



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 MOTION AND MEMORANDUM TO COMPEL
PRODUCTION OF DOCUMENTS

Pursuant to the Federal Trade Commission’s Rules of Practice, 16 C.F.R. 3.22 and 3.38, Complaint Counsel respectfully move for an order compelling Respondents to produce documents in response to Complaint Counsel’s First Request for Production of Documentary Materials and Tangible Things (“First Request for Documents”), Document Requests # 22 and # 23.

I. BACKGROUND

On November 17, 2008, Complaint Counsel propounded its First Request for Documents to Respondents. Exhibit A. On December 8, 2008, Respondents served Complaint Counsel with Respondents’ Responses to Complaint Counsel’s First Request for Production of Documentary Materials and Tangible Things. Exhibit B.

Respondents have failed to produce any documents in response to Complaint Counsel’s Document Requests # 22 and # 23. Respondents responded to both of these requests as follows: “Respondents believe they are not required to disclose such information.”

Complaint Counsel's Document Request # 22 asks for: "Documents sufficient to identify all bank accounts or other financial institution destinations into which any proceeds of sales of the Challenged Products were directed, placed, or transferred." Complaint Counsel's Document Request # 23 asks for: "All documents concerning any third party checks, cashier's checks, money orders or other financial instruments endorsed to the Respondents or deposited into any checking or savings account maintained by the Respondents, on behalf of the Respondents, or for the benefit of the Respondents relating to monies received in exchange for the Challenged Products or to the sales or proceeds of sales of the Challenged Products."

Complaint Counsel have conferred with Respondents' counsel on several occasions both by telephone and by e-mail, most recently on December 12, 2008, in a good faith effort to resolve by agreement the issues raised in this motion, and have been unable to reach such an agreement. See Complaint Counsel's Statement, attached hereto as Exhibit C.

II. ARGUMENT

Complaint Counsel's motion should be granted for two reasons. First, Respondents failed to object to Complaint Counsel's Document Requests # 22 and # 23 in a timely fashion pursuant to the Court's Scheduling Order of October 28, 2008 ("Scheduling Order") and thereby waived their right to do so. Second, the documents sought by these two document requests are relevant and within the proper scope of discovery. Each of these arguments is discussed more fully below.

In its Scheduling Order, the Court set forth specific deadlines for raising any objection to document requests. Respondents ignored those deadlines and by doing so have waived their right to object. The Scheduling Order, in additional provision # 10, specifically sets forth the procedure for making objections to document requests: "Objections to document

requests. . .shall be due within 10 days of service.” Respondents failed to object to Complaint Counsel’s Document Requests # 22 and # 23 within 10 days of service, but rather, made such “objection” 21 days later and merely claimed that “they believe they are not required to disclose such information.”

Document Requests # 22 and # 23 are well within the broad scope of pre-trial discovery. Commission Rule of Practice 3.31(c)(1) provides for “discovery to the extent that it may be reasonably expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to the defenses of any respondent.” Pre-trial discovery typically is “accorded a broad and liberal treatment. . . . This broad right of discovery is based on the general principle that litigants have a right to every man’s evidence and that wide access to relevant facts serves the integrity and fairness of the judicial process by promoting the search for the truth.” *Shoen v. Shoen*, 5 F.3d 1289, 1292 (9th Cir. 1993) (internal quotations and citations omitted). *See also Chain Pharmacy Assoc.*, Dkt. No. 9227, slip. op. at 2, 1990 FTC LEXIS 193 (June 20, 1990).

Complaint Counsel’s Document Requests # 22 and # 23 seek documents relevant to the allegations in the complaint. Specifically, these documents are relevant to whether the acts and practices of Respondents, as alleged in the complaint, have been in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. Section 44. Seeking financial documents, the two requests also relate to whether Respondents have engaged in the offering for sale, sale, and distribution of the Daniel Chapter One products which purport to prevent, treat, or cure cancer or tumors.

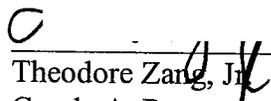
Complaint Counsel’s Document Requests # 22 and # 23 are also relevant to Respondents’ defenses. Respondents maintain that their conduct at issue here is religious speech protected by the First Amendment to the U.S. Constitution. The FTC maintains that the conduct

is commercial speech. Respondents' financial records bear directly on the Respondents' efforts to shield their conduct from scrutiny by virtue of the First Amendment. Examining the financial records of Respondents will help enable Complaint Counsel, and eventually this Court, to assess the strength of Respondents' First Amendment claims.

III. CONCLUSION

Therefore, for the reasons set forth above, Complaint Counsel respectfully request that the Administrative Law Judge issue the attached order compelling the production of documents as requested in Complaint Counsel's First Request for Documents, Requests # 22 and # 23.

Respectfully submitted,



Theodore Zang, Jr. (212) 607-2816
Carole A. Paynter (212) 607-2813
David W. Dulabon (212) 607-2814

Federal Trade Commission
Alexander Hamilton U.S. Custom House
One Bowling Green, Suite 318
New York, NY 10004

Dated: December 15, 2008

EXHIBIT A

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

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

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Docket No. 9329

Public Document

**COMPLAINT COUNSEL'S FIRST REQUEST FOR PRODUCTION
OF DOCUMENTARY MATERIALS AND TANGIBLE THINGS**

Pursuant to RULE OF PRACTICE 3.37(a) and this Court's *Scheduling Order* dated October 28, 2008, Complaint Counsel requests that Respondents produce the documentary materials and tangible things identified below for inspection and copying within 20 days at the Federal Trade Commission-Northeast Regional Office, One Bowling Green, Suite 318, New York, NY 10004, or at such time and place as may be agreed upon by all counsel.

DEFINITIONS

1. "All documents" means each document, as defined below, which can be located, discovered or obtained by reasonable, diligent efforts, including without limitation all documents possessed by: (a) you or your counsel; or (b) any other person or entity from whom you can obtain such documents by request or which you have a legal right to bring within your possession by demand.

2. **“Challenged Products”** means the products, both individually and collectively, identified as Bio*Shark, 7 Herb Formula, GDU, and BioMixx in the administrative *Complaint* issued by the Federal Trade Commission in the above-captioned matter.
3. **“Communication(s)”** includes, but is not limited to, any and all conversations, meetings, discussions and any other occasion for verbal exchange, whether in person, by telephone, or electronically, as well as all letters, memoranda, telegrams, cables, and other writings or documents.
4. **“Complaint”** means the administrative *Complaint* issued by the Federal Trade Commission, and any amendments thereto, in the above-captioned matter.
5. **“Corporate Respondent”** means Daniel Chapter One, including all of its operations under other names.
6. **“Dissemination schedule”** includes, but is not limited to, the following: (a) for radio, audio, television, and video promotional materials, the date, time of day, location and station name; (b) for product packaging, the names of distributors and retailers to whom the packaging or other promotional material was transmitted, the date of transmittal, and the number of pieces transmitted; (c) for printed promotional materials, the name and date of the publication or place in which the promotional material appeared; and (d) for Internet materials, the date that the promotional material was first placed on the Internet, the date (if any) that it was removed from the Internet, and the number of “hits” that the promotional material registered.
7. **“Document”** means the complete original and any non-identical copy (whether different from the original because of notations on the copy or otherwise), regardless of origin or location, of any written, typed, printed, transcribed, taped, recorded, filmed, punched, computer-stored, or graphic matter of every type and description, however and by whomever prepared, produced,

disseminated or made, including, but not limited to, any advertisement, book, pamphlet, periodical, contract, file, invoice, memorandum, note, telegram, record, working paper, routing slip, package insert, Web page, chart, graph, paper, index, tabulation, manual, guide, outline, script, abstract, history, calendar, diary, agenda, minute, code book, data compilation, tests, reports, clinical studies, scientific literature, articles, expert opinions, handwritten notes, correspondence, communications, electronic mail, electronically stored data, computer (including handheld computer) material (including print-outs, cards, magnetic or electronic tapes, discs and such codes or instructions as will transform such computer materials into easily understandable form), and video and audio recordings.

8. **“Each”** and **“any”** include **“all,”** so as to have the broadest meaning, whenever necessary to bring within the scope of any Document Request all information and/or documents that might otherwise be construed to be outside its scope.

9. **“Includes”** or **“including”** means **“including but not limited to,”** so as to avoid excluding any information that might otherwise be construed to be within the scope of any Document Request.

10. **“Individual Respondent”** means James Feijo.

11. **“Interrogatories”** means any and all *Interrogatories* served on the Respondents in the above-captioned matter.

12. **“Or”** includes **“and,”** and **“and”** includes **“or,”** so as to have the broadest meaning whenever necessary to bring within the scope of any Document Request all information or documents that might otherwise be construed to be outside its scope.

13. **“Person” or “Persons”** means all natural persons, corporations, partnerships or other business associations, and all other legal entities, including all members, officers, predecessors, assigns, divisions, affiliates and subsidiaries.
14. **“Promotional material”** means any written or oral statement, advertisement, illustration, or depiction that is designed to effect a sale or create interest in goods or services, whether the same appears in a press release, video news release, brochure, newspaper, newsletter, magazine, pamphlet, leaflet, circular, mailer, book insert, letter, catalogue, poster, chart, billboard, point of purchase display, instructional or education materials, packaging, package insert, package label, film, slide, radio or television broadcast or transmission, Internet or World Wide Web site, streaming video, electronic mail, audio program transmitted over a telephone system, script used to make oral solicitations to consumers, or publication or broadcast in any other medium.
15. **“Referring to” or “relating to”** means discussing, describing, reflecting, containing, analyzing, studying, reporting, commenting, evidencing, constituting, setting forth, considering, recommending, concerning, or pertaining to, in whole or in part.
16. **“Respondent(s)”** means the Corporate Respondent and the Individual Respondent, both individually and collectively.
17. **“You” or “Your”** means the Respondents or Respondents’, both individually and collectively, unless otherwise noted.
18. The use of the singular includes the plural, and the plural includes the singular.
19. The use of a verb in any tense shall be construed as the use of the verb in all other tenses.
20. The spelling of a name shall be construed to include all similar variants thereof.

INSTRUCTIONS

1. Unless otherwise specified, the time period covered by a Document Request shall not be limited and all documents responsive to the Document Request, regardless of dates or time period involved, shall be provided.
2. A complete copy of each document should be submitted even if only a portion of the document is within the terms of the Document Request. The document shall not be edited, cut, or expunged and shall include all covering letters and memoranda, transmittal slips, appendices, tables or other attachments.
3. All information submitted shall be clearly and precisely identified as to the Document Request(s) or sub-Request(s) to which it is responsive. Each page submitted should be marked with a unique "Bates" document tracking number.
4. Documents covered by these Requests are those which are in your possession or under your actual or constructive custody or control, and in the case of the Corporate Respondent, includes all of its operations under other names, whether or not such documents were received from or disseminated to any other person or entity including attorneys, accountants, directors, officers, employees, independent contractors, and volunteers.
5. All information submitted shall be clearly and precisely identified as to the Respondent(s) who produced the information. You shall do so by: (a) marking each submitted item with a notation identifying the Respondent(s) who produced that item; or (b) providing a separate list of submitted items, in numeric "Bates" document tracking number order, that identifies the Respondent(s) who produced each item.
6. Documents that may be responsive to more than one Document Request need not be submitted more than once; however, your response should indicate, for each document

submitted, each Request to which the document is responsive. If any documents responsive to a Request previously have been supplied to the Commission, you may comply with the Request by identifying the document(s) previously provided and the date of submission; identification shall be by Bates number if the document(s) were so numbered when submitted, or by author and subject matter if not so numbered.

7. If any of the documentary materials requested in these Document Requests are available in machine-readable form (such as floppy or hard disks, drums, core storage, CD, DVD, magnetic tapes or punch cards), state the form in which it is available and describe the type of computer or other machinery required to read the record(s) involved. If the information requested is stored in a computer or file or record generated by a computer, indicate whether you have an existing program that will print out the record in readable form and state the name, title, business address and telephone number of each person who is familiar with the program.

8. Promotional materials submitted in response to these Document Requests shall be submitted in the following form(s): For documents, provide the original promotional materials if available, or, if not available, color copies thereof. For audio-only (or radio) materials, provide a tape cassette or CD (if in machine-readable form) and a script, as well as any audio out-takes, if available. For video recordings, provide a DVD, CD, or VHS cassette and script or storyboard, as well as any video out-takes, if available. For Internet or other online materials, provide a CD (if in machine-readable form) or a clear color printout of all screens displayed in the promotional materials and identify the site, forum, or address.

9. All objections to these Document Requests, or to any individual Document Request, must be raised in the initial response or are otherwise waived.

10. If any requested material is withheld based on a claim of privilege, submit, together with such claim, a schedule of items withheld which states individually for each item withheld: (a) the type, title, specific subject matter, and date of the item; (b) the names, addresses, positions, and organizations of all authors and recipients of the item; and (c) the specific grounds for claiming that item as privileged. If only part of a responsive document is privileged, all non-privileged portions of the document must be submitted.

11. This First Request for Production of Documentary Materials and Tangible Things is continuing in character so as to require you to produce additional information promptly upon obtaining or discovering different, new or further information before the close of discovery. Further instructions pertinent to a particular Document Request appear in parentheses within or following that Request.

DOCUMENTS AND THINGS REQUESTED

Demand is hereby made for the following documentary materials and tangible things:

1. Two complete packages, including the product contained therein and all packaging inserts, of each of the challenged products. (If any product has been reformulated, provide two complete packages, including the product contained therein and all packaging inserts, of each version of the product that has been marketed and sold.)

2. All documents and communications, including, but not limited to, any tests, reports, studies, scientific literature, and written or oral opinions, relied upon by Respondents as substantiation for each of the following representations regarding Bio*Shark, regardless of whether the Respondents believe such representations are made in the promotional materials:

- (A) Bio*Shark inhibits tumor growth; and
- (B) Bio*Shark is effective in the treatment of cancer.

3. All documents and communications, including, but not limited to, any tests, reports, studies, scientific literature, and written or oral opinions, relied upon by Respondents as substantiation for each of the following representations regarding 7 Herb Formula, regardless of whether the Respondents believe such representations are made in the promotional materials:
 - (A) 7 Herb Formula is effective in the treatment or cure of cancer; and
 - (B) 7 Herb Formula inhibits tumor formation.
4. All documents and communications, including, but not limited to, any tests, reports, studies, scientific literature, and written or oral opinions, relied upon by Respondents as substantiation for each of the following representations regarding GDU, regardless of whether the Respondents believe such representations are made in the promotional materials:
 - (A) GDU eliminates tumors; and
 - (B) GDU is effective in the treatment of cancer.
5. All documents and communications, including, but not limited to, any tests, reports, studies, scientific literature, and written or oral opinions, relied upon by Respondents as substantiation for each of the following representations regarding BioMixx, regardless of whether the Respondents believe such representations are made in the promotional materials:
 - (A) BioMixx is effective in the treatment of cancer; and
 - (B) BioMixx heals the destructive effects of radiation and chemotherapy.
6. All documents relating to any of the Respondents' policies, procedures, or requirements for evaluating or reviewing each safety, efficacy, or bioavailability representation made for the Challenged Products, including but not limited to the representations set forth in Requests 2 through 5 above.

7. All documents and communications relating to the circumstances under which the representations set forth in Requests 2 through 5 above were formulated, considered, discussed, or made, to the extent such documents are not produced in response to other Requests.
8. Documents sufficient to show all active and inactive ingredients, as well as (a) the specific amount (*i.e.*, grams, milligrams, ounces, etc.) of each ingredient and (b) the percentage of each ingredient and the dates and use of each ingredient, contained in the Challenged Products, and if changes were made in the active or inactive ingredients or their strengths, documents sufficient to show the reasons for such changes and the dates of such changes.
9. All documents and communications referring or relating to the efficacy of any other products advertised, promoted, offered for sale, sold, or distributed by the Respondents that make any representations relating or referring to cancer or tumors.
10. All promotional and informational materials for the Challenged Products, whether in draft or final form.
11. All documents and communications referring or relating to draft or final promotional or informational materials for the Challenged Products. (This request includes, but is not limited to, contracts, documents, and communications evidencing the creation, modification, approval, execution, evaluation, dissemination, clearance, or placement of promotional and informational materials, and documents referring or relating to the contents of draft or final promotional and informational materials, including, but not limited to, any claims, messages, or communications in any draft or final promotional and informational material(s)).
12. All documents and communications referring or relating to the marketing of each of the Challenged Products. (This request includes, but is not limited to, market research, marketing plans or strategies, and all other document(s) and communications referring or relating to copy

tests, marketing or consumer surveys and reports, penetration tests, target audiences, recall tests, audience reaction tests, communication tests, consumer perception of any promotional or informational materials for any of the challenged products.)

13. All documents relating to any communication, theme, message, claim, representation, or inference intended, desired, believed, or discovered to be conveyed by the promotional and informational materials, or draft promotional or informational materials, for the Challenged Products.
14. All documents relating to the impact, success, or lack of success of the promotional and informational materials for the Challenged Products.
15. All documents and communications referring or relating to the duties, responsibilities, and work performed by the Respondents with respect to the advertising, marketing, promotion, dissemination of information, and sale of each of the Challenged Products.
16. All documents and communications referring or relating to persons who are depicted, named, or quoted in promotional and informational materials for each of the Challenged Products. (This request includes, but is not limited to, documents and communications referencing endorsers and testimonials and documents identifying the contact information for all persons depicted, named, or quoted in those promotional or informational materials.)
17. All documents relating to, referring to, or constituting a dissemination schedule for promotional and informational materials, including, but not limited to, all advertisements, relating to the Challenged Products.
18. Documents sufficient to show the total dollar amount spent by the Respondents on the advertising, marketing, dissemination of information, or other promotion of the Challenged Products from the year 2003 to the present.

19. Annually, from the date of the first sale of each of the Challenged Products to date, all documents that show net and gross sales figures and profit figures for each of the Challenged Products.
20. Documents sufficient to identify or disclose the number of units (*i.e.*, bottles) of the Challenged Products sold to (1) consumers, (2) distributors, and (3) retailers, and the price(s) at which such sales were made.
21. Documents sufficient to identify all distributors and retailers of the Challenged Products.
22. Documents sufficient to identify all bank accounts or other financial institution destinations into which any proceeds of sales of the Challenged Products were directed, placed, or transferred.
23. All documents concerning any third party checks, cashier's checks, money orders or other financial instruments endorsed to the Respondents or deposited into any checking or savings account maintained by the Respondents, on behalf of the Respondents, or for the benefit of the Respondents relating to monies received in exchange for the Challenged Products or to the sales or proceeds of sales of the Challenged Products.
24. Documents sufficient to identify all consumers and/or purchasers of the Challenged Products.
25. All documents and communications referring or relating to complaints or governmental or law enforcement investigations of any of the Challenged Products or their promotional materials. (This request includes, but is not limited to, documents and communications relating to lawsuits, demand letters, refund requests, warranty or guarantee claims, and complaints or inquiries by local, state, federal, or international regulators (including the U.S. Food and Drug Administration and the Canadian Competition Bureau) or other persons (including, but not

limited to, consumers, competitors, and entities such as the Better Business Bureau or the National Advertising Division of the Council of Better Business Bureaus)).

26. Documents sufficient to show the legal names and addresses for the Respondents; the names and titles of the Corporate Respondent's officers, directors, managers, supervisors, shareholders, employees, independent contractors, and volunteers; the date and state of incorporation; the legal name(s) and address(es) of any parent or affiliated company or companies; and the relationship of each to the Respondents.

27. All documents relating to the corporate structure of each company for which the Individual Respondent is an officer, director, advisor, consultant, employee, or significant shareholder (25% or more of total shares), including, but not limited to, Articles of Incorporation; By-laws; Board minutes; annual reports; information showing the date and place of the formation of each company, and the form of organization of each company (for example, corporation or partnership); parent organization, if any, and all subsidiaries and affiliates; annual or periodic filings with State or Federal authorities regulating corporations; the names of all directors; the name and title of all officers, supervisors, and managers; organizational charts; documents showing the ownership interests of all owners; documents describing the duties, responsibilities and authority of all officers, managers, directors, and supervisors employed by Respondents; and any documents delegating authority to engage in any act of behalf of Respondents or act as agent for Respondents.

28. Documents sufficient to show the name(s), address(es) and telephone number(s) of all employees, independent contractors, or volunteers of the Corporate Respondent who had any role in, or responsibility for, developing or reviewing any substantiation, scientific or otherwise,

or representations made in the promotional materials for the Challenged Products. For each person, identify that person's role or responsibility.

29. Documents sufficient to show the name(s), address(es) and telephone number(s) of all employees, independent contractors, or volunteers of the Corporate Respondent or advertising agencies, Web site developers, or other person(s) who had any role in, or responsibility for, the development or content of any advertising or promotional material disseminated by the Respondents or their representatives.
30. All tax returns for Respondents from 2003 to the present, including, but not limited to, all supporting documents and attachments, requests for extensions for filing any tax returns, and any statement(s) of the reasons for which any extension(s) were requested. (This request includes all returns and related information pertaining to the payment of payroll and unemployment taxes, social security taxes, medicare, and federal, state and local and sales, business, gross receipts, licensing, property, and income taxes.)
31. All documents and communications consulted or used in preparing your responses to Complaint Counsel's *First Set of Interrogatories*.

Respectfully submitted,



Theodore Zang, Jr. (212) 607-2816
Carole A. Paynter (212) 607-2813
David W. Dulabon (212) 607-2814

Federal Trade Commission
Alexander Hamilton U.S. Custom House
One Bowling Green, Suite 318
New York, NY 10004

Dated: November 17, 2008

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 17, 2008, I caused copies of Complaint Counsel's First Request for Production of Documentary Materials and Tangible Things to be served via electronic mail and followed by Federal Express delivery to the following:

James Turner, Esquire
Swankin & Turner
1400 16th Street, N.W.
Washington, D.C. 20036
jim@swankin-turner.com



David W. Dulabon
Complaint Counsel

EXHIBIT B

1 Swankin & Turner
2 James S. Turner
3 1400 16th Street, NW, Suite 101
4 Washington, DC 20036
5 Ph: 202-462-8800
6 Fax: 202-26506564
7 Email: jim@swankin-turner.com

8 **IN THE UNITED STATES OF AMERICA**
9 **BEFORE THE FEDERAL TRADE COMMISSION**

10 **In the Matter of**

11 **DANIEL CHAPTER ONE,**
12 **a corporation, and**

13 **JAMES FEIJO,**
14 **individually, and as an officer of**
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) **Docket No.: 9329**

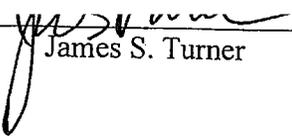
) **PUBLIC DOCUMENT**

16 **RESPONDENTS' RESPONSES TO COMPLAINT COUNSEL'S**
17 **FIRST REQUEST FOR PRODUCTION OF DOCUMENTARY MATERIALS**
18 **AND TANGIBLE THINGS**

19 Pursuant to FTC Rule of Practice 3.37 and the Court's scheduling order of October 28,
20 2008, Respondents respond to Complaint Counsel's first request for production of documentary
21 materials and tangible things on the attached pages. The items produced are from all named
22 Respondents.

23 Dated this 8th day of December, 2008

24 **SWANKIN & TURNER**
25 **Attorneys for Respondents**

26
27
28 By: 
James S. Turner

Respondents hereby respond to Complaint Counsel's First Request for Production of Documentary Materials and Tangible Things as follows:

1. Two complete packages of each of the products, alleged health claims for which are the subject of the Complaint, have been forwarded by Federal Express to Complaint Counsel.
- 2-5. See attached documents numbered DCO 0001 through DCO 0155.
6. As Respondents understand this question, Respondents have no such documents.
7. See response to Interrogatory #20.
8. See labels of products contained in response to Request #1, above.
9. As Respondents understand this question, Respondents have no such documents.
10. All such documents were previously provided to the FTC or are on the website.
11. All such documents were previously provided to the FTC or are on the website.
12. As Respondents understand this question, Respondents have no such documents.
13. As Respondents understand this question, Respondents have no such documents.
14. As Respondents understand this question, Respondents have no such documents.
15. As Respondents understand this question, Respondents have no such documents.
16. See attached copies of documents numbered DCO 0156 through DCO 0205.
17. As Respondents understand this question, Respondents have no such documents.
18. As Respondents understand this question, Respondents have no such documents.
19. As Respondents understand this question, Respondents have no such documents.
20. As Respondents understand this question, Respondents have no such documents.
21. See Exhibit 5 to response to Interrogatories.
22. Respondents believe they are not required to disclose such information.
23. Respondents believe they are not required to disclose such information.
24. As Respondents understand this question, Respondents have no such documents.

25. The only responsive documents to this Request are a warning letter from the U.S. FDA and a letter from the Canadian government, both of which Respondents believe are in the possession of the FTC.
26. See Response to Interrogatory #1 and Exhibit 1 thereto.
27. See Response to Interrogatory #1 and Exhibit 1 thereto.
28. James and Patricia Feijo. See Response to Interrogatory #2.
29. See Response to Interrogatory #12 and Exhibits 3 and 5 to the Interrogatories.
30. As Respondents understand this question, Respondents have no such documents, except for property tax returns in Rhode Island and Florida, which are not in the possession of Respondents but are being obtained from the public records and will be submitted upon receipt.
31. To the best of Respondents' knowledge, there are no such documents that have not otherwise been provided in response to these Requests or the Interrogatories.

EXHIBIT C

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
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In the Matter of
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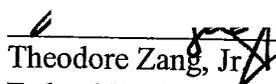
Docket No. 9329

Public Document

COMPLAINT COUNSEL'S STATEMENT

Pursuant to Additional Provision # 5 of the Court's Scheduling Order of October 28, 2008, Complaint Counsel Theodore Zang, Jr. hereby certifies that Complaint Counsel have conferred with Respondents' Counsel in a good faith effort to resolve by agreement the issues raised by the attached Motion to Compel Production of Documents and have been unable to reach such an agreement. Specifically, Complaint Counsel and Respondents' Counsel have conferred by telephone and e-mail, most recently on December 12, 2008 in a telephone conversation on which Carole Paynter, David Dulabon, and Theodore Zang, Jr. represented the FTC, and James Turner, Betsy Lehrfeld, Martin Yerick, and Michael McCormack represented Respondents.

Respectfully submitted,



Theodore Zang, Jr. (212) 607-2816
Federal Trade Commission
Alexander Hamilton U.S. Custom House
One Bowling Green, Suite 318
New York, NY 10004

Dated: December 15, 2008

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Docket No. 9329

Public Document

[Proposed] ORDER GRANTING MOTION TO COMPEL

On December 15, 2008, Complaint Counsel filed a motion to compel Respondents to produce documents as requested by Complaint Counsel's Document Requests # 22 and # 23.

IT IS HEREBY ORDERED that the motion to compel is GRANTED. Respondents shall produce such documents within 10 days from the date of this Order.

ORDERED:

D. Michael Chappell
Administrative Law Judge

Dated:

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 15, 2008, I have filed and served the attached **COMPLAINT COUNSEL'S MOTION AND MEMORANDUM TO COMPEL PRODUCTION OF DOCUMENTS** and **[Proposed] ORDER GRANTING MOTION TO COMPEL** upon the following as set forth below:

The original and one paper copy via overnight delivery and one electronic copy via email to:

Donald S. Clark, Secretary
Federal Trade Commission
600 Pennsylvania Ave., N.W., Room H-159
Washington, DC 20580
E-mail: secretary@ftc.gov

Two paper copies via overnight delivery to:

The Honorable D. Michael Chappell
Administrative Law Judge
600 Pennsylvania Ave., N.W., Room H-528
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