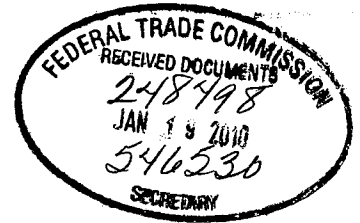


ORIGINAL



UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

)
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' PETITION FOR RECONSIDERATION
OF FINAL ORDER**

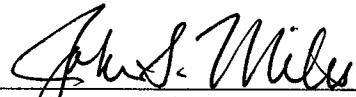
COME NOW Respondents, pursuant to Commission Rules 3.55 (16 C.F.R. section 3.55) and 3.56(d) (16 C.F.R. section 3.56(d)), and respectfully petition the Commission to reconsider its Final Order issued on December 24, 2009, served upon Respondents on December 31, 2009.

As grounds therefor, Respondents assert that said Final Order violates 15 U.S.C. section 45(g)(1) and 16 C.F.R. section 3.56(a) in that Paragraphs V.A, V.B, VII, and X require Respondents to comply with portions of said Final Order prior to the 60-day period provided therein before any cease and desist order is "final," as provided in 15 U.S.C. section 45(g)(1), or "effective," as provided by 16 C.F.R. section 3.56(a), as more fully set out in the attached Memorandum in Support of Petition for Reconsideration of Final Order.

Said Final Order having been issued in violation of statute and Commission rule, Respondents pray that the Commission reconsider its Final Order and pray for the following relief:

- (1) Set Aside the Final Order issued on December 24, 2009, and served on December 31, 2009;
- (2) Enter a Stay of the effective date of the Final Order, as well as an Order to toll the running of any and all statutory or regulatory time periods in, and relating to, said Final Order, pending a ruling on this Petition;
- (3) Provide such other relief as may be necessary to protect Respondents' rights in this matter.

Respectfully submitted,



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Attorneys for Respondents

Dated: January 19, 2010

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

In the Matter of)	Docket No.: 9329
)	
DANIEL CHAPTER ONE,)	PUBLIC DOCUMENT
a corporation, and)	
)	
JAMES FEIJO,)	
individually, and as an officer of)	
Daniel Chapter One.)	
)	

CERTIFICATE OF SERVICE

I certify that on January 19, 2010, I served or caused to be served the attached Respondents' Petition for Reconsideration of Final Order and Respondents' Memorandum in Support of Petition for Reconsideration of Final Order, on the following individuals by the means indicated:

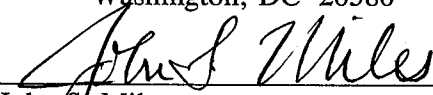
By hand delivery and e-mail:

Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW, Room H-159
Washington, DC 20580

By mail:

Theodore Zang, Jr., Esq.
Carole A. Paynter, Esq.
David W. Dulabon, Esq.
Federal Trade Commission - Northeast Region
One Bowling Green, Suite 318
New York, NY 10004

Courtesy Copy:
Hon. D. Michael Chappell
Administrative Law Judge
600 Pennsylvania Avenue, NW
Room H-528
Washington, DC 20580


John S. Miles
WILLIAM J. OLSON, P.C.
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Vienna, VA 22180-5615

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

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
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**RESPONDENTS' MEMORANDUM IN SUPPORT OF
PETITION FOR RECONSIDERATION OF FINAL ORDER**

Grounds in Support of Petition

1. On Christmas Eve, December 24, 2009, the Commission issued its Final Order in the above-entitled matter. On New Years Eve, December 31, 2009, the Commission served its Final Order on Respondents.

2. Section 5(g) of the FTC Act (15 U.S.C. section 45(g)(1)) and Commission Rule 3.56(a) (16 C.F.R. section 3.56(a)), specify that FTC Final Orders shall not become "final" and "effective" until 60 days after the date of service, or March 4, 2010.

3. Contrary to the FTC Act and to Commission Rule, however, Paragraph V.A of said Order requires Respondents to deliver to the Commission a list of all consumers who purchased BioShark, 7 Herb Formula, GDU, and BioMixx "within seven (7) days after the date of service of this order," or by January 12, 2010, 51 days before the effective date of said Order.

4. Contrary to the FTC Act and to Commission Rule, however, Paragraph V.B of said Order requires Respondents to send to such consumers an exact copy of the notice attached as

Attachment A “[w]ithin forty-five days after the date of service of this order,” or on February 17, 2010, 15 days before the effective date of said Order.

5. Contrary to the FTC Act and to Commission Rule, however, Paragraph VII of said Order requires Respondents to “deliver this order to current personnel within thirty (30) days after the date of service of this order,” or on February 2, 2010, 30 days before the effective date of said Order.

6. Contrary to the FTC Act and to Commission Rule, however, Paragraph X of said Order requires Respondents to file with the Commission a report setting forth in detail the manner and form in which they have complied with this order “within sixty (60) days after the date of service of this order,” or on March 4, 2010, thereby requiring Respondents to certify that they were in compliance with said Order before the effective date of said Order.

7. On January 11, 2010, and in response to an e-mail message to counsel of record dated January 7, 2010, from the Secretary of the FTC, Respondents through counsel made inquiry by telephone concerning the effective dates of Paragraphs V.A, V.B, VII, and X as expressly stated in the Final Order.

8. On January 15, 2010, the Secretary of the FTC, by e-mail message to counsel of record, effectively advised Respondents to disregard the language of the FTC Final Order setting the date of service of the Order as the beginning date of the times within which Paragraphs V.A, V.B, VII and X must be complied with, and substitute therefor as the beginning date, “Friday, March 5, 2010.”

9. On January 15, 2010, having substituted the March 4, 2010 date, for the “date of service” set forth in the Final Order, the Secretary of the FTC in that same e-mail advised Respondents of a new set of ending dates, as follows:

- “1. The 7-business-day period specified in Part V.A. of the Order will end on Monday, March 15, 2010.
2. The 45-calendar-day period specified in Part V.B. of the Order will end on Monday, April 19, 2010.
3. The 30-calendar-day period specified in Part VII. of the Order — with respect to delivery of the Order to current personnel — will end on Monday, April 5, 2010.
4. The 60-calendar-day period specified in Part X of the Order will end on Monday, May 3, 2010.”

10. By his January 15, 2010 e-mail, the FTC Secretary has, in effect, reopened this proceeding, setting aside the express timetables for compliance with Paragraphs V.A, V.B, VII, and X of the Commission’s Final Order, in violation of 16 C.F.R. section 3.72(a), and entering a new Final Order.

11. According to Commission Rule 3.72(a), only the Commission has authority to enter a new Final Order, and thus the FTC Secretary’s *ultra vires* act affords Respondents no binding assurance that Respondents would not be legally bound by the time periods expressly stated in the Final Order.

12. As provided in Section 5(c) of the FTC Act, a Petition for Review or application for stay filed by Respondents is limited to the administrative record, including the Final Order as it expressly reads, not as it has been purportedly modified by the FTC Secretary in his January 15, 2010 e-mail message, thereby placing in unnecessary doubt whether Respondents

may obtain modifications or stay of the Final Order that they may seek by way of a Petition for Review or application for stay.

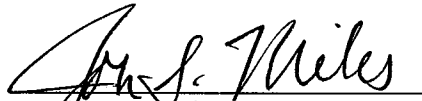
13. According to the administrative record of this proceeding, made available to the public on the FTC website, it would appear that Respondents would not be in compliance unless they conformed with the time periods prescribed in Paragraphs V.A, V.B, VII, and X of the Final Order, the FTC Secretary's e-mailed *ultra vires* changes of those time periods not appearing as part of the record of this matter, and ineffective even if so appearing.

Relief Requested

Having had no opportunity to argue this matter before the Commission prior to the issuance of the Final Order, and confining their petition to a new question not previously raised before the Commission, and for the reasons stated, Respondents pray that the Commission reconsider its Final Order of December 24, 2009, and:

- (1) Set aside said Final Order as violative of section 5(g) of the FTC Act and Commission Rule 3.56(a);
- (2) Enter a stay of the effective date of the Final Order as well as an order tolling the running of all statutory time periods in, and relating to, said Final Order pending a ruling on this petition; and
- (3) Provide such other relief as may be necessary to protect Respondents' rights in this matter.

Respectfully submitted,



Herbert W. Titus
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Jeremiah L. Morgan

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Attorneys for Respondents

January 19, 2010
