors. (CCPF ¶¶ 134-173).

27. The express statements made by DCO about the Challenged Products describe the supplement’s effects on the “structure or function” of the body. (Feijo, P., Tr. 345-357; 379-392).

**Response to Finding No. 27:**

Respondents have admitted that they made the following claims:

Bio\*Shark inhibits tumor growth;

Bio\*Shark is effective in the treatment of cancer;

7 Herb Formula is effective in the treatment or cure of cancer;

7 Herb Formula inhibits tumor formation;

GDU eliminates tumors;

GDU is effective in the treatment of cancer;

BioMixx is effective in the treatment of cancer; and

Bio Mixx heals the destructive effects of radiation and chemotherapy.

(Answer ¶ 14.)

28. The literature relied on by Respondents for their claims about the Challenged Products constitutes competent and reliable scientific evidence. (LaMont, Tr. 596).

**Response to Finding No. 28:**

This literature was not admitted for the truth of the matters asserted therein, and Patricia Feijo was unable to identify with specificity which articles she was relying upon for the specific claims that brought about the charges in this case. (Tr. 602-04; CCPF ¶ 197).

Furthermore, Respondents did not possess substantiation for their claims about the Challenged Products at the time they were made. (CCPF ¶¶ 186-211). Dr. Miller confirmed that there is no competent and reliable scientific evidence to substantiate the claims that DCO's products treat, cure, or prevent cancer. (CCPF ¶¶ 212-237). Dr. LaMont would not be comfortable with the Fiejos saying that the DCO products are going to cure cancer. (R22 (LaMont, Dep. at 53)). Until there are clinical trials, Dr. LaMont agrees that "we don't know"

whether DCO's products would be effective in battling cancer. (R22 (LaMont, Dep. at 147); LaMont, Tr. 585).

29. Respondents relied on literature consisting of articles, publications and expert analysis to substantiate their statements about the Challenged Products. (R 9; R 10; Feijo, P., Tr.. 401-402, 404-405, 605-610).

**Response to Finding No. 29:**

This literature was not admitted for the truth of the matters asserted therein, and Patricia Feijo was unable to identify with specificity which articles she was relying upon for the specific claims that brought about the charges in this case. (Tr. 602-04; CCPF ¶ 197).

Furthermore, Respondents did not possess substantiation for their statements about the Challenged Products at the time they were made. (CCPF ¶¶ 186-211).

30. The substantiating literature used by Respondents for their claims about the Challenged Products is consistent with the general research available about the constituent ingredients of the Challenged Products. (R 9; R 10; LaMont, Tr. 587-588).

**Response to Finding No. 30:**

This literature was not admitted for the truth of the matters asserted therein. (Tr., 602-04).

Furthermore, Respondents did not possess "substantiating literature" for their claims about the Challenged Products, at the time that such claims were made. (CCPF ¶¶ 186-211).

31. There is no evidence in the record that Respondents' statements about the Challenged Products caused harm or potential harm to consumers. (Entire record).

**Response to Finding No. 31:**

The deceptive nature of the advertisements about the Challenged Products is by its very nature likely to harm consumers. (Entire record).

32. There is no evidence in the record that the Challenged Products have caused actual harm to consumers. (Entire record).

**Response to Finding No. 32:**

The deceptive nature of the advertisements about the Challenged Products is by its very nature likely to harm consumers. (Entire record).

33. There is no evidence in the record that the FTC has received any complaints concerning the Challenged Products. (R 11 (Marino, Dep. at 49-51); entire record).

**Response to Finding No. 33:**

Complaint Counsel has no specific response.

34. There is no evidence in the record of any investigation or analysis concerning consumer expectations or perceptions about the Challenged Products. (Entire record).

**Response to Finding No. 34:**

Complaint Counsel has no specific response.

35. There is no evidence in the record concerning consumer expectations and perceptions about the Challenged Products. (Entire record).

**Response to Finding No. 35:**

Complaint Counsel has no specific response.

36. The cost to substantiate the “structure and function” claims made by the Respondents about the Challenged Products is unproven by Complaint Counsel, but is likely to be in excess of \$100 million per constituent ingredient. (R 14 (Miller, Dep. at 49); Miller, Tr. 149, 181).

**Response to Finding No. 36:**

Complaint Counsel has no specific response.

37. The expert witness offered by Complaint Counsel did not address Respondents’ express statements about the Challenged Products, but only addressed claims of cancer treatment allegedly implied by Respondents. (Miller, Tr. 150-152).

**Response to Finding No. 37:**

Respondents have admitted making the following claims:

Bio\*Shark inhibits tumor growth;

Bio\*Shark is effective in the treatment of cancer;

7 Herb Formula is effective in the treatment or cure of cancer;

7 Herb Formula inhibits tumor formation;

GDU eliminates tumors;

GDU is effective in the treatment of cancer;

BioMixx is effective in the treatment of cancer; and

Bio Mixx heals the destructive effects of radiation and chemotherapy.

(Answer ¶ 14.)

Furthermore, Dr. Miller did in fact confirm that there is no competent and reliable scientific evidence to substantiate the claims that DCO's products treat, cure, or prevent cancer.

(CCPF ¶¶ 212-237).

38. The expert witness offered by Complaint Counsel did not know the meaning or significance of a "structure/function" claim. (Miller, Tr. 173-174).

**Response to Finding No. 38:**

The evidence cited does not support the proposition that Dr. Miller did not know the meaning or significance of a "structure/function" claim. Moreover, even if the evidence cited does support the proposition, it is irrelevant to Complaint Counsel's claims in this case.

39. The expert witness offered by Complaint Counsel did not have knowledge of the type of statements for dietary supplements permitted by the FDA under DSHEA. (Miller, Tr. 150-152, 204).

**Response to Finding No. 39:**

The evidence cited does not support the proposition that Dr. Miller did not have knowledge of the type of statements for dietary supplements permitted by the FDA under DSHEA. Moreover, even if the evidence cited does support the proposition, it is irrelevant to Complaint Counsel's claims in this case.

40. The expert witnesses offered by Respondents did address Respondents' express statements about the Challenged Products, and concluded that those claims are accurate. (RX 3; RX 4; Duke, Tr. 519-520; LaMont, Tr. 572-574).

**Response to Finding No. 40:**

Respondents have admitted making the following claims:

- Bio\*Shark inhibits tumor growth;
- Bio\*Shark is effective in the treatment of cancer;
- 7 Herb Formula is effective in the treatment or cure of cancer;
- 7 Herb Formula inhibits tumor formation;
- GDU eliminates tumors;
- GDU is effective in the treatment of cancer;
- BioMixx is effective in the treatment of cancer; and
- Bio Mixx heals the destructive effects of radiation and chemotherapy.

(Answer ¶ 14.)

Moreover, Respondents' purported experts did not possess any information substantiating Respondents' claims. (CCPF ¶¶ 238-472).

41. Respondents' expert witness analyzed the meaning and significance of "structure/function" claims. (R 4; LaMont, Tr. 550-551, 574-575).

**Response to Finding No. 41:**

Complaint Counsel has no specific response.

