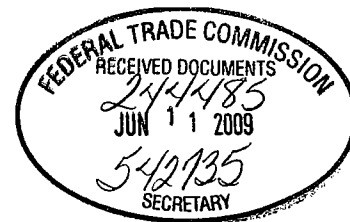


ORIGINAL



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

RESPONDENTS' REPLY TO COMPLAINT COUNSEL'S
PROPOSED FINDINGS OF FACT
AND BRIEF IN SUPPORT THEREOF

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_____)

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I. RESPONDENTS' RESPONSES TO COMPLAINT COUNSEL'S PROPOSED FINDINGS OF FACT

A. Daniel Chapter One and the Feijos

[Note: For Respondents' responses to Complaint Counsel's proposed findings of fact, the response of "Respondents concur" indicates that Respondents agree that Complaint Counsel's proposed finding is an accurate factual statement. The response that "Respondents have no specific response" indicates that Respondents do not believe that such proposed finding, whether or not true and/or accurate, is relevant to a material fact.]

1. Respondent Daniel Chapter One ("DCO") is a corporation sole organized in 2002 under the laws of the state of Washington. (Respondents' Answer to FTC's Compl., dated Oct. 14, 2008 (hereinafter referred to as the Answer) ¶ 1; Complaint Counsel's Trial Exhibit (hereinafter referred to as CX __) 35; J. Feijo, Hearing on Jurisdiction Transcript, April 21, 2009, (hereinafter referred to as HOJ Tr. __) at 84).

Response to Finding No. 1

Respondents concur but note that CX 35 is the Articles of Incorporation for

Messiah Y'Shua Shalom, and not for DCO.

2. According to its Articles of Incorporation, Respondent DCO's mailing and principal location is 21916 Southeast 392nd Street, Enumclaw, Washington, but neither Respondent DCO nor Respondent James Feijo maintains a building at that address. (CX 31; J. Feijo, HOJ Tr. 93-94).

Response to Finding No. 2

Exhibit CX 31 was filed with the Secretary of State for the State of Washington in 2002. The address cited is that of DCO's registered agent in Washington (HOJ, Feijo, J., Tr. 95). DCO's notice of Corporation Sole status states that Respondent James Feijo's mailing address and principle location are non-domestic (CX 31 at FTC-DCO 0739), and that Patricia Feijo's mailing address is non-domestic (CX 31 at FTC-DCO 0740).

3. According to Respondents, their principal office and place of business is located at 1028 East Main Road, Portsmouth, Rhode Island 02871. (Answer ¶ 1; Deposition of James D. Feijo, January 13, 2009, (hereinafter referred to as R15 (J. Feijo, Dep. ___)) at 99).

Response to Finding No. 3

Respondents concur but note that Respondent James Feijo practices his ministry at not just one, but many, locations (R 15 (Feijo, J., Dep. at 70, 218-19); R 16 (Feijo, P., Dep. at 38-39); HOJ, Feijo, J., Tr. 94, 96, 204; HOJ, Feijo, P., Tr. 262-64, 277).

4. Respondent James Feijo is responsible for the activities of Respondent DCO as its Overseer. (Answer ¶ 2; J. Feijo, HOJ Tr. 70; J. Feijo, Trial Transcript (hereinafter referred to as Tr. ___) at 416).

Response to Finding No. 4

Respondents concur.

5. Patricia Feijo, Respondent James Feijo's wife, is the secretary for DCO. (Deposition of

Patricia Feijo, January 14, 2009, (hereinafter referred to as (R16 (P. Feijo, Dep. at __) at 10, 52; P. Feijo, HOJ Tr. 276).

Response to Finding No. 5

Respondents concur.

6. Respondent James Feijo and his wife, Patricia, originally started DCO as a health food store in 1986. (R16 (P. Feijo, Dep. at 39-40); J. Feijo, Tr. 418).

Response to Finding No. 6

DCO did not begin as a health food store. DCO began as a ministry in 1983 (R 16 (Feijo, P., Dep. at 204-05); HOJ, Feijo, J., Tr. 182). DCO was first a street ministry and then was also a ministry to help home churches in communist countries (where church activities conducted in Christian practitioners' homes were discouraged, if not illegal) (R 15 (Feijo, J., Dep. at 73); HOJ, Feijo, J., Tr. 99, 182-83, 236-37).

7. Respondent James Feijo sold DCO products prior to registering as a corporation sole. (R15 (J. Feijo, Dep. at 224)).

Response to Finding No. 7

Respondents concur.

8. Respondents offer 150 to 200 products today, including Bio*Shark, 7 Herb Formula, GDU, and BioMixx (collectively, the "DCO Products"). (R15 (J. Feijo, Dep. at 37); P. Feijo, Tr. 392; Marino, HOJ Tr. 54; J. Feijo, HOJ Tr. 314-15).

Response to Finding No. 8

Respondents concur.

9. DCO has two buildings in Rhode Island – one is the Order Center and the other is the warehouse. (J. Feijo, HOJ Tr. 110).

Response to Finding No. 9

Respondent DCO uses, but does not own, two buildings in Rhode Island (R 15 (Feijo, J., Dep. at 72-73)).

10. Messiah Y'Shua Shalom, a Washington corporation sole, owns the property that Respondents use in Rhode Island. (R15 (J. Feijo, Dep. at 72-73); CX 35).

Response to Finding No. 10

Messiah Y'Shua Shalom owns one of the two buildings used by DCO in Rhode Island (R 15 (Feijo, J., Dep. at 72)). The other is rented from an owner unrelated to Respondents (R 15 (Feijo, J., Dep. at 174)).

11. Respondent James Feijo is the overseer for Messiah Y'Shua Shalom. (R15 (J. Feijo, Dep. at 72-73); CX 35).

Response to Finding No. 11

Respondents concur.

12. Respondents practice a science they call BioMolecular Nutrition. (CX 21).

Response to Finding No. 12

Respondent James Feijo created a combined spiritual and scientific approach to maintain the balance of bodily systems that he named BioMolecular Nutrition.

13. According to Respondents, "[t]here are two aspects of BioMolecular Nutrition, the spiritual and the physical." (CX 21).

Response to Finding No. 13

Respondents concur.

14. “The principles of BioMolecular Nutrition were those missing principles needed to bind together those of the nutritionists and the biochemists.” (CX 21).

Response to Finding No. 14

Respondents concur.

15. According to Respondents, “[b]ecause of BioMolecular nutritional products developed at that time, we’ve been able to support other naturopathic disciplines – chiropractic, acupuncture, herbology, and homeopathy – and using the principles of BioMolecular Nutrition has allowed many natural health practitioners to be complete.” (CX 21).

Response to Finding No. 15

Respondents concur that they made this statement.

- B. **The FTC Has Jurisdiction Over Respondent DCO, which is a Corporation within the Meaning of Section 4 of the FTC Act, and Respondent James Feijo**

Respondents’ Response:

The FTC Lacks Jurisdiction Over Respondent DCO, which is a Non-Profit,

Charitable, Religious Corporation Sole and Not a

Corporation Within the Meaning of Section 4 of the FTC Act, and Over

Respondent James Feijo, the Overseer of Daniel Chapter One

16. Respondent DCO was previously incorporated as “Daniel Chapter One, Inc.,” a Rhode Island for-profit corporation, on October 30, 1990. (CX 50; J. Feijo, HOJ Tr. 101).

Response to Finding No. 16

Between 1990 and 1997, annual for-profit corporation reports, of which Overseer

Feijo has only a vague recollection, were filed on behalf of a corporation with the

name Daniel Chapter One, Inc. with the State of Rhode Island. During that time, Daniel Chapter One, Inc.'s corporate status was repeatedly revoked, and for significant periods of time between 1991 and 1997, Daniel Chapter One, Inc. was not recognized by Rhode Island as a corporation in good standing. Respondent James Feijo never intended for DCO to be a for-profit corporation. The Challenged Products were created after Daniel Chapter One, Inc.'s corporate status was revoked (HOJ, Feijo, J., Tr. 124-25).

17. Respondent DCO's Articles of Incorporation from 1990 state that the purposes for which Daniel Chapter One, Inc. was organized were: "To engage in the sale, retail, wholesale and distribution of health products, including but not limited to health foods and supplements, namely those with special nutritive qualities and values." (CX 50; J. Feijo, HOJ Tr. 101-02).

Response to Finding No. 17

See Response to Finding No. 16. Also, the documents constituting CX 50 do not accurately reflect the manner in which Respondent DCO was conducting its activities. Instead of acting as a business engaged in the "sale, retail, wholesale, and distribution of health products," DCO was in fact a house ministry, a home church, and a home fellowship. These ministry activities were based on biblical principles and were designed to fulfill the spiritual needs of the ministry's constituents. These activities included: holding religious meetings, performing baptisms, delivering babies, performing marriage ceremonies, and making healings (HOJ, Feijo, J., Tr. 180-82). Eric Chappell, a lawyer and designated local agent named in DCO's Articles of Incorporation in Rhode Island, may have

prepared the corporate documents (HOJ, Feijo, J., Tr. 200). James Feijo never intended to incorporate DCO as a for-profit corporation (HOJ, Feijo, J., Tr. 200-202). DCO frequently gave away its products free of charge (R 15 (Feijo, J., Dep. at 210-11); HOJ, Feijo, J., Tr. 137, 184; HOJ, Feijo, P., Tr. 274). DCO makes no profit from any of its activities (R 15 (Feijo, J., Dep. at 40-43, 67, 165, 191, 193, 196, 209-10, 236); R 16 (Feijo, P., Dep. at 50-51); HOJ, Feijo, J., Tr. 313, 316), including providing information through print or through its website, or from its radio show (HOJ, Feijo, J., Tr. 188).

18. Consistent with its status as a for-profit corporation incorporated in Rhode Island, Respondent DCO filed annual reports from 1991 through 1997, during which time the stated character of the business remained substantially similar, namely “To engage in the sale, retail, wholesale and distribution of health products, including health foods and supplements.” (CX 50; J. Feijo, HOJ Tr. 102-08).

Response to Finding No. 18

Respondents deny that DCO was ever a for-profit corporation and that it ever made a profit, and note that if DCO was ever a for-profit corporation, it ceased being one after its standing in Rhode Island was revoked (CX 50). Respondents also note that James Feijo has no recollection of how DCO was organized under the Rhode Island articles of incorporation, or of filing any annual reports (HOJ, Feijo, J., Tr. 107, 120-24).

19. Each of these for-profit corporation annual reports bears the signature of Respondent James Feijo. (J. Feijo, HOJ Tr. 102-08).

Response to Finding No. 19

Respondents concur that the signatures appear to belong to Respondent James Feijo's, but note that James Feijo does not recall ever having signed the documents (HOJ, Feijo, J., Tr. 106, 197).

20. DCO is not registered with the Internal Revenue Service as a charity. (R15 (J. Feijo, Dep. at 45); J. Feijo, HOJ Tr. 209).

Response to Finding No. 20

DCO has always been a religious ministry, and later became a corporation sole (HOJ, Feijo, J., Tr. 236-38). Churches, religious orders, and religious corporation soles are not required to register with the IRS. 26 U.S.C. § 501(c)(3)).

1. Respondents Are Engaged in Commerce

21. Respondents distribute the DCO Products in commerce. (Answer ¶ 4; R15 (J. Feijo, Dep. at 102); Marino, HOJ Tr. 53-55; Harrison, Tr. 295-96).

Response to Finding No. 21

Respondents do not distribute DCO products in commerce. Respondents frequently give away DCO products free of charge, works through churches or church related organizations or through members of its fellowship (R 15 (Feijo, J., Dep. at 209-11); R 16 (Feijo, P., Dep. at 69); HOJ, Feijo, J., Tr. 137, 184-88; HOJ, Feijo, P., Tr. 274; HOJ, Mink, Tr. 293-94; HOJ, Hicks, Tr. 306-07).

22. Anyone can buy and use DCO products, including people who do not believe in God. (Marino, HOJ Tr. 55; P. Feijo, Tr. 410-11).

Response to Finding No. 22

Any interested person may *obtain* DCO products (Feijo, P., Tr. 410-11).

Respondents' goal is to reach out to followers of its ministry or any other interested persons to inform them about Respondents' perspectives on the integration of spiritual and physical well-being (Feijo, P., Tr. 325-26).

23. Respondent DCO has an 800 number and a call center for consumers to purchase the DCO Products. (R16 (P. Feijo, Dep. at 67); J. Feijo, HOJ Tr. 212; P. Feijo, HOJ Tr. 273-74; J. Feijo, HOJ Tr. 168, 204, 211-12).

Response to Finding No. 23

Respondent DCO has a toll-free telephone number that enables followers of its ministry to obtain dietary supplements and discuss their physical and spiritual well-being and order dietary supplements to support their well-being (Feijo, P., Tr. 357-58).

24. Respondent James Feijo created, managed, and maintained the toll-free telephone number, designed so that consumers can order the DCO Products. (CX 39).

Response to Finding No. 24

Respondent James Feijo created, managed, and maintained the toll-free telephone number so that followers of his ministry and other interested persons may call and discuss their physical and spiritual well-being and order dietary supplements in support of their well-being (Feijo, P., Tr. 357-58).

25. On the front page of their BioMolecular Nutrition Product Catalog, Respondents inform consumers to "Call Toll FREE 1-800-504-5511 or shop online at www.danielchapterone.com." (CX 17).

Response to Finding No. 25

Respondents have no specific response.

26. Respondents operate the Web site www.danielchapterone.com. (Answer ¶ 5; R15 (J. Feijo, Dep. at 62)).

Response to Finding No. 26

Respondents concur.

27. DCO also operates the Web sites dclpages.com and dclstore.com. (R15 (J. Feijo, Dep. at 232-33)).

Response to Finding No. 27

Respondents concur.

28. Respondents advertise their products on the Internet through the BioGuide, the Cancer Newsletter, and The Most Simple Guide to the Most Difficult Diseases, each of which is available to read or download from the Internet. (CX 1; 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. at 264).

Response to Finding No. 28

Respondents do not advertise DCO dietary supplements. Evidence shows that most of the viewers and users of DCO's website are followers of DCO's ministry who visit DCO's website to obtain more information about DCO's products (R 15 (Feijo, J., Dep. 151-152)). Respondent DCO has no advertising budget (Feijo, J., Tr. 459, 464). Respondents do not advertise for their products through the BioGuide, the Cancer Newsletter, or the Most Simple Guide. The BioGuide was intended for sharing the Feijos' own religious testimony, and quotes verses from the Bible (R 16 (Feijo, P., Dep. at 117); Feijo, J., Tr. 452-53). The Cancer Newsletter, a one-time brochure reprinted once with minor updates, was intended for sharing testimony from users of DCO's products (Feijo, J., Tr. 452). The Most

Simple Guide was originally created for doctors at those doctors' request for information on the DCO products that people have found to be helpful (Feijo, J., Tr. 453-54).

29. Consumers learn of DCO's 800 number from the DCO Web site, the BioGuide, and Respondents' radio program, "Daniel Chapter One Health Watch." (P. Feijo, HOJ Tr. 273-74; CX 21; CX 29 (FTC-DCO 0451)).

Response to Finding No. 29

DCO's website, BioGuide, and Respondents' radio show are intended to provide information about Respondents' perspectives on spiritual and physical well-being, and do not promote DCO's products (CX 2, CX 21, CX 5). DCO's website enables the followers of Respondents' ministry to obtain DCO's products, and such followers would understand that the money they send in is a donation in support of the ministry (R 15 (Feijo, J., Dep. 151-152)). The BioGuide was intended for sharing the Feijos' own religious testimony, and quotes verses from the Bible (R 16 (Feijo, P., Dep. at 117); Feijo, J., Tr. 452-53). The radio show enables followers of Respondents' ministry to discuss their physical and spiritual well-being and to learn about non-drug approaches to balancing the body, mind, and spirit, including the use of dietary supplements to support their well-being, and does not promote DCO's products (R 15 (Feijo, J., Dep. at 238-39); R 16 (Feijo, P., Dep. at 92-93, 95); HOJ, Feijo, J., Tr. 221-24; HOJ, Feijo, P., Tr. 272-74).

30. The "Daniel Chapter One Health Watch" radio program is broadcast on the "Accent

Radio Network,” a subsidiary of Respondent DCO. (CX 32; R15 (J. Feijo, Dep. at 235).

Response to Finding No. 30

Accent Radio Network is not a subsidiary of Respondent Daniel Chapter One, and Respondents note the lack of documentary evidence to that effect (HOJ, Feijo, J., Tr. 112, 202-03; HOJ, Harrison, Tr. 246).

31. The Accent Radio Network Web site states, “Put your money where our mouth is: Accent Radio Network! We can do it for you whether you’re in a small local market or you want to hit the big time.” (CX 32). The Web site also contains an advertising schedule, which lists Accent Radio Network’s advertising rates. (CX 32; J. Feijo, HOJ Tr. 112).

Response to Finding No. 31

CX 32 does not support this proposed finding. Respondents’ copy of CX 32 consists only of page FTC-DCO 0498, and includes only introductory information about Accent Radio Network. Any revenue that Accent Radio Network receives from selling advertising time is insufficient to even support itself (R 15 (Feijo, J., Dep. at 236-37)). DCO maintains no program to sell radio advertising, has sold no such advertising, and actually pays to use the time it obtains on broadcasting networks (R 16 (Feijo, P., Dep. at 104)).

32. Respondent James Feijo’s daughter, Jill Feijo, has supervised Respondent DCO’s Order Center for the past nine years and has taken telephone orders. (CX 39; J. Feijo, HOJ Tr. 204).

Response to Finding No. 32

Respondents have no specific response.

33. DCO also accepts consumers’ orders on the Internet. (P. Feijo, Tr. 397; Marino, HOJ Tr. 54).

